

Civil Penalties For Australia's Consumer Protection Provisions – Discussion Paper

ACCI Submission to the Ministerial Council on Consumer Affairs

December 2005

ACCI would like to provide overarching comments regarding the Ministerial Council on Consumer Affairs' *Civil Penalties for Australia's Consumer Protection Provisions Discussion Paper* ('the discussion paper') released in September 2005.

The discussion paper states that it was developed at the behest of the Standing Committee of Officials of Consumer Affairs working party, who were charged with reporting on the

...desirability of adopting civil penalties or some other more flexible enforcement strategy in substitution for, or as an alternative to, criminal fines for breaches of the consumer protection law.¹

As stated in the discussion paper, Australia's consumer protection law prohibits business from engaging in unfair trading practices that are detrimental to consumers, including, misrepresentations, bait advertising, pyramid selling and misleading or deceptive conduct.² Enforcement mechanisms for breaches of these practices comprise a mix of civil remedies and criminal penalties.³

The rationale presented for examining other options of enforcement is as follows:

[s]ome consumer protection agencies in Australia have suggested that the existing enforcement mechanisms available for breaches of Australia's consumer protection law are limiting their ability to enforce the law adequately.⁴

ACCI considers that this does not present adequate justification for an examination of the issues. Examples and statistics are not presented to support the case for such a thorough review of the current system.

If the Ministerial Council proposes to further explore this issue then a full regulatory impact statement and cost benefit analysis should be conducted to examine the impact of changes on business. In fact a full regulatory impact statement may indicate that the current arrangements are already detrimental to businesses.

ACCI recently released a Position Paper entitled *Holding Back the Red Tape Avalanche A Regulatory Reform Agenda For Australia*. In particular it noted the following regarding Ministerial Councils:

...the operation of ministerial councils and the regulations they endorse appear to have had much less scrutiny applied to them. We continue to be

¹ Ministerial Council on Consumer Affairs, *Civil Penalties for Australia's Consumer Protection Provisions Discussion Paper*, September 2005, p. 3.

² Ministerial Council on Consumer Affairs, p. 3.

³ Ministerial Council on Consumer Affairs, p. 3.

⁴ Ministerial Council on Consumer Affairs, p. 5.

concerned at the growth of regulations originating via ministerial councils and the consequent compliance costs which flow to business.⁵

The paper also indicates that ACCI estimates regulation costs the Australian economy approximately \$86.0 billion per year or 10.2 per cent of GDP.

Amongst the biggest losers from anti-business regulation are consumers who are inevitably forced to pay higher prices as compliance costs get passed through to end users of products and services.

ACCI's model for regulatory reform specifically deals with initiatives that should be carried out by the Australian Government. However the principles can and should be adopted at all levels of government.

Our model, proposed in the Position Paper, is built on achieving clear political accountability, making the system more transparent and subjecting all proposed regulation to straightforward cost benefit assessments.

We are aware that reducing the regulatory burden on business is currently of great importance to the Australian Government as evidenced by the Prime Minister's Taskforce on Reducing the Regulatory Burden on Business. We therefore consider that this proposal from the MCAA should recognise this priority and its potential regulatory impact on business if it was further developed.

If you have any queries in relation to this submission please do not hesitate to contact Greg Evans, Director Industry Policy and Innovation on (02) 6273 2311 or at greg.evans@acci.asn.au.

⁵ ACCI, *Holding Back the Red Tape Avalanche A Regulatory Reform Agenda For Australia*, Position Paper, November 2005, p. 40.