



8 December 2016

Australian Consumer Law Review
Consumer Affairs Australia and New Zealand
The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

615 St Kilda Road
Melbourne VIC 3004
Tel: (03) 9514 6457
www.opc.org.au

Submission via www.consumerlaw.gov.au-
'Australian Consumer Law Review- Have Your Say' page

Dear Sir/Madam,

Submission on the Review of the Australian Consumer Law Interim Report

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Victoria, and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University. The OPC is concerned about the high rates of overweight and obesity in Australia, particularly among children.

Following the OPC's submission to the Consumer Affairs Australia and New Zealand's (CAANZ) review of the Australian Consumer Law (ACL) in May 2016, we are now pleased to provide comment on CAANZ's Interim Report on the review (Interim Report). We take this opportunity to make some general comments about the ACL review and to respond to discussion of the specific issues included in our submission, particularly the following sections of the Interim Report.

Penalties and Remedies

We wish to confirm our position on strengthening penalties under the ACL, as we believe that penalties must be significant to deter breaches by transnational companies.

3.2.3 Maximum Financial Penalties

The OPC recommends that the maximum amount of financial penalties for a breach of the ACL be increased as set out in option 1¹ of the Interim Report. This option provides 3 different penalties to be applied depending on the circumstances and a maximum of penalty of \$10,000,000. This maximum penalty would allow a court to make orders of an amount that would have a significant impact on transnational companies and thereby act as an effective deterrent, rather than a reasonable cost of doing business. The OPC believes that the current penalties are not adequate to deter breaches of the ACL.

3.2.6 Misleading and Deceptive Conduct

The Interim Report makes the point that pecuniary penalties are not usually given for general legal obligations, such as misleading and deceptive conduct. However, the OPC recommends that a finding of misleading or deceptive conduct attract the same penalty as other similar breaches of the ACL, such as false and misleading

A partnership between:
The Cancer Council Victoria
Diabetes Victoria
The Global Obesity Centre at
Deakin University, a WHO
Collaborating Centre for
Obesity Prevention

¹Consumer Affairs Australia and New Zealand, *Australian Consumer Law Review- Interim Report* (2016), p180

representations, as the conduct harms consumers in the same way and it may not be possible to seek redress under an alternative provision of the ACL.

Prioritise health

Although not strictly within the confines of the review, we wish to take this opportunity to suggest that the Australian Competition and Consumer Commission (ACCC) prioritise matters that affect people’s health. We believe this is important given the results of the Australian Burden of Disease Study showing that around one third of the burden of disease in 2011 could have been prevented by reducing the exposure to modifiable risk factors, for example alcohol use, high body mass index and physical inactivity.² To prioritise health complaints would have a significant effect on the health of vulnerable populations and would be a valuable contribution to efforts to reduce the burden of disease and improve population health in Australia.

ACCC should pursue more complaints about food marketing to children

More specifically, we strongly believe that the ACL has a crucial role to play in regulating children’s exposure to misleading, false and deceptive marketing. We note that dietary risk factors accounted for 7% of the burden of disease in Australia. The OPC accordingly submits that it is particularly important for the ACCC to take action to prevent misleading, false or deceptive marketing in the food and beverage industries because of its broader public health consequences. This type of marketing has the potential to confuse consumers as they try and interpret information and to undermine public health messages about healthy eating, and negatively affect consumers’ health.

Pursuing complaints about food marketing to children and other issues that affect people’s health would be in accordance with the ACCC Compliance and Enforcement Policy 2016, which directs the ACCC to consider factors such as whether the “conduct is detrimentally affecting disadvantaged or vulnerable consumer groups” and “where the ACCC action is likely to have a worthwhile educative or deterrent effect”.³

If you require further information, please contact Kathryn Bloom, Legal Policy Adviser for the Obesity Policy Coalition, on (03) 9514 6477 or at kathryn.bloom@cancervic.org.au

Yours sincerely



Craig Bennett
Chief Executive Officer
Diabetes Victoria



Anna Peeters
Professor of Epidemiology and Equity in Public Health
The Global Obesity Centre at Deakin University, a World Health
Organization Collaborating Centre for Obesity Prevention



Todd Harper
Chief Executive Officer
The Cancer Council Victoria

² Australian Institute of Health and Welfare, (2016) Australian Burden of Disease Study, Impact and Causes of Illness and death in Australia 2011. Australian Burden of Disease series no. 4. BOD 5. Canberra: AIHW

³ 2016 ACCC Compliance Policy, (February 2016), p2