



Australian
Competition &
Consumer
Commission

CARBON PRICE CLAIMS

Guide for business

July 2012

Australian Competition and Consumer Commission
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About this guide

A carbon price commenced in Australia on 1 July 2012. The carbon price applies to certain greenhouse gas emissions, with some large businesses being required to purchase carbon credits against their emissions.

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 the carbon price. It focuses on prohibitions against false, misleading or deceptive claims under the Australian Consumer Law (the ACL)—part of the *Competition and Consumer Act 2010* (Cth) (the Act).

The updated guide follows the first version *Carbon Price Claims—Guide for Business* published on 15 November 2011. The purpose of this guide is to provide further information to businesses addressing new issues, particularly those arising out of the ACCC's engagement with industry and small businesses.

For a summary of the Guide for Business, see *Business Snapshot—Carbon price claims: guide for business* available online at www.accc.gov.au/carbon

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 the carbon price.

The ACCC's role includes:

- 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 focus is to ensure businesses do not make misleading claims about price increases as a result of the carbon price. The ACCC does not have a role in formally monitoring, setting or restricting price increases linked to the carbon price and cannot prevent a business from putting up its prices as a result of the carbon price.

Key points:

The ACCC's role includes:

- informing and educating businesses
- raising awareness amongst consumers
- investigating and, where appropriate, taking action against businesses who engage in practices that contravene the Act.

Claims about the impact of the carbon price

Key points:

You should ensure any claim your business makes about the impact of the carbon price:

- is truthful, and
- has a reasonable basis.

As a business, you are entitled to increase your prices as you see fit—it is business as usual. Leading up to and following the start of the carbon price, the same legal obligations not to mislead or deceive apply.

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.

The law prohibits you from making false, misleading or deceptive 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 may mislead customers:

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

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

- claims made on your new price lists that incorrectly link all price increases to the carbon price
- comments by your sales representatives that incorrectly link an increase in the price of goods or services to the carbon price—for example, a sales representative saying 'It's the carbon price' in response to a customer's query about the increase in price, when that is not the case.

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 three 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 the carbon price.

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

Information to support your claims

The type of information you should have regard to before making a claim about the impact of the carbon price will depend on the type of statement made, for example, whether the assertion is general or specific.

Remember, before making a claim you need to be confident that any cost increase linked with the carbon price applies to your own business. This includes statements about percentage price increases, and increases within a price range.

It may not be practical or possible in all cases to separate out a precise increase in your costs due to a particular factor, such as the carbon price. In these circumstances, you will need to consider carefully whether to make a claim about the reasons for a price increase. If you are considering making a claim, information you should consider before doing so includes:

- invoices showing the impact of the carbon price on your supply chain or business input costs (e.g. raw materials, packaging and transport, where relevant)
- notices/invoices showing the impact of the carbon price on the cost of services (e.g. gas, electricity, waste disposal and travel)
- invoices and other information showing the impact on your product or services before and after a price change. This may be relevant if you make a claim about a percentage change over a certain time period
- calculations from an appropriate business calculator that considers increased costs relevant to your particular business
- information from your professional advisors or consultants, e.g. accountant reports showing the impact of the carbon price on your business' input costs
- information from your industry association and the government. This may provide guidance as to likely price impacts as a result of the carbon price in certain industries. Information dealing with your specific business model is more likely to reflect your particular costs.

You should bear in mind that general information from broader sources, such as newspaper reports, magazines and websites, may not alone be sufficient to support your claim.

For more information, see *Business Snapshot—Carbon price claims: information to support your claims* available online at www.accc.gov.au/carbon

Key points:

You should ensure any claim your business makes about the impact of the carbon price:

- is truthful, and
- has a reasonable basis.

Claims that rely on supplier information

Checklist—Tips when making claims based on supplier information

If you are considering relying on information from your supplier when making a claim to your own customers about the impact of the carbon price, you need to assess whether it is reasonable to rely on the information. You should consider:

- ☑ Any explanation your supplier has given you about the impact of the carbon price, and any other unrelated factors that have contributed to their price increases.
- ☑ Whether the price increases are consistent with predictions by other sources, such as the government, your industry association and professional advisors.
- ☑ What your contracts with suppliers say about price increases.
- ☑ The impact of any rebates or assistance available to you or your suppliers.

Some of your suppliers' carbon cost increases may not be known immediately as some suppliers will be indirectly impacted by the carbon price at different times.

It is important to remember that any claim involving predictions about the impact of the carbon price needs to have a reasonable basis.

For more information, see *Business Snapshot—Carbon price claims: dealing with your suppliers and competitors*, available online at www.accc.gov.au/carbon

Relying on other information

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

The owner of the shop has not made enquiries with its energy retailer or other 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 the carbon price. The owner decided that 11% was a good estimate. In reality, the impact of the carbon price on this particular business is much less than the estimate.

This claim 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 the carbon price, then checked with government or industry information to see if their calculations were in the right range.

Information to support your claims

A manufacturer provides a letter to its customers outlining a price increase in response to the introduction of the carbon price. The manufacturer states that its products (currently priced at \$1.00) will increase by 2.5 cents per item.

The manufacturer has taken care to base its claim on information from its suppliers that identify cost increases due the carbon price. The manufacturer considers the following information when making the claim:

- *a notice from its energy retailer explaining that there is a 10% increase in electricity prices*
- *information about the cost of its services. The manufacturer notes from its records that energy-use amounts to 25% of its costs for producing products, and*
- *a comparison of its proposed increase with information provided by the government.*

The ACCC receives a complaint from one of the manufacturer's customers to investigate the claim that the price of products has increased by 2.5 cents per item in response to the introduction of the carbon price. Upon investigation the ACCC is satisfied that the manufacturer has a reasonable basis for its claim. By taking care to compare the information available from different sources and check the application to its own business costs, the business has avoided the risk of misleading its customers.

Checklist—How can I avoid being misled?

There are steps you can take when you consider purchasing goods or services from your suppliers:

- ☑ Look at what other suppliers are charging for similar products and services—See if they are saying different things about the impact of the carbon price, just as you would for any price increase.
- ☑ Watch out for scams—Be cautious about phone calls or emails offering to pay carbon price compensation into your bank account or asking survey questions about carbon. These may be scams.
- ☑ Make sure you only deal with people you know and trust. Avoid having a large number of staff authorised to make orders or pay invoices. This will reduce the risk of your business paying for something that it is not required or is not legitimate.

Information about how to protect yourself from carbon price scams is available at www.scamwatch.gov.au

Key points:

- The type of information you should have regard to before making a claim about the impact of the carbon price will depend on the type of claim made.
- Keep in mind that general information from broader sources such as newspaper reports, magazines and websites may not alone be sufficient to support your claim.

Carbon price calculators

A number of calculators have been developed to assist businesses and consumers understand the impact of the 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 due to the impact of the carbon price should be based on your own costs. Remember, you need to have confidence that the information you rely on is relevant to your particular business. Costs will differ from business to business. If you intend to rely on information from a third party when making claims about the impact of the carbon price, you need to assess whether it is reasonable to rely on this.

Checklist—When using a calculator, ask yourself these questions:

- ☑ Does the calculator consider your own costs, or an estimate across the industry? As individual business costs vary, a calculator that relies on industry wide figures 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.

For more information, see *Business Snapshot—Carbon price claims: guidance for business advisors* available online at www.accc.gov.au/carbon

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 was 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 the carbon price but is not sure. The owner visits her industry association website to see if there is any information on it about the carbon price. The information on the website is limited to predictions about the impact of the 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 the 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 the clinic's customers.

Talking with your competitors

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

Remember:

You must determine your carbon costs and prices independently from your competitors.

You should avoid discussions and, most importantly, agreements with competitors about the price impact of the carbon price.

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.

For more information, see *Business Snapshot—Carbon price claims: dealing with your suppliers and competitors* available online at www.accc.gov.au/carbon

Recommended prices and advice from your industry association

The Act prohibits agreements or understandings between competitors involving prices.

Your industry association should be wary about providing you with recommended price lists or fee schedules for use by members—in this case, the provision of prices incorporating the carbon price impact.

While an industry association's price list may be a recommendation only, it has the potential to facilitate expectations or understandings between members which may raise issues under the law.

Industry associations may be able to assist you by:

- providing you with information about how the carbon price works, and
- allowing you to get a more tailored understanding of how the carbon price may flow through to your business.

This type of guidance may allow you to determine what the impact might be on your particular costs rather than a one size fits all.

For more information, see *Carbon price claims—guidance for industry associations* available online at www.accc.gov.au/carbon

Key points:

- You must determine your carbon costs and prices independently from your competitors.
- You should avoid discussions, and most importantly, agreements with competitors about the price impact of the carbon price.

Dealing with your agents

Your business may be considering engaging the services of others to prepare and communicate promotional advertising material on your behalf. These services may include those provided by advertising agencies, newspapers, magazines, call centres or sales representatives.

If you decide to make a claim about the carbon price in promoting your goods and services, you need to ensure that you do not overstate or otherwise misrepresent the impact of the carbon price.

Remember, you may also be liable if your agent breaks the law. Your business could be exposed to adverse publicity as a result of your or your agent's activities which could damage your business.

Overstating a carbon price impact in advertising

An advertising agency is contracted by a manufacturer to design a television advertising campaign for their products. The agency is aware that the carbon price has some impact on the client's input costs, and uses information gathered from a newspaper article as the basis for the carbon price claim. The article suggests that input costs for participants in their client's industry may go up by a large percentage each year due to the carbon price. The agency airs an advertisement stating that consumers should 'buy now to avoid a huge annual price increase of 20% due to the carbon price each year'.

The claim is based on information gathered from a media article that significantly overstates industry trends, and has not been tested against the likely impact of the carbon price on the client's own costs and particular business model. This claim is misleading and may mean that the agency has breached the law.

Dealing with your employees

You may also be responsible for claims about the impact of the carbon price made by your employees—even if you did not instruct them to make a claim on your behalf. This means you should take care to train your employees and supervise their activities to ensure any claims are truthful and have a reasonable basis.

Point of sale issues

The overhead costs of a restaurant have gone up for reasons unrelated to the 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 the waiter's statement that the price increase is due to the carbon price. This claim 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 the carbon price.

What the ACCC can do

The ACCC can investigate and take action against businesses that make false, misleading or deceptive claims.

Some of the ACCC's powers include:

- requiring a business to provide documents and information that respond to a substantiation notice
- issuing infringement notices of \$6600 for a corporation (or \$66 000 for a listed corporation) where it considers a claim is false or misleading
- taking legal action against a business for breaches of the ACL
- seeking court-imposed penalties of up to \$1.1 million for serious breaches of the ACL or injunctions to stop a business from making certain carbon price claims.

The ACCC may ask you for information about price claims you make.

The ACCC can do this in a number of ways—for example by:

- making a written request to a business for documents and information
- issuing a substantiation notice on a business about a carbon price claim.

A substantiation notice is an investigative tool that the ACCC can issue to a business requiring documents and information that respond to the notice. 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 documents and information that respond to the notice within 21 days. This means that if you choose to make a claim about the impact of the 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.

Key points:

- If you decide to make a claim about the carbon price in promoting your goods and services you need to ensure that you do not overstate or otherwise misrepresent the impact of the carbon price.
- You may also be responsible for claims made by your employees.

Making a complaint

Businesses and consumers with complaints and inquiries can contact the ACCC by calling the ACCC Carbon Price Claims Hotline on 1300 303 609 or using the ACCC Carbon Price Claims Webform available at www.accc.gov.au/carbon

Small businesses can also contact the Small Business Help Line on 1300 302 021.

More information

Business information

FAQs and Business Snapshots are available online at www.accc.gov.au/carbon

For more information on substantiation notices see *Business Snapshot—ACCC powers to issue infringement, substantiation and public warning notices* available at www.accc.gov.au

The ACCC's Compliance and Enforcement Policy

Available at www.accc.gov.au/cepolicy

How the carbon pricing mechanism works

For more information on the administration of the carbon pricing mechanism, please contact the Clean Energy Regulator on 1300 553 542 or visit www.cleanenergyregulator.gov.au

ACCC contacts

ACCC Carbon Price Claims Hotline 1300 303 609

ACCC Carbon Price Claims Webform available at www.accc.gov.au/carbon

For information in languages other than English, call 13 1450 and ask for 1300 302 502

TTY service for people with hearing or speech difficulties:
1300 303 609

www.accc.gov.au