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Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Submission to the Competition Policy Review: boycotts and human rights

1. Australian Lawyers for Human Rights (ALHR) is concerned at recent proposals by government and industry figures to remove existing protections for individuals or groups engaged in campaigns for environmental or consumer protection.
2. The right to free expression is contained in international human rights instruments including the International Covenant on Civil and Political Rights (Art 19(2)). ALHR accepts that the right is not absolute and must be balanced against other competing rights and interests, including reputational interests.¹ However, ALHR submits that the anti-boycott provisions of the *Competition and Consumer Act 2010* (Cth) place unjustifiable limits on free expression and go further than is necessary to achieve the purpose of promoting efficient and competitive markets.
3. Indeed, ALHR considers that by constraining the capacity of individuals and organisations to inform other consumers about the environmental and social implications of their purchases, the anti-boycott provisions work *against* the efficient functioning of the market.
4. In the context of a consumer boycott, the dissemination of particular information by activists may have the effect of reducing consumer demand for certain goods and services. There are indications that this conduct may in some cases contravene ss45D or 45DB of the *Competition and Consumer Act 2010*.² Such conduct, however, is far removed from the kinds of mischief to which these provisions were originally directed, namely the use of union power to directly interrupt the movement or supply of goods or services.³
5. In Australia the law of defamation already provides sufficient protection to businesses that consider they have been the subject of inaccurate criticism.⁴ Unlike the law of defamation, however, ss 45D

¹ See International Covenant on Civil and Political Rights, Art 19(3).

² See eg *Australian Wool Innovation Ltd v Newkirk* [2005] FCA 290 at [38]-[39]; *Rural Export & Trading (WA) Pty Ltd v Hahnheuser* [2008] FCAFC 156 at [15].

³ See R McClelland (1997) 'Sections 45D and 45E of the *Trade Practices Act 1974*: Re-Born or Misconceived?', *Australian Bar Review* 16(2):118-137.

⁴ *John Fairfax Publications Pty Ltd v Gacic* [2007] HCA 28; 235 ALR 402.

and 45DB do not include a 'truth' defence. The only defence available is s 45DD(3), which excuses conduct done for a dominant purpose substantially related to environmental or consumer protection.

6. ALHR strongly urges the Competition Policy Review to consider either:

- (a) expanding the protections in s 45DD(3) to cover a broader range of permitted purposes or to excuse the dissemination of true information; or**
- (b) introducing additional criteria into ss 45D and 45DB to exclude conduct that merely consists of the dissemination of information.**

7. Further and in any case, ALHR strongly urges the Competition Policy Review not to accede to demands to remove the existing protections in s 45DD(3) for environmental and consumer protection campaigns.

Yours faithfully



Nathan Kennedy
President

Australian Lawyers for Human Rights

ALHR, established in 1993, has extensive experience and expertise in the principles and practice of international law and human rights law in Australia. ALHR is a network of over 2,500 Australian lawyers, barristers, judicial officers and law students active in practising and promoting awareness of international human rights. ALHR has active National, State and Territory committees through which it conducts training, information dissemination, submissions and networking related to human rights both within, and external to, the legal profession.
