



Weblinks

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Compliance issues regarding advertising by builders

The Department of Commerce has received a number of complaints raising concerns about representations made in advertisements placed by builders. The issues relate to house and land packages where the builder does not own the land.

The Department is aware that advertising house and land packages is an industry-wide marketing practice. However, builders need to ensure their advertising complies with the *Australian Consumer Law (WA) (ACL)*.

The Department has recently investigated some of the following issues:

Land ownership

A builder advertised a block of land they did not own (as part of a house and land package) without the authority of the owner.

Only a person who owns a block of land is entitled to sell it; otherwise it must be sold by someone who is legally allowed to do so (such as the owners themselves or a licensed real estate agent).

The Department understands some builders have an affiliation or agreement with a developer to advertise the developer's land. This should be disclosed in advertisements to avoid misleading consumers into believing the land is purchased through the builder.

When basing house and land packages on land being sold by a real estate agent or private vendor, builders should disclose this information in all advertising. They should also obtain authority to advertise the block from the owner of the land. Section 30(1)(a) of the ACL states the person promoting the sale of land must not falsely represent that they have sponsorship, approval or affiliation to sell the land when they do not do so.

Availability of land

Land was being advertised in house and land advertisements that has already been sold. Builders should only advertise house and land packages where the land is currently available.

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If land is not being advertised exclusively by the builder, this raises concern about whether it will actually be available for sale when a consumer makes an enquiry. Builders should therefore regularly review advertisements to ensure the packages are based on land that is currently available. Failure to do so may breach sections 18 and 30(1)(b) of the ACL which relate to false or misleading conduct or false or misleading representations in relation to an interest in land.

Pictured elevation

Photographs of front elevations being included in advertisements although the elevations are not included in the advertised price. If photographs of this type are used in marketing material, then builders must disclose the information in the advertisement.

Elevations should only be pictured if the builder is able to supply the elevation on the particular block of land being advertised (eg a 17m house frontage in an advertisement when the block is only 12m). Section 30(1)(e) and 30(1)(f) of the ACL relate to false or misleading representations made in relation to the characteristics of land or its potential use.

Pricing

Set prices being used in house and land packages without providing for fluctuations when site works or alterations are taken into consideration. Set prices should be avoided if they cannot be guaranteed.

Advertisements should disclose that prices are subject to change when site works and any other relevant costs are taken into consideration. Sections 29(1)(i) and 30(1)(c) of the ACL relate to false and misleading representations in relation to the price of goods or services or the sale or grant of an interest in land.

Breaches

The Department of Commerce may take action against a body corporate or an individual who breaches the ACL by making a false or misleading representation in an advertisement. The maximum penalty applicable to an individual is \$220,000, while the maximum penalty applicable for a body corporate is \$1,100,000.

More information

Contact the Department of Commerce's Consumer Protection division on 1300 30 40 54 or email consumer@commerce.wa.gov.au Information about the ACL is available from the Department's [website](#).