



TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B

BY

MATTHEW OLD

PERSON GIVING UNDERTAKING

- 1 This Undertaking is given to the Australian Competition and Consumer Commission ("Commission") by Matthew Old of 21A Turnbull St, Fennell Bay in the State of NSW under section 87B of the *Trade Practices Act 1974* ("Act").

BACKGROUND

- 2 Matthew Old currently supplies services under contract to the business "Accounting for GST", which offers various goods and services to individuals and small businesses to assist them in understanding the Goods and Services Tax ("GST").
- 3 Accounting for GST's principal, Mr Tony Amodio has offered an undertaking under section 87B of the Act relating to conduct which is described in that undertaking.
- 4 Matthew Old assisted Tony Amodio in the promotion of Accounting for GST's services and in the training of other staff involved in the promotion of those services.
- 5 The Commission received several complaints from individuals and businesses to the effect that representatives of Accounting for GST had made representations including:
 - (i) that Accounting for GST is affiliated with the GSAO and/or the ATO;
 - (ii) that Accounting for GST provides Registration Services free of charge;
 - (iii) that Accounting for GST will provide places at GST workshops in connection with the Registration Services free of charge; and
 - (iv) that all persons and entities carrying on a business require an ABN under the GST Legislation.
- 6 The Commission's solicitors wrote to Matthew Old on 11 May 2000 raising the Commission's concerns and seeking his comments and certain undertakings by the next day.
- 7 Matthew Old provided written undertakings but denied that he had engaged in conduct in breach of the Act.
- 8 The Commission commenced proceedings in the Federal Court on 15 May 2000.
- 9 The parties have agreed to resolve this matter by the giving and accepting of undertakings in the terms contained herein.

COMMENCEMENT OF UNDERTAKING

10 This Undertaking comes into effect when:

- (i) the Undertaking is executed by Matthew Old; and
- (ii) the Commission accepts the Undertaking so executed.

UNDERTAKINGS

11 Matthew Old gives the following undertakings to the Commission for the purposes of section 87B of the Act.

REPRESENTATION UNDERTAKINGS

12 Matthew Old will not make and will not counsel others to make representations to the effect that:

- (i) Accounting for GST has any sponsorship, approval or affiliation with the GSAO or the ATO generally provided that this undertaking will not prevent representation that Accounting for GST is a registered supplier in the terms of the GST Legislation for the purposes of implementation of the GST;
- (ii) Accounting for GST's Registration Services are provided free of charge, unless this is correct;
- (iii) Accounting for GST's GST workshops are provided free of charge, unless this is correct;
- (iv) an ABN is required for the purposes of the GST Legislation for anything, other than creating an entitlement to claim input tax credits within the terms of the GST Legislation; or
- (v) persons or entities who make use of Accounting for GST's services are required to attend any seminars in relation to Registration Services or otherwise.

TRADE PRACTICES COMPLIANCE PROGRAM


13 Matthew Old undertakes that he will participate in education programs conducted pursuant to paragraphs 7 and 8 of the trade practices compliance program to be implemented by Tony Amodio. That compliance program is implemented pursuant to the undertaking offered to the Commission by Tony Amodio on or about the date of this Undertaking. The terms of that compliance program are reproduced as Annexure A to this Undertaking.

ACKNOWLEDGMENTS

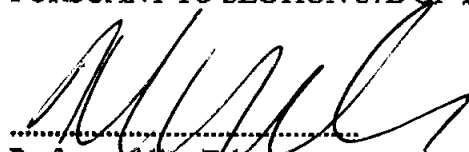
14 Matthew Old acknowledges that the Commission will make this Undertaking available for public inspection.

- 15 Matthew Old further acknowledges that the Commission will, from time to time, publicly refer to this Undertaking.
- 16 Matthew Old acknowledges and accepts that this Undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Matthew Old or Accounting for GST.
- 17 Matthew Old further acknowledges that the information referred to at Annexure B and the trade practices compliance program, as in force from time to time, will be held with this Undertaking on the public register.

Signed by Matthew Old


This 28 day of JUNE 2000

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974


.....
Professor Allan Fels
Chairman

This 28 day of JUNE 2000

Annexure A

TRADE PRACTICES COMPLIANCE PROGRAM

The Trade Practices Compliance Program ("Program") to be undertaken by Tony Amodio will be implemented as follows:

General

- 1 Tony Amodio will, within one (1) month of receipt of the Commission's acceptance of the undertaking implement the following Program at its own expense.
- 2 Tony Amodio will appoint an appropriately qualified Solicitor or compliance professional as a Trade Practices Compliance Officer ("Compliance Officer"). The Compliance Officer will be appointed at the time the Program is implemented.

Advertising Reviews

- 3 Tony Amodio will require the Compliance Officer to review standard promotional material that is proposed to be sent to five or more of Accounting for GST's customers or prospective customers ("Advertising Review") of Accounting for GST to ensure that it complies with the *Trade Practices Act 1974* ("Act"), prior to its publication, broadcast or other use.
- 4 Tony Amodio will maintain a documentary record of the Advertising Reviews. Such documentary record will include:
 - (i) a copy of the advertisement or promotional material;
 - (ii) a description of the publication (including name, date, page(s) and publisher);
 - (iii) written advice that the advertisement had been reviewed and cleared by the Compliance Officer (including the date on which the advertisement was reviewed); and
 - (iv) written advice of any possible contraventions of the Act that were identified by the Compliance Officer and the action taken to address these possible contraventions.
- 5 Tony Amodio will ensure that the documentary records of the Compliance Reviews are available to the Commission to be reviewed from time to time. Such records are to be available from one week after the date of publication of the advertisement for a period of 2 years after that date. Such records shall be provided to the Commission within 5 working days of a written request for those records.

Complaints Handling

- 6 Tony Amodio will ensure that the Program incorporates an appropriate complaints handling mechanism.

Education

- 7 Tony Amodio will develop and implement an education program calculated to ensure that sales and marketing staff are conversant with the Part V provisions of the Act to a level where:

- (i) they can avoid obvious contraventions and can identify more complex trade practices problems for referral to the Compliance Officer;
- (ii) the Compliance Officer can carry out their responsibilities; and
- (iii) the Compliance Officer can address more complex trade practices issues or, if not legally qualified, Tony Amodio's legal adviser.

- 8 Tony Amodio will ensure that training sessions covering all aspects of Part V of the Act be given to sales and marketing staff on two occasions within the twelve months after the implementation of the Program. The first of these training sessions is to be completed within 3 months of the Program being implemented, and the remaining one between 8 to 9 months later.

Review

- 9 Tony Amodio will ensure that an independent external auditor, with expertise in trade practices law, conducts an audit ("Audit") of the Program with a view to improving its effectiveness. The Audit will be conducted between 11 to 12 months after the implementation of the Program. The Audit will identify deficiencies and make recommendations as to possible improvements to the Program.

Reporting

- 10 Tony Amodio will provide the Commission with the following:
- (i) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details;
 - (ii) Within 10 working days after each of the training sessions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees; and
 - (iii) Within 10 working days of the completion of the Audit, a copy of the Audit together with advice as to what changes Tony Amodio intends to incorporate in the Program as a result of the Audit.

- 11 Tony Amodio will make changes to the Program as reasonably requested by the Commission having considered the documentation referred to at paragraph 11 (iii) above. Such changes are to be implemented within 2 weeks of the Commission's request.

Duration

- 12 The Program will remain in effect for two years following the Undertaking coming into effect.