

7th April, 2015



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Manager
Small Business Ombudsman and Programmes Unit
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Re: Australian Small Business and Family Enterprise Ombudsman Bill 2015

I write to provide the Australian National Retailers' Association's (ANRA) feedback on the exposure draft *Australian Small Business and Family Enterprise Ombudsman Bill 2015* (the *Bill*).

ANRA represents major online and store retailers that lead the retail industry, delivering to customers across all types of retail goods and services.

ANRA is concerned the proposed minimum 10 day window in subsection 37(3) for responses to Ombudsman requests for information and documents could be too narrow for a reasonable response to be made. While subsection 37(3) does not appear to cap the time period for responses, there is a risk this may become a standard time period for the Ombudsman to state in its requests.

ANRA is mindful that it is not uncommon for staff members to take 10 consecutive business days annual leave – particularly during school holiday times – and so the appropriate person to collect and collate a response to the request made under subsection 37(1) may not be 'at work' for all or most of the minimum allowed period to generate the response. This difficulty will likely be exacerbated for smaller-sized businesses with fewer staff.

This measure appears to mimic the powers given to the Australian Competition and Consumer Commission (ACCC) under section 155 of the *Competition and Consumer Act 2010*. However, the *Competition and Consumer Act 2010* does not go to the extent of specifying the minimum time period for a person to respond to requests for information and documents. In contrast, the ACCC itself provides guidance for a person when providing a response to a section 155 notice:¹

'Reasonable time (usually two to three weeks) will be allowed to comply with a notice to provide information or documents or to attend an examination.'

The absence of a legislated minimum period for responses to section 155 notices has created some tensions between the ACCC and business. These were partly addressed recently by Draft Recommendation 36 of the Competition Policy Review Draft Report:²

'The ACCC should review its guidelines on section 155 notices having regard to the increasing burden imposed by notices in the digital age'

¹ ACCC (2008), *A guide to the Australian Competition and Consumer Commission's power to obtain information, documents and evidence under s. 155 of the Trade Practices Act 1974*

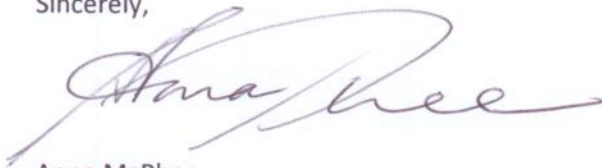
² Harper et al. (2014), *Competition Policy Review Draft Report*, p.53

While ANRA would prefer for the review of the ACCC's approach to 155 notices to be conducted independently (by Commonwealth Treasury, for example), the findings of such a review can be used as guidance for structuring the recommended approach for business to respond to Ombudsman requests.

Therefore subsection 37(3) of the Bill should not attempt to specify a minimum period for responses until such time as the review of the ACCC's approach to section 155 notices is complete.

Thank you for considering ANRA's position on this matter. Should you have any questions regarding ANRA's position please contact Mr Russell Goss, Deputy Chief, at our Sydney office on (02) 8249 4520 or via email on rgoss@anra.com.au

Sincerely,

A handwritten signature in cursive script, appearing to read 'Anna McPhee', written in dark ink.

Anna McPhee
Chief Executive