

Senator Richard Colbeck  
Senator for Tasmania  
Parliamentary Secretary for Fisheries & Forestry, Innovation, Industry & Science  
PO Box 603  
DEVONPORT Tasmania 7310

copy: Senator George Brandis, Attorney General

26 September 2013

Dear Senator Colbeck

### **Re: Free speech and the review of *Competition and Consumer Act 2010***

Civil Liberties Australia writes to refocus your attention on the Coalition Government's commitment to free speech. We are concerned by your suggestion earlier this week that the review of the *Competition and Consumer Act 2010* be used to remove permitted boycotts, a well-established mechanism to give voice to free speech, from the legislation.

Civil Liberties Australia supports the review of the Act and believe the review should focus on whether or not it is achieving its stated objective "to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection."<sup>1</sup> That is, the terms of reference should ask: are the laws promoting competition? are they promoting fair trading? and are they providing for consumer protection?

This is consistent with the Coalition's election policy Real Solutions which makes the commitment that the review will focus on increasing competition:

*We will improve competitive rules so competitive rules drive productivity growth. We will review competition policy and deliver more competitive markets because there will be, for the first time in two decades, a root and branch review of competition laws.*

Seen in this light, the Act is not intended to limit the level of scrutiny of corporations. If anything, promoting competition is synonymous with increasing community discussion and critique of products and how they are made.

#### **Coalition commitment to free speech**

The Coalition, to its credit, has campaigned heavily on free speech in recent years and during the election.

As Attorney General Brandis wrote in the week prior to the election in an article, 'If I were Attorney':

*"A Coalition Government will defend freedom of speech and expression. We regard these rights as fundamental human rights which should not be subordinated to the illiberal ideological agenda of the Left."*

and later:

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<sup>1</sup> Section 2 of the Competition and Consumer Act 2010

*“A Coalition Government will put the real human rights debate – the rights to freedom of expression, freedom of the press, the traditional rights of the individual in defending himself against the power of the State – front and centre before the Australian people.”<sup>2</sup>*

### **Permitted boycotts and free speech go hand in hand**

A commitment to free speech risks being thought of as no more than lip service if laws are changed to stop the community saying things that might confront others. To recall the maxim - *I disagree with what you say but defend to the death your right to say it.*

Boycotts place a spotlight on the actions that corporations undertake in the pursuit of profit. Whether it is sweat shop labour or damaging environmental practices, boycotts are a legitimate method to give voice to concerns held by the community.

It should not be the role of *any* government to shield profit driven corporations from community dissent. This is particularly true of the recently elected Coalition Government who campaigned strongly during the election on protecting free speech and on providing smaller government.

### **Terms of reference for the review of the *Competition and Consumer Act 2010***

Freedom of speech is a fundamental measure of a liberal society and must be respected during the review. To ensure this occurs we recommend that the terms of reference for the review explicitly refer to the need to protect the consumer and community's freedom of speech, in addition to asking about the Act's promotion of competition. As a national organisation devoted to protecting freedoms of the individual, including free speech, Civil Liberties Australia requests to be consulted during the drafting of the terms of reference.

We acknowledge the review will be a large and complicated piece of work. The *Competition and Consumer Act 2010* runs to over 1,500 pages and grew out of the *Trade Practices Act 1974*. There is no doubt that the legislation would benefit from the root and branch review the Coalition has promised. However, the importance of free speech must not be lost in all the other arguments that will undoubtedly be raised – hence our statement that it must be included in the formal terms of reference.

In conclusion, we urge you to refocus on the right to free speech and to consult with Civil Liberties Australia on the terms of reference for the review to ensure this crucial principle of a free speech is respected in the review.

Yours sincerely

Dr Kristine Klugman  
President

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<sup>2</sup> <http://www.cla.asn.au/News/shadow-ag-brandis-v-ideologues/> repeated from Newsletter of Human Rights Legal Centre of Melbourne, published 3<sup>rd</sup> September 2013: <http://www.hrlc.org.au/reclaiming-human-rights-from-the-fury-of-ideologues>