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Ensuring Clarity in Pricing for Consumers

Advertisements such as '\$24,990 plus on-road costs' and '\$5 airfares plus taxes Melbourne to Sydney' are now a thing of the past. The introduction of the Trade Practices Amendment (Clarity in Pricing) Act 2008 (Act) amending section 53C of the Trade Practices Act 1974 (TPA) on 25 May this year has had significant consequences on how businesses advertise and provide quotes for consumers.

What the Act addresses

Businesses are now restricted in their use of component pricing. Basically, component pricing is the practice of businesses pricing their goods and services in numerous components (and commonly in small text in a different location), rather than displaying a single figure to the consumer. Common examples are found in the car dealership industry (ie, advertising a car at \$24,990 plus on road costs).

The new requirements

Businesses are now prohibited from making a representation to consumers on an amount that is only a part of the total sum unless the business also specifies the total amount for the goods or services:

- in a 'prominent way'; and
- as a 'single figure'.

The amendment to the TPA does not prevent the use of component pricing; rather it requires businesses to specify a single price to be displayed if component pricing is used. However, the consumer should be able to identify the total price in the advertisement just as easily as the prices for the components.

The single price

The single figure price must be calculated at the time of supply and must include:

- the minimum price of the good or service;
- any charges payable by the consumer to the corporation (eg compulsory credit card fees); and
- the amount of any taxes, duties, fees, levies or charges imposed on the corporation (eg GST).

Qualifications to the prohibition

Business to business transactions

Perhaps the most important qualification in the legislation is that the new prohibitions only apply to business to consumer transactions.



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This means that representations made exclusively to another corporation, non-corporate business or government are not bound by the new clarity in pricing laws. However, it may be prudent for organisations to consider whether there could be any intended or unintended exposure to consumers who could receive, and consequently act upon, any information that is presented to a business and not compliant with the new laws.

Delivery

There is no need to include compulsory delivery charges for an item as part of the 'single figure' under the new laws. However, if the corporation knows the minimum price for the delivery it must be specified, albeit as a separate price to the 'single figure'.

Non-quantifiable costs

The single price is described as the 'minimum quantifiable consideration'. The amount is considered quantifiable if it can readily be

converted into a dollar amount.

As such, where a total price is not quantifiable but a minimum total price is known (eg, where the final price depends upon consumer choice) the laws stipulate this minimum total price must be publicised in the single figure.

Services which need goods to operate

If there is a contract for the supply of services and also a provision for the supply of goods that is inextricably linked to the services (eg, a mobile phone on a specified plan), the single price should cover the cost of the combined good and service. If the good could be sold separately, then it does not need to be included in the single figure for the service.

Prominence

The single price must be 'at least as prominent as the most prominent parts' (s53C(4) of the Act) of the component prices. The Act does not provide any guidance about how this requirement should be interpreted, however it does specify an exception to this requirement. That is, if a contract provides for:

- the supply of services for the term of the contract;
- periodic payments for the services to be made; and
- the supply of goods directly related to the supply of services,

the other costs may be displayed more prominently than the single price during the contract.

Representation

The concept of a 'representation' is considerably broader. A 'representation' can now include anything which conveys a

representation about the price of a good or service. This could include letters of offer, advertisements (in any media), flyers, quotations or price-tags.

Furthermore, the 'representation' provision does not only apply to representations made by the corporations involved in the final supply of a good or service to consumers. It also applies to manufacturers who advertise the product which is then sold through a distribution or dealer network.

How do the changes affect the transport industry?

The effect of the new laws will be readily identifiable in car dealerships and travel agencies, however all transport operators should be aware that if they make representations directly to consumers, each must comply with the new requirements and should consider factors such as the size, placement, colour and font of the price in each representation. A useful methodology for carriers (such as couriers) to adopt is to remember their advertisements and quotes are provided to lay people with little or no knowledge or experience in the industry. As a result, transport operators could contravene the TPA if their representations are in breach of the new laws.

Penalties

Failing to comply with the clarity in pricing obligations are not treated lightly because it is a criminal contravention of the TPA (s75AZF of the TPA) and can result in a maximum fine of \$1.1 million. As the offence is one of strict liability, under 75B of the TPA, an individual who is directly or indirectly knowingly involved in a contravention also faces penalties.



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