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Office of the President

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Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Your ref

Our ref: 857

Dear Committee Secretary

Competition and Consumer Amendment (Deregulatory and Other Measure) Bill 2015

Thank you for giving the Queensland Law Society the opportunity to comment on the Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015. This response has been developed in consultation with the Society's Competition and Consumer Law Committee.

In relation to the proposed amendments, the Society submits:

1. the proposed s155(8A) does not replicate the safeguard presently contained in s155(5A), and it is the submission of the Society that such a safeguard should be included, for the following reasons:
 - as a matter of principle, given the inherently intrusive nature of s155, its operation should be limited to the greatest extent possible without compromising its purpose;
 - the s155(5A) safeguard was introduced into the TPA (as the CCA then was) in 2001, and it has not compromised the policy objectives of s155;
 - under the proposed s155(8A), recipients of s155 notices will be exposed to additional serious consequences for failing to comply with a s155 notice (i.e. they will also be breaching a Court order), which underscores the importance of ensuring that the existing safeguard is extended to s155(8A);
 - extending the safeguard to s155(8A) will neither lessen the ACCC's existing powers under s155 nor compromise the purpose behind the proposed s155(8A) – it will simply ensure that the new s155(8A) is consistent with s155 as it presently stands; and

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- enacting s155(8A) in its currently-proposed form would introduce a lacuna into the CCA, in that a Court, in seeking to enforce a s155 notice, could make an order requiring the s155 recipient to do things that the recipient could not have been required to do pursuant to the original s155 notice itself.

The Society submits that the safeguard would be appropriately replicated by the following change to the proposed amendment (underlined): "If a person refuses or fails to comply with a notice under this section, a court may, on application by the Commission, make an order directing the person to comply with the notice to the extent that the person is capable of doing so".

2. The proposed amendment at part 7 of the Bill, repealing section 86(1) and replacing it with proposed sections 86(1), (1A) and (1B), is understood by the Society to be intended to close off a loophole in the cooling-off period definition whereby the cooling off period did not have effect on the day of entering the contract (for face to face) or the days from entering the contract until the contract is given (for phone). This meant that any conduct of supplying or accepting payment at those times was not within the cooling off period and therefore not a breach.

The amendment does rectify this issue however has failed to rectify other sections that rely on the cooling off period, including sections 82, 85 and 179. The effect of section 82(3) (a) and (b) is to set the period when a consumer may terminate a contract. The effect of not also changing this section is that if a consumer terminates on the day the contract is entered into it is not technically part of the period when the consumer may terminate and therefore may be exploited by unscrupulous traders. Similarly, sections 85(3) and (6) place obligations on the consumer in relation to return and reasonable care of goods and supply of services that could have unforeseen consequences if they are brought into line with the new definition of termination period proposed by the clause 16 amendment.

It is the submission of the Society that if the replacement of S 86 (1) is to go ahead, further amendments are required to address the consequences for other parts of the Act which rely upon the cooling off period.

We are happy for our submission to be published and would be pleased to be involved in any public forums, conferences or consultations in relation to this issue.

Yours faithfully

Michael Fitzgerald
President