



# **Trade Practices Amendment (Clarity in Pricing) Act 2008**

**No. 126, 2008**

**An Act to amend the *Trade Practices Act 1974*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to amend the *Trade Practices Act 1974*, and for related purposes**

[Assented to 25 November 2008]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Trade Practices Amendment (Clarity in Pricing) Act 2008*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	25 November 2008
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	26 November 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Component pricing**

### ***Trade Practices Act 1974***

#### **1 Section 53C**

Repeal the section, substitute:

#### **53C Single price to be stated in certain circumstances**

- (1) A corporation must not, in trade or commerce, in connection with:
  - (a) the supply or possible supply of goods or services to a person (the *relevant person*); or
  - (b) the promotion by any means of the supply of goods or services to a person (the *relevant person*) or of the use of goods or services by a person (the *relevant person*);make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the corporation also:
  - (c) specifies, in a prominent way and as a single figure, the single price for the goods or services; and
  - (d) if, in relation to goods:
    - (i) the corporation does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the relevant person; and
    - (ii) the corporation knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the relevant person that must be paid by the relevant person;specifies that minimum amount.
- (2) A corporation is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the relevant person.
- (3) Subsection (1) does not apply if the representation is made exclusively to a body corporate.
- (4) For the purposes of paragraph (1)(c), the corporation is taken not to have specified a single price for the goods or services in a

prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.

- (5) Subsection (4) does not apply in relation to services to be supplied under a contract if the following apply:
- (a) the contract provides for the supply of the services for the term of the contract;
  - (b) the contract provides for periodic payments for the services to be made during the term of the contract;
  - (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (6) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (7) In this section:

*single price* means the minimum quantifiable consideration for the supply concerned at the time of the representation concerned, including each of the following amounts (if any) that is quantifiable at that time:

- (a) a charge of any description payable by the relevant person to the corporation making the representation (other than a charge that is payable at the option of the relevant person);
- (b) the amount which reflects any tax, duty, fee, levy or charge imposed, on the corporation making the representation, in relation to the supply concerned;
- (c) any amount paid or payable, by the corporation making the representation, in relation to the supply concerned with respect to any tax, duty, fee, levy or charge if:
  - (i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and
  - (ii) the tax, duty, fee, levy or charge would have otherwise been payable by the relevant person in relation to the supply concerned.

Example 1: A corporation advertises lounge suites for sale. Persons have the option of paying for fabric protection. The fabric protection charge does not form part of the single price because of the exception in paragraph (a).

Example 2: The GST may be an example of an amount covered by paragraph (b).

Example 3: The passenger movement charge imposed under the *Passenger Movement Charge Act 1978* may be an example of an amount covered by paragraph (c). Under an arrangement under section 10 of the *Passenger Movement Charge Collection Act 1978* airlines may pay an amount equal to the charge that would otherwise be payable by passengers departing Australia.

## **2 Subsection 75AZF(1)**

Repeal the subsection (not including the penalty and the notes), substitute:

- (1) A corporation must not, in trade or commerce, in connection with:
- (a) the supply or possible supply of goods or services to a person (the *relevant person*); or
  - (b) the promotion by any means of the supply of goods or services to a person (the *relevant person*) or of the use of goods or services by a person (the *relevant person*);
- make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services.

Note: The heading to section 75AZF is altered by omitting “Cash” and substituting “Single”.

## **3 Subsection 75AZF(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the corporation also:
- (a) specifies, in a prominent way and as a single figure, the single price for the goods or services; and
  - (b) if, in relation to goods:
    - (i) the corporation does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the relevant person; and
    - (ii) the corporation knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the relevant person that must be paid by the relevant person;specifies that minimum amount.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(2A) A corporation is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the relevant person.

(2B) Subsection (1) does not apply if the representation is made exclusively to a body corporate.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B) (see subsection 13.3(3) of the *Criminal Code*).

(2C) For the purposes of paragraph (2)(a), the corporation is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.

(2D) Subsection (2C) does not apply in relation to services to be supplied under a contract if the following apply:

- (a) the contract provides for the supply of the services for the term of the contract;
- (b) the contract provides for periodic payments for the services to be made during the term of the contract;
- (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.

#### 4 At the end of section 75AZF

Add:

(4) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(5) In this section:

*single price* means the minimum quantifiable consideration for the supply concerned at the time of the representation concerned, including each of the following amounts (if any) that is quantifiable at that time:

- (a) a charge of any description payable by the relevant person to the corporation making the representation (other than a charge that is payable at the option of the relevant person);
- (b) the amount which reflects any tax, duty, fee, levy or charge imposed, on the corporation making the representation, in relation to the supply concerned;

- (c) any amount paid or payable, by the corporation making the representation, in relation to the supply concerned with respect to any tax, duty, fee, levy or charge if:
  - (i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and
  - (ii) the tax, duty, fee, levy or charge would have otherwise been payable by the relevant person in relation to the supply concerned.

## **5 Application**

The amendments made by this Schedule apply in relation to conduct engaged in after the commencement of this Schedule.

## Schedule 2—Miscellaneous

### *Trade Practices Act 1974*

#### **1 Paragraph 6(2)(b)**

Omit “53B, 60 and 61, subsections 64(3) and (4),”, substitute “53B and 60, subsections 64(3) and (4), Division 1AAA of Part V,”.

#### **2 Subsection 6(4)**

Omit “, 55 and 61) and Division 1AA”, substitute “and 55) and Divisions 1AAA and 1AA”.

#### **3 Subsection 65E(2)**

Omit “as the case may be, shall be deemed to be a prescribed consumer product safety standard for the purposes of section 65C or a prescribed consumer product information standard for the purposes of section 65D, as the case may be”, substitute:

is taken to be (as the case requires):

- (a) for the purposes of section 65C—a prescribed consumer product safety standard; or
- (b) for the purposes of section 65D—a prescribed consumer product information standard; or
- (c) for the purposes of section 75AZS—a consumer product safety standard prescribed by regulations made for the purposes of section 65C; or
- (d) for the purposes of section 75AZT—a consumer product information standard prescribed by regulations made for the purpose of subsection 65D(2).

#### **4 At the end of Division 1 of Part VC**

Add:

#### **75AZAA Concurrent operation of State and Territory laws**

This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

#### **5 At the end of subsection 75AZS(1)**

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Add:

- Note 3: For the purposes of this section, subsection 65E(2) treats a consumer product safety standard identified in a notice published by the Minister as a consumer product safety standard prescribed by regulations made for the purposes of section 65C.

**6 At the end of subsection 75AZT(1)**

Add:

- Note 3: For the purposes of this section, subsection 65E(2) treats a consumer product information standard identified in a notice published by the Minister as a consumer product information standard prescribed by regulations made for the purpose of subsection 65D(2).

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*[Minister's second reading speech made in—  
House of Representatives on 25 September 2008  
Senate on 16 October 2008]*

(200/08)

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