

16 November 2005

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Mr Steve French
General Manager
Competition and Consumer Policy Division
The Treasury
Australian Government
Langton Terrace
PARKES ACT 2600

Dear Mr French

Discussion Paper- Civil penalties for Australia's consumer protection provisions

I refer to your letter of 26 September 2005 and thank you for providing the Society with the opportunity to comment on the above matter.

The Discussion Paper has been considered by the Society's Commerce, Corporate and Tax Committee. Whilst it considered that this was a substantive and important issue, the Committee regretted that it was unable to provide a detailed response, given the deadline for provision of submissions.

Some members of the Committee were concerned that the proposals for introduction of civil penalties for breaches of consumer protection provisions of the Trade Practices Act 2001, as outlined in the Discussion Paper, represented potentially serious erosions of the standard of proof required in criminal matters.

The proposals (as set out in Chapter 2 of the Discussion Paper) are proposals to reduce the standard of proof required for what are essentially criminal penalties from a standard of proof beyond reasonable doubt to that of a mere civil onus requiring proof on the balance of probabilities. The proposed penalties are very substantial monetary penalties in the nature of "a monetary fine" and banning orders for conduct. These penalties may be considered simply to be criminal penalties by another name.

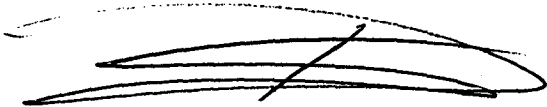
The Discussion Paper does suggest that the civil penalties are "middle ground" and that the Courts may require a stricter standard of proof if penalties are severe. However, it is the view of some Members that this would introduce a degree of

uncertainty as to the standard of proof.

Civil penalties have been present in the Corporations Act, and other legislation, without apparent problems. However, the nature of the breaches of the Trade Practices Act may be substantially different.

It is the view of the Law Society of South Australia that the civil penalties should not be introduced, or if they are, the standard of proof should be beyond reasonable doubt (as in criminal matters) unless there are compelling reasons do otherwise.

Yours sincerely

A handwritten signature in black ink, consisting of several overlapping loops and a diagonal stroke, positioned above the typed name.

D J Eszenyi —
PRESIDENT