



BUSINESS SNAPSHOT



Carbon price claims: guidance for industry associations

Industry associations play an important role in providing members with information about the impact of the carbon price.

Under the *Competition and Consumer Act 2010*, your members must not make false, misleading or deceptive claims about the price of goods or services. This includes false, misleading or deceptive claims linking price rises to the carbon price.

- Your members are entitled to increase their prices as they 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.
- Like any other claim, if your members make a claim about the impact of the carbon price or why its price has increased, the claim should be truthful and have a reasonable basis.

Carbon price claims

When providing information to your members about prices, you should encourage them:

- not to make claims linking price increases to the impact of the carbon price unless they are truthful and have a reasonable basis.

- to remember their broader obligations and avoid discussions and, most importantly, agreements with competitors about the price impact of the carbon price.

Relying on third party information

Your members may consider information from a range of sources, including information from their industry association, when determining the impact of the carbon price on their costs, and ultimately their prices.

If your members intend to rely on information from third party sources when making claims about the carbon price to their customers, they need to assess whether they have a reasonable basis for relying on the information.

Before they make a claim, your members should consider:

- any explanation the third party has provided about the impact of the carbon price.
- whether the third party's calculations reflect the cost of inputs into their own business—if they are being used to calculate a carbon price.
- whether any price increases are consistent with the carbon price impact as predicted by other sources such as the government, their industry association or professional advisers.

- if there are other factors (unrelated to the impacts of the carbon price) that have contributed to the price increase.

For more guidance on relying on information from suppliers see further Business Snapshots available at www.accc.gov.au/carbon

Key points on pricing

- It is important that your members determine their carbon price costs independently and by considering the circumstances of their particular business.
- You should consider providing information and assistance that enables your members to estimate the impact of the carbon price, reflecting their own business costs and needs.

Recommended prices

Associations should be wary about providing members with recommended price lists or fee schedules for use by members—in this case, the provision of prices incorporating the carbon price impact. The *Competition and Consumer Act 2010* (the Act) prohibits agreements or understandings between competitors involving prices. While an 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.

Associations should consider other ways to assist their members such as the provision of information about how the carbon price works allowing the business to get a more tailored understanding of how it may flow through to their business. This type of guidance allows each business to determine what the impact might be on them given their own particular costs rather than one size fits all.

Example

An industry association releases a bulletin to its members which states that:

“Our recommended retail prices have increased by 2% across the board in response to the carbon price. All members should increase their prices.”

Guidance of this type by an industry association would raise strong concerns. The bulletin seeks to encourage or induce members to adopt an agreement or understanding in the form of a minimum price increase for goods or services sold by industry members. The Act prohibits practices of this type.

What can the ACCC do?

The ACCC has a variety of powers that may be used to investigate the accuracy of claims about the impact of the carbon price.

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 prices linked to the carbon price and cannot stop a business from putting up its prices as a result of the carbon price.

ACCC investigative and enforcement powers

The ACCC may investigate and take action against businesses that make false or misleading 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 Australian Consumer Law (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 claims.

More information?

- 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.
- For more information for industry associations, see the Industry associations, competition and consumers publication available online at www.accc.gov.au
- 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
- For more information on carbon price claims and representations see *Carbon price claims—Guide for business*, FAQs and other Business Snapshots in this series available online at www.accc.gov.au/carbon
- 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

Infocentre 1300 302 502

Website www.accc.gov.au

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

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