

CHANGES TO THE (FEDERAL) *TRADE PRACTICES ACT* – ADVERTISING OF WEEKEND AND PUBLIC HOLIDAY SURCHARGES, INCLUDING THE IMPACT OF COMPONENT PRICING ON HOTEL AND RESTAURANT MENUS

Recent changes to the *Trade Practices Act 1974* (TPA) have been made by the Federal Government in an attempt to ensure that all pricing information is clear and accurate. The Government's intent is to stop misleading advertising of prices that potentially hide surcharges, levies and add-ons which fudge the real price of a particular item. The TPA changes impact on hotels where they publicly advertise prices in the mass media, and using in-house mechanisms such as price boards and menus. The TPA legally requires businesses to display full prices that are clear and accurate. Where component pricing is advertised, Section 53C of the TPA essentially requires that the full (total) price be displayed at least as prominently as the most prominent component. What this means in plain English is that, where various components make up a total price, the total price must be displayed clearly in numbers.

The most common area where this will impact AHA hotel members is the common practice where a percentage surcharge is imposed on top of everyday prices on Public Holidays or weekends to cover the additional costs of doing business on those days. The mentioned changes to the TPA means that it is no longer legal or permitted to state that a % surcharge applies at specified times. From now on, such price advertising may only be undertaken in one of two ways:

- (1) a flat rate per person surcharge nominated on the menu – e.g. a statement on the menu to the effect that a (flat fee) surcharge of \$ x per person will apply on Public Holidays and Sundays (or similar); or
- (2) produce and display a separate menu on days on which a surcharge price would previously have been displayed, which includes a different pricing structure from that which applies on the everyday menu. That is, a separate menu, with different (higher) prices, used on 'special' days.

Where a blackboard or similar menu is used, the full, actual price of the cost of each meal must be displayed clearly each day, and the use of % loadings is no longer permitted.

The ACCC has indicated that it does not intend to impose penalties for breaches of the legislation. However, over time it intends to oversee a smooth transition to this new full price disclosure regime in the interests of better consumer protection. The QHA has made representations to the Federal Government about this issue, including the observation that this new legislation requires hotels to change a long standing industry practice that is widely accepted by their patrons, but we are not hopeful of a victory for common sense.