



REPORT TO THE MINISTER  
UNDER SECTION 75AZ OF THE  
TRADE PRACTICES ACT 1974

1 JULY TO 30 SEPTEMBER 2000



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28 October 2000

Hon. Joe Hockey MP  
Minister for Financial Services and Regulation  
Parliament House  
CANBERRA ACT 2600

Dear Minister

In accordance with section 75AZ(1) of the Trade Practices Act, I am pleased to present you with the Commission's fourth quarterly report, covering the period 1 July to 30 September 2000.

Section 75AZ(4) requires the Minister to, as soon as practicable after receiving the report, make it public by such means as the Minister deems appropriate.

Yours sincerely

A handwritten signature in black ink that reads "Allan Fels".

Professor Allan Fels  
Chairman





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# GLOSSARY

A New Tax System change	Defined by legislation as the ending of Wholesale Sales Tax (WST), the introduction of the Goods and Services Tax (GST), and changes to other indirect taxes, excises, subsidies and rebates prescribed (and to be prescribed) in regulations.
ATO	Australian Taxation Office
Commission	Australian Competition and Consumer Commission
GST	Goods and Services Tax, a broad-based indirect tax. Generally, the GST taxes the consumption of most goods and services in Australia, including things that are imported.
guidelines	The price exploitation guidelines issued by the Commission that spell out what constitutes price exploitation.
price exploitation	Occurs when a business sets an unreasonably high price taking into account the New Tax System changes and other factors including suppliers' costs and supply and demand.
transition period	The New Tax System transition period is the period during which the Commission has oversight of pricing responses to the New Tax System changes. This transition period began on 8 July 1999 and ends on 30 June 2002.
The Act	<i>Trade Practices Act 1974</i>

## EXECUTIVE SUMMARY

This is the fourth report by the Australian Competition and Consumer Commission (the Commission) to the Minister under section (s.) 75AZ of the Trade Practices Act 1974 (the Act). Section 75AZ requires the Commission to report to the Minister within 28 days after the end of each quarter on the operations of the Commission under part VB of the Act. This report covers the period from 1 July to 30 September 2000 and is in three sections: promoting compliance, monitoring compliance, and enforcing compliance.

The September quarter was the first following the 1 July re-pricing. The Commission's price monitoring, and the relatively low levels of complaints and enforcement cases (despite its active enforcement approach), indicate that the transition was smooth and the Commission's preparatory activities were largely successful.

Price exploitation in relation to the New Tax System is prohibited under part VB of the Act. The Commission has been given statutory responsibilities under this part to ensure that consumers are not exploited when the New Tax System changes take effect.

## PROMOTING COMPLIANCE

The Commission has adopted a range of strategies to promote compliance with the law. A key strategy has been informing and educating businesses and consumers about their rights and obligations under the price exploitation provisions of the Act. This is achieved by raising businesses' awareness and understanding of their obligations in relation to the New Tax System pricing changes and the Commission's guidelines on price exploitation. The Commission specified clear and simple guidelines, as outlined in earlier reports. The strategy also seeks to increase consumer knowledge about expected price changes because competitive pressures work more effectively in informed markets.

During the quarter, the Commission continued its active media strategy, using media releases, articles, interviews and advertising to develop awareness and understanding of current issues and to promote compliance with the law. To clarify issues as they arose, brochures, bulletins and online material were quickly produced. These materials were made available through consumer organisations and industry associations, as well as directly from the Commission. It also built on its earlier activities to meet the needs of people from Aboriginal and Torres Strait Islander (ATSI) communities and non-English-speaking backgrounds (NESB).

All the Commission's GST-related information was available electronically on its GST website at <<http://gst.acc.gov.au>>. Printed copies could be obtained by calling the Commission's GST Price Line (1300 302 502), an information and complaints line, which supplemented the printed and electronic information produced.

The Commission announced that it had registered a further 15 public compliance commitments during this period, taking the number of participating companies to 35. It also met with individual businesses, industry groups and industry associations to clarify compliance issues and to provide targeted and detailed information.

## MONITORING COMPLIANCE

Under s. 75AY(1) of the Act, the Commission may monitor prices to assess the general effects of the Government's indirect tax changes on prices and to help identify potential cases of price exploitation by businesses.

To do this, the Commission has an extensive price-monitoring program in place. It also draws on many other sources of information about price changes and pricing behaviour. These include the Consumer Price Index (CPI) and Australian Bureau of Statistics (ABS) wholesale price indexes, commercially provided price information databases for specific products at the wholesale and retail levels, large corporations with public compliance commitments and the authorities that regulate industries such as electricity, gas and public transport. Complaints by consumers and businesses through the GST Price Line also contribute to its information on price changes associated with the New Tax System.

During the quarter 92 664 calls were made to the GST Price Line. Of these, 65 651 were inquiries and 27 013 were complaints.

Information gathered about price changes and pricing behaviour is used for both education and enforcement. It provides the basis for the Commission's estimates on price movements and helps identify where price exploitation may be occurring.

## ENFORCING COMPLIANCE

The Commission's enforcement activities were a primary focus during the September quarter. The Commission has four goals when faced with evidence of price exploitation. These are to:

- stop the unlawful conduct;
- advise those suffering detriment and provide them with refunds or compensation;
- prevent future breaches; and
- seek court-imposed penalties if necessary.

During the quarter the Commission sent 4270 letters about alleged contraventions. Of these, 2354 were letters that notified traders of the minor complaints received but did not require a response to the Commission. Many of these letters were sent to small businesses. A further 1916 letters notifying traders of more serious potential breaches were sent which required a response to the Commission.



Since 1 July 1999 the Commission has taken legal proceedings in seven GST-related matters: Accounting for GST, Discount Electrical Centre, Electrodry, Goldy Motors, Meriton Apartments, Rod Turner Consulting and Video Ezy. Of these, three cases have been concluded and those of Electrodry, Goldy Motors, Rod Turner Consulting and Video Ezy are currently before the Federal Court. During this period, the Commission also obtained 30 enforceable undertakings under s. 87B, of which 17 were in the September quarter.

The Commission achieved numerous administrative settlements during the quarter in the form of promissory letters. Since July 1999 it has received around 100 administrative undertakings.

The Commission is continuing to investigate many other cases and had approximately 1000 active matters at the end of the quarter.

# INTRODUCTION: THE COMMISSION'S ROLE

This is the Commission's fourth report to the Minister under s. 75AZ of the *Trade Practices Act 1974* (the Act). Section 75AZ requires the Commission to report to the Minister within 28 days after the end of each quarter on the operations of the Commission under part VB of the Act. This report covers the period from 1 July to 30 September 2000 and is in three sections: promoting compliance, monitoring compliance, and enforcing compliance.

Price exploitation in relation to the New Tax System is prohibited under part VB of the Act. The Commission has been given statutory responsibilities under this part to ensure that consumers are not exploited when the New Tax System changes take effect. These responsibilities include to:

- formulate guidelines about when prices for regulated supplies may be regarded as contravening the prohibition on price exploitation (s. 75AV);
- monitor prices (s. 75AY gives the Commission specific powers to monitor prices and to require that certain information be provided);
- issue a notice when the Commission considers a business has contravened the prohibition on price exploitation (s. 75AW);
- issue a maximum price notice to help prevent price exploitation (s. 75AX); and
- take court-enforcement action.

The Commission considers that well-informed, competitive markets operating in a climate of low inflation and good corporate citizenship will generally ensure that the almost all businesses will act fairly. If the markets are not well informed there is an opportunity for price exploitation to occur.

In its oversight role, the Commission has sought to achieve the aims of the legislation in the most cost-effective ways possible for business and the community. Central to meeting its responsibilities was obtaining information about prices and pricing decisions and providing information to market participants.

In assessing price movements, the Commission focuses on price changes as a result of the New Tax System. The Act and the Trade Practices Regulations 1974 (TPR) define a New Tax System change. These changes include:

- the removal of WST (s. 75AT of the Act);
- the introduction of the GST (s. 75AT of the Act);
- changes to tobacco excise and customs duty (s. 48 of the TPR);

- changes to the retail tax on luxury cars, that is, the Luxury Car Tax (s. 49 of the TPR);
- the introduction of the wine equalisation tax (s. 50 of the TPR);
- the abolition of the accommodation levy in New South Wales (s. 51 of the TPR);
- changes to alcohol excise (s. 52 of the TPR);
- changes to the petroleum products excise (s. 53 of the TPR);
- the diesel fuel rebate scheme (s. 54 of the TPR);
- the diesel and alternative fuel grants scheme (s. 55 of the TPR);
- the fuel sales grants scheme (s. 56 of the TPR); and
- WST equivalency payments (s. 57 of the TPR).

The Commission has diligently investigated allegations of price exploitation. The Commission intends to stop offending behaviour and prevent it from occurring again, to ensure that consumers receive restitution and to instigate court action, if required.

## PROMOTING COMPLIANCE

The Commission's strategy is to promote compliance with the law by informing and educating businesses and consumers about their rights and obligations under the price exploitation provisions of the Act. This is achieved by raising businesses' awareness and understanding of their obligations in relation to the New Tax System pricing changes and the Commission's guidelines on price exploitation. The strategy also focused on increasing consumer knowledge about expected price changes because competitive pressures work more effectively in informed markets.

During the quarter the Commission continued its active media strategy, using media releases, articles, interviews and advertising to develop awareness and understanding of current issues and to promote compliance with the law. To clarify issues as they arose, brochures, bulletins and online material were quickly produced. These materials were made widely available through consumer organisations and industry associations, as well as directly from the Commission. The Commission built on its earlier activities to meet the needs of people from Aboriginal and Torres Strait Islander (ATSI) communities and non-English-speaking backgrounds (NESB).

All the Commission's GST-related information was available electronically from its GST website at <<http://gst.acc.gov.au>>. Printed copies could be obtained by calling the Commission's GST Price Line (1300 302 502), an information and complaints line. The price line also supplemented the printed and electronic information produced and received 65 651 inquiries during the quarter.

The Commission announced that it had registered public compliance commitments from a further 15 companies, bringing to 35 the total number of participating companies. It also met with individual businesses, industry groups and industry associations to clarify compliance issues and to provide targeted and detailed information.

## MEDIA ACTIVITIES

The Commission's media activities are a key tool for promoting compliance. The media releases, print and radio advertisements, press articles, interviews and question and answer columns all provided timely opportunities to inform large audiences about current GST issues.

### MEDIA RELEASES

The Commission produced 36 GST-related media releases during the quarter. A full list of these can be found in appendix I. The Commission often uses media releases to promote compliance by example, explaining to the wider business community the consequences of possible price exploitation.

## ADVERTISING STRATEGY

The advertising program was designed to inform consumers and small business about the likely price impacts of the New Tax System.

An eight-week print and radio program was launched in early June and ran throughout July 2000. In order to reach a wide audience, the advertisements were run in the major metropolitan media, rural and regional media, ATSI and NESB media, magazines and on radio for the vision-impaired. Appendix II contains copies of the English-language print advertisements run in the quarter.

The key message of the program was that the Commission is acting to prevent price exploitation as a result of the New Tax System and to ensure that businesses pass on all cost savings to their customers. Consumers and small businesses learned about the likely price movements and where they could get further information. Consumers also learned that they could call the Commission's GST Price Line to report price exploitation and that action would be taken.

The number of calls to the GST Price Line increased substantially during July, which demonstrated an interest in acquiring information and increased consumer willingness to question businesses about price increases.

## PRESS ARTICLES

As well as print advertisements, the Commission continued to provide information for articles and question and answer columns in newspapers throughout the quarter. These were mainly used in the major metropolitan daily newspapers, but also in industry journals and other publications.

The articles and columns provided timely information to a wide audience on current issues, including GST-inclusive price display and advertising, gift vouchers, dual ticketing and the Everyday Shopping Guide. The Commission did not pay for the placement of these articles.

## PUBLICATIONS

### GST INFORMATION NETWORK

The GST Information Network is a Commission-managed database of consumer, community and business organisations and industry associations that receive the Commission's GST information electronically and in hard copy. It was the primary method for the distribution of all GST information. However, the information is also available from the Commission's website or by calling the GST Price Line. Appendix III contains a list of GST-related publications in the quarter.

Information for consumers was sent to the 153 consumer and community organisations, 97 libraries, 81 government agencies and 24 other agencies registered on the database. These organisations represent and reach about 7.8 million people, including the 1.9 million people that the consumer and community organisations represent through their membership.

Information for businesses was sent to the 916 business-related organisations registered on the database, representing just under two million business members.

## GST BULLETIN

During the quarter, the Commission introduced a new publication to alert consumers and businesses to emerging GST pricing issues. Fourteen issues of the *GST Bulletin* were produced and distributed. These dealt with GST-inclusive price display and advertising, gift vouchers, second-hand goods, returns and exchanges in the transition period, credit card bills, pre-paid phone cards, newspapers and cash rounding rules, commercial rent, tollways, house construction contracts and auctions.

## GST TALK SERIES

The GST Talk series of brochures provides comprehensive information to consumers about issues of public concern that emerge from the GST Price Line and other areas.

The ninth brochure in the series, published during the quarter, dealt with accommodation charges in commercial residential premises. Over 60 000 copies were printed for distribution by the Commission and the GST Information Network. It and several earlier brochures were also distributed through the Australian Tax Office and State and Territory fair trading agencies.

## NEWS FOR BUSINESS

This publication series addresses specific business issues in depth. The publications were created in response to inquiries to the Commission's GST Price Line, industry liaison and compliance activities.

The two publications in the quarter were *Franchise fees and the New Tax System* and *Handy hints on pricing for operators of cafes, takeaways and restaurants*.

Some 50 000 copies of each publication were printed. They were distributed to individual businesses by direct mail with the assistance of peak industry bodies such as the Franchising Council of Australia, Restaurant and Catering Australia, and the Council of Small Business Australia.

## WORKING WITH CONSUMERS

### ABORIGINAL AND TORRES STRAIT ISLANDER INFORMATION STRATEGY

In the June quarter the Commission mailed out more than 20 000 GST information kits produced specifically for Aboriginal and Torres Strait Islander people, and then wrote to many communities, offering to follow the kit up with generalised presentations on the GST and broader trade practice issues.

These presentations began in the September quarter with visits to seven indigenous communities in Cape York and the Torres Strait. The Commission also prepared for visits to indigenous communities in northern Western Australia. The visits dealt with

GST price changes and trade practice issues such as misleading and deceptive conduct, debtor harassment and unconscionable conduct.

The Commission's dedicated ATSI information line (1300 303 143) continued to provide GST-related information and to facilitate the lodgement of any complaints relating to prices under the New Tax System.

## NON-ENGLISH-SPEAKING BACKGROUND INFORMATION STRATEGY

In the June quarter the Commission had produced and distributed information kits for consumers on GST pricing in Arabic, Chinese, Greek, Italian, Spanish and Vietnamese. These included the *Everyday Shopping Guide with the GST*, fact sheets, business compliance information, a check list on price display and a point-of-sale poster for retailers. The kits were mailed to over 10 000 ethnic associations and all the publications are available on the Commission's website. Key publications were also translated into Croatian, Macedonian, Russian, Serbian and Turkish and they, too, are available on the website.

Following the mailout, phone contact was made with over 500 NESB organisations and letters sent to another 330, offering to provide further information. As a result another 5000 GST information kits were distributed. The feedback was very positive about their usefulness.

The NESB information strategy was reinforced in July with the ongoing comprehensive advertising program in each of the six main community languages. Major ethnic newspapers carried the Commission's translated advertisements and the Commission's general radio campaign was translated for broadcast on ethnic media.

The Commission has staff fluent in languages other than English who handled calls to the ACCC Price Line from NESB callers.

## INFORMATION FOR THE VISION IMPAIRED

During this period, the Commission worked with Vision Australia to provide further GST pricing information to those with vision impairment. Articles on topical and emerging GST pricing issues were provided for broadcast on radio.

## NATIONAL GST CONSUMER CONSULTATIVE GROUP

The National GST Consumer Consultative Group continued to assist the Commission in its consumer protection strategies. Specific issues dealt with included improving access to Commission information for people from NESB and ATSI backgrounds and the vision impaired. The Commission also provided reports on enforcement and monitoring activities.

## ELECTRONIC INFORMATION

### GST WEBSITE

The GST website at <<http://gst.accc.gov.au>> is a major information and education resource that complements the Commission's other communications activities. It provides easy access to business and consumer publications and the answers to frequently asked questions. During the quarter, reports on retail price movements since the introduction of the New Tax System were added to the site.

Information is available on the website for Aboriginal and Torres Strait Islanders and in 11 languages other than English, namely Arabic, Chinese, Croatian, Greek, Italian, Macedonian, Russian, Serbian, Spanish, Turkish and Vietnamese. The most frequently accessed NESB material was in Chinese, Italian and Vietnamese.

Over the quarter there were about 67 000 individual sessions served with over 1.6 million hits on the server and 260 000 page views. The most popular areas on the site during the quarter were publications and the *Pricing Kit for Small Business*.

### GST PRICE LINE

The GST Price Line (1300 302 502) is an information and complaints line for businesses and consumers. Staff answer inquiries about the Commission's pricing guidelines and price changes, receive requests for the Commission's GST publications and accept and log complaints about price exploitation. The price line also refers callers to other agencies that can assist with the GST and the New Tax System, such as the Australian Taxation Office (ATO), the GST Start-Up Assistance Office and Centrelink.

During the quarter there were 65 651 GST-related inquires made, compared with 34 890 in the June quarter. More information about the GST Price Line can be found in the Monitoring Compliance section of this report.

### CHOICE PRICE WATCH WEBSITE

During the quarter, the Commission continued to provide information and assistance to the Australian Consumer Association for the Choice Price Watch website at <<http://www.choicepricewatch.com.au>>. This included providing the results of the Commission's price surveys.

A special feature of the site is that consumers can record pre- and post-GST prices on it. The ACA monitored these prices and gave the Commission regular reports about the operation and use of the site. They showed that consumers used the site primarily as an information resource.



## WORKING WITH BUSINESSES

The Commission continued to work closely with industry and business associations, government agencies and individual operators to ensure understanding of the New Tax System and compliance with the price exploitation guidelines. This included regular teleconferences with the Business Council for Tax Reform. The Commission's Small Business Unit continued its active outreach program, liaising with small business operators around the country.

## PUBLIC COMPLIANCE COMMITMENTS

The public compliance commitment program is an innovative strategy to ensure major companies are committed to complying with the price exploitation legislation. It is an important element in the Commission's compliance armory as big business can often influence market prices and provide a lead for smaller businesses.

A public compliance commitment is a statement signed by the Chief Executive Officer of a major corporation, indicating that the company is committed to complying with the Commission's price exploitation guidelines. The statement is the culmination of the company's discussions with the Commission about the application of the pricing guidelines and its re-pricing methodology. This process aims to identify and address potential problems and increase public confidence that a company's behaviour is consistent with the guidelines.

Companies that participated in discussions with the Commission and proceeded with their commitment said that they found the process to be rigorous but effective. Amongst the reasons that some companies gave for not participating were that they lacked resources, the CEO was not confident the company could comply, and that they considered the requirement for ongoing reporting to be too onerous.

The Commission examined the methods of assessing the impact of the New Tax System on costs and prices. The Commission had to be satisfied that the company's approach to identifying cost savings and their reflection in pricing decisions was consistent with the guidelines.

Receipt of a public compliance commitment cannot be construed as endorsement by the Commission of any specific pricing decisions made by companies in implementing the New Tax System changes. Companies make their own pricing decisions and need to explain them to their customers.

The commitment requires the company to report to the Commission every six months or upon request. It may include independent verification of the information provided. This system of ongoing monitoring and reporting is an important element of the Commission's price monitoring, and is critical to achieving ongoing compliance. It will provide the Commission with a large database of information about cost savings.

A public compliance commitment does not protect companies from enforcement action. If an allegation of price exploitation arises, the Commission will consider, among other things, the information provided in support of the commitment.

By the end of July, 35 companies, representing many industry sectors, had public compliance commitments on the Public Register. These can be viewed at any Commission office, on the Commission's website and in appendix IV. The Commission regards this outcome as a major achievement in its efforts to encourage compliance with the New Tax System legislation.

The benefits of the public compliance commitments to date include:

- the resolution of emerging issues in a timely and cost-effective manner with a high degree of compliance from participating organisations;
- greater compliance with the New Tax System price exploitation legislation and the Commission guidelines;
- greater corporate awareness and understanding of their obligations and responsibilities in relation to the New Tax System;
- assistance with the Commission's price monitoring role; and
- consistency in the complaints handling process, with a Commission liaison officer appointed to each company with a public compliance commitment.

## ROAD TRANSPORT

The Commission has received a large number of complaints from participants in the road transport industry, an industry that received significant benefits under the New Tax System. Most complaints have been from sub-contractors complaining that their employers have reduced their freight rates by more than the savings they are receiving as a result of the New Tax System. The Commission is currently investigating these allegations to determine if they raise issues under the Act.

The Commission's position is that it is legitimate for other non tax-related costs to be taken into account when negotiating freight rates, but the two impacts (the net effect of the New Tax System and the effect of other commercial factors) should be clearly distinguished. This will ensure that all New Tax System savings are being passed on to consumers.

## TAXIS

Despite a predicted shortage of the conversion chips needed to convert taxi meters to GST-inclusive fares from 1 July 2000, industry regulators claim that 99 per cent of taxi meters were converted within the period allowed for dual pricing (the month to 31 July 2000). Taxis used manual conversion cards before their fare chip was converted and this strategy had few reported problems.

The Commission has received complaints from taxi drivers who believe they are not receiving sufficient savings from the New Tax System to remain in a neutral position after they remit GST to the ATO. The Commission has encouraged the State and Territory regulators to review the New Tax System fare adjustments regularly after 1 July 2000.

The Commission is assessing complaints from drivers who have been refused a renegotiation of their bailment arrangements by their operators. If operators receive savings that result in them increasing their net dollar margin, they may risk engaging in price exploitation if they do not pass on some of these savings to their drivers.

## COMMERCIAL RESIDENTIAL ACCOMMODATION

Commercial residential premises include hotels, motels, hostels, boarding houses, caravan parks, mobile home parks and similar premises. Under the New Tax System, the GST that users of such accommodation have to pay depends upon whether the stay is short-term or long-term. A short-term stay is classified as being less than 28 days. For these stays 10 per cent GST must be paid. Long-term stays are classified as 28 days or more and providers have two options for how to manage the GST, the input-taxed method or concessional GST treatment.

During the quarter, the Commission participated in a series of information seminars for operators and residents conducted by the Australian Taxation Office. The seminars informed operators of their obligations in relation to price exploitation, and residents of the varying applications of the GST and the likely impact of the New Tax System on prices. The Commission produced an information flyer for residents, *GST Talk 9 — Commercial Residential Premises — Accommodation charges*, that was available at the seminars. It also provided operators with business kits that included the *Pricing Kit for Small Business* on CD ROM and the small business checklists.

In late June 2000 the Government had announced that it would ask the Commission to put in place an audit program to ensure that the pricing structures of caravan parks and boarding houses do not result in increased margins that capture the increased rent assistance.

In response, the Commission has compiled a comprehensive database of contact details of caravan parks, mobile home parks and boarding houses. It has written to each advising them that they may be subject to a pricing review. The letter included the *Pricing Kit for Small Business* to help the operators comply with the price exploitation guidelines. The Commission is currently developing a survey to be sent to selected operators to obtain information about price movements.

## BANKING INDUSTRY

The Commission held discussions with banks and other credit and debit card issuers about changing the fees charged for merchant services in response to the New Tax System and in compliance with the Commission's price exploitation guidelines.

In determining the appropriate New Tax System-related reduction in merchant service fee rates, the institutions have accounted for cost savings resulting from the abolition of the WST as well as the expected impact of the New Tax System on transaction values and hence volume-related fees. In general, merchant service fees will rise by less than 10 per cent. This means that after a business has claimed input tax credits connected with that supply, the actual cost per transaction will fall.

The Commission also discussed with banks their broad changes to fees and charges in response to the New Tax System changes. As part of their public compliance commitments the four major banks committed to repricing consistent with the price exploitation guidelines. The banks advised the Commission that the input-taxed nature of most banking activities meant that they would experience some increased costs. The Commission sought to ensure that, where changes to fees and charges are made, the extent and incidence of those changes are consistent with the price exploitation guidelines and that consumers receive the full benefits of indirect tax reductions.

## FRANCHISE SYSTEMS

During the quarter the Commission received many complaints from franchisees about the calculation of royalty and other associated fees under the New Tax System, particularly where such fees are calculated as a percentage of the franchisee's gross turnover. Where GST is included in this turnover, the net dollar margin obtained by the franchisor may increase as a result of the New Tax System changes.

The Commission investigated the allegations and ensured in each case that the franchisor had made a suitable adjustment to the royalty and other associated fees so that they did not potentially engage in price exploitation. To help the sector the Commission released a News for Business information bulletin and conducted information sessions in major capital cities with the Franchising Council of Australia.

# MONITORING COMPLIANCE

Under s. 75AY(1) of the Act, the Commission may monitor prices to assess the general effects of the Government's indirect tax changes on prices and to help identify potential cases of price exploitation by businesses.

To do this, the Commission has an extensive price-monitoring program in place. It also draws on many other sources of information about price changes and pricing behaviour. These include the CPI and ABS wholesale price indexes, commercially provided price information databases for specific products at the wholesale and retail levels, large corporations with public compliance commitments and the authorities that regulate industries such as electricity, gas and public transport. Complaints by consumers and businesses through the GST Price Line also contribute to the Commission's information on price changes associated with the New Tax System.

Information gathered about price changes and pricing behaviour is used for both education and enforcement. It provides the basis for the Commission's estimates on price movements and helps identify where anticipatory pricing and other examples of price exploitation may be occurring.

## PRICE MONITORING

During the September quarter the Commission's price monitoring activities were concentrated on collecting and analysing data from specially commissioned surveys and existing databases. The surveys and supplementary information did not provide any evidence of widespread opportunistic pricing to increase margins in association with the introduction of the New Tax System.

Two reports on the outcomes of the surveys were published and are available on the Commission's website. The *Report on ACCC price surveys: pre-GST price changes* contained the results reported for the June quarter. The second was the *Report on ACCC price surveys: preliminary post-GST price changes*. This contained the findings of surveys conducted in July to provide data on immediate post-GST price changes.

## THE GENERAL SURVEY

Analysis of the Commission's August general survey was largely completed during the September quarter and is reported here, although it was published after the end of the quarter. The third published report, *Report on ACCC Price Surveys: General Survey August 2000*, contains more detail on the survey results and is available on the Commission's website.

The general survey collects the prices of identical products at different times. The size of the survey is substantial. Over 600 000 items were individually priced in the August collection, the most comprehensive survey of retail prices undertaken since the introduction of the New Tax System. Over 400 000 price comparisons were

made between the May and August data. By comparison, the ABS obtains approximately 100 000 price quotations per quarter to calculate its CPI.

However, the results of the Commission's retail price surveys are not an economy-wide measure of the effects of the New Tax System. Nor can they be compared to ABS series such as the CPI and the implicit price deflator of Households Final Consumption Expenditure in the National Accounts. These are constructed on different bases to the Commission's surveys and relate to different time periods.

The general survey covers prices for a wide range of goods and services commonly purchased by households. Prices are collected from 115 locations (capital cities, major regional cities, towns and small towns) in all States and Territories. The goods and services can be grouped into the following broad areas:

- clothing and footwear;
- processed food and beverages;
- fresh food;
- meals out and takeaway food;
- alcoholic beverages and cigarettes;
- household furnishings and equipment;
- household operations and services;
- miscellaneous goods and services;
- medical and health products ;
- personal care products;
- motor vehicle operating expenses;
- recreation — audio visual products; and
- other recreation.

To date the complete version of the general survey has been conducted four times during the GST transition period: in December 1999/January 2000, and in March, May and August 2000. The August collection took place in the first two weeks of August, with some cross-checking and auditing of price information in the third week. The period of comparison is from the May survey to the August survey. It is likely to provide a reasonable indication of the immediate effect of the New Tax System as it is long enough to allow retail prices to be adjusted, but not so long that non-tax factors largely influence the outcomes. Nevertheless, other factors almost certainly contributed to changes in many product prices during the period. With Australia's inflation rate, as measured by the CPI, recently running at about

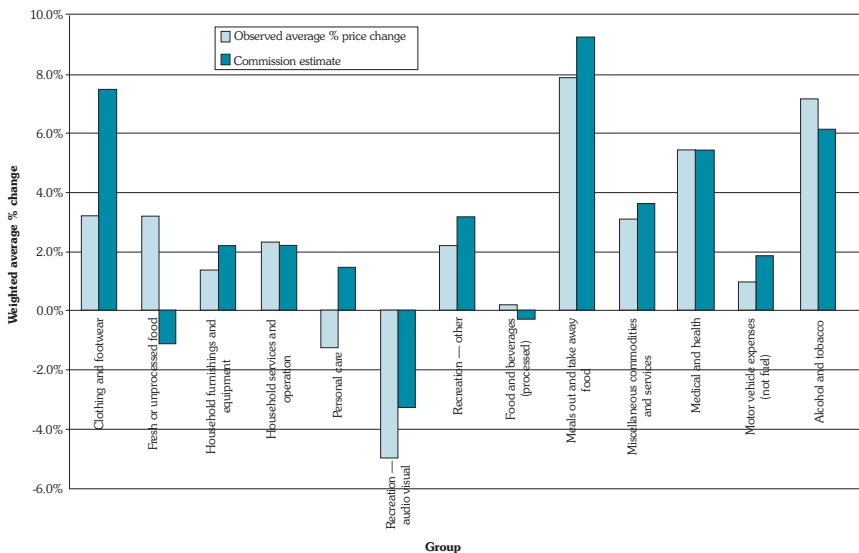
0.8 per cent per quarter, some movements in prices due to other factors would be expected. These might include increases in the cost of production factors, the depreciation of the dollar, fuel price rises and product seasonality.

The overall weighted average price change between the May and August collections is 2.6 per cent. The lower-bound Commission estimate of the effects of the New Tax System, weighted on the same basis, is 2.0 per cent and the upper-bound estimate is 3.0 per cent.

Analysis indicates that most of the prices expected to change substantially as a result of the New Tax System alone had already done so by early August. The data show that about 19 per cent of surveyed prices related to products with an estimated effect of the New Tax System to be increases of 5 per cent or more. Of these prices, about 74 per cent showed increases of 5 per cent or more and only 8.5 per cent had not changed at all. Only 1.7 per cent of prices with no change were for products that had a New Tax System-effect estimated to be decreases of 3 per cent or more. These outcomes indicate (at least for the products in the survey) that prices likely to change substantially due to the New Tax System generally had done so by early August.

Figure 1 presents an overview of the average price changes observed from the August and May collections, compared to the Commission's estimate of the effect of the New Tax System alone.

**Figure 1. Observed and estimated price changes, May to August 2000**



The survey data provide sufficiently large samples to analyse differences in price changes between metropolitan (capital city) and regional areas. The data indicate that price changes resulting from the New Tax System were fairly consistent across geographical locations where price levels may be quite different.

The Commission was also interested in how smaller businesses changed their prices compared with larger retailers and retail chains. There was some evidence from the Commission's monitoring of the WST rate reduction in July 1999 that the level of compliance was higher among large businesses than small businesses. The Commission responded to this perceived discrepancy with an intensive information campaign and issued the *Pricing Kit for Small Business* that contained tools to help small businesses to better understand Commission requirements on re-pricing and to comply with the law.

The differences in the size or direction of price change between sole outlet and multi-outlet businesses appear to be minimal. If any pattern is discernible, it may be that sole businesses tended to have slightly lower average price changes. This suggests that the Commission's small-business strategy may have helped small business to better understand the likely effects of the New Tax System changes.

The results also showed that there were no substantial differences in the average price changes observed between the States and Territories, although prices may be at different levels.

## FUEL

The Commission monitors the prices of unleaded petrol, automotive distillate (diesel) and auto liquefied petroleum gas (LPG). It released the *Report on the Movement in Fuel Prices in the September quarter 2000*, which is available from the Commission's website. Below is a summary of the report's findings.

Fuel prices differ from many other prices in that they change more frequently (often a number of times on the one day) and vary significantly from location to location. This variability makes it much more difficult to assess the appropriateness of each company's re-pricing in response to the New Tax System changes. Any such assessment needs to consider pricing trends over an extended period and take into account the many other factors underlying the price movements.

Price movements for individual businesses may not be strictly in line with industry averages and no conclusions should be inferred from the report about individual business prices.

The Commission's analysis shows that price movements from the week ended 30 June to the week ended 29 September for unleaded petrol, diesel and LPG were as follows:

### **Unleaded petrol**

- the average unleaded petrol prices in the capitals increased in the range of 3.1 cents per litre (cpl) for Hobart to 12.3 cpl for Melbourne (which was affected



by the fuel blockade in late September), with the average increase being 8.3 cpl; and

- average unleaded petrol prices in country areas increased in the range of 7.7 cpl in Queensland to 9.5 cpl in Victoria, with the average increase across all country areas being 8.5 cpl.

### ***Diesel***

- average diesel prices in the capitals increased in the range of 12.7 cpl for Hobart to 18.1 cpl for Melbourne, with the average increase being 16.9 cpl; and
- average diesel prices in country areas increased in the range of 14.9 cpl for Tasmania to 17.3 cpl for Western Australia, with the average increase being 16.1 cpl.

### ***LPG***

- average LPG prices in the capitals increased in the range of 3.1 cpl for Perth and Canberra to 9.5 cpl for Melbourne, with the average increase being 5.3 cpl; and
- average LPG prices in country areas increased in the range of 4.5 cpl for South Australia to 5.7 cpl for the Northern Territory, with the average increase being 5.0 cpl.

A comparison of unleaded petrol prices in the five metropolitan cities with average country prices over the September quarter shows that the city–country differential decreased marginally. Country prices tend to be stickier than city prices. There is not the level of discounting in country areas that occurs in the capital cities and there is a slower turnover of fuel in country areas. Because of this, no conclusions can be drawn from this analysis about the operation of the Fuel Sales Grant (FSG). One of the intentions of the FSG was to help address the divergence in fuel prices between the cities and regional areas.

A combination of factors affect fuel prices, including international prices, the Australian/US dollar exchange rate, Federal and State excises and taxes, and discounting in the market.

All these factors have had an effect during this period of volatility, especially rises in international prices together with a fall in the value of the Australian dollar. The local discount cycle has influenced prices, especially for unleaded prices in metropolitan areas. The New Tax System has also contributed to the extent that the excise rate has been reduced, the GST introduced and local industry costs have been affected. As the GST is based on a percentage of the price, it has risen due to increases in international prices.

The Commission has assessed the cost savings that the oil companies could expect from the New Tax System and concluded they could be up to 1.6 cpl in the long term. However, the timing and magnitude of these cost savings are uncertain in the short term (largely due to the exchange rate effects).

It is difficult to specify exactly the different components that have affected fuel prices over the quarter. In the case of unleaded petrol and diesel the Commission has developed a retail import parity indicator against which to assess the actual movement in prices. This indicator takes account of the key underlying factors affecting unleaded petrol and diesel prices, including international prices, exchange rates and taxes. It reflects wholesale and retail margins actually obtained by companies in the past, after taking discounting into account. The analysis concluded that, on average over the September quarter:

- actual unleaded petrol prices were below the retail import price indicator by 1.65 cpl for the five major metropolitan cities together; and,
- actual diesel prices were below the retail import price indicator by 2.93 cpl for the five major metropolitan cities together.

In the case of LPG, a retail import parity indicator could not be used. Instead the Commission examined actual price movements against movements in the factors affecting LPG prices and concluded that actual price increases in the capitals in the review period were lower than expected.

The Commission's analysis suggests actual fuel prices have not risen as much as expected on the basis of movements in the underlying factors including historical wholesale and retail margins. This is not inconsistent with the suggestion that cost savings from the New Tax System changes have been passed on. However, fuel prices during the September quarter have been quite volatile and future monitoring will determine whether this trend continues.

The Commission would be concerned if average retail prices of unleaded petrol, diesel and LPG were to exceed prices reflecting movements in underlying factors on a consistent basis. That is, if margins were to rise on account of the New Tax System changes alone, there is likely to be a breach of the price exploitation laws.

The Commission will continue to monitor and analyse average fuel prices across Australia. The Commission is also monitoring the pass on of the FSG by automotive fuel retailers.

## MOTOR VEHICLES

The Commission monitors motor vehicle industry pricing information and the CPI to analyse movements in motor vehicle prices. The CPI is the only source of reliable, continuous data based on actual transaction prices, rather than list or recommended retail prices. The CPI showed no change in transaction prices of new motor vehicles in the June quarter, before the introduction of the GST.

As reported in the June quarter report, notices were issued under s. 75AY (2)(a) of the Act to 15 motor vehicles manufacturers and importer/distributors. The aim was to assess whether direct and indirect New Tax System savings were being reflected in product prices.

From 1 July the recommended retail prices of non-luxury passenger vehicles generally decreased by just over 6 per cent, which is consistent with the direct effect of the abolition of WST. A review of the recommended retail prices for luxury passenger vehicles also indicated that direct New Tax System savings were reflected from 1 July.

Several vehicle importers/distributors notified the Commission of price increases unrelated to the tax changes, the principal factor being the depreciation in the Australian dollar exchange rate. These price adjustments appear reasonable but nonetheless offset some of the cost changes flowing from the abolition of WST.

The Commission has access to dealership profitability survey data. It suggests that dealers' net profit on average was slightly lower in August compared with July 2000. Since the introduction of the GST, dealers in the survey have achieved returns slightly above their pre-GST returns. However, lower dealership revenue (in dollar terms) per vehicle sold means that dealer dollar margins for vehicles have not necessarily increased.

In view of the economic significance of the motor vehicle industry and the extent of WST previously collected by the industry, motor vehicle companies have been asked to notify the Commission of all significant price increases over the transition period and to identify how any indirect New Tax System cost changes are being reflected in price changes. The Commission will continue to closely monitor new motor vehicle price changes.

## NEW HOUSE BUILDING COSTS

The Commission obtains a monthly index of house construction costs from a building industry information source. It incorporates 20 trade categories of labour, material, plant and subcontracting costs in the proportions needed to build a typical concrete-slab/brick-veneer house.

It does not measure the price of a new home, but provides some indication of movements in trade or wholesale prices. The average change in the house construction cost index over June to September 2000 for capital cities and several regional centres was 9.5 per cent. This reflects the imposition of GST on building materials that were largely exempt from WST. The Commission is examining further the larger increases in materials and product prices.

## RESIDENTIAL RENTS

The Commission draws on several sources of information on residential rents, including the CPI and some State and Territory Government residential tenancy bond authorities. The CPI expenditure class of privately owned dwelling rents across the eight capital cities increased by 1 per cent in the June quarter, before the introduction of the GST.

Upward and downward movements were evident, as well as no change in some locations. Capital city percentage movements tended to be smaller than in regional centres. There was no pattern of changes suggesting potential price exploitation by

landlords, for example by misleadingly adding 10 per cent to pre-GST rent. Commonly, post-GST rents did not change. Where increases occurred, they generally were in the order of 3 per cent. Larger changes reported in some regional locations often are based on very few observations. The widely variable observed changes appear to largely reflect the interaction of local supply and demand factors and no conclusions as to potential price exploitation can be drawn from this data alone.

## BANKING PRODUCTS

The Commission obtains monthly information on a wide range of consumer and business financial products, covering most financial institutions operating within Australia.

The Commission has discussed with the major banks their basis for calculating their GST-related cost changes and how they intended to recoup them. The four major banks and many other financial institutions indicated that they would try to recoup these costs through interest rate changes, rather than fee changes. This is evident in the July and August data which shows little movement in fees.

Many financial institutions will incur increased costs as a result of the introduction of the GST due to the input-taxed status of most traditional banking products. Although no GST applies directly to input-taxed products, providers of such products cannot claim back any GST paid on inputs used to provide them. Therefore, the overall cost of supplying these types of products could be expected to increase.

## SECTION 75AY NOTICES

In the June quarter 55 notices were issued under s. 75AY (2)(a) of the Act to manufacturers and distributors in industries previously subject to a 22 per cent rate of WST and to major national road freight transport businesses. The analysis of the information cooperatively provided by the companies was completed in the September quarter. The results are reported below.

The key finding was that there is no evidence of anticipatory pricing in these industries and that direct New Tax System savings appear to have been reflected in their 1 July 2000 pricing. It is too early to say whether actual indirect savings that accrue from the New Tax System are being reflected in prices.

In addition, 18 s. 75AY notices were issued during the September quarter — 16 to companies in the motor vehicle spare part, smash repair and insurance industries and 2 to cigarette retailers.

## LAWN MOWERS

There were no significant pre-GST price increases and most businesses identified no increases since July 1999. Reductions associated with the abolition of WST are reflected in pricing structures. However, the recent devaluation of the Australian dollar against the US dollar and Japanese Yen has created significant

non-tax-related cost pressures. At present most non-New Tax System costs are being absorbed, but some cost changes from the abolition of WST are being offset.

## MOTOR CYCLES

All companies passed on the direct New Tax System impact into their pricing structure. However there have been several non-New Tax System price increases related to exchange rates. These appear reasonable given the significant devaluation of the Australian dollar against the Yen and US dollar. There were also price increases associated with model upgrades or new model introductions.

## PET FOOD

There was no evidence of anticipatory pricing during the pre-GST period. Prices either remained constant or decreased. This result was consistent with the June 2000 quarter CPI that showed a -2.5 per cent annual change in the expenditure class, which includes pet food. Retail price reductions from 1 July reflect the abolition of WST.

## SPORTING GOODS

There was no evidence of anticipatory pricing during the pre-GST period with prices generally remaining unchanged. The direct effect of New Tax System cost changes associated with the abolition of WST is reflected in pricing structures. Many businesses identified non-New Tax System cost pressures associated with the devaluation of the Australian dollar against the US dollar and the Yen.

## PHOTOCOPIERS

There was no evidence of anticipatory pricing during the pre-GST period with prices generally remaining unchanged. Price increases, where they did occur, tended to apply to only part of a company's product range and to be related to the devaluation of the Australian dollar against the Yen. The direct effect of the abolition of WST is reflected in pricing structures.

## ROAD FREIGHT TRANSPORT

The Commission issued 11 notices under s. 75AY (2)(a) of the Act to major national road freight transport businesses. The key finding of the analysis is that New Tax System savings generally appear to have been reflected in road freight pricing from 1 July 2000. There are significant differences in the 1 July rate adjustments between road transport businesses, which partly relate to how successful individual businesses were in obtaining freight rate increases to compensate for fuel increases over the period before 30 June 2000. Differences also reflect the relative significance of long haul fuel usage (and in turn eligibility for Diesel and Alternative Fuels Grants Scheme payments) in freight operations.

However, transport rates have also been affected by non-New Tax System cost factors. For example, the Commission is aware that fuel prices have risen substantially since 1 July placing upward pressure on freight rates. The Commission

will continue to obtain information from major road transport firms to verify that New Tax System cost changes continue to be reflected in pricing.

## GST PRICE LINE

The GST Price Line provided an easy and inexpensive way for consumers and businesses to contact the Commission with their questions and concerns about price movements. It was the preferred means of contact with the Commission for most people and in many cases the Commission used the information provided in its compliance and enforcement activities.

As expected, July was a very busy month for the GST Price Line. Calls increased from 24 027 in June to 67 132 in July. The Commission had anticipated this high demand and had trained extra staff in the preceding quarter. It also increased the price line's hours of operation in July. Staff were available from 8 a.m. to 9 p.m. (Eastern Standard and Eastern Summer Time) seven days a week. Also, in the first six weeks of the quarter, overflow calls were directed to outsourced independent call centres.

The number of calls declined in August and September but during September the price line continued to receive between 200 and 350 calls each day.

It received a total of 92 664 calls in the September quarter, of which 65 651 were inquiries and 27 013 were complaints. Table 1 provides a monthly breakdown of these calls.

**Table 1. Calls to the GST Price Line — 1 July to 30 September 2000**

	<b>Inquiries</b>	<b>Complaints</b>	<b>Total</b>
July	50 922	16 210	67 132
August	10 217	7 558	17 775
September	4 512	3 245	7 757
<b>TOTAL</b>	<b>65 651</b>	<b>27 013</b>	<b>92 664</b>

The four industry subdivisions that generated the most calls were personal and household goods retailing, food retailing, motor vehicle retailing and services, and government administration. Government administration includes government fees and charges such as for car parks, swimming pools and rates. In July, these four industry divisions accounted for 57 per cent of calls, with personal and household goods retailing accounting for 24 per cent and food retailing 20 per cent of calls.

## ENFORCING COMPLIANCE

The Commission's enforcement activities were a primary focus during the September quarter. The aim of enforcement is to change behaviour. The Commission has four goals when faced with evidence of price exploitation. These are:

- to stop the unlawful conduct;
- to ensure those suffering detriment are advised and that they receive refunds or compensation;
- to prevent future breaches; and
- to seek court-imposed penalties if necessary.

The Commission has applied priorities in its complaint handling so that it can quickly respond to complaints, particularly those that demonstrate blatant disregard for the law (such as price rises above 10 per cent purporting to be related to the GST) or involve conduct resulting in widespread consumer detriment.

It is the Commission's intention to quickly resolve GST-related matters to minimise confusion and consumer losses. To achieve this, it has a system for swiftly analysing complaints and several investigatory teams to conduct fast-track investigations.

In line with its emphasis on the speed of correction of errors, the Commission has been willing to accept court-enforceable undertakings rather than take direct court action. Where businesses that have made inadvertent mistakes have volunteered this information to the Commission, this is taken into account when determining the enforcement action.

The Commission's GST-enforcement work is in two areas: cases of price exploitation under s. 75AU of the Act and misleading representations and GST-exclusive pricing under part V of the Act.

## PRICE EXPLOITATION

In cases of price exploitation, the Commission's enforcement work has concentrated on five key areas:

- GST being charged on GST-free items;
- traders not passing on WST reductions in full;
- ATO rulings;
- rounding; and
- general price exploitation.

Ensuring that GST-free items are correctly priced has always been a high priority for the Commission. There have been several cases of GST being charged on GST-free items. In each case the Commission's aim was to achieve remedies for the consumers, including refunds where possible. For example, Franklins Supermarkets inadvertently charged GST on 17 GST-free goods due to errors in their pricing systems. As a result consumers were charged 10 per cent GST on these products, which included fruit juice and Weetbix. Franklins agreed to implement various remedial measures, including an 11 per cent discount on the 17 products for three weeks and refunds to consumers who had receipts.

Three Harvey Norman stores and the Domayne store charged GST on pre-paid mobile phone cards and starter kits. The face value of the cards represent a GST-inclusive price and the underlying call charges have been adjusted to reflect any GST liability. Charging GST on the purchase of the card was in effect charging GST twice. The franchisees offered refunds to customers for the extra GST charged or full refunds if the card had not been used. They also placed advertisements in local papers advising of the refund.

In cases where customers could not be identified, the Commission considered that a donation to charity was appropriate, as long as customers were made aware of what steps were being taken, for example through newspaper advertisements and in-store signs.

Another part of the Commission's enforcement strategy is to advise the public of the outcomes of the actions it takes. Business has been concerned about adverse publicity but the Commission's priority is to achieve widespread compliance and the media provide an effective way of promoting this. The Commission is also prepared to give credit to businesses that work cooperatively to resolve problems.

The Commission has investigated a number of matters where WST reductions were not fully passed on to customers. One example is Lander Toyota, where a car seller miscalculated the reductions from the removal of WST on new cars. Lander Toyota customers received around \$40 000 in refunds and other compensation.

Several companies have had to pay refunds following ATO rulings that meant GST was not chargeable. These include ANZ for lenders mortgage insurance and GIO for car leases. Most companies have been responsible in providing refunds and the Commission's role is generally to make sure that refunds are made in an appropriate way. In some cases companies sought to limit the refund and only pay part of the amount overcharged because of administrative costs but the Commission did not agree to these proposals. The Commission is continuing to look closely at the financial sector, in particular in relation to car leases and mortgage lenders insurance.



## MISLEADING AND DECEPTIVE CONDUCT

The main focus of work under part V of the Act has been on GST-exclusive prices. The Commission has received complaints about all industry sectors, but of particular concern is the service sector, including the hospitality industry, tradesmen and premium telephone services.

The Commission's guidelines clearly state that when prices are displayed they should be GST-inclusive, so that the consumer is clearly informed of the selling price of the good before buying it. This also applies to price quotations.

Nevertheless, the Commission is still receiving complaints about businesses not including GST in advertised prices or stating 'plus GST' in much smaller print than the advertised price.

The Commission's concern with GST-exclusive pricing is that consumers only receive part of the price information and therefore are likely to be misled. Misleading consumers is a breach of Trade Practices Act, attracting penalties of \$200 000 for businesses and \$40 000 for individuals, per offence.

The building industry has been another major area of concern, where many consumers have been asked to pay GST on contracts they were led to believe would have been completed before 1 July 2000. Clarendon Homes (see below) agreed to waive \$1.09 million of GST invoiced to its customers. There are a number of ongoing investigations.

## OUTCOMES

During the quarter the Commission sent 4270 letters about alleged contraventions to traders. Of these, 2354 were letters that informed the traders of relatively minor potential breaches but did not require a response to the Commission. Many of these letters were sent to small businesses. A further 1916 letters notified traders of more serious potential breaches and required a response.

Since 1 July 1999 the Commission has taken legal proceedings in seven GST-related matters: Accounting for GST, Discount Electrical Centre, Electrodry, Goldy Motors, Meriton Apartments, Rod Turner Consulting and Video Ezy. Of these, three cases have been concluded and those of Electrodry, Goldy Motors, Rod Turner Consulting and Video Ezy are currently before the Federal Court. The cases that were active in the quarter are discussed below. During this period the Commission also obtained 30 enforceable undertakings under s. 87B, of which 17 were in the September quarter and are discussed below.

The Commission achieved numerous administrative undertakings during the quarter in the form of promissory letters. These undertakings include quite small outcomes, such as restaurants changing menus to show GST-inclusive prices. In all cases the Commission considers whether refunds are appropriate to offset any detriment

suffered and also whether a media release could succeed in sending a clear message to traders to ensure compliance.

The Commission has received around 100 administrative undertakings since July 1999. Of these, 60 related to GST-exclusive pricing and 40 related to alleged s. 75AU conduct.

The Commission is continuing to investigate many other cases and had approximately 1000 active matters at the end of the quarter.

## LEGAL PROCEEDINGS

### ELECTRODRY CARPET DRY CLEANING

The Commission instituted proceedings in the Federal Court against A Whistle and Co (1979) Pty Ltd, trading as Electrodry Carpet Dry Cleaning, alleging misrepresentations and false and misleading conduct under the Act.

The allegations concerned a brochure distributed by Electrodry in Queensland, New South Wales, Victoria, South Australia and Western Australia. The brochure displayed the GST-exclusive component of the price in very large, prominent print with the total price including GST in much smaller print. The Commission alleged that the brochure was likely to mislead consumers as to the total price payable for Electrodry Carpet Dry Cleaning services.

On Friday, 18 August 2000, the Commission obtained an interim injunction restraining Electrodry from further distribution of the brochure, pending further orders from the court.

The Commission is seeking court orders including:

- declarations that Electrodry has breached the relevant provisions of the Act;
- injunctions preventing Electrodry from engaging in similar conduct in the future;
- corrective advertising; and
- an injunction directing that Electrodry conduct a trade practices compliance program to prevent repetition of this or similar conduct.

A directions hearing was held on 16 October and the next has been scheduled for 20 November 2000.

### GOLDY MOTORS

The Commission instituted proceedings in the Federal Court against a Perth car dealership, Goldy Motors, alleging misrepresentations and false and misleading conduct under the Act.

The allegations concerned advertising by Goldy Motors about the likely impact of the GST and the availability of finance. The Commission alleged that on 14 June 2000 Goldy Motors advised consumers through a print advertisement to buy vehicles before 30 June 2000 because it was their 'Last chance to buy... GST FREE!!'. The Commission alleged that this advice may have misled consumers as the price of new vehicles was expected to fall with the introduction of the GST on 1 July 2000.

The Commission alleged the advertisement also advised consumers that 'No Finance Application Refused!' which was accompanied by a very small qualifier 'T.A.P' (which stands for 'to approved purchasers'). The Commission alleged that the very small size of the qualifier and the absence of a satisfactory explanation that finance applications were only to approved purchasers may have also misled consumers.

The Commission is seeking court orders including:

- declarations that Goldy Motors had breached the relevant provisions of the Act;
- injunctions preventing Goldy Motors from engaging in similar conduct in the future;
- corrective advertising; and
- refunds for consumers that may have suffered loss as a result of the advertisement.

The Commission is awaiting a hearing date from the court.

## ROD TURNER CONSULTING

The Commission instituted legal proceedings in the Federal Court, Melbourne against Rod Turner Consulting under ss. 52 and 53(e) of the Act. The Commission alleges that Rod Turner Consulting wrote to a client's tenant advising of a proposed rental increase. The Commission alleges the letter stated that from 1 July 2000 an extra 10 per cent would be payable on rent charged by the landlord but the landlord was including a GST component in the increased rent from 20 June 2000. It is also alleged that the firm claimed that water rates for the rented premises would carry a GST cost to the landlord.

The Commission alleges the statements in the letter as to the price of services, namely rent for a residential unit, was false or misleading. It has also alleged misleading and deceptive conduct because the leasing of residential premises is an input-taxed supply under the New Tax System legislation and therefore not a taxable supply for the purposes of the GST, and also because water rates are GST-free.

The Commission has also taken action against its principal, Mr Rod Turner, for being knowingly concerned in the alleged contraventions.

It is seeking declarations that the conduct is unlawful, injunctions restraining the respondents from making similar statements, and orders that the respondents take corrective action and apologise to the tenant concerned. It is awaiting a trial date from the court.

## VIDEO EZY

On 7 April the Commission issued its first notice of price exploitation, to Video Ezy Australiasia under s. 75AW of the Act. Proceedings were instituted in the Federal Court, Sydney on 25 May 2000.

The Commission has alleged that certain increases in the hire price of certain new release videos from late 1999 from \$6.00 to \$7.00 were in anticipation of the GST. The Commission alleges that the conduct amounts to a breach of the misleading and deceptive conduct and price exploitation provisions of the Act.

The next directions hearing for this matter is scheduled for 18 October 2000.

## ENFORCEABLE UNDERTAKINGS

### AC MCGRATH & CO. PTY LTD

AC McGrath & Co. advertised in *The Daily Telegraph* on 20 May 2000 that consumers should 'Beat the July price increases' in relation to new Subaru motor vehicles. The Commission was concerned that these advertisements were likely to mislead consumers to believe that prices of new Subaru motor vehicles would rise with the introduction of the GST.

AC McGrath agreed to immediately cease publication of the relevant advertisement and to run a corrective advertisement in *The Daily Telegraph*. They also agreed to offer full refunds or right of rescission to all buyers who may have been misled by the advertisement and to implement a trade practices compliance program.

### ADVANCED HAIR STUDIOS (FRANCHISING) PTY LTD

A customer of Advanced Hair Studios store alleged that a staff member represented that the prices of hair replacement units would increase by 10 per cent from 1 July 2000 because of the New Tax System. The Commission was concerned that the representation was misleading or false as before 1 July 2000 hair replacement units were subject to 22 per cent WST unless item 86 of schedule 1 of the *Sales Tax (Exemption and Classifications) Act 1992* applied.

The franchise promptly undertook to cease making any such representation and wrote to each of the franchisees and to all customers to clarify the effect of the New Tax System on the prices of hair replacement units. It has also agreed to implement a trade practices compliance program.

### AUS-CARE TOWNSVILLE, AUS-CARE CAIRNS, AUS-CARE UPPER MT GRAVATT, AUS-CARE INDOOROPILLY

The Commission received a complaint advising that Aus-Care Townsville had charged GST on vaccinations for the Hepatitis B virus for children under the age of 13 years. Investigations by the Commission indicated that similar charges may have been made by the three other medical centres. The Commission decided that the medical centres had included a GST component on goods or services that were

GST-free and were therefore at risk of breaching the price exploitation provisions of the Act.

The four Aus-Care medical centres undertook to ensure that vaccinations of Hepatitis B do not include a GST component and to review their billing practices to ensure there is no GST component on any GST-free services. The medical centres also agreed to distribute a corrective apology and refund the GST component to all patients charged GST on Hepatitis B vaccinations, and to implement a trade practices compliance program.

#### AUSTRALIAN LEISURE & HOSPITALITY GROUP

Australian Leisure & Hospitality Group (ALH Group) is a full subsidiary of Carlton and United Breweries. Between 1 July 2000 and 28 July 2000, the ALH Group incorrectly applied the Wine Equalisation Tax to approximately 20 alcohol products resulting in consumers being overcharged.

In accordance with its trade practices compliance program, the ALH Group immediately notified the Commission of the conduct and confirmed that all affected products had been removed from sale. The total cost of the conduct for the 28-day period to consumers was \$12 322. The direct benefit to consumers of the proposed settlement was estimated to be in excess of \$30 000. ALH Group entered into an undertaking with the Commission that included a full compensation package and a four-week discount period during which the affected products were marked down by 15 per cent of their normal price.

#### CLARENDON HOMES (NSW) PTY LTD

The Commission received several complaints from customers of Clarendon Homes NSW who claimed that sales staff had advised them in mid 1999 to early 2000 that the contracts for the construction of new homes were GST-inclusive. The customers alleged Clarendon subsequently invoiced them for an additional amount due to GST. The Commission was concerned that such conduct may be misleading and deceptive.

The Commission raised its concerns with Clarendon, and the company agreed to waive the charges totalling about \$1.09 million for 208 new home buyers. Clarendon also offered the Commission court-enforceable undertakings to write to all 208 customers advising them that their GST charges had been waived and to enter into a trade practices education program.

#### CUISINE COURIER PTY LTD

Cuisine Courier provides a restaurant delivery service in Melbourne and Sydney. As part of this business, Cuisine Courier publishes and distributes booklets listing menus and prices for a variety of restaurants. Cuisine Courier also has a website displaying these details. Some prices for menu items and associated fees were GST-exclusive. The Commission considered that Cuisine Courier had contravened ss. 52 and 53(e) of the Act by making false and misleading representations in its booklets and on its website, and s. 53C by not stating the full cash price.

In response, Cuisine Courier ceased distribution of menu booklets that did not display GST-inclusive prices and updated its website to display GST-inclusive prices. Cuisine Courier also undertook to issue a corrective national advertisement, to provide a special telephone recording advising customers of the fact that menu booklets already in circulation may contain GST-exclusive prices and to implement a trade practices compliance program.

#### DELLAPOND PTY LTD TRADING AS AMAZING FENCES

From 1 May 2000 Amazing Fences sent invoices to 216 customers for the building of fences that included a sale amount and an amount for GST. The invoices stated that 'If payment received (by Amazing Fences) prior to 30 June 2000, please deduct 10% GST'. The Commission wrote to Amazing Fences on 22 June 2000 expressing concern that it may have breached s. 53(e) of the Act by representing that GST was payable on accounts for goods and services supplied before 1 July 2000 when the account was paid after 1 July 2000. Further, that if Amazing Fences actually received an amount for GST on goods and services supplied before 1 July 2000, then it may be engaging in price exploitation in breach of s. 75AU of the Act.

Amazing Fences subsequently undertook not to represent that GST was payable on goods and services supplied before 1 July 2000. It also undertook not to charge or seek to charge GST for goods and services supplied before 1 July 2000 and to refund any money collected to date. Amazing Fences also undertook to implement a trade practices compliance program.

#### DURAL PHARMACY, PROPRIETOR CHERYL BENSON

Dural Pharmacy distributed a letter to account customers by post. Among other things, the letter contained the representation that, '...we are obliged to add the GST of 10 per cent on the outstanding amount, before any additional purchases are made'.

The Commission was concerned this may have led customers to believe that GST was payable on goods received before 1 July 2000 and that GST is chargeable on goods which are GST-free. Dural Pharmacy undertook to send an apology letter to all account customers, to run a corrective notice in the *Hills News*, and to attend a trade practices training program.

#### ECOM COMPUTER AUSTRALIA PTY LTD

Ecom Computer published a newspaper advertisement in the Icon section of *The Sydney Morning Herald* on 27 May 2000 that stated that customers could 'Beat the GST' on computer packages. The Commission was concerned that the representations may have misled customers into buying computer packages believing that the price would rise after the introduction of the GST.

Ecom Computer provided court-enforceable undertakings to the Commission not to make future representations about the prices of computer packages without explaining the reasonable basis for making them. They also undertook to provide

refunds to consumers who may have been misled by its representations, to run a corrective advertisement and to implement a trade practices compliance program.

#### EXPRESS PROMOTIONS AUSTRALIA PTY LTD

Express Promotions ran a promotion to encourage businesses to use their \$200 GST Direct Assistance Certificate (GST Certificate) with the company. The promotional forms included statements such as 'Do you want \$200 worth of free stationery?' with only some forms having a disclaimer to the statement which added in small font 'by using your \$200 GST Direct Assistance Certificate'. Express Promotions then sent a kit with a covering letter entitled 'You want \$200 worth of free stationery?' to those businesses that expressed interest. The kit included an order form which businesses were asked to return along with their GST Certificate to obtain stationery. Only businesses that completed the kit and sent their GST Certificate received stationery.

The Commission explained to Express Promotions that the company may have engaged and may be continuing to engage in conduct that was misleading or deceptive or likely to mislead or deceive contrary to s. 52 of the Act. The Commission was also concerned that the promotional forms would mislead consumers to believe they could obtain free stationery when in fact they had to use a GST Certificate to obtain it.

Express Promotions undertook to cease using the promotional forms and kit and to send apologies to all people sent them. Consumers who purchased stationery believing it was free were entitled to a refund. Express Promotions also undertook to implement a trade practices compliance program.

#### ISLANDER'S BOARD OF INDUSTRY & SERVICE (IBIS)

The Island Industries Board is a body corporate under s. 52(2) of the *Community Services (Torres Strait) Act 1984 (Qld)*. It operates under the registered business name of Islander's Board of Industry & Service (IBIS). IBIS operates 14 general stores in the outer Torres Strait Islands, selling general items including groceries. The Commission was concerned that when implementing the New Tax System changes, IBIS had increased some of its prices by more than it should have (by up to 22 per cent, including on GST-free items) and were at risk of breaching the price exploitation provision, s. 75AU of the Act.

IBIS undertook a review of prices to ensure that all tax savings were correctly passed on to its customers. It also undertook to provide refunds to customers, discounts of 5 per cent on all items for one month, corrective apologies in all stores, and to implement a trade practices compliance program.

#### KMP PTY LTD TRADING AS INSKI

A complaint was received about dual ticketing being displayed in an Inski store before 1 June 2000 contrary to the guidelines. The Commission regarded this to be misleading or deceptive and in breach of ss. 52 and 53(e) of the Act.

KMP Pty Ltd, trading as Inski, undertook to remove all dual tickets displayed before 1 June 2000 by an agreed date. KMP also undertook to write to those customers it

could identify as purchasing goods from Inski stores during the period that the dual tickets were displayed and offer a refund those who believe that they were misled by the dual ticketing. The Commission was to approve the letter before it was sent to customers and KMP was to develop a trade practices compliance program within two months of the undertaking.

#### LINCRAFT PTY LTD, CUSTOM MADE DIVISION

Lincraft's Custom Made Division quoted GST-inclusive prices for all curtain and blind orders placed on and after 10 May 2000 assuming that these orders would not be delivered before 1 July 2000. For orders delivered ahead of schedule and before 1 July the price was adjusted by removing GST and adding WST.

On 30 June 2000 the Commission raised concerns with Lincraft that its Custom Made Division may have engaged in price exploitation, contrary to s. 75AU of the Act. The Commission also expressed concern that Lincraft's Custom Made Division may have engaged in misleading or deceptive conduct breaching ss. 52 and 53(e) of the Act, by making false representations relating to the application of GST and WST.

In response Lincraft immediately conducted a thorough audit of its Custom Made Division and found that the tax liability had been miscalculated on a small number of accounts. Lincraft then provided a refund and gift certificate to consumers who were overcharged and agreed to implement a trade practices compliance program.

#### QUEENSLAND MOTORWAYS LIMITED

On three of the four tollways in Brisbane, the toll was increased by more than 10 per cent. Public notices issued by Queensland Motorways Limited (QML) advising motorists of the toll increase stated, 'The modifications to the price will reflect the introduction of the Commonwealth Government's 10 per cent Goods and Services Tax and minor rounding of coinage'. The Commission was concerned that the toll increases could not be justified by the GST alone.

Upon investigation by the Commission, QML acknowledged that the actual increase due to the GST was 9.94 per cent and the full price rise was not attributable to GST. Part of the increase was due to efforts to recover a proportion of the costs flowing from additional capital works (totalling \$230 million since the last toll increase) and increased operating costs (since the last toll increase).

QML undertook to provide the public of Brisbane with a toll free day on Wednesday, 16 August 2000. It also undertook to publish a public apology for failing to advise consumers of the true nature of the toll increases, not to seek any toll increases for 12 months from 1 July 2000 and to implement a trade practices compliance program.

#### THE DCH LEGAL GROUP PARTNERSHIP

The Commission was concerned about representations by DCH Legal Group partners in an article published in a Perth newspaper regarding the effect of the New Tax System on legal fees. The statements created the impression that consumers could expect the cost of divorce proceedings to increase by 10 per cent from 1 July



2000 and that consumers could avoid paying the GST by quickly seeking legal advice. This had the potential to breach the provisions for misleading and deceptive conduct under ss. 52 and 53(e) of the Act.

The DCH Legal Group undertook to acknowledge that the representations may have misled consumers and to avoid engaging in similar conduct in the future. It also placed a corrective notice in the relevant newspaper offering compensation to affected consumers and partners of the firm will take part in a trade practices compliance program.

#### TS BURSTOW FUNERALS PTY LTD

TS Burstow Funerals Pty Ltd (Burstows) operate a benefit fund to cater for pre-paid funerals. Burstows believed it had an opportunity under the New Tax System to renegotiate fund members' existing contracts to upgrade funeral services and cater for incidental expenses not covered in the initial contracts.

However, further information revealed that the review undertaken by Burstows ultimately exposed its fund members to the immediate imposition of GST on services. If the existing contracts had not been reviewed or renegotiated, the service would only incur the tax when it was provided.

This matter was brought to the Commission's attention by Mr Ian MacFarlane, MP. Mr MacFarlane and Burstows agreed to a rectification and Mr MacFarlane involved the Commission to ensure that Burstows implemented the agreed resolution.

Burstows undertook to appoint an independent accountant to audit the Burstows Funeral Benefits Trust Fund and to provide a copy of the audit report to the Commission. It also undertook to identify and reinstate contracts that were reviewed or renegotiated, and to advise all affected clients of the error in re-drawing contracts. Burstows undertook to provide refunds to clients who had paid an amount for GST before the funeral service was provided and to advise the Commission when all the resolution actions had been completed, which was to happen by the end of September 2000.

#### UNITED VEND GROUP PTY LTD

To ensure that no further representations are made which imply that GST is payable for the supply of goods or services that happens before 1 July 2000, United Vend Group undertook to implement a trade practices compliance program.

# APPENDIX I

## GST-RELATED MEDIA RELEASES IN THE SEPTEMBER QUARTER

1 July	New Tax System and price changes Petrol price movements on 1 July Action on misleading rent
2 July	ACCC watching post-GST sales Small business race to complete price changeover to GST
4 July	Price movements in petrol and LPG on July 3
5 July	ACCC takes court action over statement about GST on residential rent, water
7 July	ACCC v Video Ezy Australasia — directions hearing
10 July	Registered GST Start-Up Assistance provider to offer refunds to consumers ACCC acts on Perth law firm's GST claims
13 July	ACCC settles 'beat the GST' litigation with Discount Electrical Centre
18 July	More companies give Public Compliance Commitment
21 July	Victorian Workcover Authority amends potentially misleading brochures
24 July	Franklins must provide three-week discount to consumers for GST errors
25 July	GST 'mistakes' must be rectified fully, quickly Toll-free day follows GST claims
28 July	ACCC acts on Perth car dealer's GST claims Response to MTAA re motor vehicle purchase advice
31 July	Brisbane City Council rates: charges rise not all due to GST
3 August	Franklins supermarkets
22 August	FAI provides court-enforceable undertakings over potentially misleading premium notices ACCC protecting consumers: GST enforcement update ACCC takes carpet cleaning company to court alleging misleading GST advertising
23 August	Petrol grant allegations

24 August	GIO provides 2800 GST refunds on car leases
1 September	Up to 37 000 ANZ bank customers to receive refunds
8 September	ACCC reports on price changes before and after GST Darwin bus fare increases within ACCC guidelines
13 September	\$1 million GST waiver benefits new home owners Lander Toyota offers over \$23 000 in refunds to new car buyers
15 September	ACCC warns service sector to include GST in advertised prices
18 September	Retirement village operators may need to refund GST
20 September	IBIS provides GST compensation to customers
21 September	Refunds for GST 'double dip' on pre-paid mobile phone cards
26 September	ACCC maintains GST price watch
27 September	Medical centres provide GST refunds to patients

# APPENDIX II

## ENGLISH-LANGUAGE PRINT ADVERTISEMENTS IN THE SEPTEMBER QUARTER

# APPENDIX III

## GST-RELATED PUBLICATIONS IN THE SEPTEMBER QUARTER

### ***News for Business (Business Information brochure)***

14 — Franchise fees and the New Tax System (July)

15 — Handy hints on pricing for operators of cafes, takeaways and restaurants (July)

### ***GST Talk***

GST Talk 9 — Commercial residential premises — Accommodation charges for boarding houses, caravan parks, mobile home parks and similar premises

### ***GST Bulletin***

14 editions, various topics

# APPENDIX IV

## PUBLIC REGISTER OF PUBLIC COMPLIANCE COMMITMENTS

<b>Company</b>	<b>Signatory</b>
Ansett Holdings Limited	Mr Rod Eddington, Chief Executive Officer
Australia and New Zealand Banking Group	Mr John McFarlane, Chief Executive Officer
Australia Post	Mr Graeme John, Managing Director
Berri Limited	Mr J Joannou, Chief Operating Officer
BOC Gases Australia Limited	Mr David Hind and Mr Greg Sedgwick, Directors
British American Tobacco Australasia Limited	Mr Gary Krelle, Managing Director
Burns, Philp and Company Limited	Mr Thomas J Degnan, Chief Executive
Cable and Wireless Optus Limited	Mr Chris Anderson, Chief Executive
Capral Aluminium Limited	Mr Ian Edwards, Managing Director
Coca-Cola Amatil Limited	Mr Andrew Reeves, Managing Director
Coles Myer Limited	Mr Dennis Eck, Chief Executive
Commonwealth Bank of Australia	Mr David Murray, Managing Director
David Jones Limited	Mr Peter Wilkinson, Chief Executive Officer
Department of Infrastructure — Victoria	Mr John Taylor, Director of Public Transport
Ergon Energy Limited	Mr Kim Griffith, Chief Executive Officer
Estee Lauder Pty Ltd	Mr Mario Argenti, Managing Director
GE Capital Australia	Mr David Moffatt, Chief Executive Officer
Goodman Fielder Limited	Mr David Hearn, Chief Executive Officer
Imperial Tobacco Australia Limited	Mr Nick Cannar, Managing Director
Lend Lease Corporation Limited	Mr David Ross, Chief Executive Officer, Asia Pacific
National Australia Bank Limited	Mr Michael Pratt, Chief Executive Officer, Australian Financial Services
Qantas Airways Limited	Mr James Strong, Chief Executive and Managing Director
Rebel Sports Limited	Mr Ian Dresner and Mr Hilton Seskin, Joint Managing Directors
Strathfield Group Limited	Mr Andrew Kelly, Chief Executive Officer
Stryker Australia Pty Ltd	Mr Alex Kennedy, President
Sydney Airport Corporation	Mr Tony Stuart, Chief Executive Officer

Telstra Corporation Limited	Mr Zygmunt Switowski, Chief Executive Officer
The Broken Hill Proprietary Company Limited	Mr Paul Anderson, Managing Director and Chief Executive Officer
Toll Holdings Limited	Mr Paul Little, Chief Executive Officer
Tricon Restaurants Australia Proprietary Limited	Mr Roger Eaton, Managing Director
Unilever Australia Limited	Mr Enzo Allaro, National Manager
United Distillers and Vintners (Aust.) Limited	Mr John Pollaers, Managing Director
Westfield Holdings Ltd	Mr Steven Lowy, Managing Director, Australia
Westpac Banking Corporation	Dr David Morgan, Managing Director and Chief Executive Officer
Woolworths Limited	Mr Roger Corbett, Group Managing Director/Chief Executive Officer