nsw young LAWYERS
A Fresh Perspective

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

24 August 2007

Dear Sir/Madam

Trade Practices Amendment (Small Business Protection) Bill 2007

The New South Wales Young Lawyers Animal Rights Committee (**the Committee**) is part of NSW Young Lawyers, a voluntary organisation and a division of the Law Society of New South Wales. Membership of the Committee is open to all NSW law students and NSW legal practitioners who are less than 36 years of age and those in their first 5 years of practice. Since its establishment in December 1997, the Committee has been an advocate of legal reforms concerning a range of legal issues relating to animal welfare.

The Committee strongly opposes the proposed amendments to s 87 of the *Trade Practices Act* 1974 (Cth) as contained in the Trade Practices Amendment (Small Business Protection) Bill 2007 (**the Bill**).

It is clear from public statements made by Mr Peter Costello MP that the Bill is targeted particularly at animal protection groups. The effect of the amendments would be to empower the Australian Competition and Consumer Commission (**ACCC**) to bring taxpayer funded legal actions against such groups when they seek to educate the public about animal welfare issues.

The Committee is of the view that it is inappropriate for the ACCC to institute such proceedings and that the amendments would have a chilling effect on free speech in Australia. We also submit that in most instances the animal industries intended to be benefited by the amendments do not fall within the category of those unable to fund litigation on their own behalf.

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Role of the ACCC

The ACCC is an independent statutory authority whose role, amongst other things, is to ensure that businesses comply with consumer protection laws.

We consider that the ACCC's consumer protection role is inconsistent with a role that requires it to institute representative proceedings against groups seeking to inform consumers on matters relevant to their consumer choice. Such matters include:

1. the cruelty inherent in battery egg production

2. routine animal husbandry procedures undertaken on food production animals (such as castration, tail docking, dehorning and debeaking, all without pain relief); and

3 the confinement of sows in sow stalls

We submit that issues such as these are relevant to ethical consumer choice and that public discussion and debate should not be stifled by the threat of legal proceedings instituted by the ACCC. This issue is discussed further below.

Chilling of freedom of speech

It is an essential element of a liberal democratic society that all individuals and groups feel free to speak out about issues of concern, including encouraging consumer action where appropriate.

In *Australian Broadcasting Corporation v Lenah Game Meats* [2001] HCA 63 Kirby J said (at [217] – [218]):

> *"The concerns of a governmental and political character must not be narrowly confined. To do so would be to restrict, or inhibit, the operation of the representative democracy that is envisaged by the Constitution. Within that democracy, concerns about animal welfare are clearly legitimate matters of public debate across the nation. So are concerns about the export of animals and animal products. Many advances in animal welfare have occurred only because of public debate and political pressure from special interest groups. The activities of such groups have sometimes pricked the conscience of human beings.*
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> *Parliamentary democracies, such as Australia, operate effectively when they are stimulated by debate promoted by community groups. To be successful, such debate often requires media attention. Improvements in the condition of circus animals, in the transport of live sheep for export and in the condition of battery hens followed such community debate. Furthermore, antivivisection and vegetarian groups are entitled, in our representative democracy, to promote their causes, enlisting media coverage ... The form of government created by the Constitution is not confined to debates about popular or congenial topics, reflecting majority or party wisdom. Experience teaches that such topics change over time. In part, they do so because of general discussion in the mass media.*

he Committee is of the view that the amendments to the *Trade Practices Act* would have a chilling effect on free speech in Australia, particularly in relation to animal welfare issues. We submit that the amendments would impact on all animal advocates, even if they never enter the courtroom, due to the threat of legal action being taken by the ACCC.

In our view, this is another reason why the amendments ought to be rejected

Inappropriate use of taxpayer funds

The Committee is of the view that animal industries should not be able to look to the public purse to fund actions against animal protection groups seeking to raise issues of general public importance.

Animal industries are generally well funded as evidenced by the recent legal action brought against People for the Ethical Treatment of Animals (**PETA**) following its call for a boycott of retailers selling Australian wool products. In that case the wool industry's $100-million research group, Australian Wool Innovation (funded by woolgrowers levy funds), spent millions of dollars suing PETA under the secondary boycott provisions in the *Trade Practices Act*[1].

By contrast, many of the animal protection groups that face prosecution by the ACCC under the proposed amendments are poorly funded, often relying on public donations to fund their activities. In many cases, due to their financial circumstances, such groups must also rely on *pro bono* legal assistance.

We therefore submit that it would be inappropriate for the ACCC to institute proceedings on behalf of animal industries as presently proposed by the Bill. In this regard we note that there are already avenues open to litigants to take representative action under the *Federal Court of Australia Act* 1976 (Cth), should that be considered necessary.

In light of the above matters, we submit that the Senate Economics Committee should recommend that the Bill not proceed, or that it be amended to address the concerns we have raised.

Should you have any queries regarding the Committee's submission on the Bill please do not hesitate to contact Committee Chair Angela Radich at arc.chair@younglawyers.com.au

Yours faithfully

Angela Radich
Chair
NSW Young Lawyers Animal Rights Committee
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[1] ABC Radio National - Background Briefing: 6 March 2005 - PETA and the Wool; and Australian Wool Growers, *Self-promotion self-evident,* 5 September 2006 - http://www.australianwoolgrowers.com.au/news2006/news050906b.html