

Carbon Pricing and Misleading and Deceptive conduct

The new Federal Government carbon price is to apply from 1 July 2012.

The Government has appointed the Australian Competition and Consumer Commission (ACCC) to undertake a compliance and enforcement role in relation to the impacts of the new carbon price.

The ACCC will not of course set prices. Part of their brief will include taking action against anyone who incorrectly claims that a price increase is due to the introduction of the carbon price.

Generally a business can set the price for their product or service and does not need to justify to a customer or client why the price has increased. However, if a business claims that a price increase is because of the carbon price and the whole of the increase is not due to the carbon price, then that business will be engaging in misleading and deceptive conduct.

If a business is making a claim about a price increase, the ACCC is clear in their recent publication titled "Carbon price claims Guide for business" that a business must ensure their claims:

- are truthful and accurate
- do not mislead consumers (whether individuals or other businesses)
- are based on reasonable grounds, and
- can be substantiated.



The Competition and Consumer Law prohibits the making of false, misleading or deceptive claims about the price of goods or services. This includes in all forms of advertising or in any statements made such as on a web site, in general advertising, catalogues, labels, contracts, over the telephone or in person.

If the ACCC believes that you have made a false claim then they can issue a Substantiation Notice requiring the business to substantiate the claims made. If the business cannot substantiate the claim made, then it might lead to penalties being imposed. If a person gives false information to the ACCC, then that may lead to an Infringement Notice being issued or the ACCC applying to the court for pecuniary penalties to be imposed.



It should also be remembered that under the Act the ACCC now has power to seek substantial penalties against both corporations and individuals personally in regard to misleading and deceptive conduct.

More information may be obtained from our office or from the ACCC's publication "Carbon price claims Guide for business" which contains a number of examples of how a business might breach the Act in their claims regarding increase in prices due to the introduction of carbon prices.



Janice Bywaters regularly present at seminars and conferences in regard to Franchising. The firm is a member of the Franchise Council of Australia. Janice Bywaters is the Chair of the Queensland Law Society Franchising Committee.



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