

ACCC oversteps line in Heinz case

It does not get much more embarrassing to an administrator than the slip-up in the deal done by the Australian Competition and Consumer Commission under which it "extracted" from the owner of Golden Circle, HJ Heinz Co Australia, a donation of \$1.8 million in canned food to a charity.

Heinz agreed to the deal to save itself from prosecution for having supplied cans with false or misleading labels.

Last week before the Senate Economics Committee (June 2) under questioning from Senator Nick Xenophon, the ACCC revealed that it had not required that the labels on the cans donated to charity be corrected.

Accordingly, Heinz donated further cans which had the same false or misleading labels which had been the subject of the earlier inquiry and deal done with the

ACCC. To some this is like the police agreeing with a counterfeiter that rather than be prosecuted, he make a \$1 million donation to a charity, and then subsequently finding out that he paid the charity with forged bank notes.

The slip-up exposes the dangers of an administrator taking upon itself the role of prosecutor, judge and now executioner.

Not only is this a fundamental breach of the rule of law, but it exposes the practical difficulty of trying to have more than one of those roles. There is a fundamental defect in the ACCC or any other administrator "persuading" a wrong-doer to "give" to charity in lieu of a prosecution.

It is corruptive of the legal system and makes a mockery of donations.

More and more administrators would become above the law. It is the administrator that would decide whether the law should be dispensed

in favour of a charitable donation.

It is the administrator that would decide whether it is an "appropriate" case for such a treatment.

These dangers become clear from what was said by the ACCC to the Senate Economics Committee that, in effect, it should be congratulated for extracting the \$1.8 million donation from Heinz when, on any reasonable basis, the ACCC considered that it would not have been possible to obtain such an order from a court in any litigation against Heinz.

Everyone should be equal before the law and subject to the same range of penalties fixed by Parliament as determined by a court.

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