

April 27 2010

Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia  
by email: economics.sen@aph.gov.au

Dear Committee Members,

Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010

The Commonwealth Government should be congratulated for acting to harmonise and strengthen consumer law in Australia. The Australian Consumer Law contains many developments that will benefit consumers and promote fair and efficient markets. The Australian Consumer Law is likely to prove a work in progress. I note below a few areas that would benefit from further attention.

Transparency in consumer contracts

The ACL expressly requires transparency in some documents. Transparency is also a factor that courts must consider in determining whether a term in a standard form consumer contract is unfair. However, the ACL does not contain a direct requirement of transparency in consumer contracts.

Given that the opportunities for consumers to understand the terms of standard form contracts are considerably reduced if the terms are not transparent, it would be desirable for there to be an independent requirement of transparency under the ACL. A provision requiring with transparency in all consumer contracts might be based on s 163(3) of the Fair Trading Act (Vic) 1999 or on s 24(3) of the ACL itself.

Extended warranties

The consumer guarantee provisions in the ACL are clearer than the implied terms provisions in the TPA. However, it would be desirable for the ACL to address directly the issue of 'extended guarantees' often purchased by consumers. In many cases extended guarantees give consumers no greater level of protection than they would receive under the TPA/ACL. Yet consumers are often not aware of their rights under these provisions nor do they understand fully the extent of the protection provided by these legislative provisions. Consumers would benefit from an express requirement for business to provide information about the statutory guarantees before selling an extended guarantee.

Unconscionable conduct

Reform in the interests of coherence and consistency is needed in this area. However, the Government has indicated that its response to the expert panel report on unconscionable conduct is not included in the ACL Bill.

Sincerely

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