



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

Peter Harris AO
Chairman
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

31 August 2016

Dear Chairman

Re: Consumer Law Enforcement and Administration

Thank you for the opportunity to make this submission to inform the Productivity Commission's current study of Consumer Law Enforcement and Administration arrangements underpinning the Australian Consumer Law (ACL).

An increased focus on small business as an enforcement priority

Access to justice is a significant issue for small businesses in Australia. While regulators will only ever be able to formally prosecute a subset of breaches of the ACL, small businesses suffer from many of the same practical obstacles in taking private action as individual consumers.

Furthermore, consumers may have access to organisations such as the Consumer Law Action Centre in Victoria to advocate on their behalf. By contrast, small businesses do not have access to such mechanisms and must rely solely on their own resources, seek to mediate disputes, or, all too often, get on with business and accept that nothing will be done about a breach of the law which has caused them damage.

Against this backdrop, a willingness by regulators to take enforcement action in relation to breaches of the ACL impacting on small business is crucial. Such actions send an important signal to the business community, driving a culture of compliance and awareness of the importance of the ACL in business-to-business dealings.

As present, we believe that there is more ACL regulators could do in this respect, particularly state and territory ACL regulators, who tend to be more focussed on redress for individual consumers.

T 1300 650 460 E info@asbfeo.gov.au
www.asbfeo.gov.au

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Twice per year, the ACCC publishes a "Small Business in Focus" report which provides details on the number of complaints by small business about breaches of the ACL, and also reports on relevant enforcement action undertaken by the ACCC. This approach is a helpful example of how ACL regulators can be accountable in their role as enforcers of the ACL on behalf of small business.


I have enclosed, for reference, a copy of our submission to the current review of the Australian Consumer Law. You will note therein our view that small businesses and individual consumers should be on an equal footing when it comes to fair trading law and policy. We have advocated for equality under the substantive law, and we would similarly argue that small business issues should be a focus of all regulators involved in administration of the ACL under the 'single law, multi regulator' model.

Product safety – need for reform

A second issue we wanted to raise is the apparently farcical nature of product safety regulation in Australia. Our office has been approached by a number of small businesses who have been subjected to unfair competition from imported electrical products – namely commercial kitchen equipment which does not comply with Australian electrical safety standards.

As the Issues Paper points out, there are multiple regulators within Australia each attempting to regulate product safety in the area of electrical equipment. Specialist regimes in each state overlay the role of the state fair trading agencies and the ACCC as enforcers of product safety, leading to red tape and confusion, and complicating the regulatory landscape. At the same time, we understand that *no* regulation applies in the case of imported products that are brought into Australia after being purchased online from catalogues distributed in Australia. This is a wholly unsatisfactory situation for domestically based manufacturers who face unfair competition from unregulated products while at the same time having to engage with a complex domestic product safety regime.

I note that the Harper review's Competition Policy Review Final Report recommended moving towards the adoption of international standards, and also recommended that mandatory standards regulation be a priority area for regulation review. We support a comprehensive review aimed at positioning Australia to adopt internationally recognised standards.

Yours sincerely, 

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

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