The voice of Australia's leading retailers

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Submission

Senate Economics Committee

Competition and Consumer Credit Legislation Amendment Bill

ANRA

Australian National Retailers Association

The voice of Australia's leading retailers

Unit 8, 16 Bougainville Street
Manuka ACT 2603
P (02) 6260 7710 | **F** (02) 6260 7705

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1. Introduction

1.1. The Australian National Retailers' Association ("ANRA") represents Australia's leading national retailers, across all retail products and services. Members of ANRA include:

Woolworths	Coles
Harvey Norman	David Jones
Dymocks	Bunnings
Super Cheap Auto Group	Reece Plumbing
Just Group	RedGroup Retail
Best & Less	Franklins
McDonalds	Luxottica
Spotlight	Costco

1.2. The retail sector contributes 6.2 per cent of gross domestic product. ANRA's members account for around $100 billion in turnover, together employing over 450,000 employees, almost half of all employees within the retail sector, Australia's largest employer. There are well over 750,000 shareholders across ANRA's members.

1.3. Members of ANRA compete fiercely among one another and indeed other retailers. ANRA members play an important and significant role as employers, as investors in Australian communities and as a key driver of the Australian economy. Retail is an important indicator of national economic performance.

1.4. In the current economic climate, the retail sector has not experienced the same level of resilience as other sectors, predominantly as the result of continuing delays to the restoration of consumer confidence. Further, the sector has experienced a downturn in employment of 51,700 in the year to August 2010, and a further decline of 8,600 in the first quarter of 2010[1]. These downturns have been considerably greater than those associated with the recession of the early 1990s, which saw a decline to the number of people employed by the retail sector of approximately 29,500[2].

1.5. As major national retailers, ANRA's members make an invaluable contribution to Australian communities, in particular, those in regional and rural Australia. Over a decade ago, ANRA members made submissions to the Productivity Commission in relation to the regulatory hurdles facing its capacity to continue to sustain its presence in much of rural and regional Australia[3]. Woolworths alone has 110,000 shareholders, and employs over 50,000 staff in regional and rural Australia.

1.6. Regulatory burden is a leading inhibitor to growth, expansion and development in the retail sector. For this reason, ANRA members continue to examine the objectives of

[1] Page 16, The Australian Bureau of Statistics *Australian Social Trends* (ABS Cat. No. 4102.0)
[2] Australian Bureau of Statistics, Labour Force, Australia, Dec 2009 (ABS cat. no. 6202.0).
[3] The Productivity Commission Inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia, February 1999.

numerous regulatory frameworks to weigh their purported benefits to communities, with associated costs.

2. Competition in the Retail Sector

2.1. In 2008, the Australian Competition and Consumer Commission ("ACCC") conducted an exhaustive inquiry into grocery prices. The inquiry found that the 30,000 food retailers in Australia create strong competition, to the benefit of the consumer. The ACCC also found that creeping acquisitions were not occurring (growth in the sector was overwhelmingly due to new sites) stating that creeping acquisitions were at most a potential concern.

2.2. In this respect, in the last three years, two leading supermarket chains have bought only six independent stores across Australia. Coles has not purchased an independent in over six years. Overwhelmingly, growth has seen the development of new stores, as opposed to the acquisition of smaller, existing retailers. Coles and Woolworths combined own 150 of the 1,000 new supermarkets built during the five years to 2009.

2.3. Consequently, supermarkets face continuing challenges to the development of new operations, or adapting existing retail outlets to new and changing local needs. They face a raft of regulatory burdens, in addition to competition among one another. These challenges include attracting and retaining their workforces, global economic conditions, the impact of the drought and smaller margins on their products in comparison to other forms of retail. Even in scenarios where the market is insufficient to justify more than one supermarket, these factors represent significant obstacles to growth and development.

3. Proposed Reforms and ANRA Recommendation

3.1. The *Competition and Consumer Legislation Amendment Bill 2010* ("the Bill") seeks to introduce two changes to the *Trade Practices Act 1974*. First, it seeks to alter the reference to "a market" to "any market" in ss 50 (1) and 50 (2); second, it proposes amending the definition in ss 50 (6) by removing the reference to "substantial".

3.2. The objective of the Bill in this regard is to clarify the application of s 50 of the *Trade Practices Act 1974* ("the TPA") to so called creeping acquisitions. However in 2008, the ACCC inquiry into grocery prices examined whether creeping acquisitions were underlying movements in grocery prices or otherwise stifling competition within the sector. Mr Samuel described the issue as a strong theme throughout the inquiry, summarising the findings as follows:

> "Despite strong claims from a number of quarters, the ACCC was not presented with evidence that creeping acquisitions were a significant issue in that particular market.
>
> "However, we did express our support for the introduction of more general creeping acquisitions amendments to the Trade Practices Act to deal with the potential shortcomings of section 50.

"As we found with the grocery inquiry, creeping acquisitions has become a tag that is applied to certain transactions that are not necessarily representative of the matter being dealt with."

3.3. In other words, as ANRA has made clear in its previous submissions to Treasury regarding this issue, creeping acquisitions are not a problem that actually exists or are causing harm to competition in Australia.

3.4. ANRA submits that any proposal to conduct regulatory reform must be guided by the Competition Principles of the Council of Australian Government ("COAG"), and the COAG Principles of Best Practice Regulation. The tenets of these principles hold that legislation should only restrict competition if there is a community benefit which outweighs the costs of the reform and further, that there is no alternative way to achieve those benefits.

3.5. Having found no evidence of creeping acquisitions after extensive investigation by Government and the ACCC, ANRA believes that the cost-benefit test of the COAG Principles of Best Practice Regulation has not been met and therefore there is no basis for making any change to s 50 of the TPA. ANRA therefore does not support the amendments to the TPA contained in the Bill.