



NEW COMPONENT PRICING LAWS

Amendment to the Trade Practices Act regarding component pricing

Component pricing is where a business represents the cost of goods or services to a consumer in multiple parts, such as an airline fare advertised at \$500 plus \$220 in taxes or the cost of a dinner set as 5 installments of \$50.

The *Trade Practices Act 1974* (TPA) is to be amended from 25 May 2009 such that where a corporation makes a 'price representation' to a 'consumer', it must specify a 'single price' incorporating the sum of all component prices that a consumer will have to pay to buy those goods and services.

It is not intended that corporations should be prohibited from using component pricing, however, where it is used, a single figure, which is the figure the consumer will be required to pay, should be prominently specified. For example a corporation may still represent a price as \$299 + \$29.90 GST for a total price of \$328.90 or \$79 + \$35 taxes, fees and charges for a total price of \$114.

When the GST was introduced in 1999 it was expected that Section 53C of the TPA would implicitly require a single price in all cases, subsequently however this was tested in two Federal Court cases in which the decisions suggest that Section 53C did not require a single price for every form of component pricing.

The TPA amendment repeals the original Section 53C and replaces it with new wording under the heading "Single price to be stated in certain circumstances" to prohibit corporations from using a component price when making representations as to the price of goods or services without also specifying the single price 'in a prominent way' to the extent that the single figure price is 'quantifiable' at the time of making the representation.

Explanations

'price representation'

The scope of price representation extends to a range much broader than advertising and the amendment applies to all representations which would include quotations, tenders, estimates, and other like documents providing representations as to price.

'consumer'

The word consumer is used to recognize that this provision does not apply to supplies by a corporation to another corporation or non-corporate business or government. However the section will apply where representation is made to both consumers and business.

EXAMPLE

A hire company provides a construction company with a price list of hire equipment. This is sent by post directly to the manager of the construction company.

The price list is unlikely to be viewed by a consumer audience and clearly identifies the products and prices are for the construction company only. Section 53C does not apply to these price representations.

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'single price'

Corporations should state the price of goods or services as a single figure to enable consumers to compare like products. The single figure should be an aggregate of all components included in the single price. The single price only includes amounts that are quantifiable at the time the representation is made.

EXAMPLE

A hire company tenders for the hire of an item of equipment at \$35 per day plus \$3.50 GST.

This does not satisfy the new legislation and the tender should be for:

\$35 per day + \$3.50 GST for a total price of \$38.50 per day

'in a prominent way'

A consumer should be able to easily identify the single figure price in a price representation. It must be readily identifiable in all circumstances by displaying it so that it is easily seen and is clear, eye-catching and noticeable. Displaying the single figure price in the small print of a newspaper advert is not considered prominent.

EXAMPLE

An advertisement states upfront "6 easy payments of \$19.95" but puts the total price of \$119.70 at the bottom in fine print and in a colour similar to the background design.

The single price is not as prominent as the most prominent component of "\$19.95" and probably will not comply.

'quantifiable'

The total price is not quantifiable if at the time that the representation is made it cannot be converted to a dollar amount. Where a final price is a mixture of quantifiable and non-quantifiable charges, those charges that are quantifiable should be represented as a single figure. The representation should indicate that not all components are included in the final price. Where a component is unable to be quantified by a corporation, the corporation must be able to substantiate why it could not be done.

EXAMPLE

A hire company offers an item of petrol driven equipment for hire at \$56 per day. The business also charges a surcharge for petrol used. The surcharge cannot be quantified at the time of advertising because it cannot be known how much petrol will be consumed.

This could be advertised as:

Hire \$56/day + Fuel Used at \$1.25/litre



Exceptions

Costs that are payable only at the option of the consumer do not need to be included in the single price. For example; where a consumer can only use a credit card and a compulsory surcharge is imposed that charge should be included in the single price, however if the consumer has a choice, that does not attract a charge, the credit card surcharge does not need to be included in the single price.

Charges for postage and handling do not need to be included in the single price.

Summary

The issue is that component pricing may potentially leave a consumer with the impression that the goods or services are being offered at a lower price than they actually are and this must be avoided as serious criminal penalties are attached to breaches of component pricing laws.

ACCC COMPONENT PRICING CHECKLIST

- Does your single price include all the components you are able to quantify when you make the price representation?
- Are you able to substantiate why you are unable to quantify a particular component?
- Have you stated the total price as it is **able to be calculated** when some components vary or cannot be quantified at the time? **Remember**, the fact that a price may be subject to change does not mean it is unable to be quantified.
- Have you clearly advised consumers of any components that are excluded or may vary?
- Is your single price typically for the base level of a good or service (without optional extras where they are offered)?
- If your advertisements do not contain any price representations as per s. 53C, do they still comply, as required, with the Trade Practices Act?

References

Commonwealth Government exposure draft entitled *Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008*

Government website www.treasury.gov.au/documents *Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008*

ACCC guidelines www.accc.gov.au

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