

## Dissenting Report by The Australian Greens

The Australian Greens do not support this Bill. We oppose the secondary boycott provisions in the *Trade Practices Act* and as such cannot support the creation of new means for persons to access redress for breaches of those provisions.

We understand that the proposed amendments do not amend the cause of action under sections 45D and 45E of the *Trade Practices Act* but rather facilitate the ACCC taking action on behalf of affected persons for injury caused by a breach of those provisions. In general, we support representative actions, however, we do not believe it is the proper role of the ACCC to take action of the nature facilitated by the proposed amendments.

The *Trade Practices Act* and the ACCC are primarily concerned with consumer protection and competition law. The secondary boycott provisions in the Act are an anomaly and are primarily aimed at the activities of trade unions and their members. We agree with the ACTU when they say that:

the appropriate regulatory regime for trade union activity is the workplace relations regime, not the competition laws. The Australian Industrial Relations Commission (AIRC) is the appropriate specialist regulator. Importantly its approach to industrial disputation has traditionally involved resolution of the underlying dispute whilst preserving the ongoing relationship between industrial parties.<sup>1</sup>

We also note the comments of the AMWU that that the International Labor Organisation has found the secondary boycott provisions inconsistent with Australia's obligations in relation to freedom of association. The AMWU also notes that the Senate has on numerous occasions in the past refused to pass Bills that have sought to enable the ACCC to pursue representative actions for contravention of section 45D and 45E.<sup>2</sup>

We do not believe it is the proper or appropriate role of the ACCC to be able to bring representative action for breaches of the section 45D or 45E.

It is even more worrying for the Greens that the Treasurer advocates for these amendments citing the activities of animal welfare activists. The explicitly stated intention on the part of the Treasurer that these provisions should be used against citizen activists protesting what they believe to be unethical or immoral practices is of great concern.

We note the numerous submissions received by the Committee from activists worried about the effect of this Bill on their legitimate rights of protest. We have a great deal of sympathy for their views.

In his submission, Associate Professor Frank Zumbo highlights another concerning aspect to this Bill. Professor Zumbo submits that the ACCC rarely undertakes representative action given they are very expensive and cumbersome to run and "because they involve the use of

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<sup>1</sup> Submission of ACTU, *Submission 22*, p. 2.

<sup>2</sup> Submission of AMWU, *Submission 13*.

public money to fund what is essentially private litigation on behalf of private individuals or entities.”<sup>3</sup> In his view the ACCC would be even more unlikely to take on representative actions for breaches of section 45D or 45E. Given it is unlikely these amendments will be utilised by the ACCC, their main objective seems to be intimidating citizen activists into not protesting or organising campaigns which may affect a business.

It is this aspect of the Bill the Greens find particularly objectionable. Business interests must be able to exist in a robust democracy. Citizens exercising their rights of freedom of speech and freedom of association should not be able to be pursued by the Government on behalf of business.

We note the comments of Animal Liberation ACT:

There is no public good being furthered by this legislation. It is the job of the ACCC to ensure that the market is not corrupted by unscrupulous business practices. In doing that the whole community benefits, we enjoy a fair market place where all have the potential to benefit based on the merit of what they have to offer, a worthy use of public money for a public good. It is not the job of the ACCC to stymie public debate with the threat of a law suit....One ought to be able to take a stand on any particular issue without fear that public money will be used to silence them. ...If anyone acts tortiously towards another we have a legal system and a range of remedies that individual can use if they believe they have been wronged. This is appropriate and reasonable; using public monies to trample the rights of sections of the community is not.<sup>4</sup>

The Government argues the Bill is to benefit small business, however, it is important to recognise that the proposed amendments in the Bill in no way limit the application of the provisions to small business, however defined. Again we believe this failure for the Bill to reflect the Government’s rhetoric indicates its primary purpose is intimidation of citizens wishing to exercise their democratic rights. It is extraordinary to even consider the possibility of the ACCC taking legal action on behalf of multi-million dollar businesses against citizens protesting on moral grounds, yet that is what this Bill contemplates.

We support, in general, the protection of small businesses from anti-competitive behaviour. However, the secondary boycott provisions do not relate in our view to anti-competitive behaviour but rather are an infringement on the democratic rights of citizens to freedom of speech and freedom of association.

We note the suggestion to restrict the proposed amendments to small business. We do not support that approach given our position on section 45D and 45E expressed above. We also note the suggestions for an amendment to the secondary boycott provisions, specifically section 45DD, to provide for a clear broader exemption for public interest campaigning.<sup>5</sup> While such an amendment would improve on the current situation it does not address our primary concern with the secondary boycott provisions and the Australian Greens will be opposing the Bill in its current form.

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<sup>3</sup> Submission of Associate Professor Frank Zumbo, *Submission 20*, p. 2.

<sup>4</sup> Submission by Animal Liberation ACT, *Submission 21*, p. 2.

<sup>5</sup> See Submission by Consumer Action Law Center, *Submission 12*, and Submission by Animal Liberation ACT, *Submission 21*.

**Senator Rachel Siewert**  
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