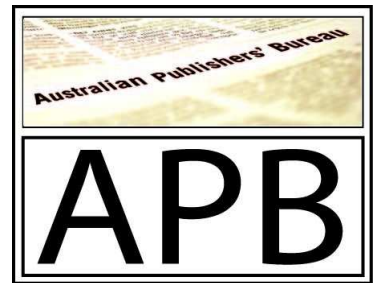


17 March 2009

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Dear Sir or Madam,

An Australian Consumer Law; Fair markets – Confident consumers”.

The **Australian Publishers' Bureau** (APB) would like to contribute to the debate on the paper “*An Australian Consumer Law; Fair markets – Confident consumers”.*

By way of background, the **APB** is an association made up of Australia's major newspaper and magazine publishers. Established over 30 years ago, the principal role of the **APB** is to provide advice to members and their constituent publications on legal and other issues affecting advertising. We also represent the interests of our members to various regulatory authorities. It is the peak industry advisory body on matters relating to advertising.

At the **APB** we pride ourselves on our extensive knowledge of the estimated 160 pieces of Commonwealth, State and Territory legislation, which include requirements on advertising, the various professional and industry Codes of Practice/Ethics, along with publishers' legal obligations under the Trade Practices Act and Fair Trading Acts. We believe that with all advertisements, the more pertinent information included in the advertisement the more likely it is that readers' expectations will be met, and the less likely it is that the advertisement will be subject to any complaint.

Maintaining cordial and professional relationships with a number of Government and Regulatory bodies, the **APB** is recognised by the ACCC as the representative industry association for newspaper and magazine publishers on all advertising and related matters. The ACCC has referred to the Bureau as “a model of industry co-operation”.

The **APB** supports any move which provides commonality between jurisdictions which reinforce consumer protection through best practice which will “*improve consumer law enforcement powers, reduce compliance costs for business and increase access to information regarding dispute resolution and consumer issues”.*

In particular the suggested changes to strengthen the provisions in relation to:

- false or misleading representations concerning claims of discounted goods;
- false or misleading representations concerning the availability of refunds or unqualified claims that no refunds are given;
- false or misleading representations concerning ‘closing down’ sales; and
- false or misleading representations concerning claims that items are on sale

are seen as having a positive impact on ensuring that advertisers clarify and substantiate various representations in relation to the above which may be considered to be misleading.

Publishers increasingly receive requests to publish advertisements for businesses which operate across borders that can encompass different legislative requirements also for those operating e-businesses. Any move which will assist publishers to assist in assessing the conformity of an advertisement for different jurisdictions would be welcome.

The Bureau also believes that the provisions in section 51A of the TPA should be extended to include presumptions in relation to 'false', 'misleading' or 'deceptive' representations, and this should be included in the Australian Consumer Law.

In Provisions under the current Trade Practices, Fair Trading and the ASIC Operations Act legislation etc., publishers have a defence in a prosecution for a contravention, in particular Part V (consumer protection) or VC of the Trade Practices Act committed by the publication of an advertisement if the defendant establishes that:

- that they are a business that publishes/arranges for the publication of advertisements;
- that the content for the ad was received in the normal course of business; and
- that they did not know and had no reason to suspect that its publication would amount to a contravention of the TPA.

On behalf of our Members the **APB** requests clarification of this section and whether it will be included into the proposed *Australian Consumer Law*.

The **APB** believes that the services it offers are important to the ongoing development, reputation and success of its members and their clients. As we have done previously with the ACCC, the **APB** would be willing to join with ACCC in introducing new Australian Consumer Law to our publisher members and their clients.

Given its history of participation on various Advertising Committees and Code Councils, the Bureau is always very keen to contribute in any forum which promotes a balanced approach to social and corporate responsibility in the role of advertising.

The Australian Publishers' Bureau would be happy to meet with Treasury representatives to further discuss the impact of the Australian Consumer Law on advertising and looks forward to viewing the Regulatory Impact Statement when it is released.

Yours faithfully,



Lianne Richards
Executive Director