



need to be extra careful with it because comparisons should only be made when the products or services are reasonably similar. They also need to consider how soon their competitors are likely to respond because if a competitor moves quickly to change its own prices the original comparative campaign could become misleading.

To avoid misleading consumers, businesses need to consider these principles:

Your intent is not important.

Many complaints about misleading conduct are explained by businesses as an error or an oversight, e.g. a computer error that leads to overcharging or an inexperienced sales person. Either way consumers may still be misled and suffer as a result. The Trade Practices Act protects consumers regardless of intent, and places responsibility on the business to avoid such conduct.

Is the target audience the only audience that will receive your message ?

Marketers may have very specific target audiences in mind, but can't always control who receives the message and who is likely to be influenced by it. They must consider the likely audience, how they could be influenced, and what impression they could take away with them.

The overall impression you create.

Businesses should always step back from their marketing and advertising to look at the overall impression that has been created. They need to ask: How is a consumer likely to look at it? Is the emphasis correct? Have any important details been left out? Can there be more than one meaning?

Marketers and the media

Most businesses that provide goods or services directly to consumers would know about their obligations. But marketers also need to know about the

law so they can help clients to avoid bending the truth. Similarly, if the media adopts, advises or endorses a misleading message that it has been asked to carry, it may be breaching the Trade Practices Act.

Penalties

Presently the penalties for offences are up to \$40 000 per offence for individuals and \$200 000 per offence for companies.

On 18 June 2001 the Australian Senate agreed to increase them to about \$1 million for corporations and \$200 000 for individuals. The new penalties will only apply to future conduct.

If you would like to know more, look up the ACCC's publication **Advertising and Selling at** <http://www.accc.gov.au>. At the moment it is only available on the website but an updated print version will be published later this year.

Debt collection tested in the courts



Until last year section 60 of the Trade Practices Act remained untested in the courts, leaving the community unsure to what extent harassing or coercive conduct adopted by some debt collectors was against the law.

But in August 2000 the Perth Federal Court found that Cash Return Mercantile Pty Ltd, a debt collection agency, and its former agent, Ms Sharyn McCaskey, had breached the Act.

They had engaged in undue harassment, undue coercion and misleading conduct while collecting debts from consumers, the court found. They had made an excessive number of phone calls to debtors; they had adopted a threatening, aggressive and abusive manner; and they had

misled debtors and others about recovery procedures and the consequences of not paying the debts.

This case has clarified the ACCC's guidelines (see below) describing conduct that would be likely to contravene the laws.

However, the guidelines point out that if the debt collector contravenes s. 60, it doesn't mean the debtor can get away with not paying the debt. Consumers who are legally bound to pay or repay money must do so unless they have a valid defence.

Creditors can take reasonable steps to ensure their debt is repaid but they are not allowed to be unfair or intimidating.

The guidelines acknowledge that failure to repay a debt may

ACCC guidelines

Debt collectors are not supposed to pester or frighten a debtor, tell others about the debts, or threaten to take action they aren't legally entitled to take. This all comes under undue harassment, and it is against the law. This applies to anyone collecting debts, such as banks, finance companies, shops, hospitals, solicitors or debt collectors.

When they should call

People who owe debts should not be harassed or called at unreasonable hours. After 7.30 a.m. and before 9 p.m. is okay, unless the debtor has arranged something else or

unless the debt collector has been trying for a while to contact the debtor during the day.

Where they should call

Collectors should make their initial contacts, at least, outside of someone's work. If a collector needs to communicate with a debtor at work, they should do so discreetly and with care. A collector should only do

this if specifically asked, if an alternative hasn't been provided, or if the debt relates to a debtor's own business. If a collector does contact a debtor at work, they should not let others know about the debt.

How they should call

Collectors can visit in person but privacy and security should be respected. They should use less intrusive means if possible, especially initially, such as by phone, fax or mail.

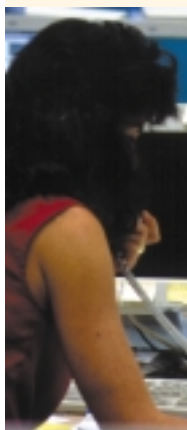
How often they should call

Collectors should only make calls that are absolutely necessary, up to about three (that you answer) a week, or 10 a month.

Who they should call

If a debtor has made arrangements to pay, a collector should not contact them. They should also not contact a debtor if liability has been denied in writing or that they intend to defend any legal proceedings.

If the debtor has a lawyer, financial counsellor or someone else representing them, a collector should contact them first.



not be deliberate. It could be because people have overcommitted themselves, or their financial circumstances have changed because of unemployment, ill health, divorce or separation.

Not paying a debt may also be because someone disputes its existence or the amount of debt.



Can they call family and friends?

If collectors don't know how to contact a debtor, they can contact family and friends to find out where the debtor is. However, those friends and family don't have to tell them the debtor's whereabouts and they are not liable for the debt. The collector should not discuss the debt with them or talk with the debtor's children without permission. They are not allowed to trick people into disclosing their whereabouts.

What they can't do

Collectors are not allowed to lie or mislead a debtor about:

- who they are and who they represent;
- the amount of money owed; and
- what will happen if the debt isn't paid.

They should also not use abusive, threatening or obscene language, and they must not use or threaten violence against either the debtor or their property.

Steps consumers can take

If a debtor is not disputing the debt, realistic repayment arrangements can be negotiated. Early and clear communication as soon as difficulties arise will help resolve any problems.

A debtor should also advise creditors of:

- current contact details; and
- any financial difficulties they may be having.

If a debtor wants a collector to stop a particular type of contact, they should write to them saying what conduct they don't like and what would be acceptable, for example, telephoning them at home instead of work. They should keep a copy of the letter.

They should keep accurate details about what has been said and done, in case they need to make a complaint.

Where to go for help

If a debtor needs help to manage what may seem to be an unmanageable situation, they should talk to:

- a free financial counselling service (usually listed under community advisory services in the Yellow Pages); or
- a free community legal centre.

Complaints can be made to:

- State and Territory fair trading agencies; or
- the ACCC.

The end result

If a creditor contravenes s. 60, it is a criminal offence and can lead to fines of up to \$200 000 for a corporation, or \$40 000 for an individual.

Civil remedies include injunctions, damages, other orders such as compliance programs and enforceable undertakings.

Even if a creditor uses an agent to collect debts, the creditor may still be liable for the agent's conduct if it contravenes the Act.

Post-GST price movements

Surveys by the ACCC checking price movements pre- and post- GST show that businesses generally haven't used the change as an opportunity to increase profit margins.

The ACCC has been surveying prices since December 1999. The ongoing general survey involves collecting the prices of identical products at different times. About 340 000 comparisons were made between May 2000 and February 2001.

The survey covers prices for a wide range of common household goods and services. Prices are collected from around 10 000 sites in 115 locations (capital cities, major regional cities and towns) in all States and Territories.

Between May 2000 (just before the GST was introduced) and February 2001 the overall average price change was an increase of only 4.4 per cent.

If you exclude fresh fruit and vegetables, which have highly variable supply and demand characteristics because of their perishable and seasonal nature, the increase drops to 3.2 per cent.

Remove alcohol and tobacco products (subject to CPI-related half-yearly indexation of excise rates unrelated to the New Tax System) and it drops further to 2.9 per cent.

On the same basis, the average price change between May–October 2000 was only +2.6 per cent — which means that between October 2000 and February 2001 there was only a slight average increase.

The ACCC considers that price increases happened mainly in the three months after 30 June 2000, and that further increases resulting from the New Tax System are unlikely.

Prices that have risen since September 2000 have generally been in line with inflation trends that existed before the New Tax System changes.

Others may be accounted for by some businesses having separated tax and non-tax factors in pricing and holding off passing on the non-tax factors when the tax changes occurred. These businesses would now need to make sure that future price increases are justified by these non-tax factors and aren't implemented under the guise of the GST.

It's these non-tax factors that are now increasingly responsible for price changes. They include increasing production costs for raw materials, labour, imported plant and equipment; changes in the Australian dollar exchange rate; fuel price rises; and climatic conditions and seasonal patterns affecting fresh produce supply.

The table shows that average price changes for most products have moved moderately since October 2000. The May 2000–February 2001 averages are in the unshaded column, with those for May–October 2000 shown in the next. The fresh food group jumped to 10.3 per cent during May 2000–February 2001 because of large increases in the prices of bananas, apples, pears, potatoes, pumpkins and lettuces.

Before the February survey the following factors, unrelated to tax changes, affected the supply-side of fresh food prices surveyed:

- floods in northern New South Wales and southern Queensland growing areas during November 2000; and
- extreme heat conditions over summer creating poor growing conditions for many crops, particularly lettuce, onions and potatoes.



Product group average price changes — May 2000–February 2001 survey data

Group	Average change May '00–February '01	Average change May–October '00	Estimated New Tax System effect on prices by end 2000
	%	%	%
Clothing and footwear	3.2	3.8	7.5
Fresh/unprocessed food	10.3	2.9	-1.1
Household furnishings and equipment	2.8	1.2	2.2
Household services and operation	4.2	2.6	2.2
Personal care	-0.3	-1.2	1.5
Recreation — audio visual	-5.9	-6.1	-3.6
Recreation — other	2.0	1.8	3.2
Processed food and beverages	1.8	0.2	-0.3
Meals out and takeaway food	8.5	8.1	9.2
Miscellaneous goods and services	4.2	3.6	3.6
Medical and health	5.9	5.5	5.4
Motor vehicle expenses	5.1	2.9	1.9
Alcohol and tobacco products	11.2	not applicable	6.0
All groups weighted average	4.4	2.7*	3.0

* The May–October 2000 overall result does not include alcohol and tobacco products.

The surveys also showed almost no significant differences in average price changes when comparing:

- capital cities with regional areas;
- smaller businesses with larger retailers/retail chains; and
- the States and Territories.

Apart from checking prices to assess the general impact of the New Tax System on prices, the ACCC's monitoring work also helped to identify potential cases of price exploitation.

Most of those investigated arose because businesses either experienced technical errors with their GST implementation or misunderstood its effect on the supplies made by their businesses. Errors included charging GST:

- on GST-free items, such as food, sunscreen products and prescription medicines;
- in relation to a pre-GST contract in circumstances where the contract provided no review opportunity; and
- in the absence of a clause allowing the business to pass on any GST charge to the customer.

In most cases businesses readily admitted their error and took corrective action including providing refunds or discounting products for an agreed period.

Advertising prices

Advertised or quoted prices should include GST. Some businesses complain that including GST in their prices will lose them sales because customers will believe their prices are higher than their competitors. It's a good reason for standardising the way prices are advertised.

And that's what the ACCC is working towards: if a business supplies goods and/or services to individual customers (who cannot claim input tax credits, and who therefore pay GST that won't be refunded later), then the prices should be GST-inclusive — because customers are entitled to know the total price before deciding to buy.

What does 'Made in Australia' really mean?

Is the fact that a product is labelled 'Made in Australia' an important factor in your decision to buy it?

Do you understand the difference between 'Made in Australia' and 'Product of Australia'?

If you suspect something doesn't originate in Australia, but claims to, do you know what you can do about it?

The Trade Practices Act prohibits businesses from making a false or misleading claim about the place of origin of goods. Under the Act, businesses are protected against such charges if they meet certain tests. For a product labelled 'Made in Australia', the two tests are that the product should be substantially transformed here, and at least 50 per cent of the costs of production should have occurred here.

Australian icon, Golden Circle, agreed to amend its labelling three years ago when it claimed some juices were Australian made when, at the time, they actually contained high levels of imported concentrate.

As ACCC Chairman, Professor Allan Fels, said, 'The ACCC takes seriously potentially misleading claims about a product's country of origin as many consumers place great importance on buying Australian products.'

What is 'substantially transformed'?

For goods to be 'substantially transformed' they must have undergone a fundamental change in form, appearance or nature so that they are new and different goods to those

existing before. This means that processes such as repackaging or mere assembly are not likely to qualify an imported good as 'Made in Australia'.

But it can be difficult to pick. For example, the ACCC decided, despite some legal opinion to the contrary, that substantial transformation occurs when tablets or capsules are made in Australia from imported ingredients. This decision, welcomed by the complementary health care industry, arose from a review of how the country of origin laws applied to the industry.

What are the costs of production?

Not only must goods be substantially transformed, but 50 per cent or more of the cost of their production or manufacture must have occurred here. To qualify, three broad categories of costs of production or manufacture are considered: the costs of materials, labour and overheads.

Material costs are usually easy to calculate. But labour and overheads only count towards the costs of the final goods.

How does 'Made in Australia' differ from 'Product of Australia'?

'Product of ...' is a premium claim about a good's origin, and the criteria to qualify for protection under the Act are much stricter. They are:

- each significant component or ingredient must originate from the country of the claim; and
- all, or virtually all, of the production processes must take place in Australia.

These criteria apply to any variations of the words, including 'produce of' and 'produced in', and they also apply to goods produced in any country, not just Australia.

In July 2000 the ACCC took Taj Food Sales Pty Limited to court for making false country of origin claims about its basmati rice. It had been importing basmati rice from Pakistan and packaging it in 1-kilo bags marked with the words 'Produce of India'.

Some consumers believe Indian basmati rice to be superior to that grown in other countries and it was this conception that the company was trying to exploit.

The Federal Court, where the case was heard, found that it had made these false claims. The company agreed not to do so again and published corrective newspaper advertisements offering refunds to consumers.

In another case the issue of what constitutes a 'significant ingredient' was raised. YBD Pty Ltd is a Victorian-based company that produces muesli slices and other related products. Many of its products were labelled as 'Product of Australia' and, in finer print, 'Made from local and imported ingredients'.

The imported ingredients were apricots, sultanas and coconut. The ACCC believed these constituted significant ingredients because they were the essential defining element of the product, rather than the main ingredient in terms of percentage.



The ACCC's new rural and regional program

The ACCC contacted the company, which agreed to remove the words 'Product of Australia' and replace them with 'Australian made Australian owned'.

Other claims are sometimes made

Some companies prefer to use more qualified claims so that they don't have to meet in full the 'substantial transformation' or '50 per cent content' tests for 'Made in Australia'. However, even for qualified claims, close attention should be paid to the wording. For example, if the imported content is greater than the local, the label should read 'Made in Australia from imported and local ingredients'. Or if the local content is greater, 'Made in Australia from local and imported ingredients'.

Other claims, if brought to the notice of the ACCC, will be assessed on their merits. They may try to imply a lesser connection with the country, for example, 'Built in ...' or 'Assembled in ...'. But if they are misleading they still run the risk of legal action by the ACCC, a competitor or any other interested party.

The ACCC is developing a program specifically to keep people in rural and regional Australia informed about their rights under the Trade Practices Act. It should mean they're better prepared to recognise anti-competitive practices and consumer protection issues.

Through its first Competing Fairly Forum (discussed below), the ACCC learned that many in these communities know nothing about the Act or the ACCC.

Over the next six months the ACCC will be working with rural and regional communities to identify relevant trade practices issues to help it better target the work of the program.

The ACCC already has an extensive network of contacts throughout all States and Territories that includes fair trading organisations, small business industry associations, local government, area consultative committees and business enterprise centres.

Communication with rural and regional communities is one of the key aims of the new program, so the ACCC will be hiring regional outreach officers in each of its regional offices and it will be their job to regularly visit communities to discuss trade practices issues and concerns.

They will build on the work the ACCC has already done with the satellite broadcasting of its Competing Fairly Forums, which give these communities the opportunity to participate directly with the ACCC's Chairman and

Commissioners, and other trade practices experts, and to have their concerns heard directly.

Two forums have been broadcast so far. The first in November 2000 discussed broad trade practices issues and went to 28 towns. The second, in May 2001, went to 62 and focused on the issue of unconscionable conduct — a topic participants in the first forum wanted more information about.

Future forum broadcasts will explore other trade practices issues relevant to rural and regional communities. Information on the forums can be found at the website <http://www.forums.accc.gov.au>.

The ACCC produces a wide range of information about its role and functions, and the Trade Practices Act. One publication directed specifically at the rural and regional sector is **Rural industry and the Trade Practices Act**. More, on topical issues, are planned. Videos are also planned, to add to one already available on unconscionable conduct.

The program will also target rural and regional press with advertisements and articles on trade practices issues.

For more information on the rural and regional program, call the ACCC infocentre on 1300 302 502.

The ACCC and complaints

The ACCC receives complaints from consumers and businesses via:

- the ACCC infocentre on 1300 302 502;
- email through its website at <<http://www.accc.gov.au>>;
- letters and faxes sent to ACCC offices all around Australia; and
- electronic forms submitted through the ACCC's website Slam-a-Cyberscam facility.

ACCC infocentre

The ACCC's new infocentre team are professional problem solvers whose job it is to take inquiries and complaints by telephone. The calls they receive cover all aspects of the Trade Practices Act from consumer protection to regulatory issues. Some are referred to more appropriate agencies, and others referred to the relevant ACCC investigator.

Email

Complaints received via email are analysed for trade practices issues by the infocentre team, then referred on or answered as appropriate.

Letters and faxes

Complaints sent as letters or faxes are often more detailed about specific ACCC investigations, and these are referred to investigating officers. More general complaints undergo the same analysis process as other forms.

Electronic complaints

Slam-a-Cyberscam is located on the ACCC website and allows victims of online scams to lodge complaints with the ACCC electronically. The ACCC monitors these complaints for trends in online conduct, and refers them to other agencies as appropriate. The ACCC will investigate any complaints that are clear breaches of the Trade Practices Act, providing they include evidence and contact details.

ACCC response-ibilities

The ACCC service charter requires that:

- telephone messages be acted on within 24 hours;
- written complaints be acknowledged within 7 days;
- written complaints be responded to within 28 days; or
- when a response is not possible within 28 days, the complainant to be kept informed of progress.

ACCC priorities

The ACCC is a Federal authority and investigates matters that involve:

- apparent blatant disregard of the law;
- a history of previous contraventions of the law;
- significant public detriment;
- the potential for action to have worthwhile educative or deterrent effect;
- a significant new market issue; or
- a likely outcome that would justify the use of the resources.

Commission offices

ACT (national office)

Chief Executive Officer, Brian Cassidy
PO Box 1199, DICKSON ACT 2602
Tel: (02) 6243 1111 Fax: (02) 6243 1199

New South Wales

Regional Director, Geoff Williams
GPO Box 3648, SYDNEY NSW 1044
Tel: (02) 9230 9133 Fax: (02) 9223 1092

Tamworth

Director, Albert Julum
PO Box 2071, TAMWORTH NSW 2340
Tel: (02) 6761 2000 Fax: (02) 6761 2445

Victoria

Regional Director, Tom Fahy
GPO Box 520J, MELBOURNE VIC 3001
Tel: (03) 9290 1800 Fax: (03) 9663 3699

South Australia

Regional Director, Bob Weymouth
GPO Box 922, ADELAIDE SA 5001
Tel: (08) 8213 3444 Fax: (08) 8410 4155

Queensland

Regional Director, Alan Ducret
PO Box 10048, Adelaide Street Post Office
BRISBANE QLD 4000
Tel: (07) 3835 4666 Fax: (07) 3832 0372

North Queensland

Director, Tony Hilton
PO Box 2016, TOWNSVILLE QLD 4810
Tel: (07) 4729 2666 Fax: (07) 4721 1538

Western Australia

Regional Director, Sam Di Scerni
PO Box 6381, EAST PERTH WA 6892
Tel: (08) 9325 3622 Fax: (08) 9325 5976

Tasmania

Regional Director, Peter Clemes
GPO Box 1210, HOBART TAS 7001
Tel: (03) 6215 9333 Fax: (03) 6234 7796

Northern Territory

Regional Director, Derek Farrell
GPO Box 3056, DARWIN NT 0801
Tel: (08) 8946 9666 Fax: (08) 8946 9600

Commission contacts

Chief Executive Officer

Brian Cassidy (02) 6243 1124

Mergers and Asset Sales

Mark Pearson (02) 6243 1276

Adjudication Branch

Tim Grimwade (02) 6243 1226

Compliance Division

David Smith (02) 6243 1234

Restrictive Trade Practices

Michael Kiley (02) 6243 1052

Consumer Protection

Carl Buik (02) 6243 1066

Small Business

Nigel Ridgway (02) 6243 1223

GST Operations

Rod Overall (02) 6243 1297

Corporate Management

Helen Lu (02) 6243 1009

Legal Group

Bruce Brown (02) 6243 1273

Bob Alexander (General Counsel)

(02) 6243 1283

Regulatory Affairs

Joe Dimasi (03) 9290 1814

Electricity Group

Michael Rawstron (02) 6243 1249

Gas Group

Kanwaljit Kaur (02) 6243 1259

Transport and Prices Oversight

Margaret Arblaster (03) 9290 1862

Telecommunications Group

Michael Cosgrave (03) 9290 1914

Media liaison

Lin Enright (02) 6243 1108

General publications queries

(02) 6243 1143

publications.unit@accc.gov.au

ACCC infocentre

1300 302 502

Websites

<http://www.accc.gov.au>

<http://gst.accc.gov.au>

<http://forums.accc.gov.au>

New on the bookshelf

The ACCC has released the following publications this year.

ACCC Journal 31, 32, 33 — A bi-monthly subscription publication — now available on CD-ROM

ACCC Journal cumulative index for January–December 2000 — free

ACCC update 8 — free magazine

fair.com — advertising and promoting Internet access. Free booklet.

Network 6, 7 — a publication of the Utility Regulators Forum. Free magazine

Fair game or fair go — 30 min video explaining unconscionable conduct. \$10 from Canberra office

Competing Fairly Forum — videos from the 1st and 2nd forums. \$10 from Canberra office

Impact of farmgate deregulation on the Australian milk industry — monitoring report. \$10

The public enforcement of Australian competition law by Karen Yeung. \$25

Telecommunications infrastructure industries — a magazine giving non-technical readers an understanding of the ACCC's role in the telco industry. Free

Inquiries into the declaration and revocation of services and exemptions — website only

Changes in the prices paid for telecommunications services in Australia — free

Telecommunications competitive safeguards and Telstra's compliance with the price control arrangements — free

Telecommunication Infrastructures in Australia 2001 — a BIS Shrapnel report prepared for the ACCC. \$25 from Canberra office

Report on ACCC Price Surveys: General Survey, February 2001 collection — free

GST Talks 10, 11 — free

GST News for Business 17, 18 — free

Report under s. 75AZ of the Trade Practices Act — 5th and 6th reports free from Canberra and Melbourne offices

GST Bulletin 22–27 — website only

