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Free speech? Not while we're on sheep's back

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No price is too high to pay to protect the Aussie woolgrower. With marked contempt for the effect it would have on freewheeling public debate, Peter Costello has introduced a little bill to clobber campaigners against the bloody business of mulesing sheep. But not only them: his strategy will snare anyone calling for customer boycotts.

So if you're asking Australians not to buy lipstick tested on caged rabbits, rugs woven by Pakistani slaves or suits made with mulesed wool, then pray your boycott calls don't succeed, for the Australian Competition and Consumer Commission is about to be given the power to sue you out of the water if they do.

Gagging public debate with such threats has been an old ambition of the Howard Government.

Not that Canberra talks in such terms. Introducing the Trade Practices Amendment (Small Business Protection) Bill 2007 last week, Costello reaffirmed his Government's "commitment to stand up for small business against thuggery and intimidation. It is vital, both for our economy and our way of life."

But Costello's bill is designed to protect businesses of any size - all the way up to BHP Billiton - not by outlawing intimidation, but by punishing persuasion.

Hurt a business simply by arguing that it's ethically repugnant to buy its products and the commission will be able to step in and sue to recover the company's lost profits. It's quite a service.

No free-speech defence is immediately available. You won't be able to go to court to plead the pros and cons of open-range chooks or gentler methods than mulesing to save sheep from fly strike.

The new law will catch lone campaigners, community groups, NGOs, lobby groups and even the media - anyone whose campaign for what the law calls a "secondary boycott" actually hits the mark and causes financial pain.

"Secondary boycotts can have a significant impact on our economy," Costello told Parliament. "They disrupt trade, they reduce output and they inhibit competition. It is important that we provide a strong disincentive for those people who would target, intimidate and bully small business by applying a secondary boycott to that business."

Costello put the proposal back on the table in February this year as the big-business woolgrowers of Australia faced a \$10 million debacle. Their efforts to sue the mighty American star-backed anti-mulesing lobby People for the Ethical Treatment of Animals (PETA) were coming badly unstuck. The Treasurer was signalling that next time the ACCC would pick up the tab.

And the effect on free speech? None at all, Costello assured journalists in February.

"Martina Navratilova and Pink will still be able to attack Australian wool as they do, ignorantly ... There is no law that is going to stop ignorant commentary, but there will be a law which will allow the ACCC to stand up for Australian farmers where they suffer from a boycott."

That the woolgrowers' case collapsed largely because they couldn't prove PETA had done them any financial harm didn't deter the Treasurer. And perhaps the legal advisers for Navratilova and Pink might caution their clients before travelling to Australia if their anti-mulesing efforts ever prove successful...

The growers walked away from the PETA case in July - though they have still to settle with the penniless Animal Liberation NSW - and Costello produced the legislation a few weeks later. Labor is considering its position on the bill. The Greens' Bob Brown sees it as a direct attack on free speech: "They've found a mechanism for curbing debate they don't like."

The commission doesn't give the impression it's hot to trot once the bill becomes law. The commission has never used the power it already has to prosecute groups who agitate for customer boycotts. That section of the Trade Practices Act has been largely dormant - not least because the fines are small by the ACCC's standards: up to \$500,000 for individuals and \$750,000 for companies.

But the financial pain to be inflicted by Costello's amendments will theoretically be endless - as much as a business can prove it has lost because of a customer boycott. And only two kinds of campaigns are exempted: those "substantially related" to environmental protection or consumer protection. Everything else is caught.

Graeme McEwen, chairman of the 90-member Barristers Animal Welfare Panel of the Victorian Bar, says: "The bill will unquestionably curtail free speech for indigenous groups, women's rights groups, and plainly animal welfare groups, which are the particular target of the bill. Why would such a public interest body wish to face the ACCC with all the power and financial clout of the state in a costly proceeding in the Federal Court?"

The Melbourne barristers are considering a High Court appeal to test the new law. The tug of war between secondary boycotts and rights of free speech was settled in the US by the Supreme Court 25 years ago, observed McEwen. "They decided in favour of free speech."

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