

ACCC working in the Northern Territory

2000–2001 report





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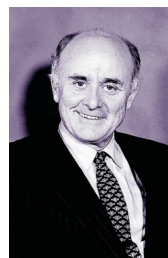
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Year in review

This is the fourth report in the *ACCC working in the Northern Territory* annual series. It highlights some of the ACCC's regional activities in Northern Territory during 2000–01, as well as national activities from a State perspective.

The year 2000–01 was the first full year of the GST and the ACCC used a large part of its resources to make sure that the benefits of the New Tax System were passed on to consumers and that businesses did not exploit consumers in implementing the tax changes. This involved an extensive public information campaign for business and consumers and the national monitoring of prices. The ACCC also set up a complaints-handling system capable of accepting and dealing with an unprecedented number of inquiries and complaints. Several successful enforcement cases resulted from investigations of complaints.

The work of the Northern Territory office is principally law enforcement and this was reflected by the number of matters handled during the year: 1287. This is 70 per cent more than the number handled in the previous 12 months and reflects the continuing importance of the ACCC's role in the Northern Territory community.



Chairman
Professor Allan Fels



Regional Director
Derek Farrell

Looking forward

The Corporate Plan, launched in July 2001, highlights the ACCC's priorities, especially compliance in the public interest in areas such as unconscionable conduct, misleading and deceptive conduct and anti-competitive conduct. The ACCC is particularly committed to pursuing areas where problems are major, detriment to public welfare is significant, and meaningful results can be achieved.

During 2001–02 the ACCC will expand its communication with regional and rural Australia through new approaches. Twice a year it runs the Competing Fairly Forums by satellite throughout Australia for regional and rural small businesses. In addition the ACCC Small Business Manager also has responsibility for rural and regional services to provide the necessary outreach to small businesses and consumers in rural and regional NT. The manager will continue to work closely with the ACCC's existing Small Business Unit and the NT regional office.

To keep pace with the changing face of business, the ACCC has set up an e-commerce unit and some of its staff will be located in the Melbourne and Canberra offices. Among other things the unit will look at aspects of e-commerce relating to both competition and fair trading.

The purpose of *ACCC working in Northern Territory* is to provide the reader with a glimpse of the work done by the ACCC's NT office, and an appreciation of how it forms an integral part of the ACCC's national program.



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The Northern Territory office — how we work



Most ACCC investigations begin as a result of complaints made by consumers, businesses and associations. We therefore rely very much on the Northern Territory public to let us know what is going on in the marketplace.

Making a complaint

The ACCC's Infocentre began operating on 1 July 2001. It is situated in Canberra and receives all telephone and email complaints and inquiries from consumers and businesses about their rights and obligations under the Trade Practices Act. The Infocentre operates between 8.30 a.m. and 6.00 p.m. and can be contacted on 1 300 302 502. You do not have to give us your name, although that might limit the help we can give you. There is no fee or charge for making an inquiry or complaint.

While we cannot give legal advice in the same way a solicitor can, we can explain your rights and obligations under the Act, and how the ACCC is likely to react to a particular business practice.

If the Trade Practices Act does not apply to your problem we will usually suggest the appropriate government agency for you to contact, or suggest other options.

How the ACCC deals with your complaint

When the ACCC receives a complaint it obtains all the necessary information and assesses whether the law may have been broken. Information is collected from the complainant, other market participants and from traders themselves. The ACCC can also use its powers to require people to provide information, documents or attend an examination under oath.

Even when the ACCC believes the law has been broken it has to be selective in the matters it chooses to pursue. Generally it takes into account whether the matter involves:

- blatant disregard of the law;
- significant public detriment;
- likely educative or deterrent effect of action;
- new market issues; and/or
- a need to test the reach of the Act.

When the ACCC pursues a matter it has several options for resolving it. It can choose to warn the businesses involved, it can work with the parties to reach an agreed outcome, it can accept court enforceable undertakings from the business or, if necessary, it can take the business to court.

Regardless of the option it chooses the ACCC seeks to achieve these basic objectives:

- to stop the conduct from continuing;
- to make sure the affected parties are given appropriate remedies;
- to prevent the conduct from recurring (by both the business and industry at large); and
- where appropriate, to seek penalties.

If the ACCC chooses to take a matter to court, the court can make orders including declarations, injunctions, corrective advertising, compliance programs, damages, legal costs and penalties.



Keeping the Northern Territory informed



As well as investigating possible breaches of the Act the ACCC's role extends to educating consumers, businesses and industry about trade practices issues and changes in the law.

New publications (many of which are free) are continually being produced with the latest information on new products, industries and markets. The ACCC also published many GST and small business brochures during the year, as well as a short video on unconscionable conduct in conjunction with the Competing Fairly Forum on that topic.

For further information about publications or a full list you can visit the ACCC's main website at <http://www.accc.gov.au>; for its GST publications visit <http://gst.accc.gov.au>; or contact the Infocentre on 1300 302 502. The websites also contain all of the ACCC's media releases with information on hot topics and current actions.

Working in the community

The ACCC is constantly in touch with the Northern Territory community through complaint handling, investigations, and providing advice. It has staff available to speak to community, business groups and educational institutions throughout the State. The ACCC has also successfully held three Competing Fairly Forums with more planned as part of its expanded rural and regional outreach program.

Working with government and industry

The ACCC works in a dynamic environment in which its projects impinge on many industry and government players. During the year joint work was undertaken with a range of government and non-government organisations. The ACCC is grateful for the enormous cooperation and assistance provided by many organisations during the year.

Working with small business, rural and regional communities

The ACCC believes small business needs a fair and competitive operating environment to succeed. In 1998 it set up the small business program to inform and educate small businesses and their advisers, such as accountants, financial advisers and business consultants, about their rights and obligations under the Trade Practices Act. In 2001 the ACCC set up its rural and regional program.

Competing Fairly Forums

The Small Business Unit broadcast three Competing Fairly Forums, the first of which explored general trade practices issues; the second, retail tenancy and franchising issues evolving from the 1998 unconscionable conduct provisions and the price exploitation role under the New Tax System; and the third, advertising and selling.

The most recent Competing Fairly Forum was again a success in the Northern Territory with the three major towns participating in the nation wide satellite broadcast on 2 October. These three towns, Darwin, Alice Springs and Katherine, continue to support the business and consumer communities of the Northern Territory and have been part of the forum since its initial broadcast in November 2000.

Cooperation

To maximise its outreach efforts the ACCC's NT office combines what it does with those of other Commonwealth agencies, State government departments and industry and community associations that deal with small business. Several networks have been established and liaison is on going though the NT Small Business Manager with numerous business and consumer organisations throughout the NT.





Small business outreach is a central aspect of the NT office's work. In March 2001 ACCC Commissioner David Cousins, the NT Small Business Manager and other senior representatives from the Banking Industry Ombudsman, NT Department of Industries and Business and NT Anti-Discrimination Commission visited remote central desert Aboriginal communities (400 km north east of Alice Springs) to discuss the relationship between business and consumers in these regions. Communities visited included the Tiwi Islands north of Darwin, the Kalano Aboriginal Community in Katherine, Maningrida Progress Association and Balanuga Aboriginal Co-operative in northern Arnhem Land. This four-day visit was very successful in raising the profile of Aboriginal consumer issues.

The newsletter, *Retail Flash*, was jointly published with the Australian Retailers Association for the retail sector. It regularly informs small retailers about fair trading practices to improve their customer relationships.

Communication

The Regional Director and NT Small Business Manager have also conducted presentations and seminars for various groups in the NT such as the Housing Industry Association, NT Traders Association, Anglicare and the NT Chamber of Commerce in Darwin and Katherine.

The NT Small Business Manager has established communication networks with various groups such as the NT Department of Industries and Business, the NT Chamber of Commerce, the Motor Traders Association, the Business Enterprise Centre, the Office of Aboriginal Development, Casuarina Small Business Association, Mango Growers Association, North Australian Aboriginal Legal Aid Service and the Aboriginal Development and Resources Services.

The ACCC ran a highly successful information stand at the 2001 Darwin Trade Expo — in conjunction with a breakfast seminar conducted for the Darwin business community by ACCC Small Business Commissioner John Martin. The office also participated in the Katherine and Alice Springs Trade Expos by providing essential information to businesses about the rights and obligations of consumers and businesses under the Trade Practices Act. This proved to be a successful way of getting information out about the Act and the ACCC's role.

ACCC Commissioners and senior management regularly visit the Darwin office to meet with staff to discuss local issues and to participate in local investigations and hearings.

Franchising Code

The dispute resolution procedure under the Franchising Code has proved to be successful for solving problems and the ACCC encourages small business to use mediation to seek redress where appropriate.

Changes to the Act and the Franchising Code

Small businesses will also benefit from recent changes to the Trade Practices Act. They offer improved protection to small businesses especially regarding anti-competitive conduct. They also clarify that the unconscionable conduct provisions apply to State and Territory jurisdictions.

Changes to the Franchising Code of Conduct took effect on 1 October 2001 and included the option of a short disclosure document for franchisors, as well as the electronic submission of documents.

Working in e-commerce

The ACCC has set up a new e-commerce issues unit. E-commerce is a growing area of commercial activity with the potential to increase the welfare of all Australians by expanding business opportunities and offering a wider choice of products and suppliers for consumers. At the same time, dangers for competition and consumer protection may arise in the e-commerce sphere.

The unit will identify emerging trade practices issues in e-commerce, increase the level of awareness of such issues within the ACCC and develop strategies to help staff deal with them in their day to day work.

The unit will also assist other areas of the ACCC in developing computer forensic capabilities. To catch online offenders the ACCC needs to use the Internet effectively itself, and understand how to access and present evidence stored on computers and the Internet to the courts.



The unit will work with external agencies, industry and consumer groups to develop e-commerce compliance materials, and to ensure the ACCC is aware of broader policy considerations. The ACCC also liaises with international agencies in pursuing cross-border enforcement matters.



Can we work with you?

If you are an organisation that would like to work with the ACCC's NT office please contact us. We would be happy to talk to you about the ACCC's roles and functions and about relevant trade practices issues when we next visit your region.

NT office staff are available to give presentations as often as our workload permits. Meeting with consumer, business and community groups helps keep us in touch with everyday issues, and builds more effective cooperation in developing compliance with the law.

Achieving compliance in the Northern Territory

The following is an overview of the more significant enforcement and other compliance actions taken by the Northern Territory office over the past year.

Stopping anti-competitive conduct

The Trade Practices Act encourages competition in Australian markets by prohibiting anti-competitive conduct such as illegal price agreements, market sharing agreements, misuse of market power and anti-competitive mergers.

Price fixing

Pauls Limited, Malanda Dairyfoods Ltd and Australian Cooperative Foods Ltd

The ACCC instituted legal proceedings against Pauls Limited, Malanda Dairyfoods Ltd and Australian Cooperative Foods Ltd alleging long-standing price fixing conduct in relation to Pauls and Malanda milk products in the Northern Territory.

It alleged that the agreement had the purpose and likely effect of controlling or maintaining the wholesale price for Pauls and Malanda milk products and unprocessed milk in the Northern Territory.

The ACCC also alleged that the companies arranged for ACF and Malanda to supply Pauls with all the unprocessed milk for the production of Pauls, Malanda and ACF milk products at an agreed price, and Pauls would process and package it.

The ACCC is seeking orders against Pauls, Malanda, ACF and the senior executives including declarations, injunctions, compliance programs, penalties and costs.





Helping consumers

All actions of the ACCC affect the welfare of Australians. One of the ACCC's major functions is consumer protection and this is reflected in the number and type of cases it takes on, and the results achieved for consumers.

The ACCC complements the consumer protection role of State and Territory consumer affairs agencies that administer their mirror legislation. The ACCC has a cooperative agreement with the Northern Territory Commissioner of Consumer Affairs that formalises the links between the two agencies.

This year some of the areas where the ACCC has resolved trade practices issues and helped consumers include:

- unconscionable conduct in business-to-business transactions;
- breach of the Franchising Code of Conduct;
- misrepresentations about business earning potential;
- misrepresentations about product claims;
- misrepresentations and unconscionable conduct in relation to door to door trading in the telecommunications industry; and
- completing surveys of mandatory safety standards for consumer goods, including portable vehicle ramps, vehicle support stands, vehicle jacks, trolley jacks, bicycles and bean bags to ensure retailers are selling goods in compliance with the standards.

Most problems and complaints between consumers and traders are minor and are resolved well before legal action becomes necessary. They are dealt with swiftly and effectively, ensuring that businesses know about the law and how to comply, and that consumers are compensated if there is a genuine problem.

The following is a broad selection of matters dealt with by the NT office during 2000–01.

Honesty in advertising

Entee Orange Juice

The Federal Court ordered Entee Food & Beverage Wholesalers & Distributors Pty Ltd to stop selling orange juice containing 15 per cent Brazilian orange juice concentrate under labels claiming that the orange juice was a 'Product of Australia' and 'Australian squeezed'.

The court found that Entee had breached the misleading and country of origin provisions of the Trade Practices Act by making inaccurate claims on the labels of their 'Darwin Squeezed Orange Juice' and their 'Orange Juice — Australian Squeezed'.

The labels stated the orange juice was a 'product of Australia', 'Australian squeezed', 'Darwin squeezed', 'pure Australian fruit' and 'locally squeezed'. However, from January 2001 to June 2001 the products contained 15 per cent orange juice reconstituted from concentrate imported from Brazil and were packaged using orange juice prepared in Brisbane. Also, there has been no Entee juice squeezing plant in Darwin since mid-2000. The labelling on the 'Darwin Squeezed Orange Juice' also did not list sugar as an ingredient or state that it contained added sugar.

The ACCC acknowledged that Entee had been fully cooperative in quickly resolving the matter. Entee gave the ACCC a court enforceable undertaking to ensure all management and relevant staff undertook trade practices compliance training.

The court also ordered that Entee become a signatory to the Code of Practice and Administration Rules for the Fruit Juice Industry and pay \$5000 towards the ACCC's costs.





Keeping products safe

Consumers have a right to be protected against products that are hazardous to health or life. Many products are subject to mandatory consumer product safety and information standards and some goods are banned outright.

Compulsory consumer product safety standards for particular goods may be made by regulation or declared by the Minister for Financial Services and Regulation by notice in the Commonwealth Government Gazette.

Currently there are 24 mandatory product safety and information standards and nine banned products. At least two new mandatory product safety standards are likely to be gazetted over the coming year.

The ACCC carries out national surveys twice a year to ensure compliance of goods and to inform businesses of their responsibilities. These surveys often result in the withdrawal from sale of some products.

Product safety surveys have been conducted on portable vehicle ramps, trolley jacks, hydraulic jacks, bicycles and bean bags. The ACCC also distributed information to retailers about the requirements in the product safety standards.

Raizall 3 in 1 Jackramp

The ACCC instituted legal proceedings in the Federal Court, Darwin, against Autobarn Pty Ltd, Autobarn Darwin and Dictomax Pty Ltd alleging that the 'Raizall 3 in 1 Jackramp' did not comply with the mandatory product safety standard for portable vehicle ramps.

Independent testing commissioned by the ACCC showed the jackramp failed the structural integrity and design tests as set out in the safety standard. The ACCC also alleges that the jackramp was supplied with incomplete instructions and incorrect labelling. In particular, it alleged that the jackramp was missing several markings including the mandatory safety warning, 'WARNING: USE ONLY ON HARD LEVEL SURFACES' which must be permanently affixed to portable vehicle ramps.

The ACCC alleged that the companies breached the Act by advertising that the jackramp complied with the prescribed consumer product safety standard when the independent testing indicated it did not meet the standard.

It is also alleged that the Autobarn Darwin retail outlet, and the manufacturer/wholesaler, Dictomax Pty Ltd, contravened the Act by supplying a product that did not meet the requirements of the safety standard.

After the ACCC brought the matter to its attention Autobarn Pty Ltd published recall notices in major newspapers in States and Territories where Autobarn franchisees supplied the ramps.

The ACCC is seeking a recall of the product by Dictomax. It is also seeking remedies against Autobarn Pty Ltd, Autobarn Darwin and Dictomax Pty Ltd including declarations, injunctions, findings of fact and costs.





The New Tax System

During 2000–01, the first year of the New Tax System, a large part of the ACCC's resources made sure that the benefits of the New Tax System were passed on to consumers and that businesses did not exploit consumers when implementing the tax changes.

The ACCC felt that price exploitation was more likely to happen in ill-informed markets and so provided a lot of information quickly to business and consumers. It also monitored prices nationally, investigated complaints and followed them up with enforcement action.

The ACCC began an extensive price-monitoring program, collecting data from specially commissioned surveys and other public and private sources.

After one year of the GST the ACCC found that most businesses had complied with its guidelines, correctly adjusting prices. The impact occurred mainly in the September 2000 quarter and was consistent with the ACCC's estimates of the effects of the tax changes.

Although some prices have risen further since, or are still rising, these have generally been in line with underlying inflation that was evident before the tax changes occurred.

Many companies that completed public compliance commitments have advised the ACCC their prices will not increase any more from the tax changes.

The ACCC has continued to work with business to ensure they understand their pricing obligations under the New Tax System. In response to complaints and inquiries about GST-exclusive price displays and advertisements, the ACCC produced a poster for the retail sector to reinforce the message that prices should include GST. Over 200 000 of these posters, carrying the message 'No one likes to be misled — Prices should include GST', were distributed through business and industry groups, local government councils and other agencies.

To ensure that consumers fully benefit from reductions in indirect taxes, the ACCC:

- issued guidelines to business on conduct likely to constitute price exploitation;
- ran an extensive consumer and business education program, including campaigns focused on NESB/ATSI communities, so they knew what to expect during the changeover to the GST;
- monitored prices to ensure all displayed and advertised prices were GST-inclusive;
- produced a wide range of publications;
- established a national GST hotline — 1 300 302 502;
- set up a purpose-built GST website <<http://gst.accc.gov.au>>;
- used staff in every capital city to investigate price exploitation allegations; and
- supported hefty penalties for those who engaged in price exploitation — up to \$10 million for corporations and \$500 000 for individuals.

All GST-related enforcement matters undertaken during the year were generally resolved quickly and without the need for court action. Once made aware of the issue most businesses were quick to amend prices or advertising to ensure compliance with the law.

During the year the NT office received over 120 substantial GST-related complaints, over 90 of which indicated possible breaches of the Trade Practices Act. Letters were then sent to the traders involved providing them with information about their obligations under the law. When a more serious breach was alleged to have occurred traders were also invited to respond to the allegation. The overall outcome has been very positive with most traders responding and where necessary modifying their conduct to comply with the Trade Practices Act.

The office continued its involvement with the informal GST consultative group made up of key NT Government and industry body representatives. The group met to discuss and coordinate GST education seminars, information dissemination and other strategies to raise awareness of the GST within the NT community.



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Websites

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Competing Fairly Forum <http://forums.accc.gov.au>

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