

UNIVERSITY OF SOUTH AUSTRALIA
TRADE PRACTICES ACT OBLIGATIONS MANUAL
PROCEDURAL GUIDELINES

Job specific procedural guidelines

Some staff members are more likely to encounter trade practices issues than others. Job specific procedural guidelines have been designed to assist you in relation to activities that involve a higher risk of breaching the Trade Practices Act.

At this stage, guidelines have been developed to summarise the relevant trade practices principles applicable to each of the following activities:

1. providing courses (attachment 1);
2. purchasing goods and services (attachment 2);
3. supplying goods and services (attachment 3);
4. advertising, promotions and marketing (attachment 4); and
5. agreements with competing service providers (attachment 5).

If you are involved in any of these activities, you may find it helpful to have the relevant procedural guidelines handy so that you can use them as a quick reference guide.

If you are involved in other activities for which you would like specific procedural guidelines developed to help you do your job, you should suggest it to your supervisor or the EDFR.

ATTACHMENT 1

TRADE PRACTICES COMPLIANCE PROCEDURAL GUIDELINES FOR PROVIDING COURSES

1. Providing courses generally

- Ensure that all aspects of courses are clearly explained, and that students understand the information concerning:
 - up-front fees
 - any other fees or costs
 - admission requirements
 - any external student registration requirements
 - length of course
 - required subjects and other course requirements
 - any work experience placements included in the course and whether the University or the student will be responsible for organising the placement
 - any prerequisites applying to work experience placements that form part of a course (for example a successful police check)
 - required pass levels, and
 - the degree or award that will be accorded.
- Special care should be taken to ensure that overseas students, or students for whom English is a secondary language, adequately understand the course information provided to them. If necessary, the University should arrange a translator to explain the information to students.
- Students should never be pressured into taking a course.

2. Answering queries

- Students should be encouraged to ask questions if they are unsure of any details regarding either on-shore or off-shore courses.
- All questions should be answered accurately and promptly. If you do not know the answer to a question, you should ask or refer the matter to your supervisor. Never try to guess the answer.

3. Complaints

- Keep a record of any complaints you receive. All such records must be forwarded to your Pro Vice Chancellor or Executive Director and responded to in accordance with their directions.

ATTACHMENT 2

TRADE PRACTICES COMPLIANCE PROCEDURAL GUIDELINES FOR PURCHASING GOODS AND SERVICES

1. Requests for tender and getting quotes

- Statements in a request for tender must be correct.
- Representations you make must not be misleading. Half truths or keeping quiet can be misleading in some circumstances.
- The tender process outlined in a request for tender should be followed.
- Quote enquiries should be genuine and statements made should be accurate.

2. Negotiating the contract

- Statements and representations made during contract negotiations must not be misleading.
- Remaining silent or only giving half the picture can be misleading in some circumstances.
- Opinions, predictions and claims must be reasonably held.
- Don't impose on small businesses any unreasonable contract terms that are not necessary to protect the University's business interests.
- Remember that the key to a harmonious relationship between the University and a supplier is well thought out specifications, clearly and unambiguously expressed.
- If the bundle of products and/or services being purchased involves another organisation, this may be third line forcing. Consider the public benefits in favour of the proposal and consult your supervisor or the Legal Officer.

3. Conduct after the contract is signed

- Statements and representations made during the term of a contract must not be misleading.

4. What if things go wrong?

- Ask the Legal Officer or the EDFR for advice if things go wrong.
- If the value of the contract is less than \$40,000, there may be statutory conditions and warranties that apply to the goods and services provided, even if the contract says otherwise.
- You may be entitled to claim compensation if the statements or representations made by the supplier were, at any stage of the business deal, misleading.

ATTACHMENT 3

TRADE PRACTICES COMPLIANCE PROCEDURAL GUIDELINES FOR SUPPLYING GOODS AND SERVICES

1. Submitting tenders and sales presentations

- Statements in tender documents and sales presentations must be accurate.
- Representations must not be misleading. Half truths or keeping quiet could be misleading in some circumstances.
- Opinions, predictions and claims must be reasonably held.
- Don't promise anything you can't deliver or make unrealistic or exaggerated claims about the goods or services you are supplying.
- Make sure that any product comparisons are absolutely correct, are fair by comparing like with like, and that there is evidence to support the comparisons.
- Don't put unreasonable pressure on a small business to buy from you.
- Don't discuss tender pricing or terms with competitors or come to any arrangement or understanding about market sharing or price, as this could constitute price fixing or an anti-competitive agreement.
- Make sure you have disclosed all relevant information about the contract. Check whether there is any fact or any other project that will affect how this contract is to be performed. If there is, this must be disclosed.
- Seek legal advice before discussing any joint venture or cooperative tendering arrangement with a competitor.

2. Negotiating the contract

- Statements and representations made during contract negotiations must not be misleading.
- Remaining silent or only give half the picture can be misleading in some circumstances.

- Opinions, predictions and claims must be reasonably held.
- Don't impose unreasonable contract terms on small businesses with whom you deal that are not necessary to protect the University's business interests.

3. What should I consider when I set prices?

- Remember that discounts, rebates and credit are elements of price.
- Set prices independently. Don't discuss or agree prices with your competitors (*price fixing*).
- Find out about competitor's prices **only** from publicly available information.
- Avoid any suggestion that the University will act in concert with any other entity to fix prices or restrict business activities in any way (*price fixing, market sharing, boycotts*).
- Don't impose harsh or unusually high prices on a buyer or seller who is in a considerably weaker position than the University (*unconscionable conduct*).
- If the products or services supplied by the University will be on-sold by the purchaser, don't attempt to set the prices at which they on-sell (*resale price maintenance*).
- Don't use sustained pricing that is below cost to drive others out of the market in which the University operates (*misuse of market power, predatory pricing*).
- If you make predictions about what prices may be in the future, make sure you have good grounds for your predictions and that you have documented them (*misleading conduct about future matters*).
- Be careful when using the word 'free' in advertising. It isn't acceptable to claim that a product is free, but then impose a range of terms and conditions that mean the product isn't really free (*misrepresentations about price*).
- Don't make an offer concerning the price of a product or service (including a discount, credit or a rebate) that the buyer can only take advantage of if he or she also obtains a product or service from someone else (*third line forcing*).

4. Conduct after the contract is signed

- Statements and representations made during the term of the contract must not be misleading.

5. What if things go wrong?

- Ask the Legal Officer or the EDFR for advice if things go wrong.
- You may be entitled to claim compensation if the statements or representations made by the purchaser were, at any stage of the business deal, misleading. Conversely, the purchaser may be able to claim compensation from the University if the University has made any misleading or deceptive statements.
- If the value of the sale is less than \$40,000, there may be non-excludable statutory terms and conditions regarding the goods or services provided by the University which will apply, and which the University must not purport to exclude.
- Don't think that a purchaser is not entitled to compensation just because there is a clause in the contract saying that the University doesn't take responsibility.

ATTACHMENT 4

TRADE PRACTICES COMPLIANCE PROCEDURAL GUIDELINES FOR ADVERTISING, PROMOTIONS AND MARKETING

Promotional material includes (but is not limited to) advertisements and brochures. It also includes all visual material.

1. What should I check for when I produce promotional material?

- Promotional material must be accurate. Be truthful and tell the whole story.
- Check all prices and terms and conditions with relevant personnel to ensure that they are correct.
- There must be no discrepancy between the product and the description of the product in the promotional material.
- Think about who your audience is. Could the advertisement be understood differently by different members of that audience? If so, it may mislead some people.
- Whenever possible, eliminate technical wording and use plain English.
- Give a clear and unambiguous explanation of unusual aspects of the offer or the deal.
- Any special terms and conditions of the offer must be stated.
- Qualifications that may be important to consumer choice must be disclosed in advertising.
- Don't rely on the '*fine print*' to outline key terms and conditions of the offer. If the main text leaves a misleading impression, it can't be cured with footnotes.
- Be very careful when using the word '*Free*'. Don't use it unless the advertisement clearly explains what other products the customer must buy. It is not permissible to inflate the price of these other products to cover the cost of the 'free' product.

- Promotional material must not perpetrate hatred or unlawfully discriminate against a person on grounds of age, ethnicity, race, nationality, gender, marital or parental status, physical or mental impairment, religion or sexual preference.
- When making statements about the future (eg '*Buy our software now because it will be very expensive in 12 months time*') make sure there is a reasonable basis for the claim and keep a copy of the evidence.
- Opinions, predictions and claims must be reasonably held and (if applicable) the basis revealed (eg '*market research conducted by Recruitment Research Pty Ltd has shown that a higher percentage of science graduates from the University of South Australia obtain employment in the first 6 months of graduation than graduates from other Universities*').
- Make sure that product comparisons are fair by comparing like with like, and are absolutely correct.
- Be careful about making comparisons with competitors' products or services. This is high risk advertising. Competitors may change their product without telling the University. Indeed they could deliberately do so to make an advertising campaign misleading and therefore unusable.
- Make contract documents readily available to consumers during negotiation.
- Exaggeration or 'puffery' must be self-evident. It must be apparent to the target audience that it is only market hype and not literally true.

2. Winning New Business And Customers

Winning new customers is encouraged, provided you do not:

- mislead or misrepresent the University's products or services through advertising or sales pitches (*misleading statements, misrepresentations*)
- extract unreasonable, unfair or unusual terms from a customer or supplier who has a weakness (*unconscionable conduct*)
- collude with the University's competitors on price or agree to a market sharing arrangement (*price fixing, anti-competitive agreements, market sharing*)
- engage with a competitor to boycott anyone to force them into doing or not doing what you want (*collective boycotts*)

- make supply conditional on dealing with a third party as well as with the University (*third line forcing*)
- set out to damage a competitor through pricing below cost for extended periods or attempting to tie up all of the key sources of supply (*misuse of market power*).

ATTACHMENT 5

TRADE PRACTICES COMPLIANCE PROCEDURAL GUIDELINES FOR AGREEMENTS WITH COMPETING SERVICE PROVIDERS

1. **Illegal agreements with competitors**

The Trade Practices Act prohibits any agreement that has the purpose or effect of substantially lessening competition in a market.

In addition to this, the Trade Practices Act strictly prohibits the following agreements between competitors irrespective of their purpose or effect. Any of the following arrangements will be illegal and subject to penalties imposed on both the companies involved and also individuals.

- *Price fixing* – this means agreeing with a competitor to fix, maintain or control price.
- *Market sharing* – this means agreeing with a competitor to divide or allocate customers or geographical markets between them.
- *Boycotts* – this means agreeing with competitors to refuse to deal with particular persons or classes of persons.

An agreement does not have to be in writing to be illegal. If through communicating with a competitor you each have an understanding of how the other will act, that is sufficient. A nod and a wink is enough to constitute a breach of the law.

2. **Guidelines**

- Consult with the Legal Officer before entering into any agreement with a competitor. While some agreements with competitors are legal, others are likely to breach the provisions of the Trade Practices Act.
- You must make decisions about the pricing of consultancy services and other services offered by the University independently of competitors. However, you may (independently) match a price in order to remain competitive.
- Make it clear that you will not exchange price information or discuss price or market sharing with any competitor that approaches you to do so.

- Do not agree with a competitor not to do business with someone, or that only one of you will do business with someone.
- Do not agree with a competitor not to poach their customers and vice versa.
- Do not make an arrangement with a competitor not to sell or buy products from a particular supplier or customer.
- Do not agree with a competitor that you or they will not enter a particular market.