

EXECUTIVE OFFICE



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Senator Glenn Sterle, Senator for Western Australia
Chair
Senate Rural and Regional Affairs and Transport References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator

**ACCC's response to issues raised in the Inquiry into the Future of the
beekeeping and pollination service industries in Australia**

I refer to the Senate Rural and Regional Affairs and Transport References
Committee's (**the Committee**) current Inquiry into the *Future of the beekeeping and
pollination service industries in Australia* (**the Inquiry**).

Several submissions to the Inquiry raised concerns with representations regarding
the origin of certain products and those same products being labelled and sold as
honey, when in fact they were not honey. The Committee indicated it would be
interested to hear from the ACCC, in response to the submissions it had received
and evidence collected from witnesses during the first public hearing held on
15 April 2014. Attached is the ACCC's response to this request.

The ACCC does not generally refer publicly to current investigations or identify
traders about which it has received complaints. Accordingly, the attached response is
restricted in the detail it provides regarding current investigations.

Yours sincerely

Rod Sims
Chairman

ACCC response to issues raised with the Senate Rural and Regional Affairs and Transport References Committee as part of its Inquiry into the Future of the beekeeping and pollination service industries in Australia

Executive Summary

This is a response to issues raised in the Senate's Rural and Regional Affairs and Transport References Committee's (**the Committee**) Inquiry into the *Future of the beekeeping and pollination service industries in Australia (the Inquiry)*. The response provides an overview of the Australian Competition and Consumer Commission's (**ACCC**) responsibilities in relation to the Australian Consumer Law (**ACL**) (found in schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**)). The response provides a summary of the ACCC's current investigations into misleading and deceptive conduct and false and misleading representations into products being labelled and sold as honey.

The ACCC is currently investigating a complaint from the Australian Honey Bee Industry Council (**AHBIC**) alleging that a certain product was not honey. The supplier has been afforded the opportunity to respond to the allegations and the ACCC's proposed enforcement action. The matter is not yet resolved, however the product has been removed from sale. Additionally, we anticipate taking further action that can be referred to shortly. The ACCC subsequently received a second complaint from the AHBIC regarding another product which it alleged was not honey and not a product from Australia.

The ACL regulators, comprising State and Commonwealth agencies, have set out their general enforcement policy in *Compliance and Enforcement – How regulators enforce the Australian Consumer Law*. Consistent with this policy and the ACCC's own *Compliance and Enforcement Policy* regarding efficient and effective use of resources, the ACCC intends to communicate the enforcement outcome expected as a result of its initial investigation to industry and the media to help bring about change in the broader honey industry.

This response also provides comments about certain recommendations that were not implemented, as outlined in the House of Representatives Standing Committee on Primary Industries and Resources Report into *More Than Honey: the future of the Australian honey bee and pollination industries*.

Background

Several submissions to the Inquiry raised concerns with the origin of certain products and of some products being labelled and sold as honey, when in fact they were not honey, but were likely to be corn syrup. Witnesses at the public hearing on 15 April 2014 reiterated those concerns. Mr Ian Mark Zadow, Chairman of the AHBIC stated the AHBIC had raised its concerns with the ACCC and that the ACCC had been slow to act and did not view the issue as a priority. In response to the submissions it had received and Mr Zadow's evidence, the Committee indicated it would be interested to hear from the ACCC.

The ACCC has reviewed the submissions and the transcript of the public hearing on 15 April 2014. In response, the ACCC provides the following information regarding its responsibilities in relation to the ACL. In general, investigations are conducted confidentially and the ACCC does not comment on matters it may or may not be investigating. However to assist the Inquiry, the ACCC will provide an overview of its approach in relation to the complaints it has received regarding products alleged not to be honey. The ACCC's response also refers to comments made in the submissions and the public hearing regarding the recommendations by the House Standing Committee on Primary Industries and

Resources in its tabled report on the Inquiry into the Future Development of the Australian Honey Bee Industry, *More Than Honey: the future of the Australian honey bee and pollination industries*.

ACCC responsibilities in relation to the Australian Consumer Law

The ACCC, in conjunction with the State and Territory consumer affairs and fair trading agencies, is responsible for administering the ACL. The ACL includes provisions prohibiting misleading and deceptive conduct and false or misleading representations regarding, among other things, the composition or place of origin of a product.

The ACL regulators have produced the publication *Compliance and Enforcement – How regulators enforce the Australian Consumer Law* as a guide to the public on how they will approach allegations of breaches of the ACL. This publication notes:

To make the best use of resources and maximise public benefit, compliance and enforcement activity will target areas of strategic priority, and incidents with evidence or likelihood of consumer detriment.

The ACL regulators cannot pursue all complaints. They consider complaints carefully and exercise discretion, directing resources to matters that provide the greatest overall benefit for consumers.

As these matters may vary within a jurisdiction or between jurisdictions, priorities for enforcement action differ accordingly.¹

The publication also notes:

...aside from compliance and enforcement by ACL regulators, the ACL creates private rights that persons can enforce through Commonwealth, state and territory courts and tribunals²

In 2012-13 the ACCC received over 185,000 complaints and enquiries of which over 15,000 related to misleading and deceptive conduct.³ The ACCC gives priority to complaints relating to priority areas it has identified in its *Compliance and Enforcement Policy*. In determining whether to investigate a specific complaint, the ACCC has regard to the factors identified in the policy, which is available on the ACCC's website.⁴

The ACCC has a range of enforcement options available to it ranging from administrative outcomes including court enforceable undertakings and infringement notices through to civil or criminal litigation. The ACCC's enforcement response is proportionate to the conduct and resulting harm and the ACCC may recognise cooperation by an offending party by agreeing

¹ Australian Capital Territory Office of Regulatory Services et al., *Compliance and enforcement: How regulators enforce the Australian Consumer Law*, Canberra, 2010, p. 8.

² Ibid, p. 6.

³ Australian Competition and Consumer Commission, *ACCC and AER Annual Report 2012-13*, ACCC, Canberra, 2013, pp. 179-180.

⁴ <http://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy>

to an administrative settlement instead of litigation. The ACCC determines each case on its merits.⁵

ACCC activity in relation to products alleged not to be honey

In September 2012, the ACCC first received a complaint from the AHBIC alleging consumers were being misled by representations on a product that it had its origins in Victoria, when the product was from Turkey. The ACCC advised AHBIC the conduct AHBIC described may have breached the ACL and lodged the details of AHBIC's complaint in the ACCC's database. No further action was taken. This step was consistent with the ACCC's *Compliance and Enforcement Policy* which states the ACCC will focus on matters involving widespread conduct and/or significant consumer detriment. Where there is only one complaint in relation to ACL conduct, such complaints are often logged and may be reviewed later if a pattern of conduct by a particular trader or industry is identified.

On 24 April 2013, the ACCC received a further complaint from the AHBIC alleging the same product was not honey. The AHBIC provided a test report from a German laboratory which concluded the product did not meet the requirements for pure honey under the European Union Council Directive 2001/110/EC (**EU Standard**). It is not clear why AHBIC did not provide a test against the relevant Australian standard.

The Australia New Zealand Food Standard Code (**Food Code**) includes a standard for honey, Standard 2.8.2 (**the Australian Standard**), which defines honey as:

the natural sweet substance produced by honey bees from the nectar of blossoms or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants, which honey bees collect, transform and combine with specific substances of their own, store and leave in the honey comb to ripen and mature.

The Australian Standard also requires honey to contain no less than 60% reducing sugars. The ACCC understands the Australian Standard is different from the EU Standard.

During June 2013, the ACCC requested the AHBIC provide further materials concerning its complaint. The ACCC notified the AHBIC that test reports indicating a breach of the EU Standard did not necessarily substantiate a breach of the ACL. The ACCC requested the AHBIC to provide further information to assist us in determining whether the product did not conform to the Australian Standard.

The ACCC understands the AHBIC made a complaint to the Victorian Department of Health (**Vic DOH**) who are responsible for administering the Food Code. As a result, in November 2013, Vic DOH provided the ACCC with a test report for the product against the Australian Standard and provided explanatory notes in relation to the test report. Based on that report, the ACCC concluded the product appeared to be comprised mainly of C-4 sugars, which are not sugars produced by honey bees but are sugars derived from certain plants including corn and sugar cane.

In the absence of health or safety risks to consumers, the ACCC does not generally request a recall of a product without first giving the supplier the opportunity to respond to the allegations being made. Accordingly, following receipt of the test report and discussions with the Vic DOH to clarify our understanding of the report, the ACCC wrote to the supplier of the

⁵ Ibid.

product seeking information about the product (including the basis for the representations that the product was honey), the source of the product, the extent of supply within Australia and any complaints it had received regarding the product. The ACCC notified the AHBIC the ACCC was seeking this information from the supplier of the product.

In December 2013, the supplier of the product informed the ACCC that the product would be withdrawn from sale and that it was willing to consider providing an undertaking in regards to the conduct. The supplier claimed it had been misled about the composition of the product by its own supplier.

Following the ACCC's request for further information, including the status of its recall of the product, the supplier notified the ACCC in January 2014 that it had removed all the product from its retail stores and its wholesale customers had verbally agreed to remove stock from shelves and to return the product to the supplier for credit. The supplier further notified us that it would not offer the product for sale pending a resolution of the matter with the ACCC.

In March 2014, following consideration of the matter by the Commission, the ACCC wrote to the supplier indicating the action that the ACCC would take. The supplier sought an extension of time to respond to the ACCC.

On 13 February 2014, the ACCC received a complaint from the AHBIC regarding another product which it alleged was not honey and not a product from Australia. The submissions and evidence at the public hearing appear to suggest this new product is a replacement for the product for which the ACCC is already taking action. However, on the information available to it, the ACCC understands the Australian suppliers of the two products are not related.

The ACCC intends to communicate the enforcement outcome expected as a result of its initial investigation to industry and publicly, through a media release, in order to help bring about change in the broader honey industry. This action is consistent with the ACL regulators publication *Compliance and Enforcement – How regulators enforce the Australian Consumer Law* and the ACCC's own *Compliance and Enforcement Policy*. The ACCC has a range of tools available to it to assist in wider deterrence. In this instance it is anticipated these will include a media release following the resolution of a matter and dissemination of the media release, through Vic DOH to local government food safety officers responsible for enforcing the Food Code, these officers will be requested to provide the media release to relevant importers and suppliers.

In circumstances such as these, the ACCC finds it more effective to rely on a finalised enforcement outcome against carefully selected industry participants to achieve general deterrence. In our experience, other participants are more likely to comply with the law when the ACCC has already demonstrated it is prepared to take enforcement action. Accordingly, following the finalisation of the matter it is currently pursuing, the ACCC will write to the supplier of the product that is the subject of AHBIC's February 2014 complaint to notify it of the recent enforcement action and seek its compliance with the ACL.

The ACCC will also write to the competition regulator in Turkey to inform them the ACCC has taken action against certain traders regarding Turkish products being imported into Australian and misrepresented as honey.

The ACCC has informed the AHBIC that the ACCC's response to its complaints does not in any way preclude it or its members from pursuing private legal action for any loss or damage

as a consequence of conduct by certain suppliers which it may consider contravened the ACL.

The ACCC has kept the AHBIC informed of the progress of the investigation into its complaints at key stages of the investigation and has carefully considered all of AHBIC's information.

More Than Honey: the future of the Australian honey bee and pollination industries

In May 2008 the House of Representatives Standing Committee on Primary Industries and Resources issued its Report of the inquiry into the future development of the Australian honey bee industry, *More Than Honey: the future of the Australian honey bee and pollination industries*. The Report included a recommendation that the Australian Government request the ACCC to investigate pricing practices for honey within the honey bee industry and retail sector.

The AHBIC submission and evidence in the public hearings noted that this recommendation was not implemented. The Government Response to the Report⁶ was that:

the government does not support the use of formal price monitoring under Part VIIA of the Trade Practices Act 1974 (Cth) [as the CCA was then named] unless a market displays characteristics that show competitive pressures are not sufficient to achieve efficient prices and protect consumers. As the committee did not conclude that the honey bee industry displayed such characteristics, the government will not be referring this matter to the Australian Competition and Consumer Commission.

Accordingly the ACCC currently does not have responsibility for monitoring the prices for honey. The ACCC only undertakes price surveillance activities where it is requested to pursuant to Part VIIA of the CCA.

The Report also included recommendations regarding the development of labelling standards. The Government Response to the Report was it considered "*changes to product labelling standards are a matter for industry to pursue through established processes*". The Government noted this included the Food Code and the provisions under the *Trade Practices Act 1974 (Cth)*, as the CCA was then named.

The ACCC considers the current provisions of the ACL relating to misleading and deceptive conduct and false and misleading representations as they relate to food labelling issues provide sufficient avenues for consumer protection. As noted above, it is not possible or appropriate for the ACCC to pursue all allegations of breaches of the ACL. The ACCC necessarily focusses on those allegations which, if substantiated, are widespread in nature and/ or likely to have significant consumer detriment. It encourages potentially affected parties to raise issues directly with traders where possible and to consider their own private right of action.

⁶ http://www.daff.gov.au/_data/assets/pdf_file/0004/1206904/gov-response-sentinel-hive.pdf