

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN UNDER SECTION 87B**

BY

RAY WHITE (REAL ESTATE) PTY LTD (ACN 054 743 510)

PERSON GIVING UNDERTAKING

- 1) This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Ray White (Real Estate) Pty Ltd (ACN 054 743 510) of Level 24, Riverside Centre, 123 Eagle Street, Brisbane, in the State of Queensland under section 87B of the *Trade Practices Act 1974* ('the Act').

BACKGROUND

- 2) Ray White (Real Estate) Pty Ltd ('Ray White Real Estate') is incorporated in Queensland and carries on a business throughout Queensland. Ray White Real Estate operates under a number of business names in the provision of real estate financial and investment services.
- 3) Ray White Real Estate did, from early 1999, operate under the business name, Ray White Investor Services. Ray White Investor Services provided to the general public, real estate investment services. Ray White Investor Services operated in the geographic localities of Sydney, Brisbane and North Queensland.
- 4) In July 1999, Ray White Real Estate, trading as Ray White Investor Services, caused to be placed a full page advertisement ("the Advertisement") on page 7 of the July edition of *The Express*. *The Express* is a relatively small newspaper aimed at promoting business in Townsville and Thuringowa. A copy of the Advertisement is attached at **annexure A**.
- 5) The Advertisement promoted the theme of beating the GST and was titled "Property investors beat GST. The advertisement promoted the benefits of making investments in new properties prior to the introduction of the Goods and Services Tax in July 2000 and thereby avoiding the expected increases in new property prices. The advertisement contained the following representation:

"Many property investors are excited by the advent of the GST, as it is widely believed that new property prices are set to increase by up to 15% due to the raw costs of goods and associated services, taking a price jump."

("the Representation")

- 6) On 1 September 1999 the Commission wrote to Ray White Investor Services alerting it to the Commission's position that the representations contained within the Advertisement were possibly misleading contrary to section 52 of the Act or may have constituted a false representation under section 53(e) of the Act.

- 7) In particular, the Commission informed Ray White Investor Services of its views that the Representation amounted to a representation that the price of new homes and land would rise by up to 15% once the Goods and Services Tax ("GST") is introduced, where the Commission believes that the actual position is that the introduction of the 10% GST and the removal of the wholesale sales tax on various inputs, will be likely to result in an increase in the price of new homes and land by less than 10%.
- 8) After being informed by the Commission of the possible contravention of section 52 and section 53(e) in respect of the Representation, Ray White Real Estate has undertaken to cease the use of the Representation. Ray White Real Estate has also agreed to the publication of a corrective advertisement and the implementation of a trade practices compliance program.
- 9) Ray White Investor Services ceased to operate on or around 13 September 1999. Ray White Real Estate continues to trade at the date of this undertaking.

ADMISSIONS

- 10) After the Commission initially raised concerns with Ray White Investor Services, Ray White Real Estate advised the Commission that it was their position that:
 - i) The prices of new homes and land are likely to increase by between 8% and 10% as a result of the introduction of the GST;
 - ii) Ray White Real Estate had made numerous public statements to the effect that the price of new homes and land were likely to increase by up to 10% as a result of the introduction to the GST;
 - iii) In making the Representation, Ray White investor Services had acted outside the Ray White Real Estate advertising approval process and had made representations contrary to the official position of Ray White Real Estate; and
 - iv) The Ray White Real Estate position that the prices of new homes and land were likely to increase by up to 10% as a result of the introduction of the GST was available to Ray White Investor Services at the time they made the Representation.
- 11) In light of the information at paragraph 10 above, Ray White Real Estate has openly admitted that the placement of the Advertisement and in particular the making of the Representation constituted a contravention of section 52 of the Act.

COMMENCEMENT OF UNDERTAKING

- 12) This undertaking comes into effect when:
 - (i) the undertaking is executed by Ray White Real Estate; and
 - (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

13) Ray White Real Estate gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

Conduct Undertakings

- i) Ray White Real Estate will take all reasonable steps to ensure that neither it nor any of its servants or agents cause to be published or broadcast any representation which states or implies that the imposition of the GST will result in the price of a new house or land rising above 10% in any newspaper or other media unless they have reasonable grounds for making the representations.

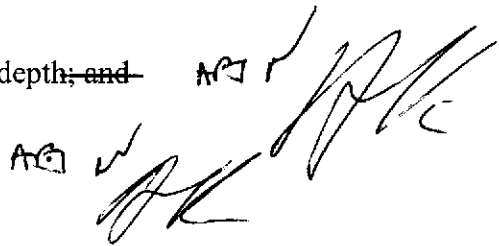
Corrective Advertisement Undertaking

- ii) Ray White Real Estate will, at its own expense, place a corrective advertisement ('the Corrective Advertisement') on or before page 7 of *The Express* in the first possible edition after the execution of these undertakings, in the same terms, font size, form, design and content of **annexure B**.

iii) The Corrective Advertisement will:

(a) be no less than 13cm in width by 15cm in depth; ~~and~~

~~(b) be located on an odd numbered page.~~

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Trade Practices Compliance Program

- iv) Ray White Real Estate will implement a trade practices compliance program ('the Program') in accordance with **annexure C**.

ACKNOWLEDGMENTS

- 14) Ray White Real Estate acknowledges the Commission will make this undertaking available for public inspection.
- 15) Ray White Real Estate further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.
- 16) Ray White Real Estate acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Ray White Real Estate.
- 17) Ray White Real Estate further acknowledges that the compliance program as in force from time to time will be held with this undertaking on the public register.

Signed on behalf of RAY WHITE (REAL ESTATE) PTY LTD by

ANDREW P JAMISON

[Signature]

28/10/99

Print Name (Director/Secretary)

Signature

Date



BRIAN R WHITE

[Signature]

28/10/99

Print Name (Director/Secretary)

Signature

Date

Print Name (Director/Secretary)

Signature

Date

Company Seal

Date

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

[Signature]

(Professor Allan Fels)

Chairperson

This 3 day of Nov 1999

Annexure A

Ray White Investor Services Advertisement - July 1999

Page 7 - The Express - July 1999

Property investors beat GST

The upcoming GST has many of us wondering if we'll be coming or going. How will it affect us? And who will be the winners and who will be the losers?

One group of people in particular will be definite winners, and that is property investors, according to Craig Whaley, sales manager North Queensland for Ray White Investor Services.

Many property investors are excited by the advent of the GST, as it is widely believed that new property prices are set to increase by up to 15% due to the raw costs of goods and associated services, taking a price jump.

This spells great news for property investors who will be boosting their equity levels on their investments portfolios.

Queensland home builders are already beginning to encounter the



Mr. Craig Whaley

pre-GST boom in construction activity as investors act promptly to be in the market to beat the GST.

Kevin Gillespie, manager for Pricewaterhouse Coopers, Chartered Accountants, says residential property income will be input taxed. This means that no GST will be

levied on rent charged to tenants and GST paid on outgoings will not be claimed back from the Tax Office. So the end result is no added compliance burden to residential landlords from the introduction of GST.

Mr Whaley said enquiries to Ray White Investor Services were at an all time high Australia wide at present and had increased significantly since the last federal election, and this mirrored the trend which occurred in New Zealand and Canada when they introduced a GST.

"We are discovering that many people who have been considering building an investment property for some time, are now acting before the upcoming GST arrives and to take advantage of the lowest interest rates in the past 20 years," Mr Whaley said.

Together with the Ray White Corporate Vacancy Protection Plan and the very significant tax savings (which can be taken weekly, fortnightly or monthly in your pay packet) the overall equation including all outgoings can actually cost someone on a \$30,000 p.a. salary only \$12 per week, and in many cases without a deposit.

The Ray White Investor Services package encompasses security with a strong emphasis on maximising profits over a period of time.

Interested people can telephone 1800 770 211 to book for the upcoming Ray White Investor Services seminars.

These are scheduled for 20th and 21st July, starting at 6.30pm at the Southbank Hotel on Palmer Street, South Townsville.



BEAT THE GST AND SAVE THOUSANDS

	Pre-GST	Post-GST
Home	\$90,000	\$97,000
Carpet	\$2,200	\$2,050
Tiles	\$4,050	\$4,450
Miscellaneous Fittings (Curtains, Light Fittings, Screens, Clothes lines, etc)	\$4,250	\$4,000
White Goods (Refrigerator, Washing Machine)	\$2,500	\$2,327
Landscaping (Turf, Concreting, Fencing, etc)	\$12,000	\$13,000
Land	\$85,000	\$89,500
TOTAL	\$200,000	\$216,327

*NB The above estimated costs based on proposed GST legislation at time of printing.

Prepared by Williams & Partners Chartered Accountants

"It's time I did something for myself"

All you need to know to make real money from real estate



BUT WHO DO YOU TRUST BEFORE YOU LOOK, BEFORE YOU INVEST?

Now is the time to see how you can create wealth and financial security by investing in residential property.

Learn how, even on an average income, you can make real money from real estate - without changing your lifestyle. Our independent advice covers everything you need to know including finance modelling, taxation issues, finance packaging, identifying where, what and when to buy, how to select the right property at the right price and how to "Leverage" your way to real wealth.

By attending this informative seminar you will learn how to take the worry out of property investing. Phone now to secure your seat.

In association with Ray White Financial Services

FREE RESIDENTIAL PROPERTY SEMINAR PANEL

Craig Whaley Sales Manager - North QLD, Ray White Investor Services
Kevin Gillespie Manager - Price Waterhouse Coopers Accountants
Karen Darley Mobile Finance Manager, Ray White Financial Services
When: Tuesday 20th July 1999, 6.30pm (registration from 6.00pm)
 or Wednesday 21st July, 6.30pm (registration from 6.00pm)
Where: Southbank Hotel & Convention Centre (Portside Room)
 23 Palmer Street, Townsville

1800 770 211 to secure your seat!

Ray White
FINANCIAL SERVICES

ANZ

Ray White
INVESTOR SERVICES

PRICEWATERHOUSECOOPERS

Annexure B

Corrective Advertisement

CORRECTIVE ADVERTISING

An apology from Ray White Investor Services

[INSERT RAY WHITE
INVESTOR SERVICES LOGO]

In *The Express* in July this year, we ran an advertisement about the effects of the GST on the price of new homes and land. The claim behind the advertisement was that it was widely believed that prices of new homes and land were likely to rise by up to 15% as a result the GST.

The Australian Competition and Consumer Commission has raised concerns that the advertisement may have misled consumers. Their reason is that, while the true effect of the GST is not yet known, it's likely there will actually be a rise of less than 10%. Ray White Investor Services agrees.

Ray White Investor Services would like to apologise to anyone misled by the advertisement.

As a result of the ACCC's concerns, we have agreed not to repeat these claims and to place this apology. We will also implement a trade practices compliance program to ensure our advertising won't mislead consumers in the future.



This advertisement has been placed by Ray White (Real Estate) Pty Ltd as part of undertakings provided to the ACCC in relation to breaches of the Trade Practices Act. Ray White Real Estate previously traded under the name Ray White Investor Services which no longer operates.

Annexure C

Trade Practices Compliance Program

Within four months of the commencement of the undertaking, Ray White Real Estate will create and maintain at its own expense, a trade practices compliance program (“the Program”). In summary the Program will:

General

- 1) Be developed and implemented by an independent external auditor with relevant experience in trade practices law.
- 2) Comply with Australian Standard on Compliance Programs AS 3806-1998 and be tailored to suit the circumstances of Ray White Real Estate.
- 3) Demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation.
- 4) Analyse and respond to trade practices matters resulting in this undertaking.
- 5) Identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks.
- 6) State that the company will take action internally against those responsible for breaches and will not indemnify them.
- 7) Provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

Specifics

In particular the Program will include the following steps:

- 8) Commitment
 - i) Form a compliance committee of the Board or ensure that compliance matters are standing items on the Audit Committee and/or Board meetings.
 - ii) Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance systems.
 - iii) Implement adequate procedures to check for trade practices compliance.
 - iv) Ensure that compliance procedures are understood by staff and other relevant parties eg agents, distributors and advertising representatives.

9) Policies and Procedures

- i) Produce a written policy of commitment to compliance and articulate how this will be carried out; set in place procedures so that the policy is well understood throughout the company; ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

10) Management Responsibility

- i) Detail the process involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- ii) Ensure that line managers are responsible for compliance in their immediate area.

11) Resources and Authority

- i) Ensure that the senior executive responsible for compliance systems has:
 - a) authority, recognition and support within the organisation;
 - b) access to all levels in the organisation to ensure compliance;
 - c) overall responsibility for design, integrity and updating of the program; and
 - d) access to the board when required.
- ii) Ensure that staff have access to the necessary materials including compliance manuals and training, reference material and databases.
- iii) Ensure that any external compliance service providers have the resources and expertise to carry out the required tasks.

12) Continuous Improvement

- i) Put in place procedures to ensure the program has regular ongoing reviews.

13) Operating Procedures for Compliance

- i) Integrate compliance considerations into:
 - a) computer systems;
 - b) forms;
 - c) contracts;
 - d) administrative procedures;
 - e) financial evaluations; and
 - f) management performance evaluations (line & senior)

14) Training

- i) Develop and execute a practical and easily understood compliance training system throughout Ray White Real Estate. Training will be:

- a) integrated into induction courses;
- b) reviewed every six months;
- c) participatory;
- d) verifiable by third parties;
- e) framed to reflect areas or risk;
- f) integrated into line and senior management development.

15) Complaints handling system

- i) Implement a visible and accessible complaints handling system which complies with Australian Standard AS 4269.

16) Record Keeping

- i) Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.

17) Employee Compliance

- i) Develop a disciplinary policy for breaches of the Act by employees and ensure the policy is widely disseminated.
- ii) Ensure that compliance is integrated into performance reviews for employees.

18) Identification and Rectification

- i) Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

19) Reporting

- i) Ensure that compliance problems are rapidly reported to the Compliance Manager.

20) Monitoring and Review

- i) Introduce a system to monitor and review the effectiveness of the compliance program.

21) Accountability

- i) Ensure that the Compliance Manager is accountable to the Board for compliance issues.

22) Review of the Program

Ray White Real Estate will cause, at its own expense, and independent audit of its compliance program to be conducted twelve months from the date of the implementation of the Program. The audit will be carried out by an independent external auditor with appropriate experience in trade practices law. The auditor should review and report on:

- i) Ray White Real Estate's adherence to the undertaking;
- ii) the implementation of the compliance program and the achievement of its objectives over the preceding twelve months; and
- iii) recommend changes to the compliance program that may be necessary to ensure achievement of its objectives.

23) Ray White Real Estate will implement the recommendations of the audit referred to above within two calendar months of the provision of the audit.

Duration

24) The Program will remain in place for at least three years following its implementation.

The Commission

25) Ray White real Estate will provide a copy of the Program to the Commission within two weeks of its implementation.