

9 December 2016

Our ref: Competition and Consumer Law Committee/KB

Simon Cohen
Chair, Consumer Affairs Australia and New Zealand

Dear Mr Cohen

Australian Consumer Law Review Interim Report

Thank you for the opportunity to provide a submission on the Australian Consumer Law Review Interim Report.

The Queensland Law Society (the Society), in carrying out its central ethos of advocating for good law and good lawyers, endeavours to be an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader Queensland community.

Please find **enclosed** the Society's submission which contains answers to the questions asked in the report. Our comments do not address all substantial aspects of the report and should not be considered to be either endorsement or rejection of its subject matter.

Our submission has been compiled with the assistance of the Competition and Consumer Law Committee who have substantial expertise and practice in this area. The answers to questions 1 to 3 (inclusive) of the report were also contributed to by our Not for Profit Law Committee.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kate Brodnik on k.brodnik@qls.com.au or 3842 5851.

Yours faithfully



Bill Potts
President

No.	Question	QLS Submission
1.2.3 FUNDRAISING ACTIVITIES AND THE ACL		
Option 1 — Clarify the current application of the ACL to the activities of charities, not-for-profits and fundraisers, and investigate whether there are regulatory gaps that warrant intervention		
1	<p>Would further regulator guidance on the ACL's application to the activities of charities, not-for-profits and fundraisers help raise consumer awareness and provide greater clarity to the sector?</p> <ul style="list-style-type: none">• If so, what should be included in this guidance?	<p>The Queensland Law Society (the Society) notes that the Interim Report has identified some uncertainties about the application and operation of the ACL in the not-for-profit sector, particularly in the context of fundraising and volunteer involvement.</p> <p>The Society supports an outcome that will clarify the current application of the ACL to the activities of charities, not-for-profits (NFPs) and fundraisers and also supports further investigation of whether there are regulatory gaps that warrant intervention (as outlined in Option 1 on page 20 of the Interim Report).</p> <p>The Society recommends that:</p> <ol style="list-style-type: none">(1) Further regulator guidance from the relevant regulators on the ACL's application would provide greater clarity to the sector, particularly in light of the confirmation in the Interim Report that the ACL does apply to many activities undertaken by charities and NFPs. Providing further guidance is consistent with the educational approach taken by the Australian Charities and Not-for-profits Commission. The guidance could, for example, consider various factual scenarios such as those in the Interim Report and set out principles that will assist organisations and advisors to assess the position of charities and NFPs faced with these circumstances. The guidance could also cover issues such as crowdfunding and peer-to-peer arrangements;(2) In addition to regulator guidance, the application of the Australia Consumer Law (ACL) to not-for-profit organisations needs to be clarified. It is a matter for Government to determine how this is achieved, but as noted above, the Society supports an outcome that will clarify the current application of the ACL to the activities of charities, not-for-profits

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		<p>(NFPs) and fundraisers.</p> <ol style="list-style-type: none"> <li data-bbox="943 300 2007 384">(3) regulators work pro-actively with the sector to raise the general understanding of the application of the ACL to fundraising conduct and donor protection. Such activities should be done by engaging with peak and sector-based intermediary bodies; <li data-bbox="943 416 2007 528">(4) wide consultation should be conducted by the ACL regulators in undertaking these recommendations with not-for-profit organisations, peak and sector-based intermediary bodies, consumers and donors and with other regulators and experts across the country; and <li data-bbox="943 560 2007 644">(5) regulator guidance could be supplemented by the not-for-profit sector, in consultation with regulators, professional fundraisers and others working to develop a single voluntary code of conduct to apply under the ACL.
2	<p>Are there currently any regulatory gaps with regard to the conduct of fundraising? If so:</p> <ul style="list-style-type: none"> <li data-bbox="376 815 887 927">• What is the extent of harmful conduct or consumer detriment that falls within these regulatory gaps or 'grey areas', and does it require regulatory intervention? <li data-bbox="376 943 898 1054">• Would generic protections, such as the ACL, provide the level of regulatory detail necessary to address identified areas of detriment? <li data-bbox="376 1070 898 1126">• What would be the benefits and costs of this approach? <li data-bbox="376 1142 869 1310">• Would there be any unintended consequences, risks and challenges from extending the application of the ACL to address regulatory gaps for fundraising activities? If so, how could they be addressed? 	<p>Regulatory gaps that would be addressed by clarification and extension of the ACL include:</p> <ol style="list-style-type: none"> <li data-bbox="943 783 1962 839">(1) existing State-based fundraising laws do not adequately deal with new forms of fundraising; including fundraising through online platforms; <li data-bbox="943 855 1872 887">(2) data suggests there is a considerable degree of non-compliance with existing laws; <li data-bbox="943 903 1995 959">(3) there is little enforcement of fundraising laws which means the current regulatory system is not actively monitored by regulators; <li data-bbox="943 975 1984 1031">(4) differences between State legislation creates confusion and accidental and/or deliberate non-compliance; particularly in relation to procedural matters as opposed to misconduct itself. <p>The Society repeats its views that the ACL should be clarified with respect to its application to the activities of charities, NFPs and fundraisers. The Society is mindful that amendments to the ACL to add specific references to "fundraising" may have unintended consequences. However, the Society suggests that further consideration is required of how the "misleading and deceptive conduct" provisions apply to fundraising activities, given the concerns and uncertainties identified in the Interim Report.</p> <p>The Society submits that specific reference to fundraising activities either in the legislation or in some form of regulator guidance is necessary to clarify the issues which have been identified in the Interim Report.</p>

No.	Question	QLS Submission
3	<p>Would extending the ACL to all fundraising activities be necessary or desirable to facilitate potential reforms of state and territory fundraising regulation?</p>	<p>The Society supports the option of extending the ACL to all fundraising activities. The Society recommends that:</p> <ol style="list-style-type: none"> (1) the ACL be the sole national code for consumer protection in relation to fundraising activities; (2) where certain fundraising activities are not caught as being in <i>trade or commerce</i>, other existing legislation should be the sole point of control e.g. State criminal codes and involvement of the police for fraud in relation to such criminal matters or, in the case of local public nuisance issues, such matters are best handled by local authorities informed by State/national code of conduct; (3) for charities registered with the ACNC, no further registration be required; (4) for NFPs and individuals fundraising for community causes that are not registered with the ACNC, existing State-based registration arrangements continue until such time as the jurisdiction of the ACNC is extended to include other not-for-profits; (5) in the interim (pending extension of the ACNC's jurisdiction), a single national registry for NFPs not registered with the ACNC be maintained. This is to avoid the necessity of NFPs having to register in all States in which it intends to fundraise given the unnecessary duplication, cost and difficulties with this requirement for online fundraising which is a common feature of modern fundraising programs.

1.2.4 WHO IS PROTECTED UNDER THE ACL?

Option 2 — Increase the \$40,000 threshold in the definition of 'consumer'

4	<p>Should the \$40,000 threshold for the definition of 'consumer' be amended? If so, what should the new threshold (if any) be and why?</p>	<p>The Society submits that the current \$40,000 threshold for the definition of 'consumer' is appropriate. The Society is unaware of any situation in which the existing threshold excludes a matter that ought to be subject to the ACL, and the Society believes that the definition should only be modified if a specific need to include an additional issue or circumstances within the ACL can be demonstrated.</p>
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1.2.6 INTERACTION BETWEEN THE ACL AND ASIC ACT

Option 3 — Expressly apply all consumer protections for financial services to financial products

7	Should the ASIC Act be amended to explicitly apply its consumer protections to financial products?	The Society submits that the ASIC Act should be amended to include financial products. By increasing the reach of the ASIC Act to financial product issuers, consumers will benefit from having greater access to justice and the possibility of seeking compensation for loss and damage arising from misleading and deceptive conduct and representations, unconscionable conduct and unfair contract terms from product issuers. Given the limited extent of compensation/professional indemnity insurance required to be held by financial services providers, which with respect rarely cover the full extent of losses suffered, this will provide a potential additional source from which compensation can be sought. This of itself will likely lead to greater consumer confidence with respect to financial markets.
8	What would suppliers of financial products need to change to achieve compliance, and what benefits or impacts would there be for businesses and consumers?	The Society is of the view that expansion of unfair contract terms to financial products would require financial product issuers to consider the potential impact as to whether terms included in their standard form contracts might be regarded as being unfair. These terms may otherwise serve an entirely legitimate purpose, but as a direct result of the applicability of the legislation would be voidable.
9	Are there any unintended consequences, risks or challenges in doing so?	The Society notes the example of a managed fund. Traditionally, the absence of consumer recourse to unfair contract provisions has enabled financial product issuers (in particular) to act against the interests of individual consumers, while the effect of exercising such a power has been in circumstances where it is practical, pragmatic and in the interests of the broader community of consumer investors of that financial product, e.g. terms giving the product issuer the power to suspend all redemptions.

2.1.2 'ACCEPTABLE QUALITY' FOR GOODS

10	Could the issues about the durability of goods be addressed through further guidance and information?	The Society believes that there is adequate information and guidance in current publications. The Society believes that a more productive use of resources is the creation of precedent through cases being brought by regulators in this area.
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		<p>The Society is also conscious that more proscriptive guidance on the durability of specific goods could increase uncertainty by unintentionally affecting goods that are not included in the guidance. To avoid this, guidance should remain principles-based and adaptable to all relevant situations.</p>
11	<p>Are there other areas of uncertainty raised by stakeholders that would benefit from further guidance, for example, the cost of returning rejected goods and what may constitute a 'significant' cost?</p>	<p>Whilst there may be areas of uncertainty, the Society believes that the best form of guidance is the creation of precedent through cases.</p>
12	<p>If they are not suited to this approach, why not? For example, do the issues (such as the costs of technicians or returning a good) require legislative clarification, or should the status quo remain to ensure a high level of flexibility?</p>	<p>The Society submits that it is preferable to maintain the status quo, as a high level of flexibility is desirable to ensure the ACL is able to respond to a variety of situations. Legislative clarification should only be considered if a specific need for clarification of an issue or circumstance within the ACL can be demonstrated.</p>
13	<p>What more, if anything, can be done to encourage businesses to provide more information about the durability of their products? What, if any, further guidance on durability is feasible while still allowing important differences between goods of a certain type to be recognised?</p>	<p>The Society submits that consumer rights would be better protected by the creation of precedent through test cases on durability, rather than the provision of further information about durability from businesses.</p> <p>Information provided by businesses regarding their views as to durability does not, and should not, determine the objective standard of durability required under the ACL.</p>
<h2>2.1.5 INDUSTRY-SPECIFIC CONCERNS</h2>		
14	<p>Can issues raised in particular industries be adequately addressed by generic approaches to law reform, such as Option 1 below, in conjunction with industry-specific compliance, enforcement and education activities? What are the advantages and disadvantages of this approach?</p>	<p>The Society supports using more generic, principles-based approaches to law reform such as Option 1, in conjunction with industry-specific compliance, enforcement and education activities as a means of addressing issues raised in particular industries.</p> <p>In the Society's view, this type of approach allows flexibility for the law to develop in response to new products and challenges across all industries while at the same time allowing regulators and the government to address any concerns that they have with particular industries.</p>

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15	<p>What kinds of industry-specific compliance and education activities should be prioritised in the context of finite resources?</p>	<p>The Society supports prioritising the education of frontline staff, in all industries, paid for by business, about a consumer's guarantee rights under the ACL. In most situations, it is a business's frontline staff who a consumer deals with at first instance when they have a problem with a product. It is important that this staff's understanding on consumer rights is correct so that all consumers' can be advised appropriately.</p>
<p>Option 1 — Clarify the law on what can trigger a 'major failure'</p>		
16	<p>In what circumstances are repairs and replacement not considered appropriate remedies? Or put another way, are there circumstances that are inherently likely to involve, or point to, a 'major' failure? If so:</p> <ul style="list-style-type: none"> • What are these circumstances, and should they be defined, or deemed, to be major failures? For example, should there be discretion for courts to determine the number of 'non-major failures' or type of safety defect that would trigger a 'major failure'? • Are there any relevant exceptions or qualifications? 	<p>The Society submits that situations where repairs and replacement may not be considered appropriate remedies includes issues which arise from either durability and/or design faults.</p> <p>By way of further explanation, where a fundamental element of a good has a lifespan of less than the warranty period, replacement and/or repair can result in circumstances where the replacement or repair is a mere short term fix. This may lead to a likely recurrence of the fault outside of the warranty period, where the consumers rights have been extinguished or limited.</p> <p>The same can be said of a design fault associated with a component of a good, where that fault renders the good useless for the purpose for which it was purchased (whether immediately or after a period of time has elapsed).</p>
<p>2.1.6 DISCLOSURE OF RIGHTS UNDER THE ACL</p>		
<p>Option 2 — Amend the current requirements regarding manufacturers' warranties against defects</p>		
19	<p>Is there a need to amend current requirements for the mandatory notice for warranties against defects? If so:</p> <ul style="list-style-type: none"> • How should the text be revised to ensure that consumers are provided with a meaningful notice about the consumer 	<p>The Society is not aware of any problems with the current requirements for mandatory notice for warranties against defects provided to consumers.</p> <p>Where there is no evidence of any existing problems with the mandatory notice, the Society submits that there is no need to amend the current requirements.</p> <p>Any changes to the existing mandatory notice requirements are unlikely to reduce ongoing costs for business as the majority of costs regarding the notice were incurred when the requirements were</p>

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- guarantees?
- Would it, in practice, reduce ongoing costs for business or were they largely incurred when the requirement was introduced?
 - Would it require any transitional arrangements and, if so, what are the preferred arrangements and why?

introduced and any on-going costs to business will be the same whether the mandatory notice is amended or not.

2.2.12 PRODUCT BANS AND RECALLS

Option 3c — Introducing a statutory definition of a voluntary recall, and increasing penalties for failure to notify a recall

- 33 Should a statutory definition of a voluntary recall be introduced? Would this address the concerns raised? If so:
- How should a voluntary recall be defined?
 - What factors or criteria should be included?

The Society submits that if a voluntary recall definition is introduced, it should be a clear statutory definition and should require the voluntary recall to be performed to the same or a similar standard as a compulsory recall. The Society believes that any definition of a voluntary recall should clarify the process a supplier must follow when performing a voluntary recall.

Option 3d — Streamlining the processes for implementing product bans and mandatory recalls

- 35 Should current processes for implementing product bans and recalls be streamlined? If so:
- How should they be streamlined?
 - What would be the associated benefits and costs?
 - Are there any unintended consequences, risks or challenges that need to be considered?

Given that the current processes for implementing product bans and mandatory recalls are different for each jurisdiction, the Society submits that the processes should be made consistent. This will increase efficiency of regulation and decrease compliance costs to businesses, ultimately benefiting the consumer.

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2.2.13 PUBLIC INFORMATION ABOUT UNSAFE PRODUCTS

Option 3e – Improving the quality of information made available to consumers about safety risks

36	<p>Is there scope to improve the quality of information available to consumers on safety risks? If so:</p> <ul style="list-style-type: none"> • What are the benefits of increased information, and what costs, risks or challenges need to be considered? • What information is most helpful to consumers, and how should it be used? In a context of finite resources, what information should be prioritised? • How could this be achieved? For example, in what format should information be provided? 	<p>The Society believes that there is scope to improve the quality of information available to consumers on safety risks. Any additional information requirements on suppliers should balance the needs of the consumer with the burden to the supplier.</p>
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2.3.2 ARE THE PROVISIONS WORKING EFFECTIVELY?

Option 1: Maintain the existing unconscionable conduct provisions and allow the case law to develop

37	<p>Is allowing the law on unconscionable conduct to develop an appropriate and proportionate response to the issues raised, and to future issues that may arise?</p>	<p>The Society supports the continued use of a principles-based definition of unconscionable conduct that allows the law to develop an appropriate and proportionate based response to the issues raised through Court precedent. This approach provides Courts with the flexibility to respond to new and future issues as they arise.</p> <p>However, for this approach to be effective the law relies upon appropriate cases being before the Courts for adjudication, so that the Courts can provide guidance to business and consumers on what is appropriate conduct.</p>
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38	<p>What are the consequences, risks and</p>	<p>The Society submits that the consequence of not codifying existing unconscionable conduct</p>
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challenges of maintaining the status quo, compared with changing the law or codifying existing principles? Are there any better approaches that would address the issues raised while allowing concepts to develop in a flexible way?

principles is that it reduces the certainty for businesses and consumers about what practices would be viewed as unconscionable conduct. The Society submits that this consequence does not provide a strong enough reason to change the current principles-based approach to unconscionable conduct.

2.3.3 UNCONSCIONABLE CONDUCT AND PUBLICLY LISTED COMPANIES

Option 2 — Extend the unconscionable conduct provisions to publicly listed companies

39	Is it appropriate to continue to exclude publicly listed companies from the unconscionable conduct provisions and, if so, why?	The Society submits that for the exclusion of publicly-listed companies from unconscionable conduct provisions to be removed there needs to be evidence of significant detriment being caused to publicly listed companies from their inability to access unconscionable conduct provisions in their business dealings.
40	<p>Should the unconscionable conduct provisions be extended to publicly listed companies?</p> <ul style="list-style-type: none"> • What are the benefits for publicly listed companies? • What changes would other business need to make to their existing business practices and what are the associated costs? • Should the protections be extended to all publicly listed companies, or are some exceptions appropriate? • Are there any unintended consequences, and how could these be addressed? 	The Society is unaware of any existing significant detriment being caused to publicly listed companies from their inability to access unconscionable conduct provisions.

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2.4.6 MONETARY PENALTIES

Option 2 — Prohibit the use of terms previously declared unfair by the courts

44 Should the use of terms previously declared 'unfair' by a court be prohibited? If so:

- What should be the extent of the prohibition? For example, would it only apply to identical or similar standard form contracts, within a particular sector, or more broadly?
- Would this increase the deterrent effect of the unfair contract terms provisions?
- What penalties and remedies should apply?
- What, if any, transitional arrangements would be required? How should business be made aware of contract terms that have been declared 'unfair'?
- Are there any unintended consequences, challenges or risks that need to be considered?

The Society submits that terms previously declared 'unfair' by a court should not be automatically prohibited, as this would significantly expand the application of the term to circumstances in which it may not be unfair and this would also impose a significant compliance cost on suppliers.

In addition, this would represent a significant departure from the current regime, in which each term must be assessed in its particular circumstances. The Society believes that the current regime represents an appropriate balance between the rights of the parties to affected contracts.

2.4.7 REPRESENTATIVE ACTIONS BY REGULATORS

Option 3 — Enable regulators to compel evidence from businesses to investigate whether or not a term may be unfair

45 Would empowering ACL regulators to compel evidence from a business to investigate whether a term is unfair be appropriate enforcement tool? If so, what should be the scope of this power?

The Society submits such a power would be inappropriate, as the regulators' powers in this regard only apply to contraventions of the Act. However, the Society also notes that enabling the regulators to exercise limited inquisitive powers may mean that unnecessary and expensive litigation could be avoided.

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2.5.5 CONCERNS ABOUT VULNERABLE AND DISADVANTAGED CONSUMERS

Option 1 — Maintain the current balance and breadth of the provisions, noting the current gap in available data about the industry and the incidence of consumer problems

48 What are your views on maintaining the current unsolicited selling provisions? Is there another approach that would provide a more effective and proportionate response? If so, how?

The Society submits that the unsolicited sales provisions of the ACL are effective and recommends that they be maintained.

The Society considers that one of the most important considerations in dealing with unsolicited sales is to protect vulnerable consumers who are most susceptible to consumer harm from pressure selling tactics. The Society submits that the current unsolicited selling provisions should remain the same, with the addition of additional rights and protections for consumers entering into enduring service contracts (please see the submission in response to question 51 below).

Option 2 — Replace the cooling-off period with an 'opt-in' mechanism

50 Should the cooling-off period be replaced with an opt-in mechanism? If so:

- How should it be designed? For example, should it apply to all unsolicited sales or only high-risk sales? How should 'high-risk' sales be defined?
- What would be an appropriate length of the opt-in period?
- Should there be any exemptions?
- What is the likelihood that consumers would exercise an 'opt in' right? What impact would this have on sales across all sectors that engage in unsolicited selling, and what difference would this make to consumers?

The Society submits that the cooling-off period should not be replaced with an opt-in mechanism. The Society recognises that there is a need to protect vulnerable consumers, however, the Society considers that an opt-in mechanism would be difficult to implement and regulate, as it would require substantial education to both consumers and suppliers, as well as involving significant compliance costs.

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Option 3 — Introduce additional rights and protections for consumers entering into enduring service contracts

51	<p>Should additional rights and protections apply to the unsolicited sale of enduring service contracts? If so:</p> <ul style="list-style-type: none"> • How should it be designed? For example, what rights should apply? How would 'enduring service contract' be defined? Are there any appropriate exemptions to consider? • What should be the length, for example, of an extended cooling-off period? When should a termination right cease to apply? • What, if any, transitional arrangements would be required, and which industries engaging in unsolicited selling would be most affected? • Are there any unintended consequences, and how could these be addressed? 	<p>The Society submits that additional rights and protections should apply to the unsolicited sale of enduring service contracts in the form of statutory termination rights. The design of such rights may accrue as an automatic monthly contract after the first year of the enduring contract, with a termination right at the end of each monthly contract.</p>
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3.1.3 BARRIERS TO ACCESSING INFORMATION

Option 1 — Improve the accessibility of the ACL and related guidance material

55	<p>What enhancements to existing communication channels would be most useful, and what is the level of consumer need? In a context of finite resources, what should be prioritised?</p>	<p>The Society notes that a wide range of stakeholders, including large and small businesses and sophisticated and vulnerable consumers, access the ACL and related guidance material. In order to ensure that all stakeholders can access their rights under the ACL, it is important that regulators continue to provide a wide range of communication channels so as to allow access for all consumers and businesses.</p>
56	<p>To what extent would a standalone version of the ACL be used by consumers and businesses?</p>	<p>The Society submits that a stand-alone version of the ACL will not make the ACL more accessible to consumers and businesses because it does not provide them with a better understanding of their</p>

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	How should it be formatted, and what additional information (if any) should it contain?	rights and responsibilities under the ACL. Consumers in particular are unlikely to use a stand-alone version of the ACL.
3.1.4 ACCESS TO REMEDIES		
Option 2 — Ease evidentiary requirements for private litigants through an expanded ‘follow-on’ provision enabling them to rely on facts and admissions established in earlier proceedings		
58	What are your views on an expanded ‘follow-on’ provision, and the extent to which it would assist private litigants?	<p>Some members of the Society submit that an expanded ‘follow-on’ provision would be inappropriate. These members note that admissions are commonly used as a strategic decision by parties to limit the issues and reduce the length and cost of proceedings. Allowing these facts and admissions to be relied on in future proceedings could result in unknown future liability for the party, which would be a strong disincentive to parties making admissions, and is therefore likely result in longer, more costly proceedings.</p> <p>However, other members of the Society note that the Government has recently agreed to expand section 83 of the CCA to allow private parties to rely on admissions of fact made in another proceeding. These members submit that expanding the follow on provisions in the ACL in a similar manner to section 83 of the CCA is appropriate and would ensure consistency in the Government’s legislative approach in this area.</p>
59	What, if any, unintended consequences, risks and challenges should be considered? For example, would this option affect the extent to which businesses are prepared to make admissions of fact?	Members of the Society that support an expanded ‘follow-on’ provision submit that there is a risk that expanding the follow on provisions might affect a business’s willingness to make admissions of fact. However, this risk is no greater than the same risk associated with the expansion of the follow on provisions of section 83 of the CCA.
60	Are there any other ways that ACL regulators can support private litigants, noting the existence of other review processes?	The Society submits that it would be appropriate that this question be addressed once other review processes are complete.

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4.1.5 PRICING AND SAFETY INFORMATION

Option 1 — Introduce measures to enhance transparency in online shopping.

69	<p>Are current measures sufficient to ensure price transparency in online shopping?</p>	<p>There are different views within the Society regarding whether there are changes that could be made to improve pricing transparency.</p> <p>One change to the ACL suggested by some members of the Society that could improve price transparency is the introduction of a 'key price screen' to all online sales. Similar to the Key Mortgage Fact Sheet that was introduced as part of the National Consumer Credit Reforms, the key price screen could be made a mandatory first screen in any on-line sales process, and could include:</p> <ul style="list-style-type: none"> • the total minimum price payable; • all optional fees that could be charged as part of the product being purchased listed individually; and • all optional charges that could be charged as part of the product being purchased, listed individually. <p>However, other members of the Society are conscious of issues including:</p> <ul style="list-style-type: none"> • the risk that a change of this sort may reduce price transparency in situations where there are a multiplicity of optional or contingent fees or charges, depending on the choices made by the consumer or the way in which the consumer uses the good or service; • the potential chilling impact on innovation (both in terms of new goods or services, as well as pricing and services for goods or services) that this change may have; • the compliance costs to business, including small business, that this change would cause (with flow-on costs to the broader economy); and • the technological difficulties that implementing a change of this sort across the multiplicity of platforms and technologies used by consumers to shop online would involve.
70	<p>Should measures to address pre-selected options during booking or payment processes be adopted? If so:</p> <ul style="list-style-type: none"> • How should these be designed? For 	<p>The Society notes the work already carried out by the ACCC in removing pre-selected options in booking processes, such as recent work regarding pre-selection of optional extras in airline booking platforms.</p> <p>The Society believes that consumers may unintentionally purchase unwanted extras that are pre-</p>

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	<p>example, should pre-selected options be prohibited, or should any associated fees or charges be required to be included in the upfront price?</p> <ul style="list-style-type: none"> • Are the changes that would be required for websites and booking processes significant? What would be the costs of such changes? What transitional arrangements, if any, would be required? • Are there any unintended consequences, and how could these be addressed? 	<p>selected in the 'opt-out' model. The Society submits that options to stop suppliers using this practice should be considered further, noting that a flat prohibition may have the unintended consequence of voiding unintentionally purchased goods, as they would be supplied in contravention of the ACL. One option to stop this practice would be to apply an amended version of the unsolicited sales provisions to pre-selected options, i.e. prohibiting suppliers from asserting a right to payment for any pre-selected product except in limited circumstances.</p> <p>The Society believes that to the extent that stopping opt-out practices would require changes to website booking processes, these would not be significant and the cost of compliance would be minimal.</p>