

20 March 2019

Digital Platforms Inquiry
Australian Competition and Consumer Commission
Level 24
400 George Street
Brisbane Qld 4000

Our ref: KS:CCL

By email: platforminquiry@accg.gov.au

Dear Madam/Sir

Digital platforms inquiry – response to preliminary report, supplementary submission

Thank you for the opportunity to provide comments on the ACCC's 'Digital platforms: preliminary report' (**the preliminary report**). The Queensland Law Society (QLS) appreciates the opportunity to comment on some of the matters raised by this inquiry. This response has been compiled with the assistance of the Competition and Consumer Law Committee who have substantial expertise in this area.

On 1 March 2019 the QLS provided its response to the preliminary report. We take this opportunity to make some supplementary comments in respect of our previous submission.

As regards proposals for 'stronger, mandated controls over the collection, use, disclosure and erasure' of consumer's personal information,¹ The QLS believes that consideration should be given to bringing enforcement action under the Australian Consumer Law in relation to breaches in this area. In this regard we note that the 'The ACCC is investigating the conduct of certain digital platforms under the *Competition and Consumer Act 2010 (the CCA)*'.²

As just one example, if a social media company incorporates an option in its app to enable consumers to elect not to be tracked (whether physically or online), but that social media company then takes steps through other technological means to track a consumer who has elected not to be tracked, this behaviour should be considered against the prohibitions on misleading or deceptive, and false or misleading, conduct. This behaviour should also be considered against the prohibition on unconscionable conduct, not only due to the unethical and deceptive nature of this behaviour, but also the substantial imbalance in bargaining power between social media platforms and individual consumers.

Secondly, as to our comments that the use of any data should be limited to the disclosed purpose, consideration should also be given to the implementation of audits or some other form

¹ Preliminary report, 10 December 2018, p 225.

² Preliminary report, 10 December 2018, p 18.

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of investigation to verify data is not being misused. In this regard we note aspects of '*Preliminary recommendation 8 - Use and collection of personal data*' relate to proposals for 'external audits to monitor and publicly demonstrate compliance with these privacy regulations through the use of a privacy seal or mark'.³ However, further information is required regarding the proposals for 'objective thresholds' businesses will need to meet in order to be required to undergo the proposed audits.⁴ For example, while it is suggested that the threshold might be connected to 'collecting the personal information of a certain number of Australian consumers', the nature of the personal information obtained, rather than the number of consumers' data collected, should also be considered.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our policy team on (07) 3842 5930 or by email to policy@qls.com.au.

Yours faithfully



Bill Potts
President

³ Preliminary report, 10 December 2018, p 225.

⁴ Preliminary report, 10 December 2018, p 227.