

# GST gets a positive report card

After conducting over 3000 formal investigations into allegations of price exploitation and misleading and deceptive conduct in relation to post GST pricing, the ACCC is satisfied with the level of overall compliance by business with the GST provisions of the Trade Practices Act.

In a recent internal review the ACCC found that despite thousands of complaints and many formal investigations into alleged price exploitation most businesses have shown that price rises that exceeded ACCC forecasts were unrelated to the introduction of the New Tax System.

The ACCC received over 35 000 complaints from 1 July 1999 to 30 November 2000 about alleged GST-related breaches of the Act. Many were multiple complaints about the same businesses. Of these, the ACCC investigated over 3000 complaints, half involve price exploitation, most being resolved once the business showed the price rises were due to such factors as increased costs or market conditions. In some cases businesses were forced to reduce their net dollar margin following the introduction of the GST because of competitive conditions in their markets.

However, despite the high level of compliance the review that over 450 businesses had to take action to remedy GST-related contraventions. These can be broken up into three main areas:

Total refunds paid to consumers or donations to charity following an ACCC investigation for GST-related contraventions exceed \$5 million. Also, more than 250 000 consumers have obtained refunds averaging refund of about \$20 each.

Other notable enforcement results include:

- 7 cases filed by business, five of which have been settled;
- 32 cases resolved by the business providing court enforceable undertakings to the ACCC; and
- 58 businesses either implemented or up graded trade practices compliance programs and training.

## Price exploitation

Most price exploitation matters investigated arose as a because business:

- experienced technical errors with their GST implementation; or
- misunderstood the GST effect on the supplies made by their business.

## GST enforcement outcomes

1 July 1999 to 20 November 2000

Price exploitation (s.75AU) 145 cases

GST exclusive advertising 170 cases

Misleading and deceptive conduct 135 cases

**Total 450 cases**

Businesses mostly took a responsible approach by admitting their error and agreeing with the ACCC to take appropriate corrective action.

A major area where GST has been refunded is lenders' mortgage insurance. Several providers decided before the GST that it should be charged on policies on a recurring basis rather than as a one-off. As a result, GST was overcharged on many which the companies realised after consulting with the Australian Taxation Office.

The ACCC is now seeking to ensure that all lenders, including most of the major banks paid a refund from their insurance provider on behalf of their customers, immediately pass the full GST refund to their customers.

Other major areas of ACCC investigation include the supply of pre-paid funerals, car lease contracts, property sale agreements and groceries by supermarkets.

The ACCC has stopped price exploitation where businesses:

- charged GST on GST free items, such as food, rechargeable phone cards, prescription medicines and treatments;
- charged GST in the absence of a review opportunity in contracts that allowed them to impose GST on their customers;
- charged GST in the absence of a clause in contracts imposing GST liability on the customer; and



- charged GST on goods and services supplied, or goods available for collection, before 1 July 2000.

## Exclusive advertising

The ACCC believes it is essential for consumers to know the price they are paying for goods or services, that is the full GST-inclusive price, before they make purchasing decisions. Businesses have had long enough to ensure their pricing is consistent with the price exploitation guidelines issued in March 2000.

A common complaint among some businesses is that if they advertise on a GST-inclusive basis they will lose sales because customers will believe they are more expensive. This is why the ACCC is against businesses advertising prices as GST-exclusive; because it misleads customers about the cost of goods and/or services, meaning they make purchasing decisions on the basis of inaccurate information.

## Misleading and deceptive conduct

Before the introduction of the GST the ACCC's main focus in GST enforcement was to ensure that businesses did not make misleading claims about its effect on their prices, especially with new motor vehicles, computer products and property values.

Since 1 July 2000 this area of the ACCC's GST work has declined, except in the building industry. Many building companies made future representations before the introduction of the GST about the likely costs of home construction or likely completion dates for new homes. The ACCC has received numerous complaints from home buyers that these promises have not been honoured. The ACCC will continue to investigate misrepresentations in this industry.

## Achieving outcomes

The ACCC has always tried to ensure that consumers obtain refunds on a timely basis. However, in some GST contraventions the payment of refunds directly to consumers has not been feasible, so the ACCC devised creative remedies that will have the effect of compensating consumers. The following is a list of the more notable.

- Meriton Homes — consent orders to cease misleading representations about the value of apartments following the introduction of the GST, offer refunds to consumers and implement a trade practices compliance program.
- Franklins Limited — certain products discounted by 11 per cent for a three week period after GST was charged on GST free products.
- Clarendon Homes — waiver of over \$1 million of claimed GST on new home construction after representations that contract price was fixed.
- Michael Hill Jewellers — donation of \$10 000 to the Starlight Foundation in lieu of refunds for failing to pass on Wholesale Sales Tax reductions.
- Australian Leisure and Hospitality Group — 15 per cent discount on certain alcoholic beverages for a four week period following incorrect application of Wine Equalisation Tax.
- Wollongong City Council — free sports days at three leisure centres to compensate consumers for rounding up the effect of GST on council services.

- Queensland Motorways Limited — toll-free day at a number of tollways following misleading claims about the effect of the GST on prices.
- Lander Toyota — compensation in excess of \$42 000 to new car buyers for the failure to pass on WST reductions on new motor vehicles.
- Cuisine Courier — undertakings to cease advertising GST-exclusive prices for home delivery restaurant meals.
- Tas University — undertaking to purchase computer equipment to the value of more than \$26 000 for the benefit of students in lieu of GST overcharge on services and amenities fees for the 2000 academic year.

Before the introduction of the GST there was some concern that the ACCC would not be able to adequately enforce the price exploitation provisions of the Act. However, the ACCC was ideally placed because of its strong enforcement record, to take on the challenges of ensuring that businesses did not take advantage of the New Tax System changes to either engage in price exploitation or mislead consumers about the effect of the GST on prices. A major contributing factor to the outcomes achieved by the ACCC so far has been the responsible approach taken by most businesses in admitting their errors and agreeing to take immediate steps to rectify such errors so that consumers are not disadvantaged.