

RRP—it's just a suggestion

A MAJOR CONCERN FOR PEOPLE RUNNING BUSINESSES IS PRICE SETTING. REVENUE, TURNOVER AND FINAL PROFIT ARE ALL AFFECTED BY THE PRICES A BUSINESS SETS FOR GOODS AND SERVICES.

Generally speaking, a business is free to set its own prices, and decisions on how much to charge will be affected by a range of factors including what competitors are charging and efforts to attract customers by advertising 'specials' or having seasonal or promotional sales.

Any business is free to set selling prices at whatever level it wants to, as long as those prices are set independently.

Businesses who supply other businesses' goods are allowed to recommend a price that the goods should be sold at, but this can only be a recommendation. Any attempt to force another business to charge this price, or to not charge below a certain price, may be a breach of the Act. This not only includes situations where a price is overtly stated, but also where the desired price is described by a formula (e.g. selling price = cost + 20%). The Trade Practices Act prohibits manufacturers, importers or wholesalers from:

- › making it known to resellers the minimum price below which goods must not be sold
- › setting a price that retailers are likely to understand is the price below which goods should not be sold or advertised
- › agreeing with a retailer that goods will not be advertised below a specified price
- › inducing a retailer not to discount goods by giving a better buying price
- › cutting off supply to a retailer to force them to comply with any of the above
- › threatening to refuse supply for any of the reasons above.

It's fine for suppliers to recommend a retail price so long as it is just that—recommended. But it's illegal for them to put pressure on a retailer to charge the listed price—this is called 'resale price maintenance' and carries heavy penalties under the Trade Practices Act.

Sometimes suppliers try to impose a resale price to maintain brand positioning or to give resellers attractive profit margins. However, this is illegal.

In a recent case that the ACCC took to the Federal Court, Dermalogica Pty Ltd, a wholesaler of prestige skin care products, was fined \$250 000 for engaging in resale price maintenance.

Dermalogica had attempted to stop two retailers discounting its products below recommended retail prices. Dermalogica had written to the two retailers stating:

It has come to our attention that your website is offering the Dermalogica product range for sale lower than the recommended retail price. Our web guidelines and policies clearly state that in order to maintain Dermalogica's premium brand image and consistent pricing strategy, we strongly discourage the selling of Dermalogica products for more or less than their suggested retail prices.

I would ask you therefore to please adjust your prices for online retailing with immediate effect.

Dermalogica staff had met with the retailers to voice their concerns in person and its web guidelines stated that a violation of its pricing policy could result in account termination and legal action.

As Justice Goldberg pointed out, the company's conduct was 'deliberate, bold and somewhat aggressive'.

The only exemption to the law is when suppliers withhold supplies of goods because a company has engaged in 'loss leader selling'. That is, buying goods with the intention of selling them below their cost so that:

- › the company can promote their business
- › the company can attract customers who are likely to buy other goods or services.

This exemption does not apply to genuine clearances, or when a supplier has agreed to supply goods to a company for the purpose of loss leader selling.

Retailers are sometimes tempted to ask their suppliers to use their price lists to stop competitors from discounting. The retailer, as well as the supplier who agrees with the suggestion, would then be breaking the law—that is, inducing resale price maintenance or price fixing.

Any business person who believes a supplier is pressuring them into charging higher prices, can contact the ACCC Infocentre on 1300 302 502.