

 <p>QUEENSLAND CONSUMERS ASSOCIATION</p>	<p>A non-profit, volunteer organisation, advocating to advance the interests of consumers in Queensland</p> <p><i>Secretary:</i> Max Howard PO Box 261 Corinda Q 4075</p> <p><i>Telephone:</i> (...)</p>
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12 April 2010

The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email

Dear Sir

Submission to Inquiry into the Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010

Recommendation

Amend Schedule 4 of the Bill to enable infringement notices to be issued for appropriate provisions of mandatory industry codes made under Part IVB of the *Trade Practices Act*.

Background

The Queensland Consumers' Association (the Association) is the peak body for consumer groups in Queensland. The Association's members work in a voluntary capacity. The Association is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups.

The Association does not have the resources make a comprehensive submission on the entire Bill. Accordingly, the Association has concentrated on the following issue:

- the need for the ACCC to be able to issue infringement notices for appropriate provisions of mandatory industry codes made under Part IVB of the *Trade Practices Act*.

Commentary

For many years, the Association has advocated for Australian supermarkets to provide shoppers with the unit price of pre packaged grocery items.

In 2008, the ACCC enquiry into grocery prices recommended the establishment of a compulsory national grocery unit pricing scheme. The Commonwealth government accepted this recommendation and on 11 August 2009 the Trade Practices (Industry Codes – Unit Pricing) Regulations 2009, SLI 2009 No 152, establishing a national mandatory code of conduct for unit pricing under Part IVB the *Trade Practices Act* for large supermarkets were laid before Parliament. The Regulations commenced on 1 July 2009 and became enforceable on 1 December 2009.

For a unit pricing system to be most effective, overseas experience indicates that regulators need a wide range of possible sanctions to take against non complying retailers depending on the nature and severity of non compliance, including the ability to impose administrative fines.

For example, in 2007 Association member Ian Jarratt studied grocery unit pricing in the USA and Europe on a Winston Churchill Fellowship. This study revealed major differences in the enforcement provisions of the unit pricing legislation between states in the north east USA with compulsory unit pricing. These differences significantly influenced by the ability of regulators to deal with retailer non compliance with the the unit pricing legislation, for example non provision of unit prices, inaccurate unit prices, and use of incorrect units of measurement. Such non compliance has significant negative impacts on consumer confidence in and ability to use unit pricing. States, such as New Jersey, which permitted the regulator to impose administrative penalties appeared able to achieve higher levels of compliance than states, such as Massachusetts, which required the regulator to take allegations of non compliance to court.

Also, in 2007 the Republic of Ireland provided in the Consumer Protection Act 2007 for the imposition of administrative fines by the regulator for alleged minor offences. This change was recommended in the 2005 report of the Consumer Strategy Group, a group of experts set up by the government. It reflected the high cost having to take alleged minor offences to court and the low deterrent effect. The new provision has been used successfully to deal with alleged non compliance with unit pricing legislation.

The Association also notes that:

The ACCC's 2008 grocery price enquiry recommended in relation to unit pricing (page 456) "that any legislative mechanisms implemented should also be sufficiently flexible to enable the agency responsible for the regime to issue legislative instruments whichallow for appropriate compliance monitoring and enforcement." and

The Senate Committee report on the 2009 inquiry into Bill No 1 included the following quotation from the Treasury submission - "Infringement notices are directed to fairly minor breaches. The size of the penalties is fairly small. The largest on the face of the bill is \$6,600 for a corporation. So these would not be used to deal with major breaches that might apply in relation to, say, a national company. They are designed to provide the regulator with a means of drawing to a business's attention a potential breach to give them the option of paying the penalty, which that business is entitled not to pay. But that comes with the risk that they may be then subject to enforcement action for a civil

pecuniary penalty, which may be a good deal more substantial. In terms of the way in which the regulator approaches this, there is a process under the intergovernmental agreement for the development of a memorandum of understanding between the ACCC, ASIC and the states' and territories' regulators to provide clarity around the way in which they will interact with one another and to provide guidance as to the way in which they will apply these powers on a consistent national basis.”

Accordingly, the Association considers that an infringement notice can be a very effective and appropriate response to some breaches of unit pricing legislation.

However, as currently drafted the Bill will result in infringement notices not being not being available for breaches of any provisions in any industry codes made under Part IVB of the Trade Practices Act. This exclusion would significantly reduce the ACCC's ability to effectively and efficiently take action in response to some breaches by retailers of the unit pricing code.

Therefore, the Association **recommends** that Schedule 4 of the Bill be amended to enable infringement notices to be issued for appropriate provisions of mandatory industry codes made under Part IVB of the *Trade Practices Act*.

The Association's contact person on this matter is Ian Jarratt - email:
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Yours sincerely

(...)

Cherie Dalley
(President)