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## **Submission on the Trade Practises Amendment (Small Business Protection) Bill 2007**

Animal Liberation ACT is a group concerned about animal welfare and in particular the use of animals in intensive, factory farming. Our primary campaign at the moment is aimed at banning the practice of keeping hens in battery cages in the ACT and encouraging consumers to choose eggs from less inhumane production systems.

We would firstly like to note the unreasonably short period allowed for public comment. The public's right to take a moral standpoint and be given the opportunity to stand up for what they believe in is an essential part of our liberal democratic society. To use public resources to attempt to curb this activity in the name of business profits is a very serious policy decision that deserves a much more thorough debate than the time allowed by the government will permit.

### **A Boycott?**

A *Boycott* is not defined in the Act other than by reference to a breach of Sections 45D and E. The *Macquarie Dictionary* defines boycott as;

1. To combine in abstaining from, or preventing dealings with, as a means of intimidation or coercion.
2. To abstain from buying or using

The Explanatory Memorandum states;

*"1.4 A secondary boycott consists of persons that are indirectly boycotting another person, preventing third parties from dealing with that person. Sections 45D and 45E deal with two types of secondary boycotts.*

*1.5 Section 45D prohibits two or more persons from acting in concert to hinder or prevent a third person from supplying or acquiring goods or services from a fourth person if the purpose or likely effect of the conduct is to cause substantial loss or damage to the business of the fourth person. In this situation, the fourth person is the target of the boycott."*

Appreciating that these amendments do not create a new cause of action, we would take the opportunity while these provisions are being discussed, to voice our opposition to these Sections insofar as they potentially create a limitation on an individual's freedom of expression. Given that the limitation is now to be increased with the weight of the ACCC behind it we would ask the committee to recommend the inclusion of a section to the effect that public information campaigns and boycotts based on perceived unconscionable conduct not be caught by these sections.

## Policy

*“The Government... believes that sections 45D and 45E are matters of competition policy. Specifically, competition is adversely affected in the market in which the person, impacted by the secondary boycott conduct, operates. Therefore, the Government believes that sections 45D and 45E should not be treated differently to any other provisions within Part IV.”*

We would argue that this is not the case. Boycotts are sometimes undertaken or campaigned for because of moral or ethical beliefs held by an individual or organisation. They may be used as a means of demonstrating support for those beliefs and an unwillingness by the participants to be part of the conduct being complained against. If a section of the community believes that a particular business practice is fundamentally wrong then it ought to be able to inform others of this so that they may choose not to encourage the practice.

Using the ACCC to prevent members of the community from protesting against what they believe is fundamentally wrong is not only an attack on free speech but a clear indication of privileged treatment given to one sector of our community over others. The Government’s intention is to stop animal welfare groups from encouraging people not to buy products derived from practises which they believe to be fundamentally cruel. Hindering the ability of people to legally voice their concerns is undemocratic and arguably unconstitutional. We draw your attention to the High Court of Australia’s decisions in the cases *Nationwide News Pty Ltd v Wills (1992) 177 CLR 1* and *Australian Capital Television Pty Ltd and New South Wales v Commonwealth (1992) 177 CLR 106*.

We would like to draw the committee’s attention to the fact that these amendments may also be used to ‘compensate’ companies that have suffered a loss because of a boycott against their products which may have arisen because of immoral actions against people. It is not only animals that stand to lose here but also people. For instance, will these changes mean that the ACCC can bring an action on behalf of *Nestle* for their losses as a result of the boycott of their products following their actions in promoting their products in developing countries in Africa?

The ACCC should not operate as the ‘values police’. Given that this provision is not strictly about competition the ACCC should not be enforcing it – or there ought to be an exclusion for people advocating a moral standpoint. Being part of the community means more than just existing to maximise profit margins.

## Public dollars for the public good

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. As a community we must encourage people to express their views so that if they are meritorious others can follow, hopefully leading to society becoming a better place. If someone is acting offensively towards the values of a portion of the community then we ought to be able to stand up and let everyone know about it so that others can make an informed decision about their actions. 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 individuals can use if they believe they have been wronged. This is appropriate and reasonable; using public monies to trample on the rights of sections of the community is not.

## Recommendations

Animal Liberation ACT does not support the proposed amendments and we ask that the Committee recommends that the Senate does not support the Bill.

Failing this we offer some suggested amendments to clarify that this Bill will not impinge on the community's right to freedom of expression:

- Section 45DD currently excludes boycotts where the dominant purpose of conduct relates to environmental protection. **This Section should be amended to include ethical or moral purposes.**
- We would also recommend that a provision be inserted into Section 45D to clarify that 'hinders or prevents supply or acquisition' does not include informing people of how products are produced or of associated ethical issues surrounding the purchase of the particular product. Consumers have a right to be informed of the practices their dollars will be perpetuating.
- Further we would also like the legislation to clarify that loss or damage suffered as a result of public information campaigns alone is not sufficient to ground recovery.

Should you require any clarification of the issues outlined in this submission or wish to discuss the amendments further please contact us at [info@al-act.org](mailto:info@al-act.org)

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