

10 June 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Competition Policy Review

Thank you for the opportunity to make a submission to the Competition Policy Review. We are making this submission in a personal capacity and are solely responsible for its contents.

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We wish to address the secondary boycott exemption in the *Competition and Consumer Act 2010*.

Recommendations

1. *Removal of restriction on workplace boycott on environmental or consumer grounds*
 - a) Repeal ss 45DD(3)(b), 45DD(4), 45DD(5).
2. *Retain the existing s 45DD exemptions for secondary boycotts.*

Prohibition on secondary boycotts

Subsections 45D(1), 45DA(1), 45DB(1) prohibit secondary boycotts, which involve action by two or more parties acting in concert, which hinder or prevent a third party from dealing or doing business with a target.

s 45DD Exemptions

The protections given to secondary boycotts under the exceptions contained in s 45DD are limited in scope. The exceptions in s 45DD are divided into two distinct categories. S 45DD(1) enables employees to engage in secondary boycotts on matters relating to 'remuneration, conditions of employment, hours of work or working conditions of the employee or of another person employed by the employer of that person'.¹

The exempted scope of secondary boycott is thus limited to employees operating within an organisation and cannot be exercised by sympathetic or 'third party' boycotters, who are

¹ *Competition and Consumer Act 2010* (Cth) s 45DD(1).

not members of an 'organisation of employees'.² S 45DD(3) is not limited in this way, and provides for secondary boycotts where the 'dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection',³ but only if such conduct 'is not industrial action'.⁴ As such, the exception is limited to third parties who have an interest in environmental or consumer protection.

However the proscription on industrial action undertaken as a means of boycott on environmental or consumer grounds contained in s 45DD(3)(b) and s 45DD(4) means that employees of an organisation cannot exercise their capacity to boycott in the workplace.

S 45DD therefore delineates legitimate spheres for boycott into two categories. In the workplace, the only acceptable boycott is one going to employment conditions – and boycotting on these terms can only be done by employees of that organisation, or members of a connected organisation of employees. Outside of the workplace, secondary boycotts can only be exercised on environmental or consumer protection grounds.

It is our recommendation that this distinction is both unnecessary, and inconsistent with the rationale for providing exemptions for secondary boycotts. We support broader exemptions and therefore recommend:

Recommendation 1:

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| <p>1. <i>Removal of restriction on workplace boycott on environmental or consumer grounds</i>
a) Repeal ss 45DD(3)(b), 45DD(4), 45DD(5).</p> |
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Relationship to the aims of the *Competition and Consumer Act 2010*

The object of the Act is 'to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection'.⁵

Consumer is defined in s 51 of the CCA as, in relation to an industry, a person to whom goods or services are or may be supplied by participants in the industry.

We submit that the exemptions are vital in protecting secondary boycotts as a key component of a functioning market economy that responds to feedback.

Importance of secondary boycotts to competition and society

Secondary boycotts form an important component of the dialectic between companies and consumers. In the broadest sense, the ability for people to abstain from and boycott companies engaging in environmentally detrimental practices is an essential component of directing the market place to better align with the values of society.

² Ibid, s 45DD(2)(a)(i).

³ Ibid, s 45DD(3)(a).

⁴ Ibid, ss 45DD(3)(b), 45DD(4).

⁵ Ibid, s2.

Removing the exemption would not level the playing field for producers and companies, rather it would remove the ability for citizens to legitimately pressure companies engaging in questionable practices.

Consumer pressure, exerted through the market place can also be the signal for closer government attention and regulation. This is a powerful positive force when correctly applied - boycotts are partly credited with ending apartheid, reducing child labour, and shining a light on the supply chains, and lending practices of numerous companies.

It is incumbent on companies to promote their products and services, and protect their reputations. Indeed Australia's total advertising spending in 2013 approached \$14 bn.⁶

However, NGOs and consumer groups play a vital role in highlighting the environmental and social impacts of corporate activity.⁷ Corresponding consumer action can bolster the impact of information exposing practices deplorable to most Australians such as; illegal logging, child labour and forced evictions. When these practices are made public, the underlying threat of boycott along with an instant loss of reputation incentivises companies to improve their business practices.

A suggestion that secondary boycotts should be prohibited to protect against specious claims misses the reality that companies are well placed to respond in a public relations sense to campaigns, and that often, the response comes via generative business change. In the absence of secondary boycotts, equivocal responses to real environmental and consumer issues would inevitably become more frequent, as recalcitrant corporations, insulated from coordinated consumer action, could proffer nostrums instead of being required to eschew harmful environmental and consumer practices.

In a market centred economy, the ability for people to critique the providers of goods and services is critical in discerning and influencing the nature of goods. There is a public good to maintaining the current exemptions for secondary boycotts. Removing these exemptions would be deeply uncompetitive.

Recommendation 2:

2. Retain the existing s 45DD exemptions for secondary boycotts.

Yours sincerely

Harj Narulla and Harkiran Narulla

⁶ 'Australia's online advertising spend outgrows traditional media channels', *CMO* (online), 16 January 2014, <<http://www.cmo.com.au/article/536057/australia-online-advertising-spend-outgrows-traditional-media-channels/>>

⁷ Nick McKenzie, Richard Baker 'Banks face land grab claims in developing world' *Sydney Morning Herald* (online) 28 April 2014 <<http://www.smh.com.au/business/banking-and-finance/banks-face-land-grab-claims-in-developing-world-20140427-zr0bg.html>>