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Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By Email economics.sen@aph.gov.au

Dear Sir/Madam

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

Consumer Credit Legal Service (WA) Inc (CCLSWA) is a non-profit community legal service specialising in credit, banking and financial services in general. CCLSWA provides legal advice, assistance, and representation to low income, vulnerable, and disadvantaged consumers of financial services. We also have an interest in general consumer law and have advocated on various consumer issues over a long period of time.

CCLSWA also represents consumers where to do so would be in the public interest. As part of our public interest role, the service is active in community legal education and policy and law reform.

We are pleased to provide a brief response to *The Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010*.

In summary, we support the Bill and view it as a positive and progressive development to protect Australian consumers from unfair practices and assist them to become confident consumers. CCLSWA has been advocating for some time to introduce a single national consumer law. Given this, we will only briefly comment on some of the issues that we consider could benefit from further comments.

We also note that we are unable to make a comprehensive submission due to a lack of resources and the short time frame given to provide comment.

Unfair Practices

For many years CCLSWA has provided advice to consumers about unfair practices. Our solicitors are frequently astonished at the tactics traders and salespeople use to sell goods and services. Chapters 3 and 4 of the Australian Consumer Law provide a reasonably clear

guide as to what is and is not acceptable when selling goods and services. However, in our opinion, there are some practices that may 'fall through the cracks'.

For example, vulnerable consumers have been targeted by unscrupulous traders and informed that they have won prizes such as mobile telephones or computers. Quite often, the client cannot remember entering a competition and is unaware of what they did to win the prize. The trader uses the prize as a conduit for the sale of other related goods.

Section 32 of the Australian Consumer Law governs the provision of rebates, gifts and prizes and requires traders to provide the gifts within reasonable time frames. We recognise that withholding of rebates and gifts is a significant problem, especially in relation to whitegoods, however section 32 is silent on the provision of prizes as a conduit to making sales on other goods and services. I provide the following examples;

- A consumer entered into a competition at a fast food restaurant and was subsequently informed that she had won a computer and basic educational software. However, the prize was used as a conduit to sell her \$12,000.00 worth of 'extra' software (which ended up being useless). The consumer purchased the software using finance and the lender is now attempting to repossess her property to recover the debt.
- A mobile telephone company contacted residents of an indigenous community in the North of Western Australia and informed several residents that they had won a mobile telephone. They then inadvertently signed the clients up to supply contracts while on the telephone. The clients were of the belief that they were simply giving information to claim the telephone. They were subsequently charged thousands of dollars for breach of contract.

As you can see from the examples above, the provision of gifts has been used by unscrupulous traders to sell consumers associated goods and services. It is unclear whether this situation would always be caught under the unsolicited selling provisions of the Bill, especially when a consumer has knowingly entered a competition.

We recommend that the practice of giving prizes as a conduit for the sale of related products should be identified as unfair and prohibited in the Bill.

Proof of Transaction and Consumer Contracts

Consumers have often been frustrated by futile attempts to obtain proof of a transaction from traders. The new requirements in the Australian Consumer Law are an important step in protecting consumers. Often the only way that they can access this information is through costly court proceedings or legal action.

Section 100 requires the supplier to provide proof of transaction as soon as practicable after the goods and services are supplied. However, in our experience disputes often occur some time after a transaction is entered into and it is at this time that consumers find it very difficult to access proof of a transaction. For example, we regularly have difficulty accessing contracts to buy motor vehicles, which are often central to a dispute and are usually of significant monetary value.

In our opinion, where a consumer contract has been entered into, a supplier should be required to provide a copy of that contract to the consumer within a specific time frame for a period of 6 years subsequent to the transaction occurring. This is generally the time frame where litigation may occur. Other legislation, including the Consumer Credit Code requires copies of contracts to be provided and this has proved a valuable consumer right and allows

consumers to avoid costly legal proceedings to access documents central to consumer disputes.

We recommend that section 100 be amended to specify that a copy of any existing consumer contract be provided upon request within a specific time frame for a period of 6 years subsequent to the transaction.

Finally, we would like to see the Australian Consumer Law require certain minimum standards around the clarity of consumer contracts, similar to the provisions contained in section 163 of the *Victorian Fair Trading Act 1999*. This requires a consumer document (contract, statement etc) to be legible, a minimum of 10 point font and clearly expressed. Given the varied experience, education and literacy levels of Australian consumers, basic document standards should be enforced for consumer transactions.

Thankyou for the opportunity to comment.

If you have any questions or would like to discuss this matter further, please contact Alison Pidgeon or Dylan Desaubin on (08) 9221 7066.

Yours sincerely

(...)

Consumer Credit Legal Service