

Carbon price claims - Guide for business



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Australian
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Commission

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Australian Competition and Consumer Commission
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Introduction

About this guide

The Australian Government has introduced a carbon price that will apply from 1 July 2012. Under the scheme, a carbon price will apply to certain greenhouse emissions, with some large businesses being required to purchase carbon credits.

The purpose of this guide is to assist you to understand your rights and obligations as a business operator when making claims about the impact of a carbon price. It focuses on prohibitions against misleading, deceptive or false claims under the Australian Consumer Law (the ACL) – part of the *Competition and Consumer Act 2010* (Cth) (the Act).

The ACCC's role

The ACCC has been directed by the Australian Government to undertake a compliance and enforcement role in relation to claims made about the impact of a carbon price.

The ACCC's role will include:

- informing and educating businesses, including through issuing guidance, about their responsibilities under the Act in relation to these claims
- raising awareness amongst consumers about their rights under the Act
- investigating and, where appropriate, taking action against businesses who engage in practices that contravene the Act.

The ACCC's role will not include setting or restricting price increases related to the impacts of a carbon price.

You are not generally required to justify or explain why your prices have increased – however, if you choose to claim that price increases are due to a particular cause, you should have confidence in your claim. This includes where you choose to link your price increases to a carbon price.

Claims about the impact of a carbon price

You should ensure your claims:

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

These are not new requirements – if you make a claim, you need to be sure it is right.

If in doubt, don't make the claim.

The Act prohibits you from making misleading, deceptive or false claims about the price of goods or services.

This includes claims and statements that you make:

- in television or radio advertising
- in catalogues
- on labels
- on websites
- in contracts (or contract negotiations) with both businesses and consumers
- over the telephone or in correspondence (such as letters or emails), or
- in person, such as on the shop floor or in meetings.

Problematic carbon price claims

Some examples of claims that will mislead customers are if:

- you represent that the whole amount of a price increase is due to a carbon price, when in fact only a proportion of the total price increase is attributable to a carbon price, or
- you overstate the impact of a carbon price.

These problematic claims might be made in a number of circumstances.

For example:

- representations made on your new price lists that incorrectly link all price increases to a carbon price
- comments by your sales representatives that incorrectly link the increase in the price of goods or services to a carbon price – for example, a sales representative saying ‘It’s the carbon price’ in response to a consumer’s query about the increase in price, when that is not the case
- exaggerating cost savings in your advertising if you encourage customers to buy before 1 July 2012 so as to avoid a carbon price impact.

Inflating or exaggerating the carbon price

A hair salon displays a new price list on 1 July 2012, stating that all salon services will be subject to “an increase of 10% largely due to the carbon price”.

In calculating the price increase, the salon is aware that a number of its input costs have gone up over the preceding 3 months. The rent on the property has increased, wages have risen and the cost of some of the products used in the salon have gone up. A month earlier, the salon received a notice from its electricity retailer indicating that there would be a new tariff from 1 July 2012. The salon estimates that based on its electricity usage, the new tariff will equate to about a 4% increase in its electricity costs partially due to the introduction of a carbon price.

The salon has made a representation clearly overstating the impact of a carbon price on its business and the claim is misleading.

Point of sale issues

The overhead costs of a restaurant have gone up for reasons unrelated to a carbon price. When explaining the restaurant menu to a customer, a waiter says:

“All of our meal prices have increased because of the carbon price.”

The business has no factual basis or other knowledge to underpin or substantiate the waiter’s statement that the price increase is due to a carbon price. This representation is misleading because although there has been an increase in the cost to the business of supplying the goods and services, this increase was not related to a carbon price.

Claims made before 1 July 2012

The new carbon price laws do not take effect until 1 July 2012 so most businesses are unlikely to see any impact of a carbon price prior to that date.

However, in the lead up to 1 July 2012, carbon price related claims might be made in the following situations:

- during negotiations for contracts that include the provision of goods and services after 1 July 2012. For instance, this may apply in the construction industry or where there are significant lead times for the delivery of particular goods and services
- when businesses announce future price increases which will include any period after 1 July 2012.

If you intend to make claims about the impact of a carbon price prior to 1 July 2012, you need to be careful that you do not wrongly suggest that a carbon price will affect the price of your goods or services before that date.

You might also be thinking of making more general statements before 1 July 2012 such as:

- *'Beat the Carbon Tax - Buy Now'*
- *'Our prices will be hit hard when the carbon price comes in'*
- *'Buy now before the carbon tax bites'*.

While these statements may be legitimate in many circumstances, you need to be careful that you do not overstate the savings to be made by purchasing before the introduction of a carbon price. For example, if your business prices will not increase by much at all due to a carbon price you should be very cautious about making these types of claims. If your statements exaggerate the saving to be made, they will be misleading under the Act.

Supplying services both before and after 1 July 2012

A large contractor enters into a one-year fixed term and fixed fee contract with a major hotel chain to service its linen for the period 1 January 2012 to 31 December 2012. The contractor suspects that on 1 July 2012 its cleaning costs will rise due to the introduction of a carbon price.

The contractor is unsure what the impact will be to the business, so it commissions a business advisor to make projections about the likely price impact.

The advisor's report indicates that the impact of a carbon price is likely to equate to a 2% increase in the total input costs to the business. The report sets out a detailed explanation of the basis for the projections. This is consistent with information provided by government and with business calculators developed by the contractor's industry association.

The contractor quotes the fixed fee for the contract on the basis of its standard prices plus a 2% increase on the fees for services to be provided after 1 July 2012. In negotiations with the hotel chain, the contractor attributes this price increase as being due to the 'projected' impact of a carbon price. The hotel chain accepts this proposed increase to the fixed fee for the one-year contract.

This is acceptable business practice. The representation by the contractor is not misleading. The contractor took care to project the likely impacts. The contractor was also able to establish there was a reasonable basis for those projections.

Claims based on information from others

You may consider information from a range of sources in determining the impact of a carbon price on your costs, and ultimately your prices. This information may include:

- your electricity or gas bills
- invoices from your suppliers
- statements made by your suppliers about their prices and the carbon price
- business calculators
- information from your industry associations and government.

When you assess whether it is reasonable for you to rely on this information, you should consider:

- how the impacts of a carbon price and the flow on price increases were calculated
- whether the calculations accurately reflect the cost of the inputs of your own business
- whether the price increases are consistent with the carbon price impact as predicted by other sources such as government, your industry association or other professional advisers
- if there are other factors (unrelated to the impacts of a carbon price) that have contributed to the price increase
- whether price increases incurred by your suppliers will be passed through to your business
- the impact of any carbon price related rebates or assistance available to you or your suppliers.

An accurate claim

On 1 July 2012, a bakery puts a sign up inside its shop alerting its customers that the price of some of its products will increase by 5 cents on 1 August 2012. Staff advise customers that the rise is due to the new carbon price.

The bakery has taken care to base its claim on information from its suppliers that identify cost increases due to the commencement of a carbon price. The bakery relies on the following information:

- a letter from an ingredient supplier dated March 2012 noting that the cost of its products will be increasing effective 1 July 2012 as a result of the commencement of a carbon price; and
- a notice from its energy retailer explaining there has been a price rise attributable to a carbon price.

The business has also compared its proposed price increase with information provided by the government and its industry association and finds its increase to be in line with expectations.

By taking care to compare the information available from different sources the business has avoided the risk of misleading its customers.

Supply chain issues

A clothing manufacturer has decided not to pass on the cost of a carbon price to its resellers. However, one of its resellers makes representations to customers through in-store advertising that it has increased the price of its goods by 10%, advising that the price increase is due to a carbon price.

When approached by the ACCC, the reseller explains that it faces increased transport delivery and energy costs, though the wholesale price of its clothing supplies has not increased. The reseller had assumed that these price rises occurred because of a carbon price.

The reseller did not check whether these price rises were caused by the impact of a carbon price. The reseller did not ask its transport company any questions about whether the cost of its services were affected by a carbon price. It had not received any documents linking a change in transport prices to a carbon price. The reseller had not examined its energy bills or information from its energy retailer suggesting an increase related to a carbon price. When the ACCC makes inquiries of the relevant transport and energy companies, it is informed that transport and energy price increases are unrelated to a carbon price.

When tested, the reseller's claim is found to be misleading.

Relying on other information

The owner of a sporting goods shop tells customers its prices have increased 11% as a result of a carbon price.

The owner of the shop has not made enquiries with its energy retailer or suppliers about the effect on energy and transportation costs. One of the shop's employees had a conversation with another local retailer who said that they think their prices will rise about 11% as a result of a carbon price. The owner decided that 11% was a good estimate. In reality, the impact of a carbon price on this particular business is less than 1%.

This representation is misleading and the retailer has contravened the Act. The business should have looked at what was actually happening with its own costs and identified how much was due to a carbon price, then checked with government or industry information to see if their calculations were in the right range.

Carbon price calculators

A number of calculators have been developed to assist businesses and consumers understand the impact of a carbon price. These can be a useful tool to check your own calculations in considering your costs and what claims you might make about price increases.

Any price rise explained as the impact of a carbon price should be based on your own costs. Calculators can be a useful tool in assisting you to check your calculations.

When using a calculator, keep in mind the following:

- does the calculator consider your own costs, or an estimate across the industry? As individual business costs vary, a calculator that relies on industry costs will produce a more general result than one that considers your specific costs
- what range of information does the calculator consider? The less information, the greater chance the result will be generalised and less specific to your circumstances
- what result does the calculator produce? Does it seek to provide you with an estimate of the overall cost increase to you or does it seek to estimate your carbon emissions (either in total or per unit you produce).

If what you have worked out is significantly different to what the calculator produces, it is a good opportunity to check your price claims before you make them.

Checking your information

In September 2012, the owner of a veterinary clinic notices that since 1 July 2012 its outgoing expenses have increased significantly. The owner is aware that the carbon price laws were introduced at this time.

The owner of the clinic decides to increase her prices and would like to explain to her customers why her prices are going up. The owner makes inquiries with her suppliers and service providers to ask why her input costs have gone up but she is unable to get any answers. The owner suspects some of the increase might be due to a carbon price but is not sure. The owner visits her industry association website to see if there is any information on it about a carbon price. The information on the website is limited to predictions about the impact of a carbon price across the entire veterinary sector and does not state the basis for those predictions. The owner calls the industry association which confirms that although they are able to make an industry-wide prediction about the impacts of a carbon price they cannot say with certainty what the effect will be on every business.

The owner decides to increase her schedule of fees, but decides not to link this increase to a specific cause. One of her customers later asks her why she has had to increase her fees and she says it is because the overall cost of running her business has increased.

This is acceptable business practice and does not mislead her customers.

Talking with your competitors

As you try to work out the impact of a carbon price on your input costs, you may be tempted to compare your circumstances with your competitors. While relevant industry information may assist you in your calculations, it is important that you set your own prices independently.

It is an offence under the Act for competitors to enter into any contract, arrangement or understanding relating to the price of their goods or services or any price adjustments including those attributable to a carbon price.

For this reason, you should take great care when you engage in any discussions with your competitors about the effects of a carbon price.

What the ACCC can do

The ACCC may ask you for information that supports any claims you choose to make about the impact of a carbon price on price rises for your goods or services. The ACCC can do this in a number of ways – for example:

- by making a written request to the business for information
- by issuing a substantiation notice on the business in relation to a carbon price representation.

A substantiation notice is an investigative tool that the ACCC can issue to a business requesting documents and information that ‘substantiate’ claims the business has made in its promotion or advertising. The benefit of substantiation notices is that they can be issued at an early stage of an investigation – this means that the information provided can assist in determining quickly whether a representation can be substantiated or whether consumer laws may have been contravened. If you receive a substantiation notice, it does not mean that the ACCC has determined that you have made a misleading claim – rather, it allows for the ACCC to consider the basis on which claims have been made in order to make this assessment.

If you receive a substantiation notice, you must provide the ACCC with the information and documents that substantiate the claim within 21 days. This means that if you choose to make a claim about the impact of a carbon price on price rises for your products or services, you should keep all documents, including invoices and communications with your suppliers and other parties that you rely on.

In line with its Compliance and Enforcement Policy, the ACCC will give priority to complaints that reveal significant or widespread consumer detriment, or that demonstrate a blatant disregard for the law.

Under the Act, the ACCC has a range of investigative and enforcement options for addressing misrepresentations and contravening conduct related to the carbon price. These include seeking financial penalties.

Making a complaint

Businesses and consumers with concerns about carbon pricing claims can lodge a complaint via the ACCC website or by contacting the ACCC Infocentre or the ACCC Small Business Help Line.

Further information

Australian Competition and Consumer Commission

Infocentre 1300 302 502

Small Business Help Line 1300 302 021

Indigenous Infoline 1300 303 143

For information in languages other than English, call 13 1450

TTY users phone 133 677 then ask for 1300 302 502

Speak and Listen users phone 1300 555 727 and ask for 1300 302 502

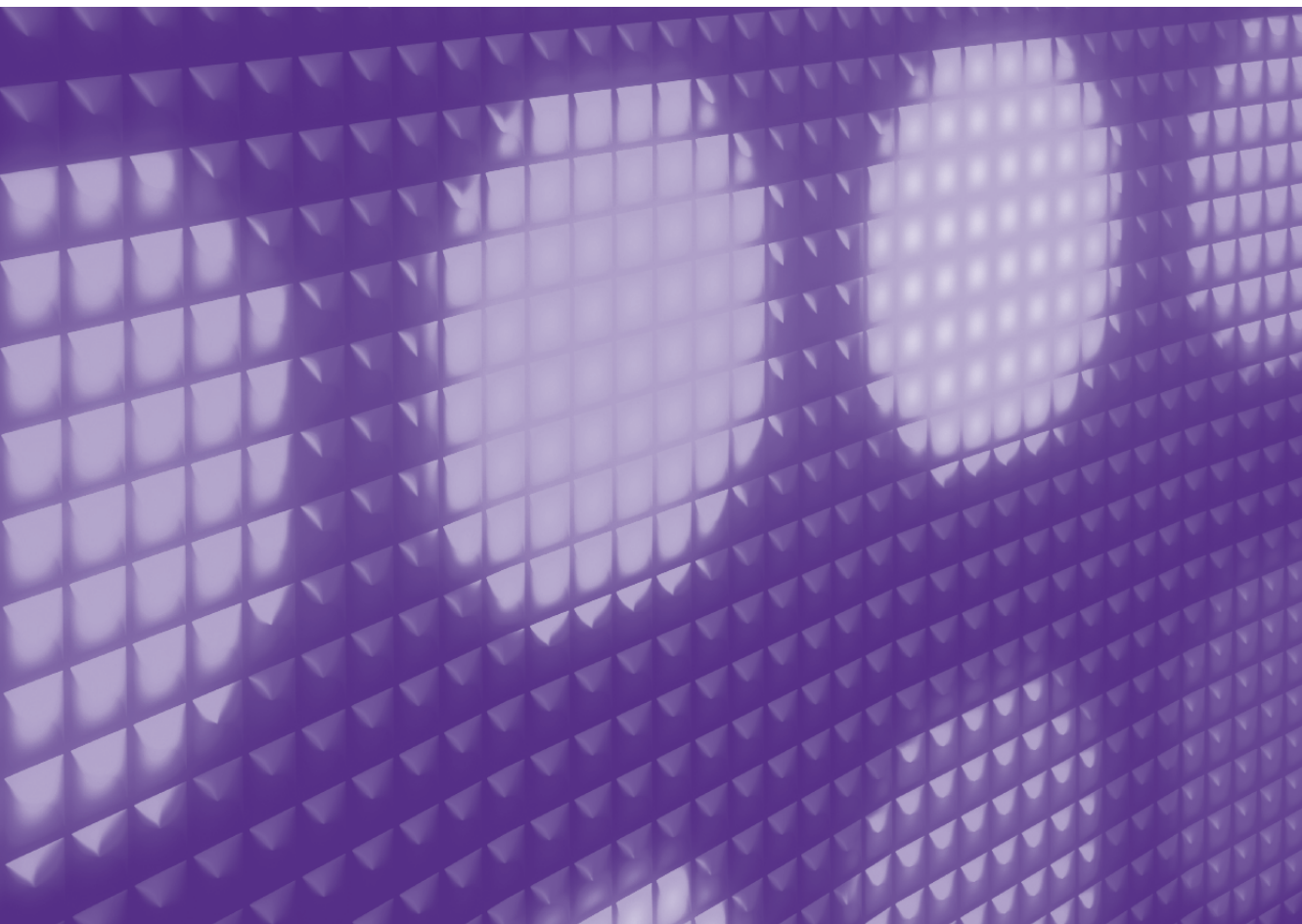
Internet relay users connect to the NRS (see www.relayservice.com.au) and ask for 1300 302 502

www.accc.gov.au

For more information about the ACCC's Compliance and Enforcement Policy, see www.accc.gov.au/content/index.phtml?itemId=867964

For more information about the carbon price, go to the Clean Energy Future website www.cleanenergyfuture.gov.au

www.accc.gov.au/carbon



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