

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

## **Inquiry into the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016**

9 January 2017

Please find below a submission from the Council of Small Business Australia (COSBOA) to the Senate Economics Legislation Committee Inquiry into the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016.

COSBOA welcomes the opportunity to provide a voice for small business people. We note that based on 2016 data from the Australian Bureau of Statistics, small businesses employ approximately 4.8 million people and remain a vital part of the Australian economy.

If you require any further information in relation to the submission, please feel free to contact me on [ceo@cosboa.org.au](mailto:ceo@cosboa.org.au).

Sincerely

**Peter Strong**  
Chief Executive Officer  
Council of Small Business Australia

# Council of Small Business Australia

---



Submission to the Senate  
Economics Legislation  
Committee Inquiry into the  
Competition and Consumer  
Amendment (Misuse of Market  
Power) Bill 2016

January 2017

## COSBOA Submission

The Council of Small Business Australia (COSBOA) welcomes the Senate inquiry into the *Competition and Consumer Amendment (Misuse of Market Power) Bill 2016* and values the opportunity to provide a submission. COSBOA is committed to working with the Parliament to improve outcomes for small business people and is well placed to provide advice to this inquiry.

We congratulate the Australian Government on its approach to the issue of competition. If we as a society are to maintain our current standard of living we need to become more productive. That will be achieved through better business practices and by innovation that is rewarded where it is successful. We need a business community where there is as much certainty as there can be in the economy and where surprises are limited and planning can be made with confidence.

COSBOA would like to highlight the following key points to the Senate inquiry:

- Certain wording within the Bill has concerned COSBOA members and we believe that sections of the Bill may result in court challenges.
- The potential for divestiture of offending businesses should be examined by the ACCC as a policy approach that could enhance operating practices.
- We remain concerned by the Federal Court's recent ruling on Woolworths in relation to unconscionable conduct and the impact this may have on small business people.
- Proposals in the 2015 Competition Review do not go far enough in supporting Australian small business people and there should be an ongoing discussion in relation to improving this.
- ACCC must be provided with increased capacity to establish and manage competition.

With the current legislation before the Senate, we are concerned that the wording, particularly in Section 1 9a), (b) and (c), will create a 'lawyers picnic' as predicted by the opponents of the effects test. The wording needs to be removed or changed to be clearer in what is the intent of the legislation and make court challenges less likely.

COSBOA also believe that one outcome that could be pursued by the Australian Competition and Consumer Commission (ACCC) is the divestiture of an offending business. We understand that some businesses in Australia have become so large that their company boards have limited control of field staff. Communications from the boards of small businesses to a diverse and or remote management team can be misinterpreted and cause

damage to the market and to innovation. Divestiture, or a threat of divestiture, could have the desired effect of forcing better communications and better internal procedures and company policies.

Of deeper concern to COSBOA is the decision late last year by the Federal Court that exonerated Woolworths from charges of unconscionable conduct. We are concerned that Woolworths and other big businesses will now have free rein to potentially mistreat their suppliers, many of whom are hard working Australian small business people.

The real potential for a large and dominant company to force suppliers to provide them with funds at short notice, without any real return to the supplier, will inhibit innovation by creating uncertainty. Large, medium and small companies will become less certain of what funds they have available for investment. Increased uncertainty of finances directly impacts on the ability of people in small business to invest in innovation, particularly in new business processes or new products.

COSBOA believe that, given that recent decision, proposals from the 2016 Competition Policy Review (Harper Review) do not actually go far enough to achieve real competition. The Parliament should pass this current legislation with the changes recommended above and then work together with small business people and other key stakeholders to discuss what Australia needs from competition policy. Policies should enhance innovation, develop choice for consumers and help create more productivity, ultimately building a stronger economy. Competition policy that focuses only on achieving the lowest price will in the long run increase prices and decrease our standard of living.

To establish and or maintain real competition in industry sectors involved in human services and other emerging and important services, the Australian Government must ensure that measures are in place to manage the potential for ethically challenged oligopolies to develop. Legislation and related regulations should not encourage oligopolies, but rather focus on providing regulators such as the ACCC with the capacity to do their job.

While COSBOA is a strong voice for small business, other organisations also work to provide the Parliament with a deeper understanding of the impact policies will have on small business people. This response should be read in conjunction with other responses particularly from organisations such as the Australian Newsagents Federation, Master Grocers Association, WA Independent Grocery Association, Retail Guild of Australia and John Dahlsen along with other representatives of Australians involved in small business.

COSBOA will be confronting competition challenges with our members throughout 2017 and look forward to further opportunities to work with the Parliament on these important issues.



Secretariat  
PO Box 576  
Crows Nest NSW 1585  
Ph: 02 9431 8646

Peter Strong  
Chief Executive Officer  
M: 0433 644 097  
E: [ceo@cosboa.org.au](mailto:ceo@cosboa.org.au)

[www.cosboa.org.au](http://www.cosboa.org.au)