



24 August 2007

By email: economics.sen@aph.gov.au

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

**Senate Economics Committee
Inquiry into the Provisions of the Trade Practices Amendment (Small Business Protection) Bill 2007**

The Consumer Action Law Centre (Consumer Action) welcomes the opportunity to comment on the Trade Practices Amendment (Small Business Protection) Bill 2007 (the Bill).

About Consumer Action

Consumer Action is a campaign-focused consumer casework and policy organisation, dedicated to advancing the interests of low-income and vulnerable consumers, and of consumers as a whole. Based in Melbourne, it was formed in 2006 by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service and is funded jointly by Victoria Legal Aid and Consumer Affairs Victoria.

Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and throughout the community directly.

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Secondary boycott provisions

Consumer Action is concerned about the operation of the secondary boycott provisions contained in sections 45D and 45E of the Trade Practices Act 1974 (Vic) (TPA), as well as the extension to their application proposed by the Bill.

It is Consumer Action's view that campaigning activities which highlight unfair or illegal conduct by businesses is in the public interest, and that they should not be threatened with potential litigation under the TPA. We are concerned that a possible interpretation of the scope of the provisions could have the effect that such activity could be in breach of the secondary boycott provisions, at least in certain circumstances.

Section 45D of the TPA states that a person must act in concert with a second person before they can be found to be engaging in an illegal boycott. We have received legal advice which suggests that despite the requirement for two persons to be acting in concert, a single organisation could be in breach of the provisions, as the organisation (the first person) may act in concert with an employee of that organisation (the second person). Such an interpretation may leave campaigning organisations vulnerable to liability.

We note that section 45DD of the TPA does contain a defence to the claim of an illegal boycott, where it can be shown that the dominant purpose for which the conduct is engaged is substantially related to environmental protection or consumer protection. Ostensibly, this defence would apply to limit liability to any claim against a consumer or environmental organisation, which could be said to have engaged in the relevant conduct for the requisite dominant purpose. However, noting that there is no definition of 'consumer protection' in the TPA, we have received legal advice to the effect that the defence may be construed narrowly. Such a construction would frustrate the apparent legislative intent of the provisions not to apply to social or political conduct that is in the public interest (that is, conduct which has the dominant purpose of environment or consumer protection).

The Bill

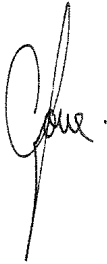
The Bill does not directly address the concerns described above. Instead, it would allow the Australian Competition and Consumer Commission (the ACCC) to take representative action on behalf of affected businesses. We have no objection to this proposal per se, however, if our concerns relating to the substantive provisions are correct, this amendment may provide an additional mechanism by which genuine public interest campaigning could be stifled (should the ACCC decide to seek action against a campaigning organisation).

Considering the above, we request that the Committee propose an amendment to the Bill, to place it beyond doubt that public interest campaigning is not caught by the secondary boycott provisions, or the increased powers of the ACCC.

Should you have any questions, please contact us on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink, appearing to read 'Catriona Lowe'.

Catriona Lowe
Co-CEO

A handwritten signature in black ink, appearing to read 'Gerard Brody'.

Gerard Brody
Director – Policy & Campaigns