



Australian
Competition &
Consumer
Commission

Pricing manual for the motor vehicle industry





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Australian Competition and Consumer Commission

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Important notice

This publication 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.

Because it avoids legal language where possible, there may be some 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 the application of the Act.

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Foreword

Buying a motor vehicle is, for most Australian consumers, a significant purchase. It is therefore important that motor vehicle manufacturers and dealers are aware of and comply with the Trade Practices Act (the TPA) when advertising their products.

Representations about price or other features or characteristics of a motor vehicle should be clear and accurate and should not have the potential to be misleading. When advertisers meet these conditions, Australian consumers are able to make informed purchasing decisions.

The Australian Competition and Consumer Commission (ACCC) is responsible for the enforcement of the TPA and has the power to investigate and prosecute breaches. The ACCC also has a responsibility to educate the motor vehicle industry about their rights and obligations under the TPA. This manual will assist you to gain an understanding of your rights and obligations and ensure your business complies with the law.

Introduction

The motor vehicle industry, like many others, relies on advertising to promote its products and services. Price is usually a major factor in the decision to buy a motor vehicle and consumers pay close attention to any price representations made in advertisements, whether they appear on television, in the newspaper, or on a website.

Accurate price representations are not just a good advertising practice. The *Trade Practices Act 1974* (the TPA) requires that your advertising correctly represents the product for sale, including its price and any specific characteristics so that consumers can make informed purchasing decisions.

This manual has been developed to explain how the TPA applies to motor vehicle advertising. In particular, it explains some recent amendments to the TPA which may require you to change your advertising practices in relation to component pricing in order to provide greater clarity to consumers. It will also tell you about other important parts of the TPA and provide tips, checklists and examples to assist you to understand how these apply to your business and to industry practice more generally.

This publication also contains some new information on the ACCC's views on motor vehicle advertising. You should consider how these views impact on your current advertising practices.

This publication has been developed by the ACCC in consultation with industry and other stakeholders. You should not, however, rely upon it as a statement of law as it is not the role of the ACCC to provide legal advice. If you are unsure about whether you may be breaching the TPA, you should seek independent legal advice.

1. Advertising practices

Motor vehicle advertising can take various forms – including dealer, manufacturer and cooperative. All forms must comply with the TPA.

When you are advertising a motor vehicle and making price representations, you need to be mindful that there are some advertising practices that should be used with caution while others are prohibited. It is important that you understand the difference between these practices and the boundaries of the law. You should also be aware of any additional legal obligations that may arise out of the type of advertising you choose.

Remember, you must comply with all the requirements of the TPA. The fact that you may have complied with one provision does not necessarily mean that you have complied with them all. As the manual shows, this is particularly relevant to your obligation to avoid actually or potentially misleading or deceiving consumers.

The pricing manual for the motor vehicle industry will tell you about:

Advertising practices you should use with caution:

- component pricing (includes guidance on the application of the TPA to different forms of motor vehicle advertising)
- disclaimers
- discount pricing (or two-price advertising)
- pictorial advertising
- cost or below cost advertising
- cashback or rebate offers.

Prohibited advertising practices:

- misleading and deceptive conduct
- false or misleading representations
- bait advertising.

Additional legal obligations.

2. Component pricing

What is component pricing?

Component pricing is the representation of the cost of a good or service to consumers in, or as the sum of, multiple component parts. If a price represents some but not all of the components, it risks contravening the TPA as it could mislead consumers into thinking that a product or service is being offered at a lower price than it actually is.

Changes to the law

The rules for component pricing are contained in s. 53C of the TPA. This section has recently been amended and requires that, from 25 May 2009, if you choose to cite a particular component of a price in advertisements, you must also provide consumers with a prominent single (total) price for goods or services – as it is able to be quantified at the time you make a price representation.

What do these changes mean for you and your business?

As a result of the changes, you may need to revise and modify your advertising practices. The law now requires you to provide consumers with a single price that he or she needs to pay to obtain a motor vehicle. This price must also be stated in a prominent way.

Working through the following steps will help you to understand the changes and ensure your business complies.

What does 'prominent way' mean?

A prominent single price is one that:

- stands out so that it is easily seen by a consumer
- is clear, eye-catching and very noticeable.

To ensure that you are providing a price in a prominent way, you should check whether your advertising exhibits the above, looking closely at the medium you are using. While this will vary largely on a case-by-case basis, you should consider factors such as the size, placement, colour and font of the price, as well as the background of the advertisement.

Can I still use component pricing?

While you can still use component pricing, you must now also include a figure for the total price **at least as prominently** as the most prominent component. This means that a consumer should be able to identify the total cost of a vehicle as easily as he or she can identify a component or part of that total. For example, if a single price is smaller or in a font colour that is harder to read than any component price, then this is likely to mean that it is not as prominent.

A motor vehicle is advertised as:

EXAMPLE

\$15 990
+ \$500 (dealer delivery) + \$1000 (registration)
+ \$1000 (stamp duty) + \$500 (CTP)
for a total price of \$18 990

The advertisement uses component pricing and does not provide a single price.

However, due to the size, colour, font, background and placement of the total (\$18 990), it is not able to be as easily identified as the most prominent component (\$15 990) and is unlikely to comply with s. 53C.

It does not matter that the component amounts themselves vary in size, font and style, it is the most prominent component which is to be used as the point of comparison for the total price.

What is the single price?

The single price means the minimum total cost that is able to be quantified (or calculated) at the time of making the representation – in order for a consumer to obtain the motor vehicle.

How do I calculate the single price?

The single price is calculated by adding up each of the price components that you are able to quantify when you make the price representation. The law specifies a number of components you are required to include, as well as others that can be excluded, or that you may choose to exclude.

What needs to be included in the single price?

Components you are required to include are:

- Charge – of any description payable by a consumer to purchase the goods or services.
- Tax, duty, fee, levy or charge – payable by the consumer for the supply of the vehicle.

If your customers are paying a tax, duty, fee, levy or charge directly to a relevant authority, the amount would not be a component of your price and would therefore not be included in the single price.

Components you do not need to include are:

- Optional extras – additional charges that a consumer may choose to pay.
- Sending charges – while mandatory charges for sending goods need to be specified in the advertisement, they do not have to be included in the total price. You could, however, choose to do so. It is important to note that in the ACCC's view, 'dealer delivery' as currently imposed within the motor vehicle industry does not constitute a delivery or sending charge that would be exempted in s. 53C.
- Any components which are not 'quantifiable' at the time the representation is made.
- Amounts your business pays to a third party that are not passed on to the consumer.

How do I determine whether a component is 'quantifiable'?

An amount is quantifiable if **at the time you are making the representation**, you are able to readily convert it into a dollar amount. If a total price is comprised of a number of components, you are to quantify and add up each component to the extent you are able. Where a total price involves:

- a combination of quantifiable and non-quantifiable components
- a component amount that fluctuates or varies (e.g. changes in foreign currency)

you calculate the component/s and total price based on the information available at that time. You also need to clearly advise consumers of the basis on which the amounts were calculated and that they may change. This will allow you to provide consumers with the minimum total cost they need to pay to obtain the vehicle.

A motor vehicle is advertised as:

\$22 990 RRP*

* RRP is the recommended retail price inclusive of stamp duty, CTP, registration, vehicle cost and dealer delivery

EXAMPLE

This manufacturer advertisement provides a single price made up of all components including a price for the vehicle and dealer delivery. This advertisement is likely to meet the requirements of s. 53C.

Are there any circumstances where I do not need to provide a single price as prominently as a component?

There are two exceptions to the requirement for a single price to be shown as prominently as the most prominent component. These are:

- Representations made exclusively to a **body corporate**.

Where you are able to ensure that your advertising will be made exclusively to a body corporate, you are not required to provide a prominent single price. However, if your advertising may reach both consumer and business audiences, you are still required to do so.

- **Services** supplied under a contract that also provides for **periodic payments**. Goods directly related to the services also fall within this exemption.

While a single price should be given in these circumstances, it does not need to be as prominent as any component.

How does s. 53C apply to dealer, manufacturer and cooperative advertising?

This section applies equally to all forms of advertising that include price representations, regardless of whether the advertisements are placed by a dealer, manufacturer or cooperatively. The following checklist will help you to comply with the new component pricing laws. More detail on price representations made by each category can be found in the *Forms of advertising* section below.

Component pricing checklist

- The single price must include all components that you are able to quantify when you make the price representation.
- If you are not able to quantify a component, you should be able to substantiate why you could not.
- Where some components may vary, or are not able to be quantified at this time, you need to state the total **as it is able to be calculated**.
- Consumers must be clearly advised of any components that are excluded or may vary.
- For new cars, the single price will typically be for the featured model of a new vehicle (without any optional extras).
- A single price should be given for each vehicle advertised.
- Where you advertise exclusively to a specific class of consumers, you may calculate the total price as it is relevant to this class as long as you clearly inform consumers – e.g. a price for primary producers may be advertised in a rural newspaper, or prices for both ABN holders and all other consumers may be required in national newspapers.
- Advertisements that do not contain any price representations do not need to comply with s. 53C, but still must comply with other provisions of the TPA.

Forms of advertising

Advertising within the motor vehicle industry occurs at various levels and may be placed by dealers and manufacturers acting independently or cooperatively. Cooperative advertising occurs on two levels: horizontally – between competing dealerships, and vertically – between dealers and manufacturers themselves.

Regardless of which category you fall in to, you must comply with all the requirements of the TPA. Compliance with the requirements for component pricing, for example, does not necessarily mean that you have complied with your obligations not to mislead or deceive consumers. Some categories of advertising may be subject to additional legal obligations. You should be particularly mindful of the types of practices outlined in this manual and make use of the checklists provided.

The application of the TPA to pricing practices commonly used by industry (in each category) is examined below.

Dealer advertising

Individual dealers should be able to quantify the single price of a motor vehicle that is inclusive of all components. Typically, this will include:

- vehicle purchase price
- stamp duty
- compulsory third party insurance (CTP)
- registration
- dealer delivery fee.

The sum of these components must be given as a single figure that is at least as prominent as any component or partial price.

Additional points to consider:

- The single price should relate to the featured model of the vehicle.
- If you are advertising a new vehicle and the single price includes less than 12 months registration, you should ensure the advertisement clearly and adequately informs consumers of this fact.
- The advertisement should be clear and there should not be any potential to mislead or misrepresent the vehicle in any way.

A motor vehicle is advertised for \$22 440 inclusive of:

- \$19 990 vehicle cost
- \$250 CTP
- \$500 registration
- \$1000 stamp duty
- \$500 dealer delivery (in metropolitan Sydney areas only, regional areas may be additional)

Alternatively, the vehicle may simply be advertised at the total cost of \$22 440 (without the breakdown of components).

Both are likely to comply with the TPA.

Manufacturer advertising

Manufacturers should also be able to quantify all component amounts (referred to above) as an actual or recommended price. A single price will then be calculated by adding up all components to form a total recommended retail price.

If this is not possible, or it is not a practice you wish to employ, you may choose to target particular geographic areas in your advertising, so that it is less likely that significant price discrepancies will exist as a result of differences in dealer delivery, registration or other charges. Alternatively, you may elect to advertise the vehicle without making a price representation.



Additional points to consider:

- The single recommended retail price should be the minimum price at which the vehicle is able to be purchased from dealers (though this may be subject to negotiation).
- The overall impression given by the advertisement should not mislead or deceive consumers.
- The use of images of overseas models where the model is not able to be purchased in Australia at the advertised price should be avoided.
- If a particular promotion or deal that is not available through all dealers is advertised, consumers need to be made aware of that fact.

Cooperative advertising

Cooperative advertising between competing dealers, or between dealers and manufacturers, must also include a single price for any vehicle featured. Within both forms of cooperative advertising, all components outlined above should be quantifiable.

As with manufacturer advertising, there may be discrepancies in the price at which the advertised vehicle can be purchased from the dealers promoted in the advertisement. Where this is the case, you should take care with any price representation included in your advertisements to ensure that consumers are not misled. The examples below will assist you in doing this.

A motor vehicle is advertised as \$32 990 RRP (inclusive of on-road costs).

This manufacturer advertisement provides a single price made up of all components including a price for the vehicle and dealer delivery, and is likely to comply with s. 53C and the TPA.

Or

A motor vehicle is advertised as: \$27 990 vehicle cost, \$500 CTP, \$2000 stamp duty, \$1000 registration and \$1500 dealer delivery (Sydney metropolitan areas only – subject to variation). TOTAL = from \$32 990 RRP

This manufacturer advertisement is also likely to comply with s. 53C. However, as the single price is only applicable to metropolitan areas in Sydney, you should take extra caution so as not to mislead consumers outside this geographic area, and comply with the TPA more broadly.

EXAMPLE

Additional points to consider:

- Reaching an agreement about prices (for example, a common price for dealer delivery) with any of your competitors may raise serious competition concerns and put you at risk of breaching the TPA – you should be careful to avoid doing this, particularly in any cooperative advertising.
- In some limited circumstances, the ACCC may grant an authorisation for competition concerns that would otherwise breach the TPA – if it is found that the net public benefit would significantly outweigh any detriment.
- Consumers should be advised of the details of participating dealers and the price applicable to each dealership needs to be clear.
- Consumers should be informed if the price includes less than 12 months registration.
- An advertisement should not mislead or deceive consumers.
- The price in the advertisement has to relate to the models featured.

3. Disclaimers

Disclaimers in advertisements generally take the form of ‘fine print’ that is used to clarify what a price representation includes or excludes. This often appears as an asterisk (*) followed by any conditions or limitations that apply. When you use disclaimers in relation to price representations, it is important to ensure that they simply explain the representation in further depth. They should not be used in an attempt to correct a misleading impression that may be created by the advertisement as a whole. General disclaimers, such as ‘terms and conditions apply’, should be used with caution and **not** to conceal important information. If you use terms like this, any important qualifiers should be spelt out in the main message.

You must also ensure that the disclaimer is effective. This means that it must be:

- able to be readily identified by a consumer
- placed close to the main price representation
- clear in meaning.

The question of whether a disclaimer is effective and readily identifiable by a consumer is a matter of judgement and will vary on a case-by-case basis. You need to consider the medium in which each price representation (and disclaimer) is made – looking at the size, location and detail of the fine print in relation to the headline vehicle advertisement. Remember, a consumer should not need to extensively search the advertisement or pages of a price list for additional disclaimer information. It is your responsibility to ensure that consumers are clearly directed to and made aware of any fundamental terms and conditions that relate to the motor vehicle purchase.

Although the effectiveness of a disclaimer or fine print will depend on each set of circumstances, the following general principles may assist you in understanding how this applies to different mediums:

Print advertisements (includes press, point of sale and billboards)

- The font type and point size of a disclaimer must be able to be clearly read in the context in which it appears. The degree of contrast between the font and the background of the advertisement must also be considered.

Electronic audio-visual media (includes television, cinema and the internet)

- The point size of a visual disclaimer must also be clearly readable in that context and remain on screen for sufficient time to be noticed and read.

Electronic audio media (such as radio)

- The disclaimer should be clearly stated so that it can be reasonably understood.

EXAMPLE

A motor vehicle dealer in metropolitan NSW advertises a new vehicle for \$19 990 including vehicle cost, dealer delivery*, CTP, stamp duty and registration.

* **dealer delivery** quoted for NSW metropolitan areas only, other areas may be additional – see your local dealer for further information.

The single price includes all components and uses a disclaimer to advise consumers that the dealer delivery applies to NSW metropolitan areas only. The advertisement clearly draws attention to the disclaimer which is close to the main price representation.



4. Discount pricing (or two-price advertising)

Discount pricing involves a comparison of two prices – commonly taking the form of ‘was/now’ pricing – and is also often referred to as two-price advertising. If you use this type of pricing practice, you need to ensure that any comparison drawn is genuine and accurately reflects the previous (most recent) price with the discounted amount.

Discount pricing checklist

- A ‘was’ price needs to be the price at which the motor vehicle was offered for sale in a sufficient number and for a reasonable period of time before being discounted – you need to be able to substantiate the offer.
- Any previous price should be genuine and not inflated, so the discount is real.
- A discounted price or special offer should only be available for a limited period of time.
- A discount that is offered for a lengthy period of time effectively becomes the new price, so continuing to use two-price advertising will not reflect a genuine discount to consumers.
- If you use discount pricing on the basis of how much a car is ‘worth’, you need to ensure this is supported by objective evidence – this is particularly relevant for used vehicle sales.

As part of an advertising campaign, a motor vehicle dealership increases all RRP's for new vehicles, then crosses this amount out as a ‘was’ price, and puts the original price as the ‘now’ price. No vehicles were ever sold at the increased price.

This advertisement is likely to give consumers the impression that the vehicle has been discounted from the ‘was’ price and that by purchasing at the ‘now’ price, they will make a real saving. However, this reduction and any resultant saving is illusory and at serious risk of breaching the TPA.

EXAMPLE

5. Pictorial advertising

A motor vehicle advertisement that displays a picture accompanied by relevant pricing and vehicle information is known as pictorial advertising. Where this type of advertising is used, the vehicle, as depicted in the picture, must be able to be purchased by a consumer at the advertised price. You need to ensure that the model, visible accessories, any other features and advertised price corresponds with what is actually available at the dealership.

Pictorial advertising checklist

- Avoid using phrases or disclaimers such as ‘picture for illustrative purposes only’ where the vehicle is not available for purchase as shown.
- If an advertisement refers to a range of motor vehicle models that are available, but only one is pictured, you should ensure that the advertisement is clear about which model and price the picture represents.
- Where it is not possible for you to provide a picture of an **actual** used vehicle that is for sale in an advertisement (and you want to include a picture), you should instead provide a picture of an equivalent vehicle together with a prominent disclaimer.
- Manufacturer advertising showing models not available in Australia accompanied by the disclaimer ‘not the Australian model’ may mislead consumers. This is particularly so where 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. You should avoid this type of advertising where possible.

A picture of a 2009 model 4WD with bull bar, fog lights, other extras and a price of \$58 990 is displayed in a newspaper advertisement by a motor vehicle dealer. No further information is provided.

However, it is only the 2008 model without extras that can be purchased at this price. The 2009 model with extras as shown in the advertisement costs \$62 990. This type of pictorial advertising is likely to mislead consumers and therefore breach the TPA.

EXAMPLE

6. Cashback or rebate offers

Cashback or rebate offers involve the reimbursement of part of the purchase price for a motor vehicle to the purchaser. Where these types of offers are advertised, it is important that any price representation does not include the reimbursement **unless** this is given to the consumer **at the time of purchase**. Many of these offers, however, provide for the payment to be made at a later date and it is therefore the dollar amount the consumer must pay to take ownership of the vehicle which should be advertised.

The following checklist will assist you to promote cashback or rebate offers correctly.

Cashback checklist

- Check that any vehicle advertised with a cashback offer or rebate is available for purchase on those terms at your (or a) dealership.
- Ensure that your advertisement clearly identifies the rebate or cashback as a separate payment that will be made *after* buying the vehicle (if this is the case).
- Clearly state any limitations or conditions that apply to the reimbursement with equal prominence to the cashback offer itself.

A motor vehicle with a total price of \$40 000, but with a cash rebate of \$2000 is advertised on television at \$38 000. No mention of the cashback offer is made within the advertisement, instead consumers are advised of this when they enquire about the vehicle at the dealership.

As this advertisement does not provide the correct purchase price (with the vehicle cost and rebate as separate amounts) or refer consumers to important terms and conditions, it is likely to breach the TPA.

EXAMPLE

7. Misleading and deceptive conduct

Misleading and deceptive conduct – whether it actually misleads or is likely to mislead – is prohibited by the TPA. When you are advertising a vehicle, it is important that the overall impression created by your ad is an accurate one. This includes any representations, written or pictorial, about the price, model, features, and any other essential information. This does not apply only to the advertisement itself, but also to any other representations you make to a consumer when they are considering purchasing a vehicle. This may include, for example, negotiations which are made in person.

What is misleading or deceptive conduct?

Misleading or deceiving someone is leading them into error (or being likely to) and includes conduct such as:

- lying
- leading someone to a wrong conclusion
- creating a false impression
- leaving out (or hiding) important information
- making false or inaccurate claims.



Under the TPA, it is irrelevant whether you intend to do this or not – the prohibition can be breached by both deliberate and inadvertent conduct. It is very broad in scope and will be determined largely on a case-by-case basis.

Following the checklist below will help you to limit your likelihood of misleading or deceiving consumers.

Checklist to reduce the risk of misleading consumers:

- Sell goods and services on their merits.
- Be honest about what you say and do commercially.
- Look at the overall impression of your advertisement – ask yourself who the audience is and what the advertisement is likely to say or mean to them. Remember, at a minimum, it is the viewpoint of a layperson with little or no knowledge of motor vehicles that should be considered.

EXAMPLE

A new sports model motor vehicle is advertised (with a large picture) at \$53 990 – comprising various accessories including a body kit, sunroof, tinted windows and mag wheels. The advertisement does not mention that a standard model of the vehicle is available, or that the accessories featured are optional.

When consumers approach their local dealership to inquire if a standard model of the vehicle is available or if the sports model is able to be purchased without the featured accessories, they are told no. Based on the response to their inquiries, a number of consumers purchase the sports model with optional extras.

This type of advertising, and subsequent conduct, is likely to mislead consumers and is at serious risk of breaching the TPA.

8. False or misleading representations

The TPA also contains a more specific prohibition on making **false** representations about a motor vehicle. A false representation is one that is incorrect or contrary to fact. As with the prohibition on misleading conduct, your intention is irrelevant. You may breach these provisions regardless of whether your actions were deliberate or whether you did not know the representation was false at the time of making it.

It is important for you to think about whether you could be (or are) creating a wrongful impression in the mind of a consumer when you are making representations about:

- future matters (where you have no reasonable grounds for doing so)
- vehicle characteristics – including style, model and features
- a vehicle being new
- vehicle price
- place of origin of the vehicle
- the availability of repair facilities or spare parts for the vehicle
- the buyer's need for the vehicle
- the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Following the checklist on page 24 will assist you to minimise the risk of making misrepresentations about a motor vehicle.

9. Bait advertising

The TPA prohibits you from advertising motor vehicles at a specified (often discounted) price if you are aware or should reasonably have been aware that you would not be able to supply that vehicle at that price – in reasonable quantities and for a reasonable period. Bait advertising occurs when motor vehicles are advertised at an attractive ‘bait’ price, but when the consumer goes to buy the vehicle it is not available and the dealer seeks to switch the consumer to a higher priced or differently optioned alternative. Consumers must be given a reasonable chance of actually buying the goods on special offer.

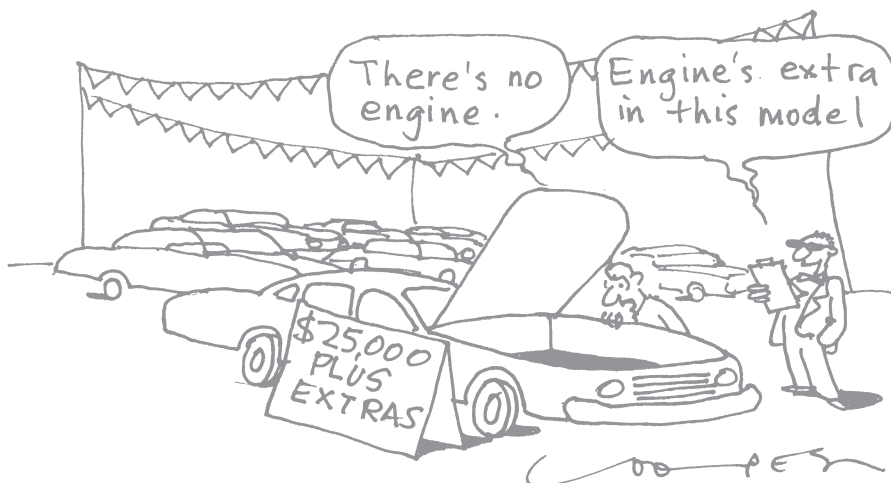
You can reduce your risk of engaging in bait advertising by applying the following checklist to your business practices.

Checklist to reduce your risk of bait advertising:

- With any promotion, ensure that the motor vehicles advertised are available in reasonable quantities, at that total price for a reasonable period.
- If advertising used vehicles, clearly state how many vehicles of a particular type are available.
- Do your research so that you are able to anticipate demand as much as possible – look at previous promotions or other market data.
- Prepare contingency plans in the event that you do not have enough stock to meet consumer demand – consider whether or how you could supply the vehicle at a later date (within a reasonable time). Could you source a substitute from another dealership, for example?
- Where you have genuinely misjudged demand and will not be able to supply the vehicle advertised, you should offer the consumer a reasonable alternative.

10. Additional obligations – leasing, finance and credit

You should also be aware of additional legal obligations relating to advertising and motor vehicle sales imposed on you by state or other federal laws. In particular, finance and leasing arrangements are subject to strict regulation that creates obligations additional to those outlined above. The consumer protection provisions of the TPA do not apply to financial services but are mirrored in legislation administered by the Australian Securities and Investment Commission (ASIC). You should contact ASIC for further information.



Contacting the ACCC

Infocentre: 1300 302 502

Small business helpline: 1300 302 021

Callers who are deaf or have a hearing or speech impaired can contact the ACCC through the National Relay Service: www.relayservice.com.au.

Voice-only (speak and listen) user – phone 1300 555 727 and ask for 1300 302 502.

Website: www.accc.gov.au

For other business information, go to www.business.gov.au.

