

30 September 2008

Say goodbye to “plus on-road costs”

Trade Practices Amendment (Clarity in Pricing) Bill

Who will this affect?

Any business that uses component pricing

On 25 September 2008, the Federal Government introduced into parliament the *Trade Practices Amendment (Clarity in Pricing) Bill* to amend the *Trade Practices Act 1974* (Cth). If passed, the changes will affect all businesses which advertise the price of their goods or services in component parts.

The bill targets misleading “component pricing” practices. Component pricing is where goods or services are advertised in component parts – for example, where a price is stated as \$X (base amount) + \$Y (taxes, fees and charges).

The changes are intended to protect consumers from misleading advertising, and to replace the current obligation of businesses under the Trade Practices Act to specify the “cash price”. In practice, the amendments may prove controversial given the increased compliance burden on businesses and the criminal penalties which may result from a breach of the proposed provisions.

The bill will replace section 53C of the Trade Practices Act with a new section. At the time the GST was introduced, the Federal Government received legal advice that section 53C would require consumer advertising to display a single price including GST and also any other compulsory taxes. However, the courts have since held that it is not necessary for a single figure price to be specified. The new section 53C is intended to rectify this situation.

The key features of the proposed changes are:

- **single price:** there is a requirement to specify the price as a single figure. This must include all amounts that are quantifiable at the time of advertising. Where the total amount is not known, the minimum price must be disclosed as a single figure.
- **prominently displayed:** the single figure must be displayed “in a prominent way”. Also, the single figure must be displayed “at least as prominently” as the most prominent of the other components of the price.
- **consumers only:** the new provisions are intended to apply to the advertising of consumer goods only. It is not intended to apply to price representations between businesses or between businesses and government.

The changes will not prohibit component pricing, provided that the single price is also displayed.

Delivery or other charges relating to sending the goods from the supplier to the customer do not need to be included in the single figure.

Also, in relation to certain service contracts with periodic payments (for example, a mobile phone contract), while there is still an obligation to prominently display a single figure, the single figure does not need to be displayed as prominently as the component prices.

While the Federal Government has targeted the advertising of cheap airfares as one example of misleading component pricing, the changes will apply to all industries.

Two examples are below

Example 1: Motor dealers

For motor dealers, this could be the end for “plus on-road costs” as the price for vehicles must be advertised as:

“\$32,990 plus on-road costs = \$34,990 drive away no more to pay”;

“\$34,990 drive away no more to pay”; or simply “\$34,990”

NOT

“\$32,990 plus on-road costs”

Example 2: Retailers

For retailers, you must advertise the price for goods as:

“\$5,000 + GST = \$5,500” or simply “\$5,500 including GST”

NOT

“\$5,000 + GST”

We will keep you informed as to the progress of the bill in the Federal Parliament.

If you have any questions about the proposed changes or their likely impact on your business, please contact:

John Kell, Sydney

+61 2 9391 3163

jkell@hunthunt.com.au

Ashley Pelman, Melbourne

+61 3 8602 9213

apelman@hunthunt.com.au

Robin Lonergan, Brisbane

+61 7 392 9710

rlonergan@macrossans.com.au

Darren Miller, Perth

+61 8 9488 1300

dmiller@marksandsands.com.au

Disclaimer: The information contained in this e-alert is not advice and should not be relied upon as legal advice. Hunt & Hunt recommends that if you have a matter that is legal, or has legal implications, you consult with your legal adviser. If you no longer wish to receive this e-alert or any other publication from Hunt & Hunt, please email us at unsubscribe@hunthunt.com.au