



## **A SUBMISSION BY VOICELESS ON THE TRADE PRACTICES (SMALL BUSINESS PROTECTION) BILL 2007**

**August 2007**

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*voiceless envisions a world in which animals are treated with respect and compassion.  
voiceless ltd. is a non-profit australian organisation established by the sherman family in 2004.*

## ABOUT VOICELESS

Voiceless is a non profit Australian organisation established in 2004 by father and daughter team Brian Sherman AM and Ondine Sherman. Voiceless's mission is to promote respect and compassion for animals, increase awareness of the conditions in which they live and take action to protect animals from suffering.

Its aims are to:

1. give grants to organisations that share its vision;
2. educate Australians and in particular young Australians; and
3. work to modify or create legislation and policies to protect animals.

### PATRONS

**J.M. COETZEE**, Nobel Prize for Literature Winner 2003, author of 'The Lives of Animals' and 'Elizabeth Costello'...

**BRIAN SHERMAN AM** Philanthropist and Businessman

### AMBASSADOR

**HUGO WEAVING**, Actor

The Adventures of Priscilla Queen of the Desert, Matrix Trilogy, Lord of the Rings Trilogy...

### ANIMAL CLUB AMBASSADOR

**ABBIE CORNISH**, Actor

Somersault, Candy, A Good Year...

For further information visit <http://www.voiceless.org.au>

All correspondence in relation to this submission should be directed to

Katrina Sharman,  
Voiceless  
2 Paddington Street, Paddington NSW 2021  
Tel: (02) 9357 0713  
Fax: (02) 9357 0711  
e.mail [ksharman@voiceless.org.au](mailto:ksharman@voiceless.org.au)

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## **SUBMISSION ON THE TRADE PRACTICES (SMALL BUSINESS PROTECTION BILL) 2007.**

This submission has been prepared by Voiceless in response to the Senate Standing Committee on Economics' Inquiry into the *Trade Practices (Small Business Protection) Bill 2007*. Voiceless is extremely concerned about the proposed amendments to the *Trade Practices Act 1974* ('the Act'). We view the Committee's inquiry as a crucial component in exposing the misuse of legislative power which the Bill represents.

According to the Bill's Explanatory Memorandum, the main objectives of the amendments are to achieve consistency in the application of the remedies and enforcement provisions of the Act and improve access to remedies under the Act. Plainly stated, the Bill will enable the Australian Competition and Consumer Commission ('ACCC') to seek compensation for parties affected by the secondary boycott provisions under sections 45D and 45E of the Act. This will be achieved by amending section 87 of the Act to allow the ACCC to take representative action and pursue compensation on behalf of persons (or small businesses) who have suffered, or are likely to suffer, loss or damage as a result of unlawful secondary boycotts.

Voiceless's objections to the Bill are set out below.

1. While the provisions of the Bill appear *prima facie* innocuous, a detailed examination of the Bill's contents and the circumstances in which it came to be introduced, reveal that to be far from the case. To the contrary, the Bill represents a further erosion of the freedom of political communication which has been implied into Australia's Constitution (*Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520).
  - a. Voiceless recognises that under section 45D of the Act secondary boycotts carried by groups acting in the public interest may, in some circumstances, be deemed unlawful. Voiceless takes objection to those provisions, to the extent they inhibit freedom of political communication and the right to call for consumers to take a stand against the institutionalised suffering of animals.
  - b. Voiceless is concerned that the proposed changes to the Act represent a further erosion of the freedom of political communication because they increase the likelihood of actions being taken against animal protection groups that call on consumers to vote with their feet, or their dollar. For example, if the Bill is enacted, an animal protection group that:
    - i. seeks to educate consumers about the pain and suffering of animals in factory farms; and
    - ii. in doing so, calls on consumers to purchase ethical food,
 may find itself the subject of an action by the ACCC, seeking compensation on behalf of factory farmers.<sup>1</sup>
2. Many groups that call for consumer action in the public interest (such as indigenous groups, womens' rights groups and other civil liberties groups) will be affected by the Bill. However

<sup>1</sup>In recent years, numerous studies have been conducted which suggest that consumers may respond to increased knowledge about the suffering of animals by boycotting certain products. For example, in a recent European study, 62% of participants indicated that they would be willing to change their usual place of shopping in order to buy more animal friendly food products (Special Euro barometer, *Attitudes of EU Citizens towards Animal Welfare*, March 2007, 38. [http://ec.europa.eu/food/animal/welfare/survey/sp\\_barometer\\_aw\\_en.pdf](http://ec.europa.eu/food/animal/welfare/survey/sp_barometer_aw_en.pdf)).

the clear targets of the Bill are animal protection groups that call for consumers to take action in response to their ethical concerns. In Voiceless's view, that is evidenced by the following:

- a. While the Second Reading Speech does not expressly refer to targeting animal protection organisations, the true intentions of those who support this Bill were made clear in a speech to the *Pastoralists and Graziers Association 2007* in which the contents of the Bill were foreshadowed by the Treasurer, Peter Costello MP.
    - i. In that speech Mr Costello referred expressly to the campaign led by People for the Ethical Treatment of Animals (PETA) against mulesing of Australian sheep and the litigation that resulted from that campaign.<sup>2</sup> In doing so, he said that the 'Government's reforms would enable the ACCC to bring representative action on behalf of wool growers in comparable cases'.
    - ii. Mr Costello also said, in relation to the contribution to the PETA campaign by celebrities Martina Navratilova and 'Pink', that 'ignorant commentary from misguided celebrities would remain legal'. Voiceless is uncertain as to whether Mr Costello intended to suggest that informed commentary by animal protection groups would expose them to legal action, where that commentary may affect the bottom line for Australian farmers.
  - b. Unlike groups acting for the dominant purpose of consumer protection or environmental protection, animal advocates who are 'targeted' by this legislation cannot rely upon s45DD (which provides certain defences to secondary boycotts). Consequently any expansion in enforcement powers under the Act will increase the risk of litigation against animal protection organisations, unless s45DD is amended to provide a right to conduct a secondary boycott in the interests of animals.
3. While the current provisions of s45D permit action to be taken for alleged unlawful conduct, the Bill will transfer the risk and costs burden of litigation from small business to the public purse. The PETA litigation (referred to above<sup>3</sup>) cost Australia's woolgrowers more than \$10 million<sup>4</sup>. Under the new laws, costly litigation of this kind will be waged at the expense of Australia's taxpayers. The Explanatory Memorandum to the Bill also foreshadows the possibility of an education campaign directed at informing businesses about their legal rights and remedies under the Act. Such a campaign would also, presumably, be conducted at a further cost to Australian taxpayers.
4. Animals in Australia are suffering today, particularly on factory farms. For example:
- a. more than 422 million broilers<sup>5</sup> spend their lives crammed together with thousands of others in dimly lit sheds, selectively bred for their journey 'from nest to nugget';
  - b. more than one third of a million sows<sup>6</sup> – essentially piglet-breeding machines, are kept in stalls so small they cannot turn around for most of their reproductive lives<sup>7</sup>;

<sup>2</sup> *Australian Wool Innovation Ltd v Newkirk* [2005] FCA 290; *Australian Wool Innovation Ltd v Newkirk (No 2)* [2005] FCA 1307 (16 September 2005); *Australian Wool Innovation Ltd v Newkirk (No 3)* [2005] FCA 1308 (16 September 2005).

<sup>3</sup> *ibid.*

<sup>4</sup> 'Secondary boycott Bill introduced into Federal Parliament', *Farmonline*, 22 August 2007, [24 August 2007] [http://www.farmonline.com.au/news\\_daily.asp?ag\\_id=44756](http://www.farmonline.com.au/news_daily.asp?ag_id=44756).

<sup>5</sup> Based on 2004/05 figures. In 2006/07, this figure is expected to climb 487.9m broilers slaughtered per annum. See: Australian Chicken Meat Federation, Inc, *Industry Facts and Figures* <<http://www.chicken.org.au/page.php?id=4>>.

<sup>6</sup> Australian Pork, *Australian Pig Annual*, 2005, <<http://www.australianpork.com.au/media/Australian%20Pig%20Annual%20Epdf>>

- c. each year, approximately 4 million cattle are raised or finished in feedlots (in which they are often stressed, roughly handled and prevented from engaging in many of their natural grazing activities.)<sup>8</sup>; and
  - d. more than 13 million layer hens, or battery hens as they are better known, currently serve as egg-laying machines.<sup>9</sup> They typically share a cage with 3 or 4 others and are each accorded the size of an A4 sheet of paper in which to move, insufficient room to exercise the bulk of their natural behaviours.<sup>10</sup>
5. There is a veil of secrecy which keeps the suffering of more than half a billion animals in Australia (each year) hidden from the public.<sup>11</sup> This Bill will reinforce that veil because it will have a chilling effect on animal protection groups that seek to engage in public awareness campaigns. Many such groups will feel constrained by the high costs of seeking legal advice about the legality of their conduct prior to commencing campaigns, or the prohibitive costs and risks of litigation brought by the ACCC.
  6. In the High Court Case, *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63, the Honourable Justice Kirby recognised [at 217] that 'animal welfare is a matter of legitimate public debate' and that 'Many advances in animal welfare have occurred only because of public debate and political pressure from special interest groups'. It seems clear that the chilling effect of this Bill will impede such advances and limit the ability of Australia to demonstrate leadership in matters of animal protection.
  7. Under the Bill, the ACCC which is meant to be an independent Commonwealth statutory authority charged with consumer protection, may be used as a political weapon to clamp down on organisations acting in the public interest. The Treasurer's comments (cited above) make it clear that the Bill has been introduced to support rural industries. This has been recognised by the comments of certain industry representatives. For example, Woolproducers Australia President, Robert Pietsch recently said: 'This initiative by the Treasurer is a real step forward in protecting the rights of farmers'.<sup>12</sup>
  8. Of further concern is that fact that the 'new powers' of the ACCC, whose activities are directed towards consumer protection, may stifle the flow of information to consumers. Australian consumers have a right to be fully informed about the products they buy and to make choices accordingly, even if those choices affect the profitability of certain agricultural sectors.

<sup>7</sup> Primary Industries Ministerial Council, *Model Code of Practice for the Welfare of Animals- Pigs (revised)*, 20 April 2007. ([http://www.daff.gov.au/animal-plant-health/welfare/model\\_code\\_of\\_practice\\_for\\_the\\_welfare\\_of\\_animals](http://www.daff.gov.au/animal-plant-health/welfare/model_code_of_practice_for_the_welfare_of_animals)).

<sup>8</sup>RSPCA Australia Inc, *Statements: Farm Animals*, RSPCA Policies and Position Papers, *Policy*, 2005, p53 <<http://www.rspca.org.au/policy/B.pdf>>, Animals Liberation NSW, Cows: Feedlots; <http://www.animal-lib.org.au/lists/feedlots/feedlots.shtml>; Queensland Government Department of Primary Industries & Fisheries, *Animal Welfare and Beef Cattle Feedlots* <<http://www.animal-lib.org.au/lists/feedlots/feedlots.shtml>> at 10 October 2006; ABC Landline, *Animal Farm*, 1 July 2007.

<sup>9</sup> Australian Egg Corporation Limited, *Australian Egg Industry Annual Statistical Publication 2005*, (Australian Egg Corporation Limited), <<http://www.aecl.org/index.asp?pageid=406>>

<sup>10</sup> Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals – Domestic Poultry*, 4th ed., (2002); Animals Australia, 'Meet Betty, the Battery Hen', [24 August 2007], <[http://www.animalsaustralia.org/freebetty/battery\\_hens.php](http://www.animalsaustralia.org/freebetty/battery_hens.php)>

<sup>11</sup> Comprised of 419 million poultry, 94 million sheep, 24.1 million cattle, 2.55 million pigs; See Department of Agriculture, Fisheries and Forestry, Commonwealth Government, *Australian Agriculture and Food Sector Stocktake* (2005). This figure does not include animals used in dairy or egg production.

<sup>12</sup> 'WoolProducers welcome new boycott powers', *WoolProducers and Farmonline*, 17 August 2007, [24 August 2007] [http://www.farmonline.com.au/news\\_daily.asp?ag\\_id=44600](http://www.farmonline.com.au/news_daily.asp?ag_id=44600).

## SUMMARY

Voiceless strongly objects to the Bill and encourages the Senate Committee members to oppose it on the grounds that it:

- offends the freedom of political communication implied into the Australian Constitution;
- impugns the independence of the ACCC and misdirects its powers; and
- limits the ability of Australians to demonstrate respect and compassion for animals, a core indicator of a civilised society.

In Voiceless's submission, this misuse of legislative power must be challenged. If this Bill is to pass, it must only do so with an amendment to s45DD of the Act, which would permit animal protection groups to carry out secondary boycotts where the purpose of those boycotts is to protect animals.

The Government's support of the rural sector must not be fostered at the expense of free speech, animal protection and other matters of public interest.

**Voiceless would be pleased to provide further written or verbal comment on any aspect of this submission if it is invited to do so by the Committee.**