



6th June 2014

Submission to the Competition Policy Review

Secondary boycotts, markets-based campaigns, and consumer and environment groups

Some current Members of Parliament have publicly stated their intention to use the Competition Policy Review to make markets-based campaigns by consumer and environment groups illegal through changes to the Competition and Consumer Act 2010 (CCA).¹

The Issues Paper section headed 'Secondary Boycotts' invites discussion of the question: "Do the provisions of the CCA on secondary boycotts operate effectively, and do they work to further the objectives of the CCA?" This submission seeks to address one aspect of this question only: the exemption for conduct related to 'environmental protection or consumer protection' contained in section 45DD of the CCA.

This submission is not expressing a view about the general desirability of making secondary boycotts illegal. It is addressing the narrower question of whether, if secondary boycotts are illegal, as is currently the case, there should exist an environment and consumer exemption. We argue that, if secondary boycotts are to remain illegal, the national competition laws should retain the environmental and consumer protection exemption. That is because markets-based campaigns serve the important public function of free provision of information and should not be criminalised. To do so would also be an illiberal suppression of free speech.

Consumer and environmental organisations, when necessary, run markets-based campaigns; that is, campaigns that highlight bad business practices in the hope that those practices will be

¹ Senator Eric Abetz, 'Corporate Campaigns a Concern' *The Advocate*, Feb. 14, 2012, accessed online at <http://www.theadvocate.com.au/story/701405/opinion-corporate-campaigns-a-concern/>; Parliamentary secretary for agriculture Richard Colbeck was reported as saying, "We'll be looking at the way some of the environmental groups work because we are very concerned about some of the activities they conduct in the markets ... They have exemptions for secondary boycott activities under the Consumer and Competition Act. We are going to have a complete review of the act." Matthew Denholm, 'Companies to get protection from activists' boycotts' *The Australian*, September 23, 2013, accessed online at <http://www.theaustralian.com.au/national-affairs/companies-to-get-protection-from-activists-boycotts/story-fn59niix-1226724817535>

transformed. Such campaigns are highly effective because most customers don't want to buy products that unnecessarily harm either the consumer, the workers who produce the products, or the environment. Individual consumers do not always have the time or capacity to research every single product they buy, so consumer and environmental organisations provide evidence to inform purchasing decisions.

While market-based campaigns are usually not boycotts and do not necessarily fall within the legal definition of a 'secondary boycott', it is reasonable to be concerned, following the public statements by some MPs, that the secondary boycotts provisions may be sculpted to make markets-based campaigns illegal. On behalf of our supporters and the Australian citizens and consumers who are interested in the information we provide, we object to any attempt to narrow the capacity of organisations and individuals to provide the public with information about harmful corporate practices.

If the section 45DD exemption were removed, or if any constraints on the ability of consumer and environmental protection organisations to tell citizens the truth about harmful business practices were imposed through this review process, it would constitute an assault on Australians' moral rights to freedom of speech, and on the consumer's right to know. [Chris Berg](#) of the Institute of Public Affairs has described the views of those who want to outlaw markets-based campaigns as attacks on 'freedom of speech', and has argued that, 'as uncontrollable and impulsive as consumer campaigns can be, it would be entirely illiberal to try to suppress them by force of law.' Any attempt to make markets-based campaigns illegal will be highly unpopular because they cut against the liberal principles of freedom of speech and consumer choice.

We urge you to ensure that, whatever the outcome of this review, the exemption for consumer and environmental boycotts remains.

Please feel free to contact us should further information be required. Representatives from our organisations will be available to provide further advice as required.

Yours sincerely,



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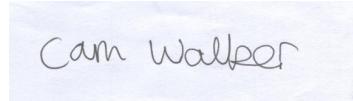
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