



17 April 2008

By email: james.chisholm@treasury.gov.au

Mr James Chisholm
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The Treasury
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Dear Mr Chisholm

Component Pricing – Draft Legislation

Consumer Action Law Centre (**Consumer Action**) welcomes the Government's commitment to amending the *Trade Practices Act 1974* (Cth) (the **Act**) to require advertisements to state the single price of goods and services. Consumer Action believes that the amendments proposed by the *Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008* (the **Bill**) will ameliorate some of the market distortions and anti-competitive effects of traders advertising component prices and not the single price.

Consumer Action supports amendments to the Act that increase consumers' access to easily understood information about goods and services. Requiring the single price for goods and services will provide important price information to consumers. We support the general thrust of the amendments, and believe that generally the draft legislation is well-prepared, and the draft explanatory memorandum clear and useful.

We do, however, have concerns about the proposed amendments due to exceptions that in our view are not logical, and are likely to undermine the effectiveness of the amendments.

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Fixed term and ongoing contracts

We are particularly supportive of the amendments applying equally to goods and services purchased through one-off transactions and goods and services purchased through fixed term contracts payable by instalments.

We note that many services, for example telecommunications, energy and gym memberships, are sold through fixed term contracts. We believe there is significant consumer benefit to consumers being made aware of the total minimum price over the entire length of the fixed term contract. This would not prevent a trader also displaying a monthly price, but a consumer would also be made aware of their total minimum contractual commitment. Consumer Action commonly receives complaints from consumers that the monthly price disclosed in advertisements led to misapprehensions about the overall cost of a service. The application of the Bill to fixed term contracts should go some way to addressing this problem.

It is not clear, however, how the Bill is to apply to ongoing contracts. Many common consumer services being sold by way of ongoing contract – for example, fixed line telephone services and energy services. One reading of the Bill is that because a total cost is not quantifiable, a trader selling a service through an ongoing contract will only have to display an upfront cost, and not the total cost over a period of time. We are concerned that businesses may structure their contracts as ongoing rather than fixed term to avoid the operation of the Bill. We believe that the Bill should provide that, for ongoing contracts, a total price should be disclosed for a minimum period of time (for example, one year).

Exclusion of financial services

We note that when the component price amendments were first prepared in 2006, they were intended to apply equally to goods and services regulated under the Act and to financial services regulated under the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**).

We believe that financial services should be subject to the component pricing amendments. Despite arguments from financial service industry representatives, it is not logical to exclude financial services and yet not other services.

It has been argued that financial services should be excluded from component pricing laws because of the difficulty in calculating the 'single price'. While there are of course many examples of unquantifiable costs relating to financial services, there are likewise unquantifiable costs relating to other services. The legislation makes clear in the definition of 'single price' that only prices quantifiable at the time the advertisement is made are required to be included in the total single price. Thus, the problem of unquantifiable costs is solved (and in any event is no different for financial services than for other services).

There is no reason to think that the complexities of calculating costs for financial services are any different from the complexities for other bundled services such as mobile telephone services or computer software. The cost of many financial services will be easy to quantify (eg. costs of insurance premiums). Some financial services will be very difficult to quantify –

but then so will some non-financial services – so if financial services are to be excluded, this cannot be basis for the exclusion.

Likewise, the fact that there is already price disclosure regulation of some financial services under the Uniform Consumer Credit Code (**UCCC**) is not a reason to exclude financial services. The proposed amendments to the Act state that there is no intention for the amendments to oust the concurrent powers of State law. Thus, the amendments could include financial services and operate in addition to the requirements under the UCCC. The need for the amendments to cover financial services is all the more apparent because the UCCC only covers consumer credit, and not the numerous other forms of ASIC regulated financial services contracts that Australian consumers enter into.

Exclusion of postage and handling costs

Consumer Action does not support the exclusion of postage and handling from the single price.

In our view, were this exclusion to be retained in the final legislation, traders would be very likely to use it as a loophole. The explanatory memorandum states that postage and handling “includes only those costs directly related to postage as well as the process of packing, moving, carrying or transporting...”. In our view, this explanation may not be helpful. This explanation gives no idea about the method by which a trader may price postage and handling. In practice, many traders may charge a price for postage and handling well above the actual cost to the trader as a means of circumventing the requirement to advertise a single price.

It is also odd that postage and handling be excluded given how easily quantifiable it normally is. In fact, postage and handling could be seen as archetypical of the type of price that policy-makers would have in mind when seeking to implement a system that requires the disclosure of a single price.

Advertising

Under the draft legislation the proposed amendment will apply where a trader makes “a representation in an advertisement...”. This diverges from the current formulation of section 53C, and the 2006 draft amendment, which referred only to “a representation”.

Consumer Action does not support the use of the formulation “a representation in an advertisement...”. The effect of this would be to reduce consumer protection where a representation had been made to a consumer, but that representation was not made in an advertisement. We can think of many examples where it is appropriate to provide consumer protection through requiring the single price to be displayed in representations that are not advertisements (eg. where a trader faxes and emails price lists and order forms to individual consumers).

Consumer Action recommends that the single pricing requirement apply to all representations, not just those contained in advertisements.

Should you have any questions about this submission, please contact Neil Ashton on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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