

30 July 2009

Mr J Hawkins
Committee Secretary
Senate Standing Committee on Economics
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Hawkins

Trade Practices Amendment (Australian Consumer Law) Bill 2009

The Australian Newsagents Federation (ANF) is the national peak industry body representing newsagents in Australia. The ANF's membership comprises some 2,100 newsagents Australia wide. Nearly all ANF members are small or micro businesses employing less than 20 staff.

The newsagent industry comprises of a network of approximately 5000 small businesses employing over 20,000 staff and having further direct commercial relationships with over 25,000 businesses and generates an estimated annual industry turnover in excess of \$7 billion per annum.

Newsagents serve 85% of Australians aged 14 years and over once to twice each week or 2.5 million customers face-to-face each day. Newsagents home deliver approximately 3 million newspapers daily.

The bulk of firms supplying newsagents originate from highly concentrated markets dominated by larger, more powerful, better informed and better resourced commercial counterparties.

As a result, the majority of the supplier relationships within the newsagency industry are conducted through standard form contracts, many of which contain onerous provisions that could be argued to be "unfair".

Typical of this type of arrangement is the publication and distribution of newspapers and magazines, which together represent the largest proportion of turnover in most newsagencies.

Standard form contract "unfair" terms are not isolated to the distribution and sale of newspaper and magazines and also occur in the supply and sale of lottery products, telecommunications, other electronic commerce and retail tenancy leases.

The Federation has prior to the Productivity Commission's inquiry into Australia's Consumer Policy Framework sought legislative relief for its members from the onerous or "unfair" contract terms.

Since the Productivity Commission's inquiry, the ANF has also stated its members views for the Treasury's discussion papers '*An Australian Consumer Law: Fair Markets – Confident Consumers*' and '*The Australian Consumer Law: Consultation on draft provisions on unfair contract terms*'.

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The ANF agreed with the position stated in the Treasury's published consultation draft paper which suggested that,

*"it would be invidious to suggest that the same term, which may be considered unfair in relation to a contract entered into by a natural person, would not be similarly unfair in relation to a business, where neither of them is in a position to negotiate the term."*¹

Whilst the ANF was initially disappointed with the removal of the business-to-business provisions from the amendment, we are greatly encouraged by the Government's announcement to consider the unfair contract terms business-to-business provisions pending current inquiries into the Franchising Code of Conduct and Unconscionable Conduct provisions of the TPA.

The ANF and its members remain strongly in favour of a legislative remedy capable of addressing the needs of small business in respect of onerous and unfair contractual terms arising out of standard-form contracts.

Should you wish to discuss this matter further, please do not hesitate to contact me.

Yours sincerely



Anthony Matis CPA
Chief Executive Officer

¹ *The Australian Consumer Law: Consultation on draft provisions on unfair contract terms*, 11 May 2009, pg 20 available at <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1537>