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Director  
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### **Proposed Fair Trading Regulation 2019**

The Australian Competition and Consumer Commission (ACCC) is pleased to make a submission in support of remaking the NSW Fair Trading Regulation.

#### **The success of the multi-regulator model**

The ACCC is proud of the work that consumer protection and fair trading regulators around Australia have done under the multi-regulator model established along with the Australian Consumer Law in 2011. This model was a significant harmonisation of consumer protection laws. This model has made substantial and meaningful progress towards its goals of improving consumer wellbeing through empowerment and protection and enabling the confident participation of consumers in markets in which suppliers trade fairly, while at the same time reducing regulatory complexity for businesses and encouraging the development of a seamless national economy.

Progress has been strongest where regulators around the country have worked closely together and each has contributed differently to these goals in complementary and coordinated ways. It is essential to ensure that the NSW Office of Fair Trading retains appropriate enforcement and compliance tools and functions so that it can continue its important contribution to the success of the multi-regulator model. Therefore, the ACCC supports the proposed Fair Trading Regulation 2019.

#### **The importance of sufficient and consistent penalties**

This one law, multiple regulator model remains the most efficient and effective model for enforcing and administering the Australian Consumer Law. However, the growing expectation of a nationally coordinated and consistent approach is unlikely to be fully realised without improvements, and it is important to ensure that all regulators have access to a well-graduated toolkit that can be applied effectively and efficiently according to the circumstances of particular conduct.

To that end, while we are pleased to see the proposed increases in the maximum penalty amounts for the penalty notice offences in NSW, we note that the highest proposed penalty for a corporation in the proposed Fair Trading Regulation 2019 (\$5 500) is substantially lower than the 60 penalty units (currently \$12 600) that is most often available to the ACCC for an infringement notice against corporations (other than listed corporations) for non-compliance with the Australian Consumer Law.

The ACCC considers that a \$5 500 penalty notice maximum is unlikely to be a sufficient incentive to promote compliance with the Australian Consumer Law or the *Fair Trading Act 1987* (NSW). Increasing maximum penalty amounts further to bring them into line with the ACCC's would provide stronger incentives for businesses to comply with the law and increase harmonisation.

Thank you again for the opportunity to make a submission to your consultation.

Yours sincerely

Delia Rickard  
Deputy Chair