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Truth in Advertising – Component Pricing

ANDREW NICHOLSON

Recent amendments to the Trade Practices Act (the Act) require further transparency in pricing. Businesses are no longer able to lure in consumers by advertising part only of the price of any product. Following lobbying by consumer groups and the Australian Competition & Consumer Commission (ACCC), the Government passed amendments to the Act in relation to Single Price Advertising which commenced on 25 May 2009.

SCOPE OF AMENDMENTS

The Act will cover any form of advertising of the goods and services of a business where price is indicated, from new car sales and airline ticketing through to fast food and everyday consumer items. It will not apply where goods are sold to other companies. The changes also apply to any form of advertising, whether in print, television, radio or any other means.

The intent of the amendments is to require businesses to advertise in a prominent manner a single (complete) price for any product/service. While a number of components may contribute to the price of goods/services, those component parts may still be set out, but a single price must be prominently identified so the consumer is clear on the amount which has to be paid to complete the purchase.

There are several exceptions to the Act, some of which are mentioned below.

QUERIES ON PRICING

We have had a number of enquiries in relation to the application of the amendments to business. Some of the most frequently asked questions include:

- **Optional extras** - If customers wish to change or modify goods (for example scotch guard on a lounge), those matters may generally be regarded as optional extras and are not required to be shown in the single price.
- **Known optional charges** - Any known optional charges should be clearly set out.
- **Delivery fees** - Traders are not required to include delivery fees in the single price. However, where the minimum amount for any delivery fee is known, that must be specified.
- **Public holidays** - It is insufficient to merely indicate that a surcharge will apply to the regular price on public holidays.
- **Member discounts** - Advertising special prices for members is in breach of the Act. The additional charge payable by a non-member must be indicated in the price.
- **GST** - Of course, the single price must include GST.

PENALTIES

The consequences of failure to comply with the Act include civil remedies such as injunctions, compensation and corrective advertising, which can be both expensive and damaging to the brand. Criminal penalties may also be imposed. They include fines of up to $1.1 million for corporations and $220,000 for individuals.

It is likely that the ACCC will be monitoring this area closely. It is imperative for businesses to get their house in order.

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Government crackdown on **lobbyists**

OLIVIA VERSACE

As a result of the recent furore surrounding former Government ministers receiving success fees and other fees for lobbying activities, Premier Bligh has taken further steps to regulate the lobbying industry in Queensland. The Premier recently banned lobbyists from holding government positions (such as directorships of government owned corporations) and announced a series of measures, including a green paper on integrity and accountability, designed to crack down on their influence.

The lobbying debate heated up earlier this year when in March a code to form part of the Ministerial Code of Ethics titled the "Queensland Contact with Lobbyists Code" ("Code") was introduced.

Lobbying activities in the Code are defined as **communications with a Government Representative in an effort to influence Government decision-making**, including the making or amendment of legislation, the development or amendment of a government policy or program, the awarding of a Government contract or grant or the allocation of funding, subject to certain exclusions such as petitions, statements made in a public forum and responses to tender requests.

At the same time, a Lobbyists' Register was established requiring lobbyists to register with the state government.

The Code defines a "lobbyist" as a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a government representative.

However, a lobbyist does not include:

- an organisation whose purpose is to represent the interests of its members (e.g. union or professional body);
- a religious or charitable organisation;
- an entity or person whose business is recognised as a technical or professional occupation which, as part of the services provided to third parties, represents the views of the third party (e.g. lawyers or accountants);
- a full-time employee of an organisation that represents their own interests.

In addition, certain persons are specifically excluded from engaging in lobbying activities in certain circumstances. These include:

- any former Queensland Government minister for a period of two years after they cease to hold office if the lobbying activities relate to these official dealings as a minister in their last two years in office.
- any former Queensland Government parliamentary secretary for a period of 18 months after they cease to hold office if the lobbying activities relate to these official dealings as a parliamentary secretary in their last two years in office.
- any former senior public sector employee (eg parliamentary service, local government, university) for a period of 18 months after they cease public sector employment if the lobbying activities relate to any matter that they had official dealings within their last 18 months in public sector employment.

It seems the debate will continue for some time to come. So if you or your business has dealings with the Queensland Government, you may want to watch this space.....

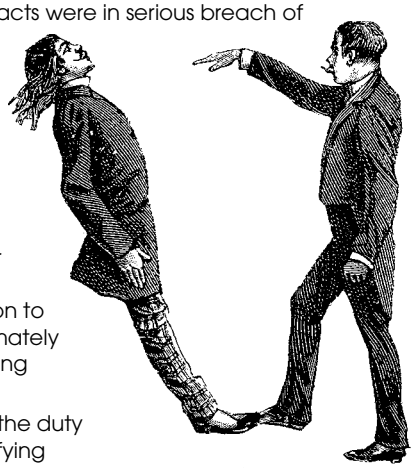
How far should an employer go?

NIGEL INGLIS

An employee approaches their employer and says they have been sexually harassed or bullied in the workplace. They also tell their employer that they don't want the matter to go beyond this, only that the employee "wanted you to know". How far should an employer go with the complaint?

Is it the duty of the employer to act against the wishes of the employee and take the complaint further? Or, should the employer respect the wishes of their employee and leave it at that? This was a question discussed in a recent case in the New South Wales Industrial Relations Commission.

In AWU NSW (on behalf of Grahovac) v BlueScope Steel (2009) NSWIRC 86, an employee was dismissed for sexual harassment after being at the centre of allegations made by a fellow employee. The employee, a pump hose attendant, was alleged to have hugged and kissed a fellow employee on the neck and was dismissed after an investigation found that the acts were in serious breach of company policy.



A key issue that arose, was that after telling her supervisor of the sexual harassment, the claimant expressed the wish that the information be kept private and that he not pursue any sort of inquiry outside of their discussion. Despite this, the manager took the information to a senior authority, which ultimately resulted in the employee being dismissed.

So the dilemma arises, does the duty of the employer lie with satisfying the wish of their employee to keep the matter quiet? Or does the greater duty lie with the overall welfare of the company and their employees? Further, should the interests of the employee even be considered? In this instance, the court held that the employer was correct in taking the matter further, stating:

> Employers must act to ensure a safe workplace - free of intimidation and harassment. A failure to do so might well be held to be in breach of the Occupational Health & Safety Act for which there are substantial penalties.

With sexual harassment claims on the rise and employee rights growing in importance, the question remains, how far should an employer go? The answer will always depend on the facts, and the issue of degree of seriousness will need to be considered and weighed.

The message from this decision is that no complaint should be taken lightly, even if the employee doesn't want anything to be done about it. We recommend that workplace policies should mention this so employees understand that sometimes it may not be possible to "do nothing" with their complaint.

If employers have a policy that says their organisation strives for a workplace free from sexual harassment or bullying, then this may have the added effect of placing an employer in a position where the duty to act is even greater.

The assistance of Natalie Bucceri in the preparation of this case note is greatly appreciated.

Fine tuning the amended **Liquor Act**

MATTHEW BRADFORD

The Queensland Parliament has passed further legislation to fine tune the recently amended Liquor Act (the Act).

The Act now recognises that uniform standard trading hours of 10am – 12 midnight are not appropriate for liquor warehouses, mining camps, airports and casinos. These venues will now be eligible to apply for suitable hours as determined on a case-by-case basis.

We have recently been involved in an application for a liquor licence for a remote mining site that was seeking approval to trade between 7am - 9am to cater for workers who finished their 12 hour shift at 6am and wanted a few after work drinks. Prior to these amendments being passed, it appeared that the site would not be permitted to sell liquor before 10am, which was too late as the mineworkers would generally be asleep as their next shift started at 6pm.

The amendments also now provide clearer exemptions for low risk premises to provide moderate amounts of liquor without needing to obtain a liquor licence.

Florists or gift basket providers can now provide up to two litres of liquor (or one litre of spirits) as part of a floral arrangement or gift basket, as long as the value of liquor is not more than 75% of the price of the arrangement or gift.

Retirement villages may now sell up to two standard drinks per person to residents or their guests. This change does not go as far as New South Wales liquor legislation, which contains a broader exemption for residents and guests and, in particular, it does not limit the number of drinks that may be sold.

Hairdressers and barbers may now sell up to two standard drinks per person to their customers. Similarly, limousine operators can sell up to two standard drinks per person to their passengers during a journey.

It is pleasing to see a common sense approach being taken in these areas, given the recent emphasis on increasing regulation in the liquor industry. These amendments will go some way towards tidying up the ambiguities and anomalies that have arisen as a result of recent liquor licensing reform. However, we expect to see several more minor amendments passed in the future, as practical issues expose gaps and inconsistencies within the legislation.

A New Super Tribunal

Queensland Civil and Administrative Tribunal ("QCAT")

MELANY DAY

On 17 June 2009, the Queensland Parliament passed the Queensland Civil and Administrative Tribunal Act 2009 (the Act). The aim of the Act is to establish an independent tribunal which will carry out its functions in a manner that is fair, just, economical, informal and quick and in a way that ensures a high quality and consistency of decision-making in public administration.

The tribunal will have original, review and appellate jurisdiction to the Appeal Tribunal or the Court of Appeal. It will be organised into three divisions, specifically, human rights matters, civil disputes and administrative and disciplinary matters. The tribunal's original jurisdiction will address a primary decision regarding a range of matters such as minor civil disputes, guardianship, discrimination, building disputes and disciplinary matters. The tribunal will also have jurisdiction to review decisions that are made by another body, including a government department, regulatory or disciplinary authority.

The small claims and minor debt jurisdictions of the Magistrates Court will be transferred to the tribunal and have the highest number of matters of any amalgamating tribunal. Over 15 other tribunals will be amalgamated but of particular interest are the Commercial and Consumer Tribunal, Guardianship and Administration Tribunal, Retail Shop Leases Tribunal and the Gaming Commission.

The tribunal will incorporate all levels of the judiciary in the performance of its functions. A president who is a Supreme Court Judge and a deputy president who is a District Court Judge will lead it. There will be a core group of full-time members who are experienced legal practitioners as well as sessional members who have special knowledge and experience in the type of matter being heard by the tribunal.

Over 15 other tribunals will be amalgamated but of particular interest are the Commercial and Consumer Tribunal, Guardianship and Administration Tribunal, Retail Shop Leases Tribunal and the Gaming Commission.

The general rule will be that an applicant must represent himself or herself at any hearing unless the tribunal grants leave for someone to be legally represented.

Further, each party will pay their own costs. Only where the tribunal considers that it is in the interests of justice will an order for costs against a party be granted.

QCAT as an "all-encompassing" tribunal will commence on 1 December 2009 and will replace many existing tribunal and court functions.

LAND TAX CHANGE
RECOVERY FROM TENANTS

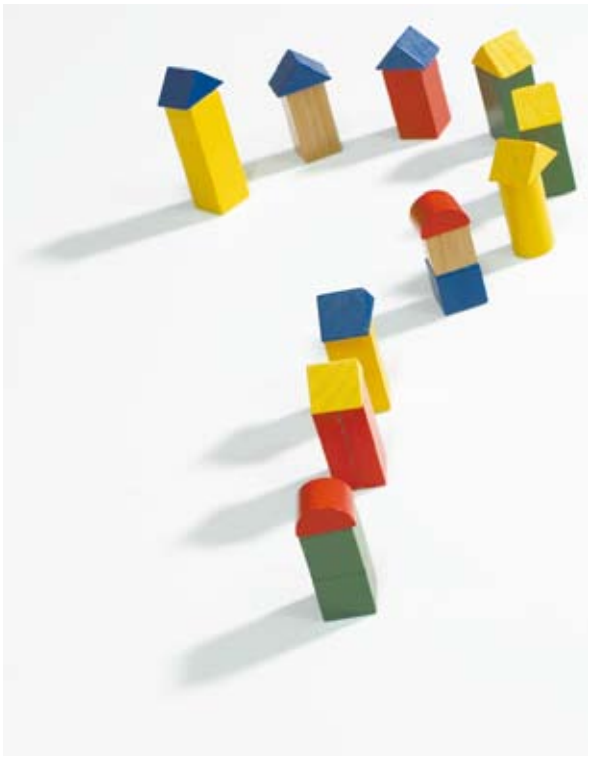
REBECCA CASTLEY

There has been a significant change to the Land Tax Act 1915 with effect from 30 June 2009. A landlord can now lawfully include a clause permitting recovery of land tax from a tenant.

The restriction against recovering land tax from tenants will continue to apply to tenants of residential property and retail shops.

There are also transitional provisions, the result of which is that the old section prohibiting land tax recovery will continue to apply to a "pre-existing lease". This means that landlords will still not be able to recover land tax from tenants under leases entered into after 1 January 1992 (which is when the old section became effective) and before 30 June 2009. This will also be the case for options or renewals and assignments of "pre-existing leases".

There is no guidance in the legislation as to when leases are "entered into" so the general principles of contract law will apply. There is also no clarification as to whether the term "pre-existing lease" includes agreements for lease or binding letters of offer entered into before 1 July 2009. However, if an agreement to enter into a lease is specifically enforceable and that agreement was entered into before 1 July 2009, it is likely that a court would find that the lease arising out of that agreement will be a "pre-existing lease" and still subject to the old prohibition against recovery of land tax.



The change to the Act of course does not require all tenants to pay land tax. Rather, for leases entered into after 30 June 2009, the lease will need to contain an obligation on the tenant to pay land tax in order for a landlord to recover. Landlords will therefore need to include this in negotiations with tenants and ensure the lease is correctly drafted. Interestingly, a tenant still does not have standing under the relevant legislation to object and appeal against valuation of land or land tax assessments. Presumably, this will mean that the number of objections lodged by land owners will reduce given that tenants will now be contractually obliged to pay the landlord's land tax bill.

JOHN MULLINS
EDITORIAL

At the time of dictating this editorial, Australia has just lost the Ashes and yet another Bledisloe Cup game against New Zealand. To the sport loving Australians this is all very depressing.

This all started me thinking as to what extent does sentiment drive the economy. There are all sorts of mixed messages from heads of Reserve Banks all over the globe. We have been told that this is a downturn different to all other downturns and that we should not expect recovery to follow the traditional pattern of recovery but no one has told us what pattern of recovery we should expect to see.

So is it hard economic circumstances or public and business sentiment which will drive and fuel a recovery? Obviously, it is a combination of both but which is the true driver, the true catalyst? I guess we will only know after the event.

We also have the confusing economic reality that whilst there is talk of economic recovery there is the prediction that unemployment will continue to rise as we are moving into a recovery phase.

While the focus is on the economy, at the State and Federal level there are significant legislative changes occurring driven by environmental issues, employment issues, taxation issues, probity issues and consumer protection. This edition of the Mullins Report deals with a number of these significant changes.

The nature of the change in legislation at the moment is both rapid and widespread. In some cases, such as the alcopop tax, we are seeing the collection of a tax before the legislation has even been passed by the Senate.

As usual we try to cover a wide range of topics that may be of interest to you. The article on employment law deals with the vexed question of the responsibility of employers to deal with a serious issue when the employee affected does not want any action taken. The change in Land Tax for leases has significant impact for both landlords and tenants

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