



Restaurant
& Catering



18 January 2013

Manager
Consumer Policy Framework Unit
Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

RE: Restaurant and Café Menu Surcharges - Draft amendments to the single pricing requirements

Restaurant & Catering Australia (R&CA) would like to thank the Assistant Treasurer, the Hon David Bradbury MP, for the opportunity to provide a submission on the draft Single Pricing Legislation of the Commonwealth's proposed amendments to the single pricing ("component pricing") requirements in the Australian Consumer Law for restaurant and cafés.

During the past three years the Association has taken strong advocacy to have the Federal Government and State Governments amend the legislation dealing with single pricing since 2008.

Previously, R&CA wrote to the Treasury outlining deep concerns with the changes of the 'Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008'. The Association encouraged the Treasury that restaurant menus should be explicitly excluded from the requirement to state 'as single figure, the single price'.

It was based on this letter, which set out a definition of a menu, that the Association formulated its submission to the Productivity Commission. A menu as defined by the Oxford Concise Dictionary is 'a list of items to be served at a meal'. The purpose of a menu is therefore contrary to the 'single figure price' doctrine. R&CA contends that a menu is specifically designed to list the components of a meal and therefore should list all the components at their price. The comparison of menu items by the consumer is undertaken at the restaurant (and not between restaurants as an all up price for a meal). The Association believes that restaurants should be exempted from the single price requirement.

In October 2010, the Productivity Commission released its final report recommending the Federal Government should amend section 53C of the *Trade Practices Act 1974*, now section 48 of the Australian Consumer Law (ACL), which is a schedule to the *Competition and Consumer Act 2010*.

R&CA advocate that section 48 of the ACL has negatively impacted on restaurants by imposing extra costs in regard to their menus. Previously, restaurant and café menus could indicate that there was a percentage surcharge on Sundays and/or public holidays. However, amendments to section 53C of the *Trade Practices Act 1974* have forced restaurants and cafes to: print and distribute menus for different days; show two or more prices on the same menu; and undertake changes to blackboard menus. This imposes additional complexity and extra costs on these small businesses.

During the past two years the Association has met with the Hon Senator Sherry (former Minister for Minister for Small Business and the Minister Assisting Deregulation) in early late 2010 and the Hon Martin Ferguson Minister for Tourism and Energy Resources to discuss the difficulties restaurants and cafes were facing with legislative amendment.

R&CA has canvassed the views of consumer groups in the preparation of this submission. It appears that consumer representatives are sympathetic to a percentage surcharge that is easy to calculate (i.e. 10%). There is an understanding and acceptance that restaurants being closed on Sundays and/or Public Holidays is not good for consumers.

In late 2011, the Hon Senator Sherry announced that the Federal Government would move to exempt restaurants and cafes from section 48 of the ACL and then the State Government Ministers for Consumer Affairs called for submissions via the Policy and Legislative Branch in Victoria.

R&CA provided a written submission similar to this letter outlining views of its members and the real concern consumers may have. The Association believes consumers would not be misled or deceived as there would be a clearly printed disclaimer on menus highlighting that a percentage surcharge applies on Sundays and or Public Holidays. With this approach, consumers who are not satisfied with the surcharge could leave before ordering their meal. If it proves a consumer was misled or deceived then it would be at the discretion of the owner of the restaurant and or café to refund the surcharge.

The Association believes the Single Pricing Legislation amendment will set clear guidelines for businesses to follow and reduce the level of uncertainty that has existed throughout the past two years and will also enable consumers to have a better understanding of what businesses are allowed to rightfully apply to their menus.

The Association is available for further comments during the Component Pricing Consultation period, if you would like to discuss this submission further, please call me on (02) 9966 0055 or email at jhart@restaurantcater.asn.au.

Yours faithfully



John Hart
Chief Executive Officer

Restaurant & Catering Australia Submission on the draft Single Pricing Legislation of the Commonwealth's proposed amendments to the single pricing ("component pricing") requirements in the Australian Consumer Law for restaurant and cafés

Background

There are 38,000 restaurants, cafes and caterers throughout Australia; this industry generates more than \$29.9 Billion per annum. Of these 38,000 businesses, approximately 91% fall within the definition of a small business¹, therefore classifying them as small businesses. Restaurant & Catering Australia (R&CA) has conducted several bench marking surveys in the the past few years and on average, approximately 71.4% of turnover is retained on gross profit, while the average profit before tax is around 3.5% of turnover. Therefore, restaurants and cafes are on average marginal businesses. These enterprises continue to satisfy an insatiable demand by consumers who willing to eat out, but they are unable to absorb any additional costs.

History of Component Pricing

R&CA first wrote to Treasury on the Component Pricing Issue in 2008 when a Bill (*Trade Practices Amendment (Component Pricing and Other Measures)*) was being proposed. The Association outlined its concerns stating restaurants and cafes should be excluded from this requirement. R&CA added that a menu is specifically designed to list components of a meal and therefore should list all the components at their price. The comparison of menu items by the consumer is undertaken at the restaurant (and not between restaurants as all up price for a meal). In this submission, R&CA called for restaurants to be excluded and not subject to a move to a single price.

The Association then wrote a submission to the Productivity Commission for the Annual Review of the Burdens on Business arising from the stock of Government regulation. In this submission, R&CA outlined the issues the industry would face in not being able to simply apply a weekend/public holiday surcharge. The Productivity Commission released its report in October 2010 agreeing with the Association by stating that 'surcharges on restaurant meals on Sunday and/or public holidays were not a focus of the original concerns raised in regard to component pricing'².

In early 2010, several members received 'infringement notices' for breaching section 53(c) of the *Trade Practices Act* 1974, these infringement notices totalled \$6,600 per restaurant. Three members faced the Federal Court in an effort to overturn their initial infringement notice, however the court ordered them to pay \$13,200 each for breaching the Act.

In one instance, the ACCC fined former owners of a restaurant a staggering \$20,000 for failing to use inclusive pricing on their menus for weekends and public holidays. The Association released a statement stating these 'fines were grotesque and these venues should be excluded from single pricing'.

¹ ABS definition "actively trading business with 0–19 employees".

² Productivity Commission October 2010 - Annual Review of Regulatory Burdens at 106

In 2011, R&CA wrote to Senator Nick Sherry, Minister for Deregulation, and requested a meeting to discuss the issue of single pricing on menus, and outlined its submission to the Productivity Commission to Minister Sherry. The Association then met with the Hon. David Bradbury, Assistant Treasurer to discuss an amendment to section 46 of the Australian Consumer Law and exempt restaurants and cafes from the legislation. After numerous meetings with both sides of Federal Parliament and a follow up meeting with the Hon. Martin Ferguson, Minister for Tourism and Minister for Resources and Energy, the Government announced in late 2011 that it agreed with the Productivity Commission recommendation to exempt restaurants and cafes from this section of the legislation.

In early 2012, in accordance with the terms of the Intergovernmental Agreement for the ACL, Assistant Treasurer Bradbury began consulting with State and Territory Consumer Affairs Ministers on the proposed amendments. The Commonwealth required the support of the States and Territories in order to change the law.

The Association wrote to each State and Territory Consumer Affairs Minister calling for their support of the amendment to single pricing. After a consultation and written submission to the Component Pricing Consultation, Policy and Legislation Branch of Consumer Affairs Victoria in mid-2012, the Assistant Treasurer.

Minister Bradbury announced in late December 2012 a proposed bill to amend section 46 of the Australian Consumer Law.

The Association believes the Single Pricing Legislation amendment will set clear guidelines for businesses to follow and reduce the level of uncertainty that has existed throughout the past two years and will also enable consumers to have a better understanding of what businesses are allowed to rightfully apply to their menus.

Restaurants & Surcharging

As a result of the proposed Bill, the Association does not believe surcharge structures would become more complicated. Most restaurants and cafes will use a percentage surcharge between 10% and 15%. The Association advocates the market will create equilibrium for what venues want to charge their customers. The consumer will still maintain their right of choice to pay the surcharge, if they feel it is too high they can leave the restaurant/café and go to a competitor for their dining experience.

When the amendment is made and restaurants and cafes are exempted from the legislative requirements it will allow for the market to settle and stop the confusion currently experienced by consumers and venues, as it is not clear what type of surcharging provisions apply.

In the past three years, the Association has spoken to many of its members about surcharging and the resounding response from these business owners is the cost of changing menus so they can have dual menus. The costs associated with the menu starts at the design, printing, changing the website and advertising materials and then the changing of menu boards which restaurants are starting to use. Restaurants have also had to change their point of sale system. The cost for restaurants changing all the above is between \$8,000 and \$10,000 and this expense is directly related to the change in single price component laws.

Restaurants and cafes use their menu as a marketing tool and it can cost hundreds if not thousands of dollars to implement new menus, when a simple statement at the bottom of a menu that announces 'a % surcharge applies for Sundays and public holidays'.

Restaurants and cafes also impose a surcharge on customers to cover costs such as wages and salaries for staff working on weekends and public holidays; they also use the surcharge to cover costs for supplies for fresh foods.

There are enough regulatory burdens already placed on these operators without the need to keep the standard law and fines for surcharging.

Conclusion

R&CA support this Bill and thank the State and Federal Governments for acting to reduce the regulatory burden on small businesses. The impact this Bill will have once it receives Royal Assent will be significant on small businesses and will enable many venues to remain open on weekends and public holidays to provide a service to consumers in major cities and regional areas.

The Association provides a commitment to educate members and restaurants and cafes more broadly on weekend and public holiday surcharging to alleviate confusion that may initially exist when the Bill becomes law.