



NANA
Since 1891
ABN 13 096 737 352

The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

31 July 2009

Dear Sir,

Inquiry into the Trade Practices Amendment (Australian Consumer Law) Bill 2009

The NANA represents 420 members in NANA. We are the classic small business operators and face powerful suppliers such as newspaper and magazine suppliers and lottery companies.

Small business has long campaigned for action in relation to the use of standard form contracts which may be unfair to small businesses.

In May the then Minister for Consumer Affairs, Chris Bowen MP issued draft legislation to prohibit unfair contract terms. He indicated that the legislation would come into effect on 1 January 2010.

The proposed law covered business to business and well as consumer to business contracts. In relation to business to business contracts the Minister said,

“Standard-form contracts are used by parties irrespective of the legal status or nature of the party to whom the contract is presented, and without any effective opportunity for that party to negotiate the term. In such cases, it would be invidious to suggest that the same term, which may be considered unfair in relation to a contract entered into by a natural person, would not be similarly unfair in relation to a business, where neither of them is in a position to negotiate the term”

Small business strongly agreed with the above statement. Small business warmly responded to the proposal. Too long has small business been forced to accept unfair “take it or leave” it contracts.

There were some aspects of the Bill that needed clarification, such as the exemption of ‘up front price’ but overall the proposed law was a huge leap forward.

The Government raised the expectations and hopes of small business. Even when the Minister announced a threshold of \$2 million on prohibited contracts.

Small business, and newsagents in particular, was generally very pleased.

The Bill in Parliament on 24 June 2009 BUT business to business contracts were excluded. No warning was given and the first that small business knew of this change was in the Second Reading Speech.

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A further review was flagged. No timing was given for that review.

We were very disappointed. We ask the Committee to recommend that business to business contracts be put back into the Bill or an associated Bill. Critical to newsagents is the timing as the renewal of major newspapers contracts comes up in early 2010.

The Trade Practices Act applies to business generally and we feel that that should be maintained. Unconscionable conduct law covers most small business contracts, why not "unfair".

We understand that there were some concerns about the proposed law and we can understand that. But why not change the law to meet these concerns and not take business to business out all together.

Yours truly,

S Cousins
President

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