



14 January 2013

By email: australianconsumerlaw@treasury.gov.au

Manager
Consumer Policy Framework Unit
Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Single pricing requirements—proposal to exempt restaurants and cafes

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the proposed amendments to the Australian Consumer Law (**ACL**) in Schedule 2 of the *Competition and Consumer Act 2012 (Cth) (C&CA)*.

As stated in our earlier submission¹ to Consumer Affairs Victoria during their consultation on the proposal, we do not support the position that cafes and restaurants should be exempt from this requirement that was designed to apply to all industries across the economy. We also have concerns that the proposed amendments empower the Commonwealth Minister to exempt certain representations from the single pricing requirements, and he or she will not be required to gain the support of states and territories as per the process outlined in the Intergovernmental Agreement for the ACL.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Precedent of exemptions without analysis of the costs and burdens

The Federal Government is creating a precedent in exempting cafes and restaurants from single pricing, which in future may pave the way for other businesses to seek to exempt themselves from the single pricing requirements. Through providing in the Act that a category of business can be exempted from single pricing if a regulation is made through the *Competition*

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and *Consumer Regulations 2010 (Cth)*, the government is creating a mechanism to allow further exemptions to be created in future.

As stated in our earlier submission, we are concerned that before making the decision to recommend an exemption for cafes and restaurants in its report, the Productivity Commission did not engage in an assessment of the costs and benefits of such an exemption. No evidence was produced in support of industry's claim that single pricing would be an unnecessary burden on cafes and restaurants, and no investigation was made by the Productivity Commission. This was also the case for industry's claim that there was consumer benefit in the exemption.

We would be greatly concerned if an exemption for another industry was inserted into the regulations without a greater cost-benefit analysis being undertaken.

Support of Intergovernmental Agreement before further exemptions

We also note that the proposed section 48(4A) of the ACL empowers the Commonwealth Minister to exempt certain representations from the single pricing requirements by regulation. It is our understanding, pursuant to the definition of "regulations" in section 2 of the ACL as well as section 139G of the C&CA, that the Commonwealth Minister can direct the making of regulations without the support of state and territory ministers. While the Intergovernmental Agreement for the ACL outlines a process for amending the ACL, including for an amendment to receive support from the Commonwealth and at least four other members (at least three states), it does not appear that this requirement extends to regulations being made under the ACL. We do not believe that this is the intent of the Commonwealth and States and Territories. We strongly argue that the proposed provisions should be redrafted to ensure that agreement with the states and territories is required before any further representations or industries are exempted by regulations.


Please contact Catherine Thwaite on 03 9670 5088 or at cathy@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Director—Policy & Campaigns



Catherine Thwaite
Policy Officer

ⁱ Submission to Consumer Affairs Victoria on Single Pricing legislation, 8 June 2012, available at: <http://consumeraction.org.au/wp-content/uploads/2012/06/CALC-submission-proposal-to-exempt-restaurants-from-single-pricing-legislation-June-2012.pdf>