



AUSTRALIAN HOTELS ASSOCIATION

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Manager
Consumer Policy Framework Unit
Competition and Consumer Division
The Treasury
Via Email: australianconsumerlaw@treasury.gov.au

Dear Sir or Madam

RESTAURANT AND CAFÉ MENU SURCHARGES - DRAFT AMENDMENTS TO THE SINGLE PRICING REQUIREMENTS

The Australian Hotels Association (AHA) strongly supports the Government's proposal to amend the *Competition and Consumer Act 2010* and Regulations to exempt restaurant businesses from component pricing requirements. The draft legislation and regulations are appropriate and sufficient to give effect to the Government's stated intention of implementing the Productivity Commission recommendation to place restaurant menus outside the scope of Section 28 of the Australian Consumer Law (ACL).

The AHA is an organisation of employers in the hospitality and accommodation industry registered under the *Fair Work (Registered Organisations) Act 2009* representing hotels and hospitality businesses in all states and territories. Each of the AHA's more than 5,000 members provides meals and other food to customers for consumption on the premises and has been affected by the new requirements for the display of menu prices, which have been a source of frustration and anger for the industry.

The AHA has been a strong opponent of the application of these requirements since the Australian Competition and Consumer Commission (ACCC) first signalled its interpretation of the new ACL in 2009. The AHA has sought an exemption for hospitality venues in a number of forums, including through the Productivity Commission's *Annual Review of Regulatory Burdens* in 2010. In its report following the Review, the Productivity Commission recommended that restaurants and cafes be exempt from component pricing requirements on the basis that "their inclusion has imposed costs on these businesses without providing significant additional benefit to consumers." In December 2011, the Commonwealth formally accepted this recommendation and proposed that the ACL be amended to exempt restaurant and café menus.

The original intent of section 48 of the ACL was to curb misleading advertising of retail prices which could mislead consumers about the price of goods or services. Typically, the type of advertising related to cheap deals such as air fares or holiday accommodation where a headline basic price was (subsequently) inflated in the fine print by additional but undisclosed charges such as booking fees, fuel surcharges, departure taxes, etc.

It has been a long-standing and uncontroversial practice in the hospitality industry to apply a percentage surcharge to meals served on Sundays and public holidays. This practice derives from the industrial reality that staff wages, which make up more than one third of typical operating costs,

are by law heavily increased on weekends (penalty rates between 125%-175%) and public holidays (penalty rates of 275%). Those costs have increased dramatically since the introduction of the *Fair Work Act 2009*.

The relevant amendments to Australian Consumer Law (ACL) took effect from 1 January 2011. Under section 48 of the ACL, businesses were no longer permitted to promote or state a menu price that is only part of the cost of meals or goods, unless also prominently advertising the total price.

To meet the revised requirements of the ACL menus could:

- have a flat rate per-person surcharge nominated on the menu – e.g. a statement on the menu to the effect that a (flat fee) “surcharge of \$X per person will apply on Public Holidays and Sundays” (or similar);
- have a separate set of menus put out for days on which a surcharge applies, where all the prices listed are inclusive of the surcharge;
- put an extra price column on the menu, showing the prices inclusive of surcharges (the surcharge inclusive column must be as prominent as the normal price column) – this solution is confusing and was not recommended to members; or
- consider an overall restaurant pricing structure that avoids surcharges.

All of the above options add additional costs (or poses a risk of costs not being recovered), administrative burdens and confusion to the already complex business of running a successful hospitality business. The notion of being required by law to print, control and maintain two separate sets of menus for normal and special days is absurd, as is the notion of having separate column restaurant prices for different types of days – the traditional method of noting a surcharge was not broken, and did not require fixing.

The AHA notes that since the introduction of the ACL a small number of venues have been fined \$6,600 by the ACCC for not complying with this provision of the ACL and submits that this is an excessive penalty for such an insignificant technical breach where there is essentially no victim.

The AHA welcomes the proposed *Competition and Consumer Amendment Bill 2013* and the *Competition and Consumer Regulations 2013* (Section 80A of Schedule 1) and believes they are reasonable and sufficient to achieve the desired reduction in business red tape while still ensuring consumers will have protection and clarity when ordering from restaurant menus. The prescriptive wording of the surcharge notice will require the words “a surcharge of [percentage] applies on [the specified day or days]” and the requirement that it be displayed at least as prominently as other items listed for sale on the menu will ensure that customers are aware of the full cost of their meals.

The AHA encourages the Government to introduce the amendments without change and will continue to urge the states and territories to support the changes.

Yours sincerely



Des Crowe
National Chief Executive Officer