

21st April, 2015



**Australian National
Retailers Association**
The voice of Australia's top online
and store retailers

Dr Kathleen Dermody
Committee Secretary
Senate Economics Legislation Committee
PO BOX 6100
Parliament House
Canberra ACT 2600

Dear Dr Dermody,

Re: Competition and Consumer Amendment (Deregulation and other measures) Bill 2015

I write to provide the Australian National Retailers' Association's (ANRA) views on the *Competition and Consumer Amendment (Deregulation and Other Measures) Bill 2015* (the *Bill*).

ANRA represents major online and store retailers that lead the retail industry, delivering to customers across all types of retail goods and services.

Removal of food from the reporting requirements under subsection 131(1) of the CC Act

ANRA supports Part 1 of the Bill.

The requirement for participants in the supply chain of 'food' (for the purposes of the Act) associated with a death, serious injury or illness to report an incident to the ACCC is:

- Unnecessarily duplicative;
- Creates additional and unnecessary cost for industry; and
- Has not resulted in improved food safety outcomes.

ANRA agrees with the conclusions of Food Standards Australia New Zealand (FSANZ) in its submission to this inquiry:¹

'(t)here is no evidence that the reports have provided the state and territory enforcement agencies with information on food-related injuries, illnesses and death that they are not already aware of or would have been aware of by other sources. The reports have also not provided an early alert to a national food safety issue.'

Removal of requirement for Ministerial consent to litigate by virtue of section 5 of the CC Act

ANRA supports Part 2 of the Bill.

The object of the CC Act is better served by removing the potential obstacle – of seeking Ministerial consent – to private litigants' right to ensure conduct that impacts on competition in Australian

¹ FSANZ (2015), *Submission1: Inquiry into Competition and Consumer Amendment (Deregulation and other measures) Bill 2015*.

markets and the rights of Australian consumers does not contravene the Act.² The repeal of subsections 5(3), 5(4) and 5(5) of the CC Act would:

- Lower the risk of damaging conduct by firms and consumers outside of Australia but with a connection to Australia; and
- Lower the cost of seeking remedies for damaging conduct outside of Australia by firms and consumers with a connection to Australia.

Power to obtain information, documents and evidence

ANRA does not support Part 9 of the Bill.

Part 9 of the Bill seeks to amend the CC Act to permit the ACCC to seek a court order directing a person to comply with a notice to produce information, documents and evidence under section 155.

The issue of compliance with section 155 notices was recently considered by the Harper Competition Policy Review. In its submissions to this review, the ACCC called for the Panel to consider recommending the creation of a power as contained within Part 9 of the Bill.³ However, the review's draft and final reports did not provide any such recommendation.⁴

This change would impose a significant burden on businesses subject to section 155 notices given that there are existing penalties that can be applied to parties that do not comply with a notice.

It is particularly concerning that the proposal has been included as part of a Bill aimed at reducing the compliance burden and red tape for businesses and individuals. We have two specific concerns with the proposed power:

- it will increase the likelihood of costly litigation, particularly where the ACCC imposes an unreasonable scope and timeframe within the section 155 notice; and
- it could expose individuals to contempt sanctions in circumstances where production of information, documents and evidence is very difficult or costly.

ANRA has no comments regarding parts three through eight of the Bill.

Thank you for considering ANRA's views on the Bill.

Sincerely,

Anna McPhee
Chief Executive

² Section 2, CCA: *'The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.'*

³ ACCC (November 2014), Submission to the Competition Policy Review – Response to the Draft Report, p. 74

⁴ Harper et al. (September 2014), *Competition Policy Review: Draft Report* and Harper et al. (March 2015), *Competition Policy Review: Final Report*.