



Tasmanian Council of Social Service

Submission to the
Productivity Commission's
Review of Australia's Consumer Policy Framework

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Introduction

The Tasmanian Council of Social Service (TasCOSS) welcomes this inquiry into Australia's consumer policy framework and welcomes the opportunity to make this formal submission. Note that TasCOSS also appeared before the Commission and gave evidence to this inquiry in its Hobart hearing in early April this year.

TasCOSS is the peak industry council for the Tasmanian non-government community services industry. Our membership comprises organisations and individuals engaged in the provision of services to low income, disadvantaged and vulnerable Tasmanians. TasCOSS represents the interests of our members and their clients to government, relevant regulatory bodies, the media and the public. TasCOSS also supports the capacity and performance of the community services industry and its services to ensure that it achieves positive outcomes for its clients and the broader Tasmanian community.

TasCOSS has a particular interest in consumer issues which is based on a belief that those living on low incomes and who are otherwise disadvantaged (by disability, language and literacy issues, age, lack of mobility and so on) are particularly vulnerable in the contemporary consumer environment.

In the absence of a non-government generalist consumer advocacy body in Tasmania, and with an under-resourced State Office of Consumer Affairs and Fair Trading, TasCOSS introduced a dedicated part-time consumer policy officer position within our organisation in 2003. Through this position TasCOSS has taken an active role in consumer policy and has sought to establish, with several submissions to the State government for funding, an independent non-government consumer advocacy organisation in Tasmania. These have been unsuccessful.

TasCOSS has continued to advocate for increased consumer information and advocacy services in Tasmania in both the non-government sector and through calling for increased resources for the State Office of Consumer Affairs and Fair Trading. In the meantime, TasCOSS has become a de facto consumer voice in Tasmania, especially for low income and disadvantaged consumers, and is approached by government, regulators, the media and other organisations for input into consumer policy and comment on issues of consumer detriment.

In order to inform its policy work in this area, TasCOSS is involved in national consumer advocacy organisations, such as Choice, the Consumers Federation of Australia and the National Energy Consumer Advocates' Roundtable. We also convene a consumer policy working group of our Tasmanian Social Policy Council and have had a seat on the Australian Competition and Consumer Commission's (ACCC) Consumer Consultative Committee since the Committee's establishment. TasCOSS also represents the interests of low income and disadvantaged consumers on the Tasmanian Energy Regulator's Customer Consultative Committee.

Our submission addresses some of the matters raised in the Productivity Commission's *Consumer Policy Framework Issues Paper*, as well as consumer policy in relation to consumers of community and disability services in Tasmania.

Overall framework and approach

TasCOSS supports increased national consistency in consumer policy and protection. Current inconsistencies can cause consumer detriment and can result in some Australian consumers being better protected than others, depending on the jurisdiction in which they live. An example of this is unfair contract terms regulation. Although formally recognised as a need by the Ministerial Council for Consumer Affairs (MCCA), only Victoria has so far introduced amendments to its *Fair Trading Act* to specifically address the issue of unfair terms in contracts.

Despite repeated requests by consumer advocates in Tasmania to the Office of Consumer Affairs and Fair Trading and to the Minister responsible (the Attorney General / Minister for Justice), there has been no progress in Tasmania toward enacting legislative protection from unfair contract terms.

Another example of lack of national consistency in consumer protection is the continued absence in Tasmania of a rental deposit authority (also known as a rental bond board). Although enabling legislation was passed by the Tasmanian Parliament in late 2005, the responsible agency, the State Office of Consumer Affairs and Fair Trading, has not yet managed to get a rental deposit authority operational in Tasmania. Other states have had rental bond boards for many years.

We believe that these examples underline the necessity to have a uniform Australian consumer policy framework that is supported by adequate human and financial resources – and by political will – in all jurisdictions.

The Tasmanian Office of Consumer Affairs and Fair Trading is, in our view, chronically under-resourced. In recent years, the Office has rarely received budget increases higher than CPI. It is characterised by staff and funding shortages, and regularly claims not to have adequate resources to carry out its responsibilities. It now has only one office in the state, located in Hobart, having closed its last remaining regional office in Devonport several years ago.

TasCOSS has repeatedly called for increased funding for the Office of Consumer Affairs and Fair Trading in our annual submissions to the State government budget process. We believe the under-resourcing of the Office of Consumer Affairs and Fair Trading seriously hinders the implementation of adequate consumer protections for Tasmanians in some key areas (including residential tenancy and unfair contract terms, as mentioned above). It also limits the ability of the agency to adequately investigate consumer complaints and to provide access to redress, as well as limiting the agency's ability to enforce compliance.

Policy tools

Our view on consumer policy tools is that they must be appropriate to the situation and must be accessible, particularly to those most in need.

This raises the issue of disadvantaged and vulnerable consumers and the need to ensure that Australia's consumer policy framework is able to adequately protect such consumers. Our members work daily with people on low incomes, and tell us that, through necessity, most people on low incomes are very careful and astute consumers. However, they can easily suffer serious detriment when things go wrong since they have little or no financial buffer to

protect them. A poor decision or ‘market failure’ can have disastrous and long-term effects. In this sense, people living on low incomes are both vulnerable and disadvantaged as consumers.

Consumers living on low incomes are particularly vulnerable in situations in which long-term and/or non-negotiable, standard-form contracts are required or offer potentially large savings, such as some telecommunications services. A poor decision can set in train ongoing financial stress and can have long-term consequences. Penalties for early withdrawal and/or contract alteration are usually high and impose an additional burden.

In such situations, it is essential that consumers have access to assistance to enable them to negotiate their rights under whatever policy tools apply. This highlights the need not only for clear and transparent consumer protection, but also for more widespread and effective consumer advocacy services. Consumers should not be required to become policy experts but, at times access to policy experts will be necessary.

It is not only low income consumers who are vulnerable, it is also consumers with disabilities, with literacy or language limitations, young consumers and older consumers. All have their particular vulnerabilities – many people with disabilities, for instance, have limited mobility and therefore rely on remote consumer activities such as mail order, telephone and internet shopping. These methods may involve uncertainty about the actual nature and quality of the goods concerned. Others may have intellectual disabilities or brain damage that limits their capacity to exercise judgement in consumer transactions. Young consumers may lack the skills required to fully understand contract terms and obligations. The ACCC’s Disadvantaged and Vulnerable Consumer Campaign has found that older consumers are particularly vulnerable to the complexities of contemporary markets, including pre-payment contracts, ‘bundling deals’, and the multiplicity of choice and difficulty in comparison between many products and services

Appropriate policy tools must be put in place to protect vulnerable consumers – features such as mandatory cooling-off periods can assist vulnerable consumers in some circumstances, as can requirements for simplified product or service information provision and, of course accessible consumer advocacy assistance. In the case of the latter, that is, finding an accessible and effective advocacy service, it is a matter of luck at present. This again underlines the need for well-resourced consumer information and advocacy services, either within government or in the non-government sector.

Generic vs industry specific regulation

TasCOSS believes there are strong arguments for industry specific regulation in many areas, and particularly in essential services such as energy and housing.

In Tasmania, electricity is the only widely available energy source for domestic use, and therefore all Tasmanian households depend on a safe, reliable and affordable electricity supply. Electricity specific regulation is, in our view, essential to ensure that supply. Currently, household electricity provided under the standard tariff in Tasmania is supplied by monopoly state-owned companies in a non-contestable retail environment. It is robustly regulated by the Tasmanian Energy Regulator through tools including the *Electricity Supply Industry Act*, associated Regulations for tariff customers, the Tasmanian Electricity Code and licence conditions.

These industry specific regulations function well to protect tariff customers and to maximise their access to an uninterrupted electricity supply. Specifically, regulatory features such as standard requirements for billing and account statements and the offer of payment plans by instalment for consumers having difficulty paying; standard procedures for disconnection warnings and limitations on the time allowable for disconnection – all contribute to ensuring that as few consumers as possible are disconnected due to their inability to pay. We are certain that generic consumer regulation would not offer the same level of protection. In addition, energy specific regulation in Tasmania requires that both the retailer and distributor report regularly to the Energy Regulator on performance standards, including the number of payment plans entered into, completed and abandoned, and the number of disconnections and re-connections. This allows for identification of systemic problems, and for improvements to be made. The Energy Ombudsman is also required to report to the Regulator – this provides another opportunity to identify and address consumer issues.

The Commission may not be aware that pre-payment meters for household electricity supply are in widespread use in Tasmania. Almost 20% of Tasmanian households – about 40,000 – use the Aurora Pay As You Go (APAYG) pre-payment meter system. Electricity delivered through pre-payment meters is not subject to the same specific regulation that supply through standard meters is. It is regulated, like other services, through generic trade practices and fair trading legislation which we believe are inadequate to protect consumers of an essential service.

The pre-payment meter technology used by Aurora Energy in the vast majority of households in Tasmania does not have the capacity to recognise and record periods of disconnection. This concerns TasCOSS because we believe that this could mask problems with so-called ‘self-disconnection’ (that is, when meter credit is exhausted and electricity supplied is discontinued until the meter is re-charged with credit). This masking removes the problem from the public gaze, and therefore prevents appropriate policy and other responses.

Disconnections from the standard tariff supply are reported, as stated above, and we have seen the disconnection rate on standard meters fall dramatically in recent years. This is largely due to the combined efforts of Aurora Energy and the Energy Regulator; however, the falling disconnection rate must also be affected by the removal from reporting of the many consumers who have moved to pre-payment meters.

In 2006, TasCOSS commissioned research on pre-payment meter use in Tasmania and found that one in four households had completely run out of electricity in the previous 12 month period. While the vast majority (92%) re-connected within 24 hours, running out of electricity was more common in single parent households (43%) and in households where at least one person was unemployed (33%), that is, in households likely to be in some financial stress.

[Note that we tabled a copy of our research report: *Pre-payment meters in Tasmania: consumer views and issues* (2006) at the Hobart hearing of this inquiry on April 2, 2007]

As a result of an investigation that the Tasmanian Energy Regulator held into APAYG in 2005, it was decided that, given the widespread use of the system and the inequities in consumer protection measures, pre-payment meters needed to be regulated, and he recommended that a specific pre-payment meter code be introduced. The development of the code is still underway and its likely contents will include a requirement that pre-payment

meter capabilities be enhanced in order to record all disconnections and their duration. Other consumer protection measures include alignment with standard meters for allowable times for disconnection, and cost-free reversion to standard meters in cases of self-identified financial hardship.

TasCOSS looks forward to the introduction of the pre-payment meter code and believes that this Tasmanian experience is a clear example of the necessity for industry-specific regulation to protect consumers, and particularly vulnerable consumers. Specific regulation also allows for targeted intervention to assist consumers in need and to address systemic issues.

Enforcement and re-dress issues

A consumer policy framework that works well for all depends on effective monitoring, enforcement and access to redress. These factors in turn rely on the commitment of adequate resources and the will to effectively monitor, enforce and provide for redress. Again, we cite the straitened circumstances of the Tasmanian Office of Consumer Affairs and Fair Trading as a serious impediment to these activities in Tasmania.

Much consumer advocacy work, both systemic and individual, is carried out by under-funded community legal services. Tasmanian community legal services are funded almost exclusively by the Federal government, with only the Tenants Union of Tasmania receiving a contribution to its funding from the State government. The legal services play a vital role in Tasmania's consumer framework and, we believe, often receive referrals on consumer issues from the State Office of Consumer Affairs and Fair Trading.

TasCOSS has advocated unsuccessfully for State funding for community legal services, and we will continue to work with the legal services to secure a commitment from the State government to support their very important work.

Not only are community legal services under-resourced in Tasmania, but Tasmanian consumers also do not have access to the specialist legal and consumer services available in the major cities. TasCOSS believes this is a serious gap in consumer services in this state and that this gap affects Tasmanian consumers' access to enforcement and redress.

We see a clear role for the non-government sector to provide appropriate and accessible services to consumers, and particularly to vulnerable and disadvantaged consumers. As mentioned above, TasCOSS has submitted proposals to the State government for funding for a generalist non-government consumer information and advocacy organisation which would, among other functions, assist consumers with access to appropriate avenues of redress. Our submissions have so far been unsuccessful.

Self and non-regulatory approaches

TasCOSS has little confidence in industry self-regulation and we see this as a weak regulatory option. This view is based on a number of factors, including our belief that consumers do not have confidence in self-regulation and are sceptical of industries' abilities to provide fair and objective self-regulation. We have observed a number of examples of poor self-regulation, including from the gambling industry in Tasmania.

In addition, we understand that many peak industry organisations that administer systems of self-regulation do not have universal industry coverage and therefore, many businesses

operate outside of specific industry regulation frameworks. Of course, governments could impose licence or business authorisation conditions to ensure that all participants in an industry are signed up to an industry specific code and/or dispute resolution scheme.

The Chair of the ACCC, Graeme Samuel said at the recent National Consumer Congress in Melbourne that he thought self-regulation suits business better than consumers, and TasCOSS would agree. He went on to say that his views on self-regulation had changed since he had been with the ACCCC and that he was now “somewhat more sanguine about industry’s ability to regulate itself to the level of community expectation.”

The Productivity Commission *Issues Paper* introduces the notion of formalised government support for consumer advocacy as a non-regulatory option. This is an option TasCOSS would support, providing the consumer advocacy is provided independently, nationally and at arms-length from government.

We believe there is a critical role for a well-resourced independent national, as well as state-based, consumer research, information and advocacy organisation. It could be that a national body could have branches in the jurisdictions, or be a federation of jurisdictional-based consumer advocacy groups.

A key role for such an organisation could be in-depth research that could inform policy and regulatory processes. It could also address the issue of information asymmetry through information campaigns, as well as undertaking high-level advocacy on behalf of consumers.

Jurisdictional responsibilities

On the issue of jurisdictional responsibilities, TasCOSS would like to make a general but critical point and that is, that respective responsibilities must be unambiguous and well-publicised.

In our experience, many consumers (and consumer advocates) are unclear about responsibility in consumer affairs – when, for instance, is a problem the province of the State Office of Consumer Affairs and Fair Trading, and when should a problem be reported to the ACCC? Public information campaigns would go some way to increasing clarity on jurisdictional boundaries.

This problem is exacerbated in Tasmania by the lack of resources of the State Office of Consumer Affairs and Fair Trading – appropriate approaches made to that Office, may be referred on due to lack of resources.

TasCOSS believes that the Ministerial Council for Consumer Affairs and its Standing Committee of Officials of Consumer Affairs are useful bodies that not only have the potential to address areas of duplication and consistency, but also to determine the most appropriate governmental level for particular consumer activities.

Consumers of community and disability services

A final issue we would like to raise is protection and redress for consumers of community and disability services provided by the non-government sector and private providers. We believe there is a gap in the consumer protection framework in Tasmania in relation to consumers of these services.

Consumers of government services and health services have access to a State Ombudsman and a Health Complaints Commissioner respectively. Other consumers of, say, telecommunications, financial services and insurance, all have recourse to industry ombudsman schemes. However, consumers of community services delivered by non-government and private providers have no such avenue for complaint.

As you know, governments are increasingly withdrawing from the direct provision of services and choosing instead to contract services out to non-government agencies and to private providers. Services treated in this way include community care services, supported accommodation, the provision of emergency relief, sexual assault and domestic violence counselling services, employment services, refugee re-settlement support services, disability services, and so on. TasCOSS represents organisations that provide these services and we have found that the absence of an independent complaints/dispute resolution mechanism in the community services industry has an impact on both consumers and services.

The effect on consumers is obvious – there is no recourse to an independent umpire and consumers must seek to either resolve conflicts with the organisation concerned through complaints mechanisms, or simply walk away and forego their rights to both conflict resolution and the service in question.

Organisations are also affected by the absence of independent feedback and assessment of their services. We believe that community sector organisations can benefit from being open to independent and constructive outside scrutiny from a properly constituted and established consumer complaints mechanism.

TasCOSS would like to see the establishment in Tasmania of a community and disability services commission that is well-resourced and independent from funding sources.

Conclusion

We hope that our comments are useful in your deliberations on these critical matters. We hope that this inquiry results in a more accessible and effective consumer protection framework, and one that has the capacity to adequately protect all consumers, including the most vulnerable.