

Spier Consulting – Legal

4 Waller Cres, Campbell, ACT, Australia, 02 62812030- 0419 239 755
spierconsulting@netspeed.com.au

Dr Richard Chadwick
General Manager
Adjudication
ACCC
Canberra ACT

21 May 2015

Dear Dr Chadwick,

**The Association of Magazine Publisher of Australia – Authorisation A 91472- MPA
Trial of Code of conduct.**

On 13 May 2015 Mr Mark Fletcher, said to be representing all newsXpress franchisees, made a further submission to the ACCC.

So that the ACCC has a proper appreciation of the issues post the draft and the PDC I offer the following comments on that letter on behalf of the ANF, some of the comments are self-evident.

The need to correct is all the most pertinent as Mr Fletcher uses his “Newsagency Blog” to promote his views.

The following comments are made for the record.

Fletcher

“Every newsagent who presented to the conference spoke against the proposed magazine supply rules at the heart of the Pilot.”

Response: This is not quite correct they all spoke about the issues that they have in their newsagencies in relation to the supply chain. They all agreed that early returns were important due to the current issue of oversupply. They questioned why existing data is not being used and they spoke about the detrimental effect oversupply has on their cash flow.

Fletcher

“Considering various points made by MPA and Bauer Media representatives at the conference, there is a gap between what has been documented to the ACCC about the Pilot and what has been said will be done as part of the Pilot.”

Response: I believe that Mr. Fletcher is relying on old documentation which has subsequently been updated. The copy of the draft Code of Conduct he keeps referring to is just the initial document.

Fletcher

“For example, newsXpress and others expressed concern that the Pilot is to test rules that deny newsagents the opportunity to early return magazines. On page 4 of the minutes of the Pre-- Decision conference we can see Mr. Varricchio of Bauer Media and the MPA to say the MPA plans to *allow early returns after 30 days*. While we say the 30--day moratorium on early returns is unfair, it is not referred to in the documentation submitted to the ACCC for authorisation.”

Response: Please refer to Mr. Fletcher’s original correspondence to the ACCC dated 1st April, 2015 where he specifically proposes that there “Magazines to have no greater than 30 day no-return period during with (sic) early returns would not be acceptable”.

newsXpress proposes that a pilot program does proceed but that such a pilot program trials the supply of magazines to newsagents on terms more similar to those achieved by retailers competing with newsagents. Our proposal is of a trial covering but not restricted to these terms:

1. *Newsagents having control over the magazine titles they receive.*
2. *Newsagents having control over the volume of titles they receive.*
3. *Newsagents only needing to return tops (covers) of unsold stock.*
4. *Magazines to have a no greater than 30 day no-return period during with early returns would not be acceptable.*
5. *Publishers and distributors to offer financial assistance to justify newsagents carrying titles they may otherwise decline to carry.*

Fletcher

“Mr Varricchio advised that *newsagents participating in the pilot will have control over the range of magazines they stock*. This is not covered in the submission from the MPA to the ACCC. There has been no evidence presented by the MPA as to the extent of control newsagents could have over the range of magazines they stock, whether the claimed control is being or can be applied uniformly, what the claimed engagement of participating newsagents looks like for them in the Pilot and in the future and or the magazine distributor processes to be put in place to enable such newsagent control over the range of magazines they stock.”

Response: Once again Mr. Fletcher is relying on the initial draft. This is a project which is developing overtime, the MPA will continue to re-examine the draft especially during the trial and once the data from the trial is available.

Fletcher

“Mr. Alf Maccioni, CEO of the Australian Newsagents’ Federation, told the Pre-- Decision conference that the ANF had *informed its members about the Pilot, with articles in newsagency magazines and newsletters*. We can only find brief and passing comment about the Pilot by the ANF: to its members once in one paragraph in its magazine; and, once in as a topic in a general email to members. In neither case did the ANF adequately *inform* its members. We therefore say the ANF itself is not appropriately informed to speak on behalf of newsagents on this topic.”

Response: The ANF welcomes the conversation and interest that this trial has provoked. We understand the need to address the inequalities in the current system and will continue to support the trial with the hope that it will lead to a better magazine supply model for newsagents and the industry. As a consequence of this trial data which was previously not available is to be made open and transparent and using this data the current system will be challenged.

Fletcher

“The most comprehensive information from the ANF information was published May 6, 2015. The ANF has not actively engaged with its members about the Pilot.”

Response: The views of many far outweigh those of a few. Last October and November 176 newsagents (a mixture of members and non-members) attended 12 ANF meetings held across Queensland, the proposed Code of Conduct was on the agenda and each agent was asked to contribute not only to the discussion on the day but also to comment on the existing magazine supply issues and make recommendations.

During March and April this year 270 newsagents attended 18 ANF meetings in WA, SA, TAS & QLD, in NSW meetings were held by NANA across the state and the draft Code of Conduct was discussed and all concerns were noted. All but one newsagent at these meetings agreed that it was vitally important to hold the trial and all were happy that this issue was at last being addressed.

There have been many many phone conversations about the draft Code of Conduct between the state managers and their members and where possible the draft has been discussed during regular store visits to ANF members.

The ANF has continually invited all members to contact them to discuss the draft Code and the trial.

Fletcher

“Every newsagent who spoke at the Pre--Decision conference spoke against the Pilot rules and the inequity of newsagent magazine distribution arrangements. No newsagent endorsed or supported the position taken by the ANF.”

Response: No newsagent at the pre-decision conference (according to the official minutes) said that the trial should not take place. One was concerned that the cost of the process would be put on to the newsagents.

On a personal note I was at the very first newsagency PDC in 1979 on behalf of the then Federal Minister supporting newsagents. The newsagency distribution system has been the subject to much anguish in the sector and all newsagents have concerns. This application for authorization by the MPA is a step forward. It does not solve all the sectors ills as Mr. Fletcher seems to want. The ACCC cannot unilaterally change the current magazine distribution regime, the publishers /distributors can do so by agreement but any agreement is likely to need ACCC authorization.

This collective application is a huge step forward but also a small step. In the next stage of the Code process other issues are likely to be addressed.

I am aware that this submission will be put on the ACCC Public Register.

Yours truly,

A handwritten signature in black ink, reading "Hank Spier". The signature is written in a cursive style with a large, prominent initial "H".

Hank Spier