

2010-2011-2012-2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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COMPETITION AND CONSUMER AMENDMENT BILL 2013

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the Assistant Treasurer, Minister Assisting for  
Deregulation, the Hon David Bradbury MP)



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## ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ACL	Australian Consumer Law
Bill	Competition and Consumer Amendment Bill 2013
CCA	<i>Competition and Consumer Act 2010</i>
IGA	<i>The Intergovernmental Agreement for the Australian Consumer Law 2009</i>
PC	Productivity Commission
Report	<i>Annual Review of Regulatory Burdens on Business: Business and Consumer Services, Productivity Commission, 2010</i>



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## ***General outline and financial impact***

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### **An amendment relating to the component pricing requirement in the Australian Consumer Law**

The Competition and Consumer Amendment Bill 2013 (Bill) amends the *Competition and Consumer Act 2010* (CCA) to insert a regulations-making power to enable regulations to be made to exempt certain representations from the component pricing requirement in the Australian Consumer Law (ACL) (Schedule 2 of the CCA).

The amendment will allow a regulation to be made to place restaurant and café menu surcharges for specific days outside of the component pricing requirement in the ACL.

***Date of effect:*** The amendment applies on the day after this Act receives the Royal Assent.

***Proposal announced:*** This proposal was announced in the Australian Government's response to the Productivity Commission's (PC) *Annual Review of Regulatory Burdens on Business: Business and Consumer Services 2010* (Report), on 13 September 2011.

***Financial impact:*** Nil.

***Compliance cost impact:*** The amendment will enable regulations to be made which will reduce the regulatory burden on small businesses in the restaurant and café sector, as identified in the PC Report.

***Human rights implications:*** This Bill does not raise any human rights issues.





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# ***An amendment relating to the component pricing requirement in the Australian Consumer Law***

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## **Outline of chapter**

1.1 The Competition and Consumer Amendment Bill 2013 (Bill) amends the component pricing provision of the Australian Consumer Law (ACL), located in Schedule 2 of the *Competition and Consumer Act 2010* (CCA), by inserting a regulations-making power.

1.2 The regulations-making power will allow a regulation to be made to prescribe that restaurant and café menu surcharges for specific days are placed outside of the component pricing requirement if conditions relating to disclosure, prominence and transparency are satisfied.

## **Context of reform**

1.3 The amendment contained in this Bill gives effect to the Australian Government's response to a recommendation of the Productivity Commission (PC) in its 2010 *Annual Review of Regulatory Burdens on Business: Business and Consumer Services* (Report).

1.4 In the Report, the PC recommended that 'The Australian Government should amend the *Trade Practices Act 1974* to have restaurant and café menu surcharges for specific days placed outside the scope of the component pricing provision of that legislation'.

1.5 On 1 January 2011, the *Trade Practices Act 1974* was renamed the CCA, with the component pricing provision located in section 48 of the ACL — Schedule 2 to the CCA.

1.6 The amendment to the CCA will enable regulations to be made to exempt restaurants and café menu surcharges for specific days from the component pricing provision in the ACL, if conditions relating to disclosure, prominence and transparency are satisfied.

1.7 The amendment will enable regulations to be made which will reduce the regulatory burden on small businesses in the restaurant and café sector, as identified in the PC Report.

### **Consultation process**

1.8 The consultation process on the amendment to the CCA involved two levels of consultations — (i) consultations with the public; and (ii) consultations with State and Territory Consumer Affairs Ministers.

#### ***Public consultations***

1.9 The public consultation process involved the Treasury publicly releasing an exposure draft Bill via its website, inviting comments from interested parties. The public consultation period ran for six weeks and closed on 18 January 2013.

1.10 A total of nine submissions were received, which are available on the website (see [www.treasury.gov.au](http://www.treasury.gov.au)).

1.11 These public consultations complemented the targeted consultations that were conducted by Victoria and New South Wales in early 2012.

#### ***State and Territory Consumer Affairs Ministers consultations***

1.12 Pursuant to the State and Territory consultation requirements in Clause 11 of the *Intergovernmental Agreement for the Australian Consumer Law 2009* (IGA), the Commonwealth consulted State and Territory Consumer Affairs Ministers on the proposed amendment to the CCA.

1.13 Clause 19 of the IGA provides that, before the Commonwealth can introduce a Bill into the Commonwealth Parliament to amend the ACL, the support of four other jurisdictions, including at least three States is required.

1.14 In May 2013, the Commonwealth received the requisite State and Territory support in favour of the proposed amendment.

## **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
Inserts a regulations-making power to enable regulations to be made to exempt certain representations from the component pricing requirement in the ACL.	The component pricing requirement in the ACL applies to all persons in trade or commerce. No regulations-making power currently exists.

## **Detailed explanation of new law**

1.15 Section 48 of the ACL prohibits a person in trade or commerce from representing a component of a price when making a representation about the price of a good or service, without also prominently specifying the single figure price a person must pay to obtain the good or service, to the extent that a single figure price (total price) is quantifiable at the time of making a representation.

1.16 The Bill amends the component pricing provision (section 48) in the ACL to insert a regulations-making power, which will enable conditional exemptions to be prescribed in the *Competition and Consumer Regulations 2010*. [Schedule 1, item 1]

1.17 The amendment to the CCA will enable regulations to be made to exempt a class of representations from the component pricing requirement in the ACL. [Schedule 1, item 1, paragraph 48(4A)(a)]

1.18 The amendment to the CCA will enable regulations to prescribe conditions in relation to a class of representations that must be complied with to obtain the benefit of an exemption. [Schedule 1, item 1, paragraph 48(4A)(b)]

1.19 Following the Royal Assent, it is proposed that a regulation will be made to prescribe an exemption to restaurant and café menu surcharges for specific days from the component pricing provision in the ACL, if conditions relating to disclosure, prominence and transparency are satisfied.



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# ***Statement of Compatibility with Human Rights***

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## **Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011**

### **Competition and Consumer Amendment Bill 2013**

2.1 The Competition and Consumer Amendment Bill 2013 (Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

2.2 The Bill amends the *Competition and Consumer Act 2010* (CCA) to insert a regulations-making power to enable regulations to be made to exempt certain representations from the component pricing requirement in the Australian Consumer Law (ACL) (Schedule 2 of the CCA).

#### **Human rights implications**

2.3 This Bill does not engage any of the applicable rights or freedoms.

#### **Conclusion**

2.4 This Bill is compatible with human rights as it does not raise any human rights issues.

**The Hon David Bradbury MP, the Assistant Treasurer, Minister Assisting for Deregulation**



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## **Schedule 1: Amendments**

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1	1.16
Item 1, paragraph 48(4A)(a)	1.17
Item 1, paragraph 48(4A)(b)	1.18

