

# What Do Builders Need to Consider When Advertising?

Builders that perform residential building work need to ensure that appropriate systems are in place to ensure that their advertisements comply with legislative requirements for licensing and consumer protection. Outlined below are some issues that should be considered by builders when advertising for residential building work.

## 1. *Inclusion of Contractor Licence Number In All Advertisements*

Under the Home Building Act 1989 there are maximum penalties of up to \$110,000 for a corporation and up to \$22,000 for an individual or partnership, seeking residential building work or specialist work (plumbing work, gas-fitting work, electrical work, refrigeration or air-conditioning work) without holding a contractor licence.

The amendments to the Home Building Act 1989 anticipated to commence on 1 December 2014 will see repeat offenders face increased penalties of up to \$55,000 and/or 12 months imprisonment. This will apply for all second offences committed after the amendments commence and it will not matter when the first offence occurred.

The maximum penalties that apply if an advertisement doesn't include a contractor's licence number are up to \$2,200 for a corporation and up to \$1,100 for an individual or partnership. These penalties will also apply if the name of the individual, the names of all members of the partnership, the name of the corporation, or a registered business name are not included in the advertisement.

It is important that the licence number published in an advertisement belongs to the owner of the business that is advertising the residential building services. For example if a building corporation is advertising it should quote its licence number in any advertising and not the licence number of one of its employees.

## 2. *Representations*

The Australian Consumer Law ("**ACL**") is, as its name suggests, legislation which has been enacted to protect Australian consumers. Builders that make false and misleading representations in advertisements face substantial penalties under the ACL. The maximum penalties under the ACL for making false and misleading representations are \$1.1 million per act or omission for a corporation or \$220,000 per act or omission for an individual or partnership.

The decision of *Australian Competition and Consumer Commission v Metricon Homes (QLD) Pty Ltd (ACN 005149 137) [2012] FCA 797 (31 July 2012)* emphasizes the importance of:

- (a) Clearly identifying any features and fittings depicted in an advertising brochure that are not included in a "from" price or offered by the builder. For example if there is a Bali hut or pool in an advertisement and that feature is not supplied by the builder as part of a "from" price this should be identified in the brochure.

- (b) The applicability of any promotional offers across the range of houses offered for sale by the builder should be clearly identified. In this case Metricon promoted a build time guarantee in advertising brochures that was subject to terms and conditions published on its website. The terms and conditions excluded the build time guarantee from the majority of houses sold by Metricon. The court found that the brochures induced consumers to mistakenly believe that a build time guarantee applied to all single storey and double storey homes sold by Metricon.
- (c) Where discount lists are advertised that include a “list” price and a “pay only” price, the “list” price should have been offered to consumers immediately before the start of the promotion. In this case, Metricon had never offered houses at the “list” price in its advertisements at any time.
- (d) For any promotion of upgrade packages comparing a “standard price” or a “recommended retail price” to the promotional price of the upgrade package, the builder should have supplied the upgrade package items at the “standard price” or the “recommended retail price” immediately prior to the promotion. In circumstances where Metricon had not supplied package items at the “standard price” or the “recommended retail price” immediately prior to the promotion, the Court found that consumers were misled in relation to the value of the features in upgrade packages and the advertised savings to the consumer.

## Conclusion

Builders should ensure that they have appropriate systems in place to ensure that advertising and any disclaimers are reviewed prior to publishing to ensure compliance with legislative requirements in relation to licensing and consumer protection.

## Key takeaways

- Builders must include their contractor licence number in all advertisements to comply with the Home Building Act 1989.
- False and misleading representations in advertisements can result in significant penalties under the Australian Consumer Law.
- Promotional offers must be clearly defined, and any conditions must be disclosed to avoid misleading consumers.
- Builders should ensure that any features depicted in advertisements are accurately represented and included in the advertised price.
- Penalties for non-compliance can be severe, including fines and imprisonment for repeat offenders.

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