



Australian
Competition &
Consumer
Commission

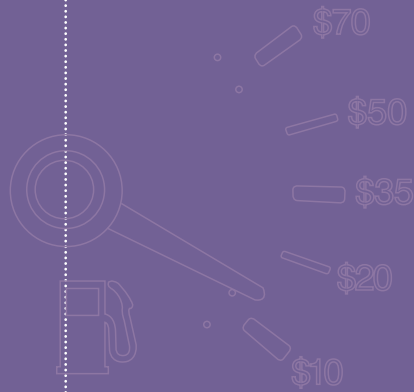
GUIDELINES FOR PRICING IN THE

motor vehicle industry

NOVEMBER 2004



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Competition &
Consumer
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ISBN 1 920702 61 X

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Important notice

This guideline is designed to give you basic information; it does not cover the whole of the Trade Practices Act and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining how the Act applies to that conduct.

Produced by the ACCC Publishing Unit 11/04.

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// Introduction

The motor vehicle industry relies on advertising to promote its products. As price plays a major role in the decision to buy a motor vehicle, so does price advertising in attracting customers.

The Australian Competition and Consumer Commission (ACCC) receives many complaints about price representations in motor vehicle advertisements. Issues of concern for business and consumer groups include:

- > price representations
- > advertising discount prices
- > bait advertising
- > cash rebate/cash back offers.
- > use of disclaimers in pricing
- > pictorial representation of vehicles
- > cost or below cost advertising

About this guideline

This guideline has been developed in consultation with the motor vehicle industry and other stakeholders to provide practical guidance about these concerns and other advertising practices.

The guideline sets out the ACCC's views on what must be done to comply with the *Trade Practices Act 1974 (Act)* with examples, as well as what the ACCC considers to be 'best practice' in the area. The guideline also provides some examples of practices that are likely to contravene the Act.

This guideline should not be relied on as a statement of the law. It is not the role of the ACCC to provide legal advice. The information is for general guidance only and reflects the ACCC's opinion on the types of pricing conduct that is either generally acceptable or not under the Act. If you are unsure about whether you are breaching the Act, seek out specific legal advice.

Why 'best practice'?

The ACCC encourages the industry to adopt best practice principles in advertising. Adhering to the best practice principles in this guideline is likely to:

- > enhance consumer confidence not only in the seller/dealer/manufacturer relationship, but the brand and the industry as a whole
- > attract customers to markets
- > minimise the risk of businesses in the motor vehicle industry contravening the Act.

Relevant provisions of the Act

The provisions of the Act relevant to price advertising in the motor vehicle industry include:

section 51A—making misleading representations about future matters without reasonable grounds for doing so

section 52—engaging in misleading or deceptive conduct

subsection 53(a)—making false representations that goods are of a particular style or model

subsection 53(b)—falsely representing that goods are new

subsection 53(e)—making false or misleading representations about the price of goods or services

subsection 53(ea)—making a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods

subsection 53(g)—making a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy

section 53C—stating the cash price in circumstances where a representation has been made as to part price

section 56—bait advertising.

How these provisions apply to price advertising in the motor vehicle industry is explained in more detail in this guideline.

In addition to the above provisions, advertisers should also be aware that there are equivalent provisions in the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) which apply to advertising in relation to financial services, such as credit and finance.

// Price representations

The law

The Act does not require businesses to state the prices of motor vehicles in their advertisements. However, a failure to advertise prices may in certain circumstances contravene the Act if it constitutes false or misleading conduct (ss. 52, 53(e)). For example, an advertisement that implies the vehicle is very 'cheap' when in reality turns out to be very expensive, may be misleading.

It is your choice to advertise prices, but if you do advertise the price or part price, the representations must state the price that needs to be paid before the vehicle can be purchased and must be accurate, unambiguous and clear.

Generally prices in advertisements are, unless otherwise clearly noted in the advertisement, the maximum price at which the vehicle will be sold. However, purchasers are free to negotiate lower prices with individual dealers. The fact that some purchasers may be able to successfully negotiate a cheaper price does not relieve a vendor from ensuring that any price representation is within the ambit of the Act.

The term 'price' refers to the actual price of the good or service purchased plus any mandatory components that must be paid before a consumer can receive the good or service. These components may include taxes, charges (such as delivery charges), levies and/or fees.

The ACCC takes the view that a component is part of the price if it is mandatory to pay for that component to acquire the good or service advertised. It does not matter that the payment may be due and payable to someone other than the person advertising the package. For example, if the price of a motor vehicle is advertised, then any compulsory payments for delivery, stamp duty and so on, required to be paid to obtain that motor vehicle, must be specified irrespective of the fact that payment for those components may not be directly payable to the trader advertising the motor vehicle.

The ACCC does not see the following as mandatory components and therefore they do not have to be specified: additional charges or 'on road costs', such as vehicle registration and third party insurance, which are not mandatory to acquire a vehicle, but must be paid to operate a vehicle on the road. Dealers may of course choose to include additional costs in their advertisements. Stating the price is not enough to comply with the Act, dealers must not mislead or deceive customers (ss. 52, 53(e)).

The form a price representation should take

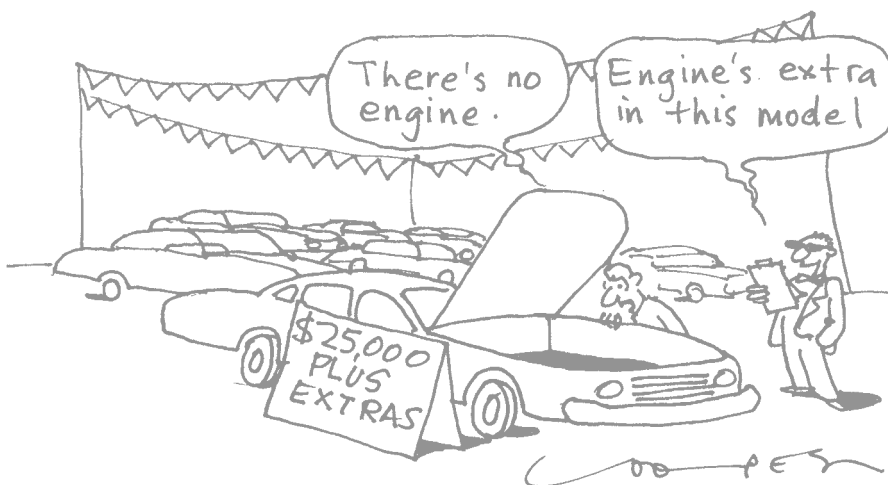
A price representation may take one of two forms:

- > may comprise of a single figure total price, being the sum of the mandatory components
- > may refer in dollar terms to all components, or aggregates thereof, that make up this single figure total price.

When the price is stated by its component amounts, advertisers must ensure that the price representation is not misleading or ambiguous and that the calculation of the sum of the component amounts does not involve a complex calculation.

All component amounts should be sufficiently emphasised, particularly when the headline representation is not the single figure total price. The degree of prominence required may well vary depending on the circumstances. When components and the main price are given more or less equal prominence, it is not likely to be misleading.

When mandatory components are tucked away in the fine print, it is likely to be misleading.



Common types of price advertising—new cars

Price representations by manufacturers

When advertising, car manufacturers do not generally represent the actual purchase price of a motor vehicle. This is because consumers cannot buy motor vehicles from manufacturers. The manufacturer usually represents the recommended retail price (RRP) of the advertised vehicle and is therefore not expected to specify the dealer delivery and statutory or government charges.

If the manufacturer does advertise price or part price it is not obliged to specify the cash price (including all mandatory components of price such as dealer delivery and statutory government charges) of the vehicle.

However, manufacturers must clearly advise consumers that such charges exist to ensure that the advertisement is not misleading or deceptive.

An advertisement by a manufacturer may be misleading or deceptive if it conveys the impression that the car:

- > may be purchased from a manufacturer
- > can be purchased from a dealer at the RRP.

Example likely to contravene the Act

Question: A car manufacturer advertises a car at the ‘recommended retail price of \$19 990’ without further mentioning that the RRP excludes other mandatory charges such as dealer delivery charge and stamp duty. Why is this a problem?

Answer: The manufacturer has not alerted the consumer to the fact that additional amounts need to be paid before the consumer can take delivery of the car and is also representing that the car may be bought from them at the RRP.

Best practice

When a manufacturer is not able to state the exact amount of mandatory charges (i.e. dealer delivery charges and administration fees), it is best practice to display the RRP with a prominent notice that it excludes other mandatory charges which may vary from trader to trader. In such cases, it is also best practice to note that the advertisement is a ‘manufacturer’s advertisement only and that vehicles must be bought from dealers’.

Price representations by individual dealers

Consumers should be able to acquire motor vehicles at the price at which they are advertised. If you are advertising a price that is not all-inclusive because there are two or more figures to add up before you get the total price, working out the total from the amounts should not involve an ambiguous or complex calculation. The price must be clear cut.

Price representations made by individual dealers should:

- > specify all mandatory components a consumer must pay for the motor vehicle not using an ambiguous or complex calculation to ensure that the full price is stated
- > display material qualifications prominently and in close proximity to the advertised price to ensure that the price representation is not misleading or deceptive.

Best practice

Display a total ‘drive away no more to pay’ price as a single figure, with a clear, unambiguous and accurate representation of how it is calculated, so that the consumer will immediately know the total amount of money required to buy and take delivery of the car. Advertisements that refer to a drive-away price that include less than 12 months registration should include a disclaimer indicating the registration period offered with the vehicle.



\$22 990 Drive away
no more to pay.

Best practice

Consumers should expect to pay no more than the advertised price.



\$20 990 + \$2000
(delivery charge
and stamp duty).
Other on-road
costs additional.

Minimum required
(All mandatory
components should
be stated)



\$18 343 + \$1817
GST + \$1000 dealer
delivery & admin +
\$1830 stamp duty.
Other on-road
costs additional.

Likely to contravene the Act

Consumers should be informed about the amount or total of all mandatory charges.

A complex or ambiguous calculation will contravene the Act as the cash price of the motor vehicle must be specified.



\$18 343 + statutory
& dealer delivery
& other charges.

Price representations by a group of dealers (cooperative advertising)

It is a widespread practice within the motor vehicle industry that new vehicle advertisements are undertaken cooperatively (commonly known as group or cooperative advertising), involving dealers and manufacturers or dealers only.

The law requires the same level of disclosure in group advertisements as it does for individual dealer advertisements.

Participants in group advertising arrangements should also be aware that such arrangements could raise issues under the price fixing provisions of the Act.

Whether a particular group advertising arrangement may raise competition issues will depend on the facts of each case. Group advertising arrangements will not raise competition issues if the effect or likely effect of the arrangement is not to control or maintain prices by agreeing to an artificially high advertised price, and prices remain genuinely negotiable between dealers and customers.

When advertisements prominently state that the advertised price is negotiable, it may reduce the risk of price fixing, depending on the circumstances of the case.

Manufacturers or individual dealers who are concerned about this issue should obtain independent legal advice.



Best practice

Display a total 'drive away no more to pay' price as a single figure or all components of a 'drive away' price. The consumer will immediately know the total amount of money required to buy and take delivery of the car. Advertisements that refer to a drive away price that include less than 12 months registration should include a disclaimer indicating the registration period offered with the vehicle.

To avoid price fixing, individual dealers must understand that their prices are genuinely negotiable. Dealers concerned with this issue should seek advice specific to their circumstances.

Common types of price advertising—used cars

An advertisement for a used vehicle should state the cash price necessary to complete the transaction of sale between the consumer and the trader. However, a cash price need not be an all-inclusive figure as long as all mandatory components are prominently disclosed in close proximity to the advertised price allowing the consumer to easily work out the total price payable. Advertisements for a used vehicle must not be misleading or deceptive in the way that the price is advertised.

Price representations for finance and/or lease arrangements

When terms specific to the finance and/or lease arrangements are used, take care that they are not misleading or deceptive. The representation should be clear, unambiguous and simple to understand. Jargon such as 'balloon payment', 'residual, minimum buy back' and 'TAP' may confuse some consumers, and should be adequately explained. Misleading claims about the financing of the price of a motor vehicle may also breach the Trade Practices Act and/or the ASIC Act.

Finance and/or lease offers can be divided into two distinct types: offers for private consumers and offers for business consumers. All finance and/or lease offers should identify whether the finance and/or lease is being offered to private consumers or to business.

Finance offers should also state the cash price in circumstances where a representation has been made for a part-price.

Finance offers

At the minimum, offers of finance should state the following terms:

- > interest rate per annum
- > deposit requirements
- > periodic payments
- > duration of the contract
- > any fees and charges payable
- > any residual or balloon repayments
- > date the offer ends
- > the total amount the consumer will eventually pay over the life of the agreement
- > the total amount required to buy the motor vehicle immediately for cash (i.e. the cash price).

Example likely to contravene the Act

When a used car dealer advertises the price of a car as periodic repayments without stating the total cash price of the vehicle. For example, advertising a car's price as \$100 per month over 24 months would not be a sufficient specification of the cash price if residual or balloon payments are required. The consumer cannot work out exactly how much the car will cost over the 24 month period unless the amount of the residual or balloon payment is also specified in the advertisement. In this example, the car appears to cost \$2400. However, depending on the terms of the finance offered the cost of the car would be more than \$2400.

Lease offers

At the minimum, offers to lease should state the following terms:

- > deposit requirements
- > periodic payments
- > duration of the contract
- > any fees and charges payable
- > any residual or balloon repayments
- > date the offer ends.

Advertisers should be aware that there are a number of other codes and legislation they should adhere to when advertising finance offers. In particular, the Uniform Consumer Credit Code provides specific disclosure requirements in relation to finance offers to consumer purchases. Dealers concerned with this issue should seek advice specific to their circumstances.

// Use of disclaimers in pricing

The level of disclosure of mandatory components in advertising prices is discussed in section 1 under ‘the form a price representation should take’.

Disclaimers, qualifications or fine print may be used to clarify what the main offer does or does not include. However, they should only be used to clarify the meaning or intent of a statement and not to correct a misleading impression created by the more prominent aspects of the advertisement. To be effective, a disclaimer must be sufficiently prominent, placed in close proximity to the main representation, clear in meaning and fully address the issue being clarified. If not, the overall effect of the advertisement may be misleading and deceptive, and likely to contravene the Act.

For example, where a price of ‘\$19 990*’ is given and the asterisk is used to clarify the basis on which the price was calculated, the asterisked information should be clearly linked and close to this main price—‘*price based on delivery within southern Sydney suburbs’.

The question of whether fine print is sufficiently prominent is a matter of judgment and depends on the size, location and detail of the fine print in relation to the headline advertisement.

The application of these principles will also vary according to the medium used. This guide cannot specify a minimum font size because the relative legibility of fine print will vary with the size of the newspaper, billboard, television, cinema or internet advertisement. However, as a guide:

- > for print advertisements (such as press, point of sale and billboards), the font type and point size of a disclaimer must be such that the disclaimer is clearly readable in the context in which it appears
- > for electronic audio-visual media (such as television and the internet), the point size of a visual disclaimer must be such that the disclaimer is clearly readable in the context in which it appears and remains on screen for sufficient time to be noticed and read
- > for electronic audio media (such as radio), the disclaimer should be clearly stated so that it can be reasonably understood.

Example likely to contravene the Act

A newspaper advertisement in Sydney stating in large print the discount price of \$19 990* on a particular model. Another much smaller asterisk accompanied by very small fine print states “*for delivery within southern Sydney suburbs only”. The overall impression this advertisement creates is that the price is available to all readers of the Sydney based newspaper.

Remember: it is the overall impression that counts! The test is whether the consumer is misled or is likely to be misled, and not what the dealer/trader thinks.

When a pricing offer is only available to a specific group of buyers, or excludes one or more groups of buyers, this must be clearly identified in the advertisement. The correct approach will depend on the particular circumstances, but as a guide:

- > when one or more easily identifiable groups of buyers are precluded from purchasing at the advertised price they should be clearly identified—for example, ‘Not available to fleet or government customers’
- > if it is clearer to do so, identify the group to whom the offer is applicable, for example ‘Private buyers only’.

Such a disclaimer should appear in close proximity to the price and be prominent.

Best practice

Display with equal prominence and in close proximity all material conditions of an offer and refrain from using disclaimers, qualifications or fine print to correct a misleading impression created by a more prominent part of the advertisement. Customers should not have to scour an advertisement or pages of a price list for additional information.



// Advertising discount prices

A discount price claim must accurately reflect a comparison between the most recent price and the current discounted price for that vehicle. If not, it is likely to mislead or deceive and breach ss. 52 and 53 of the Act.

The ‘most recent price’ used in the comparison should be the price at which the vehicle was available for a reasonable period of time before the discount offer commences and not just a price that has been inflated to make a subsequent sale price seem more attractive. The discount offer should represent a genuine price decrease.

A representation as to the ‘previous price’, or reduction, or comparison should be as accurate as the discount price itself.

A discounted price should only be available for a limited period of time. When a reasonable amount of time has elapsed, that discounted price effectively becomes the new selling price, so it may be misleading or deceptive to continue to call it a ‘discount price’.

Take care when using claims such as ‘\$X saving off RRP’ to ensure that it is not misleading or deceptive. Advertisements can say ‘save off RRP’ as long as ‘RRP’ refers to the manufacturer’s or wholesaler’s recommended retail price for the particular brand or model of vehicle.

It is understood by most consumers that the term ‘RRP’ refers to the retail price recommended by manufacturers or wholesalers. Individual dealerships and group (cooperative) advertisers should therefore be careful not to mislead consumers by using the term otherwise.

// Pictorial representation of vehicles

A motor vehicle depicted in an advertisement should correspond in model, visible accessories and price to a vehicle offered for sale at the dealership. If not, it is likely to mislead or deceive and breach ss. 52 and 53 of the Act.

The phrase ‘picture for illustrative purposes only’ (or other similar expressions) accompanying a pictorial representation that does not correspond to the vehicle on offer has the potential to mislead consumers in most circumstances. The misleading or deceptive feature of the advertisement is unlikely to be removed by a disclaimer.

When a single second-hand motor vehicle is depicted, but a wider range of vehicles is on offer, at least one of the vehicles available for sale should correspond in model, visible accessories and price to the vehicle in the advertisement. If it is impracticable for a photograph of the actual second-hand motor vehicle to be used in an advertisement, it is appropriate to depict a representation of the same make and model of vehicle, together with a prominent disclaimer.

When an advertisement relates to a range of models, but only one model is pictured, take care when advertising a price to ensure that consumers are not misled or deceived about the price of the advertised vehicle.

Example likely to contravene the Act

A picture of a 2004 model 4WD with bull bar, fog lights and other extras is used in a newspaper advertisement by a car dealer along with a stated price of \$43 990. However, only the 2003 model without extras can be purchased at \$43 990. The 2004 model with extras depicted in the advertisement costs \$44 990.

The motor vehicle offered for sale should have all the attributes of the motor vehicle discussed in the advertisement and shown in the accompanying image.

Manufacturer advertisements depicting models not available in Australia accompanied by the disclaimer ‘not the Australian model’ may risk misleading consumers particularly if a RRP accompanies the advertisement and the model for sale in Australia differs substantially in quality or external features from the vehicle depicted in the advertisement.

// Bait advertising

The Trade Practices Act prohibits advertising goods at a specified price if the advertiser is aware or should reasonably have been aware that they would not be able to supply reasonable quantities at that price for a reasonable period.

Bait advertising occurs when motor vehicles are advertised at an attractive price, but when the consumer goes to buy the motor vehicle they are not available and the dealer seeks to switch the consumer to a higher priced or differently optioned motor vehicle.

A dealer advertising motor vehicles for sale at a specified price must ensure that such vehicles are available at that price for a reasonable period and in reasonable quantities.

As motor vehicle stock is sometimes purchased against orders received, it is acceptable to have the vehicle available subject to a reasonable delivery time.

Example likely to contravene the Act

A car dealer advertises 'loads of 2003 model 4WD's at an attractive special price of \$43 990'. Customers come flocking and are then told that all the 2003 model 4WD vehicles have been sold or are out on a test drive, and instead are offered the 2004 model at \$46 990. Only one 2003 model 4WD vehicle was recently available for sale at the dealership—but it was sold the week before the advertisement.

Best practice

A dealer advertising **second-hand** vehicles for sale should stipulate the number of vehicles available.

// Cost or below cost advertising

Care must be taken in advertising vehicles ‘at cost’ or ‘below cost’. If the base cost is not accurately reflected, it is likely to mislead or deceive customers and breach ss. 52 and/or 53 of the Act.

The ACCC takes the view that prices in a ‘cost price’ sale, ‘below cost’ sale, ‘cost plus X%’ sale, or similar sales referring to ‘cost’, should reflect the ‘landed’ cost of the vehicle to the retailer. That is, they should relate the actual cost to the retailer of the motor vehicle. Other overheads such as rent and wages should not be used in a cost or below cost price claim.

Best practice

A dealership advertising a clearance sale at cost price uses the ‘landed’ or delivered cost of the motor vehicle to the dealership as the cost price.

// Cash rebate/cash back offers

A manufacturer/distributor, dealer group or individual dealer may at times offer a rebate or cash back payment on the purchase of a motor vehicle. Care must be taken not to mislead customers when such offers are made. Unless the purchaser receives the rebate or payment at the same time the purchaser pays for the vehicle, the price quoted in an advertisement should not be quoted net of the rebate or payment.

When there is a rebate or cash back offer on a vehicle advertised for sale, the advertisement should clearly identify that the purchaser will receive a separate rebate after buying the vehicle. Any limitations or conditions on a cash rebate or cash back payment should also be fully explained with equal prominence to the rebate or cash back offer.

Example likely to contravene the Act

A motor vehicle with a total price of \$40 000, but with a cash rebate of \$2000 is advertised at \$38 000.

Best practice

A dealership advertises the full price of the motor vehicle and the cash rebate as separate amounts. Any conditions of the rebate are quoted with equal prominence.



// Contacting the ACCC

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