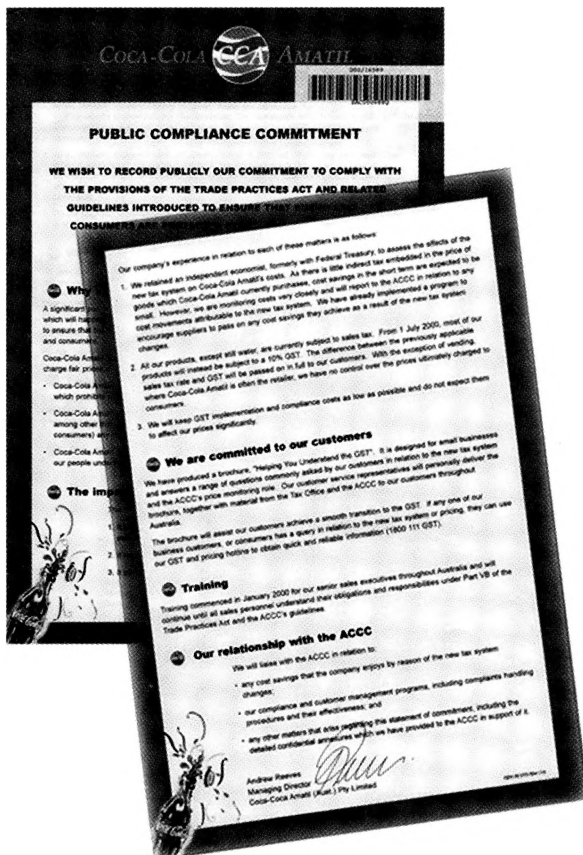


# GST

## Public compliance commitments

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 ACCC's price exploitation guidelines. The statement is the culmination of discussions with the Commission about application of the pricing guidelines by the company and its repricing methodology. This process aims to identify and address potential problems and increase confidence that a company's behaviour is 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 during the period of transition in implementing the New Tax System changes. Companies make their own pricing decisions and may need to explain the basis for these decisions to their customers.

A public compliance commitment does not protect companies from enforcement action. If price exploitation is alleged the Commission will consider, among other things, the information provided in support of a commitment in assessing whether or not any specific pricing decision was a breach of the price exploitation guidelines or the Act. Liaison arrangements between the Commission and the organisations have been established as part of the process.

The companies below are listed on the Commission's public register as having provided public compliance commitments as at 30 June 2000.

- Ansett Holdings Ltd
- Australia and New Zealand Banking Group Ltd
- Australia Post
- Berri Ltd
- BOC Gases Australia Ltd
- British American Tobacco Australasia Ltd
- Burns, Philp & Company Ltd
- Cable & Wireless Optus Ltd
- Capral Aluminium Ltd
- Coca-Cola Amatil Ltd
- Coles Myer Ltd
- Commonwealth Bank of Australia
- David Jones Ltd
- Department of Infrastructure, Victoria
- Ergon Energy Ltd
- Estee Lauder Pty Ltd
- GE Australia
- Goodman Fielder Ltd
- Imperial Tobacco Australia Ltd
- Lend Lease Corporation Ltd
- Qantas Airways Ltd

Rebel Sports Ltd  
 Strathfield Group Ltd  
 Stryker Australia Pty Ltd  
 Sydney Airport Corporation  
 Telstra Corporation Ltd  
 The Broken Hill Proprietary Company Ltd  
 Toll Holdings Ltd  
 Tricon Restaurants Australia Pty Ltd  
 Unilever Australia Ltd  
 United Distillers and Vintners (Aust.) Ltd  
 Westfield Holdings Ltd  
 Westpac Banking Corporation  
 Woolworths Ltd

## Community information

The Commission has a comprehensive communication strategy to promote compliance with the law prohibiting price exploitation in relation to the New Tax System. The aim is to raise awareness in the community, both consumers and business, about rights and obligations in relation to price changes and the New Tax System.

The communication strategy reflects the differing needs of the two major target groups — business and consumers. In addition, communication strategies targeting both these groups have been developed for non English-speaking background and Aboriginal and Torres Straight Islander audiences.

The key elements of the business strategy are:

- the small business compliance guide;
- the small business cost savings estimator;
- the small business retail price adjuster;
- news for business publications;
- GST checklist publications;
- a seminar program;
- Business information network; and
- industry association liaison and business presentations.

The *Small business compliance guide* explains the guidelines in detail and contains numerous examples and illustrations of the concepts in the guidelines. It also contains practical

compliance tips and checklists. The guide will serve as a reference manual throughout the transition period. It is available in hard copy and electronic form through the website and on CD.

The *Cost savings estimator* is a software tool that assists businesses to calculate likely cost changes in business inputs arising from the New Tax System changes. The *Price adjuster* assists small retailers to adjust their retail prices taking into account cost savings in overheads, the removal of Wholesale Sales Tax and adding GST. It also calculates the amount of WST in stock on hand. These tools are available on the website and on CD.

The key elements of the consumer strategy are:

- Australia's everyday shopping guide with the GST booklet;
- an advertising campaign;
- point of sale material;
- a national consumer liaison group;
- a consumer information network;
- GST talk publications;
- the *How to make a complaint* brochure; and
- a consumer newsletter.

On 23 May 2000 the Commission issued a guide and wallet-sized booklet in a plastic wrapper titled *Everyday shopping guide with the GST* containing estimates of how prices are likely to change because of the New Tax System in the six months from 1 July.

The list of a broad range of commonly purchased household goods and services gives consumers the estimated percentage shift in a price. An example price is also given in the guide to illustrate the impact of the percentage change.

The *Everyday shopping guide* recognises that prices may vary for reasons other than the tax changes. The guide is an estimate of price changes, and states that many factors other than tax cause prices to change e.g. exchange rates, business costs, competition and regional factors.

The estimated price changes were independently calculated by the Commission drawing on a number of sources of indirect tax and pricing information including industry data and economic modelling. The estimates reflect the impact of the tax changes on businesses in the short term. Competitive forces may well mean that price rises are lower in some cases and falls greater than shown in the guide.

The Commission undertook an extensive advertising program to inform the community about the expected tax-related price changes during the period of release. Advertisements were displayed in most Australian newspapers, including rural and regional Australia.

In the months leading up to 1 July 2000 various articles and 'Q&As' (questions and answers) provided by the Chairman appeared in major metropolitan daily newspapers, the rural and regional press, and industry magazines and newsletters targeting a broad range of community and industry groups. The Commission also provided information and assistance to the media for numerous GST specials in the lead-up to 1 July 2000.

### Website

The Commission launched its GST-specific website on 9 March 2000. The website is a dynamic resource for both business and consumers. It has a facility for sending inquiries or complaints to the Commission, media releases, frequently asked questions and all GST publications. The overall demand for GST material from the Commission website in the month of June was 1 528 141 'hits', 287 141 'page views' and 44 084 unique-user sessions lasting more than 15 minutes. More than 2000 visitors subscribed for media releases.

### GST price line

Calls to the price line range from complaints about the cost of a cup of coffee through to evidence of substantial breaches of the Act.

Complaints are analysed daily and investigated if price exploitation looks apparent.

From July 1999 to 30 June 2000 there were 79 367 complaints and inquiries logged into

the Commission's reporting system. Of these, 58 794 (74 per cent) were GST matters. Of the 58 794 GST matters, 43 317 (74 per cent) were inquiries and 15 477 (26 per cent) were complaints. Figures for the 10 most popular industries were as follows.

Industries	Percentage
<i>Complaints</i>	
General insurance	13.27
Retailing (nec*)	9.96
Supermarket and grocery stores	7.95
Central government administration	5.62
Specialised food retailing (nec*)	4.82
Domestic appliance retailing	2.45
Automotive fuel retailing	2.43
Accommodation	2.37
House construction	2.15
Newspaper, book & stationery retailing	1.28
<i>Inquiries</i>	
Retailing (nec*)	15.36
Central government administration	13.26
General insurance	6.10
Supermarket and grocery stores	3.87
Domestic appliance retailing	2.80
Wholesaling (nec*)	2.55
House construction	1.83
Accommodation	1.63
Business services (nec*)	1.63
Car retailing	1.49

\*nec = not elsewhere classified.

## Compliance and enforcement

### Video Ezy and ors

*Price exploitation, misleading and deceptive conduct (ss 52, 75AU)*

On 25 May 2000 the Commission instituted proceedings in the Federal Court in Sydney alleging that Video Ezy Australasia Pty Ltd engaged in price exploitation under the Trade Practices Act. The Commission has also alleged that Video Ezy Australasia engaged in misleading and deceptive conduct.

The case follows intensive investigations that culminated in the Commission issuing the first price exploitation notice to Video Ezy Australasia in April this year. The notice stated that the Commission considered that Video Ezy had charged an unreasonably high price for certain new release videos in the majority of its corporately owned stores.

The notice is prima facie evidence in legal proceedings that price exploitation has occurred. After the price exploitation notice was issued, the Commission discussed the matter with Video Ezy. The Commission had hoped to obtain a resolution that would protect consumers and enable refunds to be given. The failure of those discussions led the Commission to file proceedings and seek orders to help protect consumers.

In the court documents the Commission alleged that from December 1999 Video Ezy, in 21 of its 33 corporately owned stores, supplied certain new release videos at \$7. The price of \$7 was an increase of \$1 above the previous price. The Commission has alleged that these increased prices were charged unlawfully in anticipation of the introduction of the GST.

The Commission has also alleged that Video Ezy, through staff at its corporate stores, made representations to customers likely to mislead them into believing the price increases were due to the GST and that Video Ezy was entitled or obliged to collect GST before 1 July 2000.

The Commission has joined Video Ezy senior management in these proceedings including general manager, Mr Peter Scicluna, a

company director, Mr Daryl McCormack and a senior manager, Mr Jaims Hill. The Commission has alleged that these managers were party to the alleged price exploitation and that Mr Hill was a party to the misleading of customers. The Commission has not taken action against the individual staff members. The Commission considers the alleged representations were not the invention of junior staff at the Video Ezy outlets, but rather they reflect the reasons for the price increases given by Video Ezy management to the staff.

The Commission claims that Video Ezy hoped to take advantage of customer uncertainty as to when the GST would be reflected in prices by increasing the price of its videos to a level that would enable Video Ezy to increase its profits and reach a convenient new price point of \$7. The new \$7 price point would be high enough to cover the GST after the GST came into effect on 1 July 2000 and to be maintained after that date.

In the proceedings the Commission intended seeking the following outcomes:

- that Video Ezy reduce its prices in the stores in question;
- that Video Ezy refund its customers who had hired videos at \$7 in the stores in question;
- that Video Ezy send letters and post in-store notices, advising customers of the refunds and apologising for the alleged conduct;
- that Video Ezy be restrained from making misleading statements or from price exploiting in the future; and
- that pecuniary penalties be imposed on Video Ezy and three of its senior managers.

A directions hearing was held on 5 July 2000 in the Federal Court Sydney and a further directions hearing was held on 9 August 2000 in the same court. A further directions hearing has been set down for 18 October 2000 in the Federal Court Sydney.

Corporations found by the court to have engaged in price exploitation can be fined up to \$10 million and individuals, including senior managers involved in corporate decisions, face penalties of up to \$500 000.

The Commission has not at this stage brought any proceedings against Video Ezy franchisees. However, investigations are continuing into a number of franchisees and their increases in rental prices to \$7.

### **Golden Miles Pty Ltd**

*Misleading or deceptive conduct (s. 52), misrepresentation (53(aa), 53(e))*

The Commission recently accepted s. 87B court enforceable undertakings from Golden Miles Pty Ltd, a real estate and investment agent, over a representation about the effect of the New Tax System on the prices of residential apartments. The Commission had alleged that Golden Miles made oral representations to prospective purchasers of residential apartments that the value of these properties would increase by 10 per cent on the introduction of the GST. The Commission considered it was more likely the increased supply of apartments in many capital cities will limit property price increases to significantly less than 10 per cent.

Golden Miles has undertaken to cease making representations that:

- the price of property will increase by 10 per cent by July 2000 from the value of the property at the date of the agreement to purchase is signed because of the GST;
- GST of 10 per cent will be levied on property after 1 July 2000 when it is possible that the effect of the New Tax System will be an increase of less than 10 per cent; and
- the introduction of the GST will lead to an increase in the value of property of 10 per cent allowing owners of a similar property to increase sale prices by 10 per cent.

Golden Miles has also undertaken to implement a trade practices compliance program.

### **Total Aqua admits its GST claims were wrong**

*Misleading or deceptive conduct (s. 52), misrepresentation (53(e))*

The Commission accepted 87B court enforceable undertakings from a Perth based water purifier retailer, Total Aqua Pty Ltd, to

stop making further incorrect claims that the GST would apply to bottled and spring water and to offer refunds to those customers misled by the claim.

In the Good Living section of *The Sunday Times* on 2 April 2000, Total Aqua published an advertising feature promoting its CCI undersink water purifier system. Appearing under the heading 'Health needs good water', Total Aqua stated that alternatives to their water purifier systems, in particular bottled and spring waters, are about to be 'hard hit when the GST comes in'. These claims were incorrect.

The Australian Taxation Office confirmed that both spring and bottled waters would be exempt from GST. The Commission therefore considered there was no reasonable basis for making such a statement.

When informed of the Commission's concerns, Total Aqua accepted the claims were incorrect and potentially in breach of the Act. Total Aqua undertook to make no further claims about the application of GST to bottled and spring water, offer refunds to those customers who were misled by the claims, publish a corrective notice, and institute a trade practices compliance program.

### **Apollo Blinds GST undertaking**

*Misrepresentation (53(e))*

The Commission has accepted 87B court enforceable undertakings from Apollo Window Blinds Pty Ltd over a representation in a newspaper advertisement about the effect of the GST on the prices of blinds.

The Commission alleged that the advertisement which stated 'Beat the GST & Get Off Scot-free ... Don't sit there till June 30 and wait to be taxed! Order your blinds from Apollo', had misled consumers to believe that no tax was payable on blinds at that time. However, blinds were subject to a 12 per cent wholesale sales tax.

Apollo Window Blinds Pty Ltd gave undertakings to:

- cease making misleading or deceptive representations about the effects of the introduction of the GST or WST on prices for blinds and other window coverings;

- issue corrective advertisements;
- offer refunds for consumers if they believe they were misled by the advertisement; and
- develop a trade practices compliance program.

**Discount Electrical Centre (Australia) Pty Ltd**

*Misleading or deceptive conduct (s. 52),  
misleading representations as to future supply (s. 51A)*

Advertisements placed by Discount Electrical Centre (Australia) Pty Ltd in the Melbourne *Herald Sun* on 31 May 2000 were considered by the Commission to amount to a representation that the introduction of the GST would lead to a 10 per cent increase in the price of electrical goods after 1 July.

Proceedings against Discount Electrical led to them providing an undertaking to the Federal Court Melbourne. It agreed not to represent, whether by publishing or causing to be published, any catalogue or advertisement or other document or howsoever otherwise, that the price of electrical goods will increase after 1 July 2000, as a result of the introduction of the New Tax System.

Discount Electrical Centre gave this undertaking without any admission of liability in relation to the alleged breaches of the Act. The matter was adjourned until Wednesday, 12 July 2000.