



THE NEW TAX SYSTEM

Year in review

During 2001–02, the third year of the New Tax System (NTS) transition period, the Commission's primary focus was to ensure continuing compliance with the NTS-related price exploitation provisions of the Act. Considerable resources were also devoted to ensuring that businesses did not misrepresent the price of goods and services using GST-exclusive price displays. The Commission continued to provide information to both businesses and consumers about the NTS, investigate complaints and where necessary take appropriate enforcement action.

From early July 1999 the Commission has handled more than 180 000 NTS-related inquiries (just under 5000 during 2001–02), including about 40 000 complaints (around 3500 in 2001–02). Many were found not to be breaches of the Trade Practices Act and many were multiple complaints about the same business. Since July 1999 the Commission has investigated in detail about 6700 GST-related matters. As a result numerous businesses took corrective action to remedy contraventions related to the tax changes resulting in nearly \$18 million being refunded for the benefit of approximately two million consumers.

The Commission's role

The law against price exploitation operated until 30 June 2002 and reflected federal and state parliaments' desire to address the possibility of some businesses taking advantage of the tax changes to charge unreasonably high prices. Price exploitation carried penalties of up to \$10 million per offence for corporations, and up to \$500 000 per offence for individuals. The provisions also applied to advisers found to be knowingly concerned in, or aiding and abetting, contraventions of the law.

Under the law the Commission may issue a notice to a corporation or person it considers has contravened the prohibition against price exploitation. In any court proceedings for injunction or penalty, a notice constituted prima facie evidence that the price charged was unreasonably high, and could not be attributed to the NTS changes, supplier's costs, supply and demand conditions or any other relevant matter. Once a price exploitation notice is served, it is up to the corporation or person to show that they did not engage in price exploitation.

The Commission continues to have power to pursue potential contravention of the price exploitation provisions that have occurred during the transition period.

The Commission is required, under Part VB of the Act, to report to the minister within 28 days after the



end of each quarter about the operations of its price exploitation responsibilities in relation to the NTS.

Promoting compliance

Communications strategy

The Commission continued to run a comprehensive communications strategy to promote compliance with the law during the final year of the transition period. The aim was to maintain awareness and understanding among consumers and businesses of their respective rights and obligations under the legislation. It achieved this by providing information through printed publications, a dedicated website (<http://gst.accc.gov.au>), and the Infocentre (1300 302 502).

The Commission's communications strategy involved releasing further explanatory materials as any new issues emerged.

Advertising program and media releases

While the Commission's GST related advertising program was wound down, the Commission continued to issue media releases about significant matters it was investigating. During the year, it published 15 media releases related to the NTS.

Releasing information through the media promoted compliance by example and illustrated the consequences of price exploitation and misleading or deceptive conduct with respect to the NTS to a wide audience.

The key message was that the Commission intended to prevent price exploitation and to ensure that businesses passed on all cost savings from the tax changes to their customers.

The number of GST-related calls to the Infocentre decreased substantially during the latter half of 2001. However, the proportion of callers lodging complaints increased, demonstrating consumers' general awareness and willingness to identify businesses that may be contravening the Act.

Press articles

The Commission produced a press article in the September quarter 2001 that summarised the price effect of the NTS during its first year.

Publications

Commercial residential accommodation pricing report

The review of tax-related pricing changes by caravan parks, mobile home parks and boarding houses triggered a new publication during the September quarter. A copy of the report was made available on < <http://www.minfsr.treasury.gov.au> > . The purpose of this review was to ensure that operators did not increase their rates (prices) unreasonably as a result of the NTS changes.

Consumer express

From July 2001 a monthly newsletter, *Consumer express*, replaced the former *GST Bulletins*. This change reflected the fact that most NTS-related issues had been addressed. *Consumer express* is a broader work than the *GST Bulletin*. It deals with topical issues, including GST matters, identified from calls to the Infocentre, as well as from the Commission's enforcement activities. It is produced regularly and was initially distributed through the GST information network. This distribution network, however, has since been broadened to reflect the issues *Consumer express* addresses.

Flyer for the retail sector

In response to continued complaints about the display, quoting and advertising of prices by tradespeople, the Commission produced a flyer for the small business trades sector to reinforce the message that prices should include GST. Flyers were distributed through business and industry groups. They identified the correct and incorrect ways prices should be displayed, quoted or advertised when they attract GST. Several organisations inserted the flyer into their newsletters or industry journal.



Reports

In addition to publications containing general information, the Commission published quarterly reports for the minister on its operations under Part VB as required by s. 75AZ of the Act.

Financial Institution Duty education campaign

Financial institutions duty (FID) and stamp duty on quoted marketable securities were abolished on 1 July 2001 as part of the NTS changes. The Commission ran a comprehensive education campaign to inform consumers and the affected industry sectors of the effect of these tax changes.

GST information network

The GST information network was a Commission database network containing over 1800 consumer and community groups, business organisations, industry associations, libraries and other agencies and groups.

Over 150 consumer and community organisations, representing around 1.9 million people, received material through this network. Information for businesses was sent to more than 900 business and industry organisations, representing just under two million people. Around 100 libraries and more than 100 government and other agencies also received this information. This material was also available from the Commission's GST website or by calling the Infocentre.

During the September quarter, as the need for GST specific information diminished, network members could opt to be included on a broader distribution network for more general trade practices information.

ACCC Infocentre

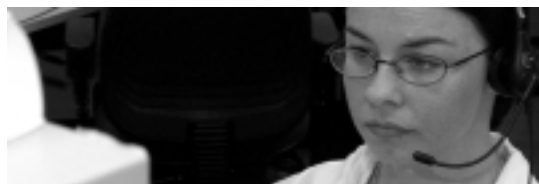
From 1 May 2001 the GST Price Line became part of the ACCC Infocentre, which is the initial response centre for all inquiries and complaints to the Commission on competition and consumer issues throughout Australia. While the Infocentre is not a dedicated GST call line, staff can answer inquiries about the Commission's pricing guidelines and handle requests for the

Commission's GST publications. They also accept and log complaints about possible price exploitation and misleading or deceptive conduct related to the NTS and refer callers to other agencies where appropriate. Calls to this 1300 302 502 service can be made from anywhere in the country for the cost of a local call.

During the year around 5000 GST-related complaints and inquiries were logged into the Commission's reporting system. Of these, 28 per cent were inquiries and 72 per cent were complaints. The 10 industries most commonly referred to were:

INQUIRIES	PERCENTAGE
Commercial property operators and developers	16.7
Real estate agents	10.2
Retailing (not elsewhere classified)	8.3
Business services (not elsewhere classified)	7.5
Central government administration	6.9
House construction	3.9
Residential property operators	2.1
Accommodation	1.8
Car retailing	1.7
Telecommunication services	1.3

COMPLAINTS	PERCENTAGE
Real estate agents	8.6
Commercial property operators and developers	7.6
Business services (not elsewhere specified)	4.4
House construction	4.9
Telecommunication services	4.0
Retailing (not elsewhere classified)	3.8
Supermarket and grocery stores	3.0
Cafés and restaurants	2.4
Domestic appliance retailing	2.4
Car retailing	2.1



Information strategy for those with special disadvantage

To address the needs of people who may be subject to a special disadvantage the Commission continued providing information in an accessible format.

The Commission's dedicated ATSI information line (1300 303 143) now provides general trade practices information to indigenous people and records their complaints, including those specifically GST-related.

A telephone interpreter service is available for people from non-English-speaking backgrounds calling the Infocentre.

GST website

The GST website at < <http://gst.accc.gov.au> > remained a key communication tool providing easy access to relevant business and consumer publications and answers to inquiries frequently received by the Commission. Reports on retail price changes since the start of the NTS were also available on the site.

During the year there were over one million hits, with more than 100 000 individual sessions. The most popular areas on the site were 'publications' and 'media releases' with the Price Exploitation Guidelines the most down-loaded document.

Information was available on the website for Aboriginal and Torres Strait Islanders and was also available in 11 languages other than English: Arabic, Chinese, Greek, Italian, Spanish, Vietnamese, Croatian, Macedonian, Serbian, Russian and Turkish. Key GST-related publications in Croatian, Macedonian, Russian, Serbian and Turkish remained on the website and were available on request.

Price monitoring

The Commission continued to monitor prices during 2001–02. It drew on many sources of information about price changes and pricing behaviour. These included the consumer price index (CPI) and Australian Bureau of Statistics' 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 at the retail level such as electricity, gas and public transport. Complaints by consumers and businesses through the Infocentre also contributed to the Commission's information on price changes associated with the New Tax System.

This information helped identify where price exploitation occurred.

The general survey

The Commission continued to collect and analyse data from specially commissioned price monitoring surveys, particularly the monthly supermarket survey. These surveys and supplementary information did not show any evidence of opportunistic pricing to increase margins in association with the NTS during the year.

Monthly supermarket survey

The Commission conducted monthly surveys of supermarket prices from January 2000, covering more than 300 supermarkets nationwide, with a product basket of over 100 commonly purchased items.

Comparisons, over time, were based on changes between prices averaged over two months. This reduced volatility from month to month resulting from changes in supermarkets' price 'specials'. From May–June 2000 to April–May 2002 the weighted average price increased by 10.3 per cent. When prices of fruit and vegetables items, which have volatile supply and demand characteristics, were removed, the increase was 8 per cent over the total period.



Alcohol and tobacco product survey

The Commission conducted a survey into alcohol and tobacco products in the week commencing 12 August 2001. This survey was timed to reflect any immediate product re-pricing as a result of the 1 August 2001 indexation of excise rates on alcohol and tobacco products.

The results from the survey (see table) indicate that alcoholic products sold on licensed premises increased by around 10–12 per cent over the period May 2000 to August 2001. Price increases for beer sold on hotel premises were lower than for other alcoholic products, mainly reflecting the passing on of the excise reduction on 4 April 2001.

However, price change varied more in 'takeaway' alcoholic products, with spirits increasing by 4.3 per cent, bottled wine by 5.4 per cent and heavy beer by 10.4 per cent.

Cigarette prices increased by 23.7 per cent over the period May 2000 to August 2001. This mainly reflects cost increases associated with the implementation of the NTS and the effect of the July 2000, February 2001 and August 2001 increases in excise under indexation arrangements that existed before the tax changes.

Alcohol and tobacco product survey, August 2001

PRODUCT	AVERAGE PRICE CHANGE: MAY 2000 TO AUGUST 2001 %
Heavy beer—hotel	10.4
Light beer—hotel	10.1
Basic spirits—hotel	12.1
Wine—hotel	11.3
Heavy beer	8.9
Light beer	8.6
General spirits	4.3
Cask wine	8.0
Bottled wine	5.4
Cigarettes	23.7

Consumer price index

While the methodology used by the ABS to measure CPI price changes is different from that used by the Commission in its retail price surveys, movements in prices of products in the CPI 'basket' have been broadly consistent with the Commission's estimates of the effects of the tax changes on prices. In comparison with the 6 per cent increase over the 2000–01 year, the CPI increased by only 2.8 per cent over the four quarters ending June 2002.

General impact of the NTS on prices

The results of the Commission's surveys since the September quarter 2000, together with CPI outcomes, confirm that the impact on prices occurred mainly in the first quarter of 2000–01. This was consistent with the Commission's estimates. No evidence of significant opportunistic pricing to increase margins was found.

Significant price increases normally occur in the March quarter for pharmaceutical products and education, both secondary and tertiary, and this pattern continued in the March 2002 quarter. Other sectors contributing substantially to the overall increase in the four quarters were health and housing, and domestic and international holiday travel.

The June 2001–June 2002 CPI result confirms previous assessments by the Commission that most re-pricing associated with the NTS occurred during the September quarter 2000.

Enforcement

Price exploitation remained a Commission enforcement priority throughout the prescribed transition period for the NTS (8 July 1999 to 30 June 2002). The principle aim of the Commission's enforcement activities is to promote compliance. During the year the Commission's enforcement work concentrated on the following major areas:

- businesses misrepresenting the total price of goods or services (GST-exclusive price display)



- increases in prices which reflect the full impact of the tax changes on the CPI where the GST also was previously imposed (CPI-based increases may need to be discounted for the effect of the GST to comply with the Commission's rule that businesses should not increase their net dollar margin as a result of NTS changes alone)
- charging of GST on contracts that did not provide for the passing on of GST
- GST wrongly collected on GST-free supplies by gift deductible entities
- property sale agreements that did not provide for the passing on of GST liability
- GST being charged on GST-free items
- businesses not passing on indirect tax benefits, such as the abolition of WST or the reduction in petrol excise, in full.

The Commission aimed to quickly resolve GST-related matters to minimise confusion and consumer losses. Therefore when the conduct was not obviously deliberate or blatant the Commission accepted court enforceable undertakings, rather than taking direct court action. When businesses made inadvertent mistakes and volunteered this information the Commission took it into account in determining any enforcement action and, if appropriate, the remedies.

During the reporting period the Commission played a major role in assisting charities and gift deductible entities (GDEs) to refund GST collected on supplies subsequently deemed to be GST-free following private rulings by the ATO.

The Commission established guidelines for these entities to adopt when managing the refund process. GDEs were required to contact all known consumers to provide an explanation and refund of the GST paid. When consumers could not be identified, GDEs had to advertise the availability of refunds in suitable forums to identify as many affected consumers as possible. Any unclaimed refunds, less refund administration costs, were disbursed through a reduction in the price of admission.

To date over \$4.5 million in GST refunds has been disbursed by the organisations concerned.

Since July 2000 the Commission has investigated over 6700 GST-related matters, obtaining refunds

of nearly \$18 million on behalf of approximately two million consumers. Since 1 July 2000 the Commission has instituted court proceedings in 10 GST-related matters and has accepted 54 court enforceable undertakings. These matters were reported in detail in the *ACCC Journal* and quarterly s. 75AZ reports. Summaries of major matters for 2001–02 are outlined below.

Court cases and undertakings

Strasburger Enterprises (Properties) Pty Ltd trading as Quix Food Stores

(s. 87B undertaking)

Quix operates 99 convenience stores around Australia. Commission surveys in 2000 revealed price changes in Quix Stores that did not appear to accurately reflect GST price increases. In September 2001 the company undertook to redress the Commission's concerns about overpricing by commissioning an independent audit, reducing prices to refund the overcharge, placing corrective notices in store and in newspapers and implementing a trade practices compliance program.

Marsh Pty Ltd

(s. 87B undertaking)

In September 2001 one of Australia's largest insurance brokers, Marsh Pty Ltd gave enforceable undertakings to the Commission that it would refund customers over \$18 000 after asserting a right to collect GST on insurance premiums when in fact no such right existed. The policies related to premiums collected in 1999, covering a period of insurance running past 1 July 2000.

Marsh acknowledged that its conduct may have raised concerns under the price exploitation and misleading or deceptive conduct provisions of the Act and agreed to provide court enforceable undertakings to the Commission. The Commission accepted that Marsh had not intended any price exploitation. The undertakings included compliance training for Marsh's staff, rescinding the claim for GST on premiums



where customers have not made the payment, and providing a full refund of GST for those customers who had made the payment.

Mike Carney Motors Pty Ltd, trading as Mike Carney Toyota

(s. 87B undertaking)

In August 2001 the Commission accepted undertakings by Mike Carney Motors: not to advertise motor vehicle prices as being exclusive of GST; not to make false representations concerning the accessories available on vehicles for a particular advertised price; and not to advertise an 'on the road drive away' price where there are additional compulsory costs. Mike Carney Motors placed corrective advertisements in the *North Queensland Register* and the *Queensland Country Life* and ensured that at least one consumer was provided with a motor vehicle and accessories at the advertised price. Further, the company created and implemented a trade practices compliance program.

Commercial television networks

Following discussions with the Commission, all commercial television networks agreed to alter their price proposal schedules and confirmation sheets to show GST-inclusive prices. The Commission had received complaints from businesses alleging that the networks were displaying and quoting prices for television advertising time on a GST-exclusive basis. The Commission raised its concerns with the Federation of Australian Commercial Television Stations and the networks that such conduct may breach Part V of the Act.

Metropolis Real Estate Pty Ltd

Proceedings commenced on 6 September 2001 in the Federal Court (Canberra) alleging that Metropolis misled and deceived a client by quoting a flat fee of \$5000 and then, after settlement, withholding an additional 10 per cent from the vendor.

The court made orders, by consent, declaring that Metropolis had engaged in false, misleading and deceptive conduct, restraining representations of GST-exclusive pricing, ordering a refund of \$500 to the vendor, attendance of Metropolis' employees and agents at a trade practices seminar and contributions to the Commission's legal costs.

Domaine Homes (NSW) Pty Limited

In November 2001 the Commission completed its legal proceedings against Domaine Homes (NSW) Pty Limited, its managing director, Mr Robert Grant, and its contracts manager, Mr Terry Sofos. The Commission alleged that the parties had made misleading representations to new homebuyers about the effect of the New Tax System on the construction of new homes and had acted unconscionably in their dealings with some consumers.

In response Domaine undertook to refund approximately \$1.9 million in GST collections to 260 affected new homebuyers, plus interest at 7.25 per cent calculated from the date the GST was paid to Domaine by those homebuyers. It did this before the Federal Court, without admitting liability.

Domaine also agreed to pay an additional \$5000 to each of the seven customers on whose behalf the Commission took the representative action to reimburse them for other potential losses; and \$150 000 towards the Commission's legal costs.



Flipstock Pty Ltd (trading as A Man's Toyshop)
(s. 87B undertaking)

On 5 December 2001 the Commission accepted court enforceable undertakings from Flipstock Pty Ltd (trading as A Man's Toyshop), a retailer and wholesaler of hardware, that it would no longer display GST-exclusive prices. Flipstock undertook to display/quote prices inclusive of GST both in-store and at agricultural field days, place corrective notices in-store advising customers that prices are now GST inclusive, issue letters to A Man's Toyshop VIP Club Members advising them that all prices will now be displayed/quoted inclusive of GST, ensure all future advertising states GST-inclusive pricing, remove GST-exclusive pricing displays from its website and conduct trade practices compliance training.

7-Eleven Stores Pty Ltd

In November 2001, 7-Eleven Stores Pty Ltd, as the franchisor of 265 7-Eleven convenience stores in NSW, Victoria and Queensland, undertook to reduce the prices on 150 dry grocery items by an average of 5.6 per cent and freeze the prices on another 600 dry grocery items. Both the price reductions and price freeze remained in place until 30 June 2002. 7-Eleven undertook this action to allay concerns held by the Commission that the company's recommended retail prices for certain goods from 1 July 2000 did not fully reflect the abolition of wholesale sales tax in wholesale prices from some suppliers. On the basis of those wholesale prices the Commission considered that 7-Eleven stores' retail prices were too high.

A Tavern in Mandurah, Western Australia

In November 2001 a Western Australian publican agreed to offer refunds to its customers who were incorrectly charged GST on credit card cash advances.

The Commission obtained a ruling from the Australian Taxation Office which stated that a credit card cash advance transaction is not a taxable supply and therefore not subject to GST.

The Commission holds the view that representing GST as payable in circumstances where it is not constitutes misleading or deceptive conduct, and contravenes the consumer protection provisions of the Act. In resolving the matter with the Commission the tavern in Mandurah voluntarily agreed to stop the conduct, display a corrective notice in the tavern, and refund the incorrectly charged GST to consumers who could show they were charged GST on a credit card cash advance transaction.

Commodore Homes (WA) Pty Ltd

Proceedings commenced in April 2001 in the Federal Court (Perth). On 12 February 2002 the court found, by consent, that Commodore Homes had misled new home buyers about the time it would take to build their new homes and the application of the GST to their home building contracts. The Commission alleged that in the lead up to the introduction of the GST, Commodore Homes represented to potential homebuyers that if they signed up with the company they would have their homes built by 1 July 2000, and would therefore avoid having to pay any GST. Delays in construction of the new homes meant, however, that many were not completed by that date and Commodore Homes then tried to recover the GST component from those homebuyers. The court, by consent, imposed injunctions, required implementation of a trade practices compliance program and payment of costs. In settling the action with the Commission, Commodore Homes voluntarily refunded \$882 124 to 264 new home buyers.



Tangent Nominees Pty Ltd (trading as Summit Homes)

(s. 87B undertaking)

On 17 January 2002, in a court enforceable undertaking, Tangent Nominees Pty Ltd (trading as Summit Homes) agreed to refund \$258 000 in GST payments to 111 home owners.

It was alleged that Summit had charged an amount for GST above the allowance built into the original contract price. In raising the matter with Summit, the Commission expressed its concerns that this conduct may have been in breach of the misleading or deceptive conduct provisions of the Act. Following a change in both ownership and management, Summit Homes conducted an internal audit that resulted in Summit Homes writing to all affected customers and refunding these customers a total of \$258 000. As part of its court enforceable undertaking under s. 87B of the Act, Summit Homes also introduced a trade practices compliance program.

ADT Security Pty Ltd

In January 2002 ADT Security Pty Ltd agreed to refund approximately \$141 000 to 2300 of its mainly residential customers after the Commission raised its concerns with ADT about charging GST on long-term alarm monitoring contracts. ADT agreed with the Commission that certain ADT 'Safewatch' monitoring contracts did not provide for ADT to pass on GST liability incurred by it to its customers. ADT subsequently undertook to write to all affected customers refunding any GST paid and apologising for the mistake.

Capital Finance Australia Limited

Capital Finance Australia Limited agreed with the Commission to refund 118 consumers over \$70 000 incorrectly collected as GST on motor vehicle leases entered into before 2 December 1998. An Australian Taxation Office ruling confirmed that Capital Finance should not have levied GST under the particular contracts. As a result Capital Finance refunded or re-credited 118 consumers the GST collected on lease payments. The Commission agreed to an informal administrative settlement to this matter because the company cooperated with the Commission's investigation and responded quickly once it obtained the Australian Taxation Office ruling.

Signature Security

In March 2001 the Commission instituted proceedings in the Federal Court (Sydney) alleging false, misleading or deceptive advertising and a failure to disclose the full cost price by Signature Security Group Pty Ltd in its promotion of security systems to the public on a 'GST exclusive' basis. The Commission also alleged breaches of an undertaking given pursuant to s. 87B of the Act in which Signature agreed to stop advertising its prices on a GST-exclusive basis. The matter was heard by the Federal Court of Australia in April 2002, and judgment reserved.

