

Your Ref:

Quote in reply: Competition and Consumer Law Committee: 21000857/6

27 January 2012

The Legal Services Commissioner
Legal Services Commission
PO Box 10310
BRISBANE QLD 4000

By email: lsc@lsc.qld.gov.au

Dear Commissioner

THE APPLICATION OF THE AUSTRALIAN CONSUMER LAW TO LAWYERS REGULATORY GUIDE 2-2011

Thank you for the opportunity to provide comments in relation to the LSC draft Regulatory Guide 2-2011, "The application of the Australian Consumer Law to Lawyers."

This letter has been written with the assistance of the Queensland Law Society Competition and Consumer Law Committee.

Overall the Society commends the Legal Service Commission for preparing a draft Regulatory Guide which has been prepared in plain English and will assist practitioners in understanding their obligations from a disciplinary and ACL perspective.

There are a few observations the Society wishes to make in relation to the draft.

1 What is the Australian Consumer Law?

The Regulatory Guide observes at page 2 that the ACL "... commenced on 1 January 2011." This is inaccurate as the ACL commenced in tranches, with the majority of provisions commencing on 1 January 2011. The Society therefore proposes that this sentence be rephrased as follows:

"The majority of the provisions commenced on 1 January 2011."

4.2 Misleading and Deceptive Conduct

The Regulatory Guide sets out section 18 of the ACL, which provides a definition of misleading and deceptive conduct. The draft Guide then goes on to say "the section (identical to s52 of the *Trade Practices Act*)..."

Section 18 of the ACL is not identical to section 52 of the *Trade Practices Act* as the ACL is wider and includes “a person” whereas the repealed section 52 refers to “a corporation.”

Therefore the Society recommends that the Regulatory Guide advise that section 18 of the ACL has been drafted in similar terms to section 52 of the repealed *Trade Practices Act* but extends its application to natural persons.

5 Does a breach of the Australian Consumer Law come within the jurisdiction of the Legal Services Commission?

The Society notes that the Regulatory Guide provides practitioners with an overview of when a breach of the ACL may come within the jurisdiction of the Legal Services Commission. However the pertinent issues yet to be addressed are:

Will the Legal Services Commission:

- investigate a practitioner¹ who does not provide an itemised bill within 7 days of the request (in possible breach of the ACL) but provides an itemised bill within 28 days in accordance with the *Legal Profession Act 2007*;
- satisfy itself/ investigate whether a legal practice is subject to the ACL and refer the matter to the Office of Fair Trading (“OFT”) in circumstances where a practitioner does not provide an itemised bill within 7 days of the request; and
- notify the practitioner when the LSC and OFT undertake a joint investigation/ enforcement action?

Thank you again for the opportunity to provide comments on the draft Regulatory Guide.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Louise Pennisi on (07) 3842 5872 or l.pennisi@qls.com.au

Yours faithfully

John de Groot
President

¹ In this context practitioner refers to a legal practitioner only and not a legal practitioner in an incorporated legal practice