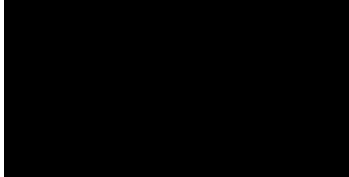


Petreski, Sonya

From: Serrano, Caroline
Sent: Friday, 19 June 2009 1:32 PM
To: EC/LC Papers
Subject: TRIM: RE: Agenda for EC Meeting: 25 June 2009 [SEC=UNCLASSIFIED]
Categories: SEC=UNCLASSIFIED

Hi Chantelle,

Please find enclosed papers for:



And

2. EC09/166 - Mercy Ministries



EC paper June
2009.doc

Kind regards

Caroline

From: EC/LC Papers
Sent: Friday, 19 June 2009 12:44 PM
To: Serrano, Caroline
Subject: RE: Agenda for EC Meeting: 25 June 2009 [SEC=UNCLASSIFIED]

Hi Caroline

Your paper number for matter 1 is: EC09/165 and matter 2 is: EC09/166.

Meeting number 21.

I need the trackit numbers also.

In future, please put agenda items/minutes/papers in separate emails.

Kind Regards,

Chantelle Odd
02 6243 1020

From: Serrano, Caroline
Sent: Friday, 19 June 2009 10:31 AM
To: EC/LC Papers
Subject: Agenda for EC Meeting: 25 June 2009 [SEC=UNCLASSIFIED]
Importance: High

Hello,

Please find below the minutes of yesterday's meeting [REDACTED]

[REDACTED]

Also, could you please include the following matters in the agenda for the EC meeting next week (25 June 2009):

#1:

[REDACTED]

#2

Title: Mercy Ministries [REDACTED]

Alleged: Misleading conduct in the provision of counselling services by a charitable organisation

Purpose: To provide the EC with an update and to seek direction as to how the matter should be pursued

Officers: Caroline Serrano, Melinda McDonald and Elizabeth Jennings

Caroline Serrano
Senior Investigator
Australian Competition & Consumer Commission
Level 3 | 500 Queen Street | Brisbane QLD 4000
T: 07 3835 4666 | F: 07 3832 0372
W: www.accc.gov.au
E: caroline.serrano@acc.gov.au

ENFORCEMENT COMMITTEE SUBMISSION

Meeting date	25.06.2009
Meeting number	2009/21
Paper number	EC09/166
Matter name / TRACKIT	34468 / Complaints against Mercy Ministries entities and [REDACTED] [REDACTED] [REDACTED]
Matter description	Alleged misleading and deceptive conduct in the provision of counselling services by a faith-based charitable organisation
Matter status	[REDACTED]
Project team	McDonald, Melinda / Jennings, Elizabeth / Serrano, Caroline
Office	Brisbane
Legal team	Firm: AGS Name: [REDACTED]
Commencement date	18 March 2008
Last EC consideration	Last considered in 16 October 2008 and EC directed staff to continue with the investigation.
Purpose of paper	To provide the EC with an update and to seek direction as to how the matter should be pursued.
Legal costs to date	\$27,230.00
Funding sought	<input type="checkbox"/> Yes. Note: schedule required. <input checked="" type="checkbox"/> No.
Recommendation	The Committee directs that staff pursue the matter by preparing to institute proceedings should suitable remedies not be offered by Mercy Ministries Incorporated [REDACTED] [REDACTED]
Recommendation approved by RD/GM	Yes
Legal advice	<input type="checkbox"/> Not applicable. <input checked="" type="checkbox"/> This paper includes confidential and privileged material. Note: shade references to legal advice in the paper.

1. Alleged conduct

1.1 It is alleged that in making certain various representations, Mercy Ministries Incorporated (**MMI**) and Mercy Ministries Limited (**MML**) (together **Mercy Ministries**) engaged in misleading or deceptive conduct in breach of section 52, 53(aa) and 53(e) of the TPA.

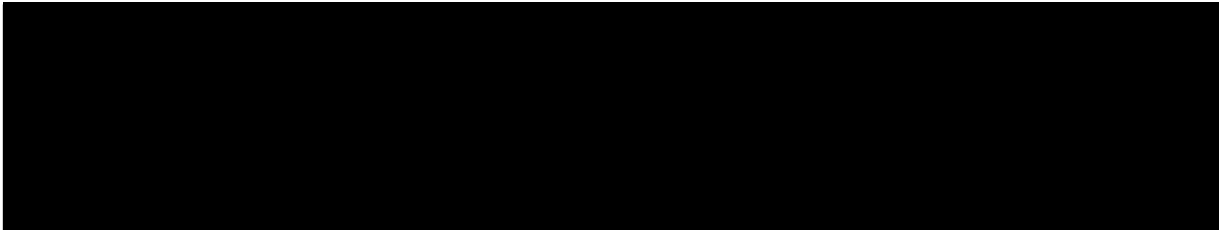
1.2 

2. Potential contravention/s

- | | | |
|-----|------------|---------------------------------|
| 2.1 | s. 52 | Misleading or deceptive conduct |
| 2.2 | s. 53 (aa) | Misrepresentation as to price |
| 2.3 | s. 53 (e) | Misrepresentation as to quality |


3. Relevant background and context for investigation

Mercy Ministries

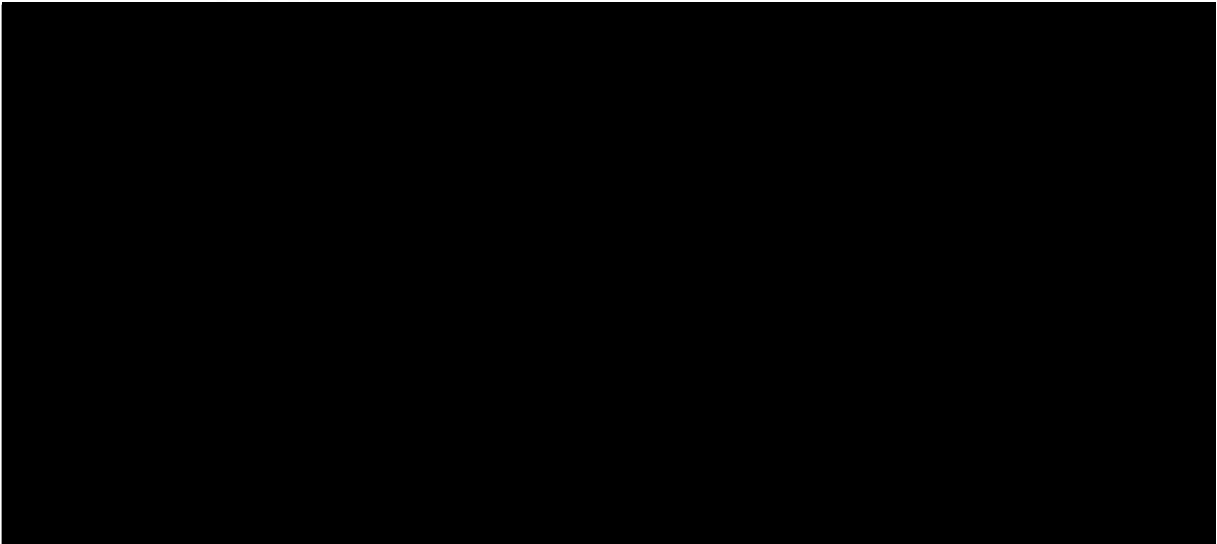
- 3.1 Mercy Ministries is a not for profit charitable organisation that was originally founded in America.
- 3.2 In 2001, the Australian Mercy Ministries entities opened their first residential home in Glenhaven Sydney. Its second home opened in 2003 in Glenview, Sunshine Coast, which Mercy Ministries stated closed in July 2008 due to "strategic and resourcing issues".
- 3.3 Mercy Ministries provides a Christian-based residential program to young women (between the ages of 16 and 28) suffering from a range of illnesses which include eating disorders, depression, self-harming, suicidal ideations and drug and alcohol abuse.
- 3.4 The average duration of the residential program was between 10 to 14 months and required a minimum of six months commitment from the young women.
- 3.5 The young women were required to stay in one of Mercy Ministries' residential facilities. During this time and in most instances (especially for those who lived interstate), contact with their family was very limited.
- 3.6 It is alleged that Mercy Ministries represented, on its website, in brochures and other published materials that its residential program was provided **free or at no cost** to the participants in circumstances where, the participants were required to sign over their entire Centrelink benefits they received to Mercy Ministries for the duration of their stay.
- 3.7 It is also alleged that Mercy Ministries represented that it has **highly qualified staff** available to provide counselling and clinical care services, when that does not appear to be supported by its staffing profile.
- 

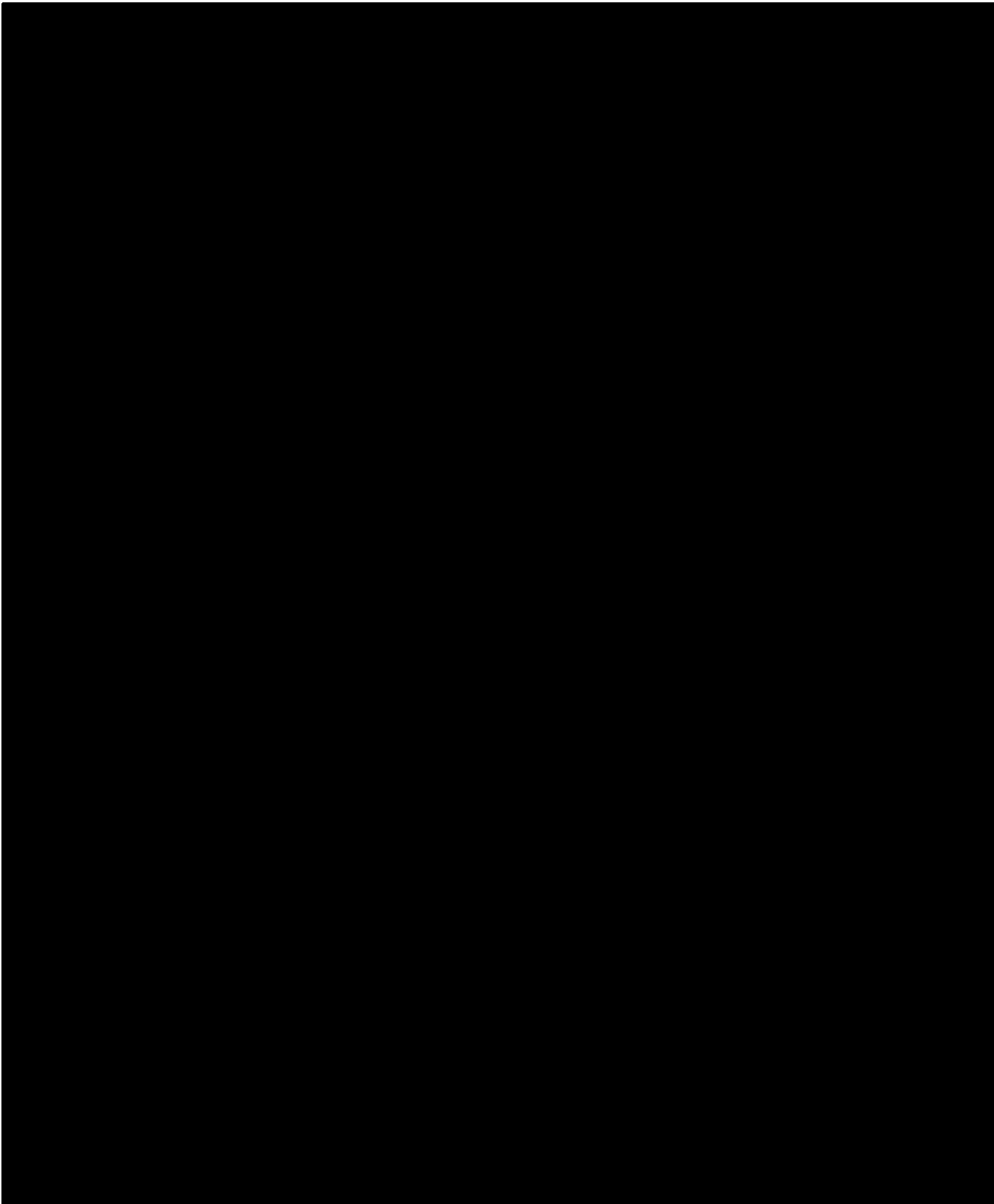


The current conduct

- 3.17 Currently, MMI states on its website that ‘there is no charge’ for the program. It should be noted that it stated on its website in September 2008 that as of June 2008, Mercy Ministries no longer accepts Centrelink benefits.
- 3.18 MMI’s representation relating to the provision of highly qualified staff has now also been amended to state that, “*Mercy Ministries provides a variety of appropriately qualified staff who work with the young women and provide **access** to professional support from psychologists, dietitians [sic], general practitioners and career guidance...*”
- 3.19 

The strategy

- 3.20 As previously advised our complainants are former residents of residential facilities run by Mercy Ministries and are naturally vulnerable. At the time of being admitted in Mercy Ministries’ facilities, they were suffering from a number of conditions including anorexia, bipolar disorder, self-harming and/or depression.
- 3.21 Given the complainants’ conditions, vulnerability and the potential difficulties in pursuing a case using the complainants as witnesses, staff have pursued a misleading conduct case confined to the representations contained in documents. This strategy removes the need for former residents to give evidence on the traumatic experiences they had whilst at Mercy Ministries’ residential facilities.
- 



5. Potential remedies

5.1 If litigated, court orders sought could include:

- Injunctions;
- Declarations; and
- Findings of fact

- 5.2 If other resolution, such as s87B undertaking is pursued, remedies could include:
- Undertaking not to engage in relevant conduct;
 - Admission of s52 conduct;
 - Corrective notices / letters of apology to residents; and
 - Trade practices compliance program (Gloria Jean's entities)
-

6. Factors that warrant the ACCC's intervention

- 6.1 The conduct affects disadvantaged and vulnerable consumers.
- 6.2 There exists an opportunity for the Commission to clarify or advance the law in terms of whether representations made by charitable organisations in certain circumstances fall within the ambit of the TPA.
- 6.3 There remains continuous public, media and ministerial interest on the matter.
-

7. Key decisions and dates

- 7.1 October 2008 EC is informed of the matter. EC directed staff to pursue the matter.
-

9. Anticipated timeframes

- 9.1 If the EC directs staff to proceed to litigation, it is anticipated that pleadings could be prepared with the next four weeks.
- 9.2 If the EC directs staff to approach Mercy Ministries [REDACTED] to determine whether suitable remedies might be offered ahead of instituting proceedings, staff intend to revert back to the EC in one month with the outcome of that approach.
-

10. Estimated completion date

- 10.1 Having regard to 9.1 above and subject to court timetables, it is anticipated that the matter could be filed by August 2009.
- 10.2 Having regard to 9.2 above and subject to the parties agreeing to offer a s87B undertaking containing terms that are acceptable to the Commission, it is anticipated that the entire matter could be finalised by August 2009.
-

11. Other considerations

- 11.1 Due to the complainants falling within the categories of disadvantaged and vulnerable consumers, the Compliance Strategies Branch has been kept advised on the matter.

12. Risks and other relevant factors

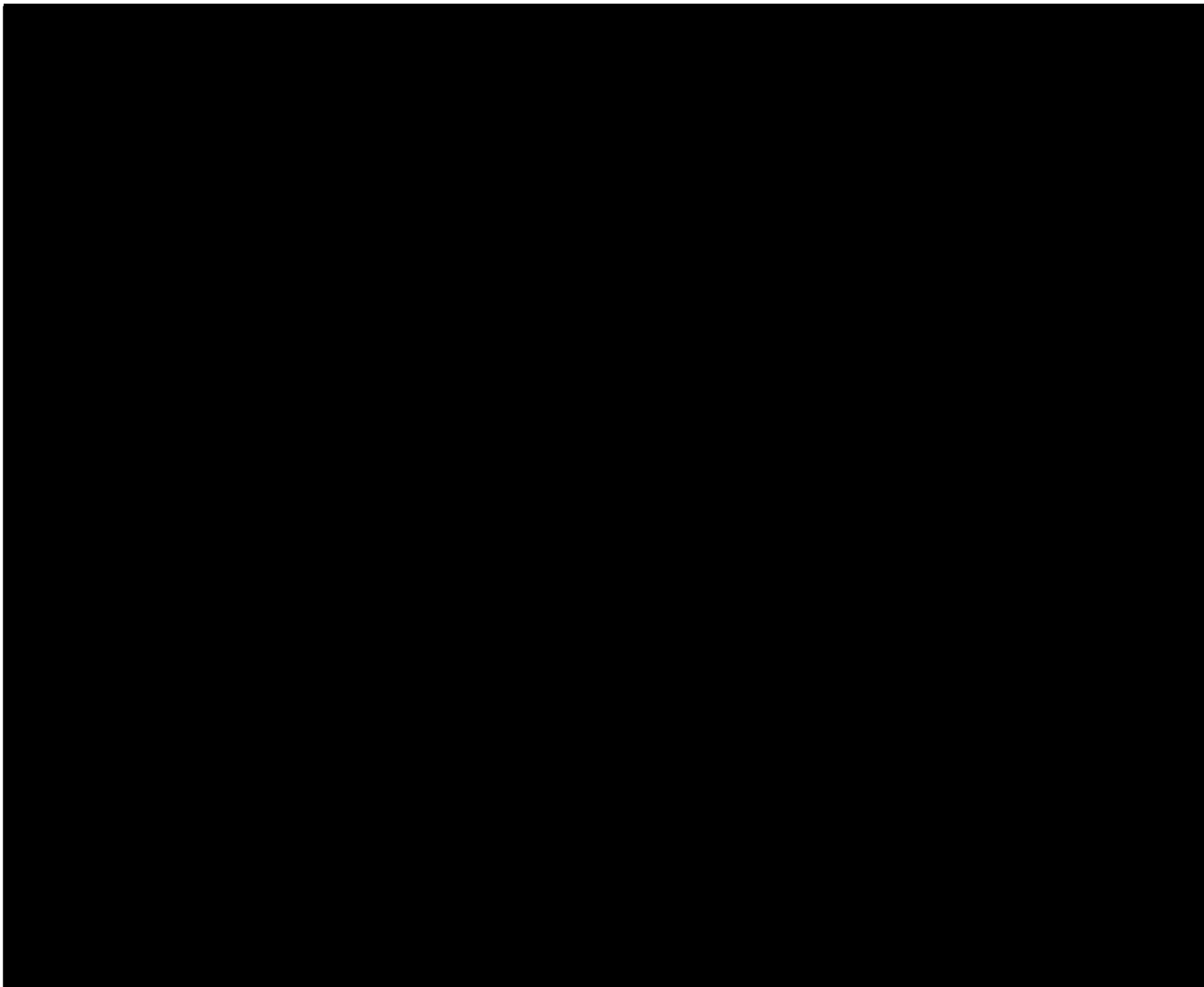
- 12.1 Should the Commission determine to proceed by way of litigation, there is a risk the court may find that:

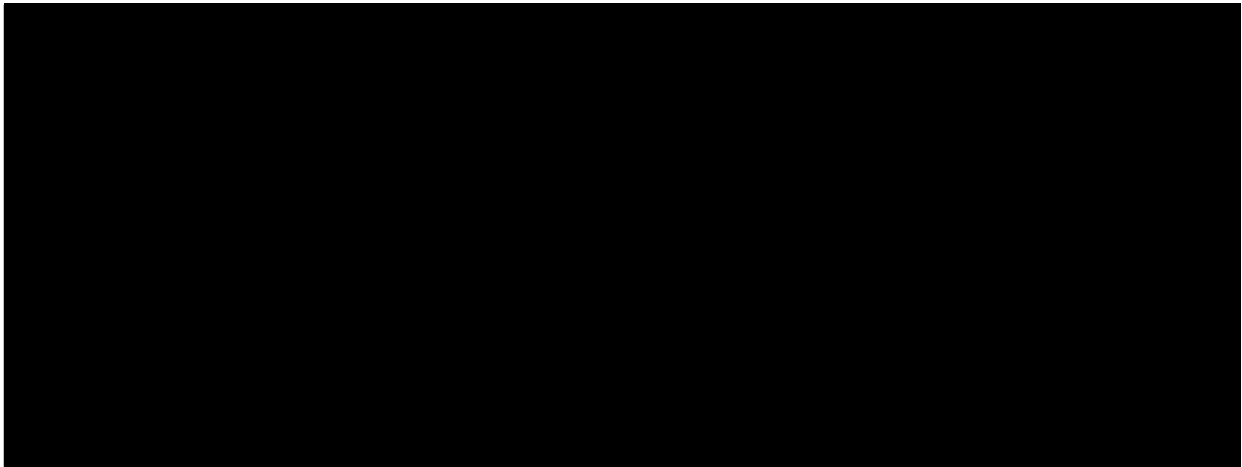
- MMI does not meet the threshold requirements of a trading corporation;
- The making of misleading representations in the course of soliciting donations is not conduct in trade or commerce; and/or

- 



13. Options and recommendations (and reason for selection of particular option)





Staff's recommendation

13.8 Staff recommend that the Committee directs staff to prepare to institute proceedings against MMI [REDACTED] in the event suitable remedies are not otherwise offered by MMI [REDACTED].

Caroline Serrano
Investigator