



# BUSINESS SNAPSHOT



## Carbon price claims: information to support your claims

Under the *Competition and Consumer Act 2010*, you 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.

- 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.
- Like any other claim, if you choose to make a claim about the impact of the carbon price or why the price has increased, this claim should be truthful and have a reasonable basis.
- Be aware if you make a claim the ACCC may ask you to provide information in support of your claim.

### Types of supporting information

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. Before making a claim, you need to be confident that any price increase linked with the carbon price applies to your own business. This includes claims 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 cost due to a particular factor, such as the carbon price. In these circumstances, you will need to carefully consider whether to make a carbon price

claim. If you are considering making a claim, information you should consider before making a claim includes:

- invoices showing the impact of the carbon price on your supply chain or business input costs (eg. raw materials, packaging and transport, where relevant).
- notices/invoices showing the impact of the carbon price on the cost of your services (e.g. electricity, gas, waste disposal and travel).
- invoices and other information showing the impact on your product/services before and after a price change 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 or industry.
- information from your professional advisers 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 which may provide information as to likely price impacts as a result of the carbon price in certain industries, noting that information that deals 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, may not be sufficient to support your claim.

## Example: Supply chain issues

A food manufacturer has decided to pass on cost increases from the carbon price to its resellers. The manufacturer makes the claim to his resellers that 'some of the cost increases on the product range are in part due to the carbon price'. The manufacturer provides a table showing the supply and service inputs which have gone up as a result of the carbon price. The increases are shown within a small percentage range.

The manufacturer has taken care to base its claim to resellers on information from its suppliers that identify cost increases due to the carbon price. The manufacturer assesses and relies on a number of sources of information including:

- modelling from its auditors about the sources of carbon costs and predictions about future carbon costs.
- invoices from its suppliers showing the impact on its transport costs.
- notices from its electricity and gas suppliers explaining a 'percentage increase within a range' which is due to the carbon price.
- information from the government and industry associations.

Having considered a range of information relevant to the particular business, the business has developed a reasonable basis for making a claim that its cost increases are in part due to the carbon price.

## Making predictions

Some carbon cost increases from your suppliers may not be known immediately as some suppliers will be indirectly impacted by the carbon price at different times. There may also be a period between the date an invoice is received and the date that the increase in cost is reflected in your supplier's or your price.

In dealing with these factors, it is important to remember that any claim or representation that involves predicting the impact of the carbon price needs to have a reasonable basis.

## Relying on third party information

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 information before making a claim. If you choose to make a claim relying on this information, you need to have confidence that the information is relevant to your particular business as costs will differ from business to business.

## What can the ACCC do?

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

The ACCC may issue a substantiation notice requiring a person to provide certain documents and information in response. If you receive a substantiation notice, you must provide the ACCC with the information and documents which respond to the notice within 21 days. Information on which you have based your claim will be useful in responding to a substantiation notice.

## 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 (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](http://www.accc.gov.au/carbon). Small businesses can also contact the Small Business Help Line on 1300 302 021.
- For more information about substantiation notices see *Business Snapshot—ACCC powers to issue infringement, substantiation and public warning notices* available at [www.accc.gov.au](http://www.accc.gov.au)
- For more information on carbon price claims and representations see the *Carbon price claims—Guide for business*, FAQs and Business Snapshots in this series available online at [www.accc.gov.au/carbon](http://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](http://www.cleanenergyregulator.gov.au)

### ACCC contacts

Infocentre 1300 302 502

Website [www.accc.gov.au](http://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](http://www.accc.gov.au)

© Commonwealth of Australia 2012

#### Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

ISBN 978 1 921964 77 0

ACCC 06/12\_47572\_499