



Australian Government
Productivity Commission

Review of Australia's Consumer Policy Framework

Productivity Commission
Inquiry Report

Volume 1 – Summary

No. 45, 30 April 2008

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ISSN 1447-1329

ISBN 978-1-74037-250-3

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An appropriate citation for this paper is:

Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra.

The Productivity Commission

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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30 April 2008

The Hon. Chris Bowen MP
Assistant Treasurer, Minister for Competition Policy and Consumer Affairs
Parliament House
CANBERRA ACT 2600

Dear Assistant Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's final report for its *Review of Australia's Consumer Policy Framework*.

Yours faithfully

Robert Fitzgerald
Presiding Commissioner

Gary Potts
Commissioner

Philip Weickhardt
Commissioner

Preface

The Commission's report for its inquiry *Review of Australia's Consumer Policy Framework* comprises two volumes.

- This first volume contains the Terms of Reference for the inquiry, Key Points, Summary and Recommendations.
- The second volume contains the chapters and appendices, and also reproduces the recommendations and a summary table of those recommendations and their intended effects from volume 1.

Both volumes of the report can be downloaded from the Commission's website (www.pc.gov.au/inquiry/consumer) or from the CD included with volume 1. That CD also provides access to a range of other relevant inquiry material, including submissions to the inquiry; transcripts of public hearings; the consultancy report prepared for the Commission on jurisdictional variations in the generic consumer law; and documentation of the model used by the Commission to estimate the potential gains for the community from its proposed reform package.

Terms of reference

REVIEW OF AUSTRALIA'S CONSUMER POLICY FRAMEWORK

PRODUCTIVITY COMMISSION ACT 1998

I, PETER COSTELLO, Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, request the Productivity Commission to undertake an inquiry into Australia's consumer policy framework, including its administration, and to report within 12 months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry and to produce a draft report.

Australia's consumer policy framework

The Australian Government and the State and Territory governments share responsibility for consumer policy in Australia. Australia's consumer policy framework includes policy-making, regulatory and non-regulatory activities. Regulation consists of a combination of self-regulatory, co-regulatory, regulatory and enforcement responses to assist consumers to meet the challenges they face in the market for consumer goods and services.

Within the framework, the principal legislative provisions are those contained in Parts IVA, V (with the exception of Division 1AA (country of origin representations)), VA and VC of the Trade Practices Act 1974 (TPA) and equivalent provisions in state and territory Fair Trading Acts. Australia's consumer policy framework also includes a range of other industry-specific legislation administered by the Australian Competition and Consumer Commission or state and territory fair trading agencies.

The Ministerial Council on Consumer Affairs (MCCA) and its supporting bodies are responsible for considering consumer and fair trading matters and, where possible, developing a consistent approach to these issues. The membership of MCCA consists of the Australian Government, the governments of the States and Territories, and the New Zealand Government.

Key considerations

In conducting the inquiry and making recommendations, the Commission is to have particular regard to:

1. the need to ensure that consumers and businesses, including small businesses, are not burdened by unnecessary regulation or complexity, while recognising the

-
- benefits, including the contribution to consumer wellbeing, market efficiency and productivity, of well-targeted consumer policy;
2. the need for consumer policy to be based on evidence from the operation of consumer product markets, including the behaviour of market participants;
 3. the impacts of its recommendations on consumers, businesses and governments, including on small businesses and families, in light of the need to avoid unnecessary increases in regulation;
 4. the shared responsibility of the Australian Government and the State and Territory governments for consumer policy; and
 5. the importance of promoting certainty and consistency for businesses and consumers in the operation of Australia's consumer protection laws.

Scope of Inquiry

The Commission is to report on:

1. ways to improve the consumer policy framework so as to assist and empower consumers, including disadvantaged and vulnerable consumers, to meet current and future challenges, including the information and other challenges posed by an increasing variety of more complex product offerings and methods of transacting;
2. any barriers to, and ways to improve, the harmonisation and coordination of consumer policy and its development and administration across jurisdictions in Australia, including ways to improve institutional arrangements and to avoid duplication of effort;
3. any areas of consumer regulation which are unlikely to provide net benefits to Australia and which could be revised or repealed;
4. the scope for avoiding regulatory duplication and inconsistency through reducing reliance on industry-specific consumer regulation and making greater use of general consumer regulation;
5. the extent to which more effective use may be made of self-regulatory, co-regulatory, consumer education and consumer information approaches and principles-based regulation in addressing consumer issues; and
6. ways in which the consumer policy framework may be improved so as to facilitate greater economic integration between Australia and New Zealand and ways to remove any barriers to international trade in consumer goods and services created by the current consumer policy framework.

Considerations

In conducting the inquiry and making recommendations, the Commission is to have particular regard to:

1. the complementarities between Australia's competition and consumer protection laws;
2. the shared responsibility of consumers, businesses and governments for responding to consumer issues;
3. the nature of consumer markets, including regional, national and international dimensions;
4. the implications of its recommendations for the consumer policy framework of New Zealand;
5. recent developments in consumer policy overseas; and
6. the need to maintain consistency between the consumer protection provisions of the TPA and the mirror consumer protection provisions applying to financial services in the Australian Securities and Investments Commission Act 2001 and the Corporations Act 2001.

The Commission is further requested to:

1. take into account but not replicate significant current and recent review activity relating to the Taskforce on Reducing the Regulatory Burden on Business, the National Competition Policy reforms, Australian and New Zealand competition and consumer protection regimes, and the Australian consumer product safety system, as well as any other relevant reviews, including those undertaken under the auspices of MCCA; and
2. advertise nationally inviting submissions, hold public hearings, and consult with relevant Australian Government and state and territory government agencies, other key interest groups and affected parties.

PETER COSTELLO

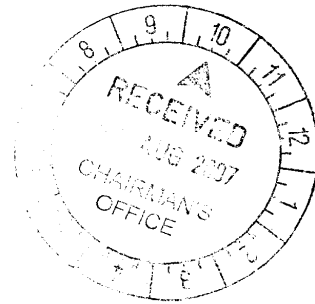
[Received 11 December 2006]



THE HONOURABLE CHRIS PEARCE MP
Parliamentary Secretary to the Treasurer
Federal Member for Aston

14 AUG 2007

Mr G Banks
Chairman
Productivity Commission
PO Box 80
BELCONNEN ACT 2616



Dear Mr Banks

Thank you for your letter of 18 July 2007 to the Treasurer seeking an extension to the reporting date for the Productivity Commission inquiry into Australia's consumer policy framework. Your letter has been referred to me as I have portfolio responsibility for consumer affairs.

I understand that the Commission has engaged in extensive consultation with a range of interest groups, and that several key submissions have only recently been lodged with the Commission. I therefore agree to the extension requested. The Commission should now report to the Government by 28 February 2008.

As with all Commission inquiries, I anticipate that the report will include information on the costs and benefits of the Commission's recommendations. I consider that the costs and benefits of recommended options should be quantified as much as possible as it assists governments to undertake regulatory impact assessments and implement the recommendations in a timely fashion.

I look forward to receiving a copy of the draft report.

Yours sincerely

CHRIS PEARCE



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19 DEC 2007

Mr G Banks AO
Chairman
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Banks *Wayne*

Thank you for your letter of 6 December 2007 seeking an extension to the reporting date for the Productivity Commission inquiry into Australia's consumer policy framework.

I agree to the extension requested. The Commission should now report to the Government by 30 April 2008.

I look forward to receiving a copy of the Commission's final report.

Yours sincerely

WAYNE SWAN

SUMMARY

Key points

- While Australia's consumer policy framework has considerable strengths, parts of it require an overhaul.
 - The current division of responsibility for the framework between the Australian and State and Territory Governments leads to variable outcomes for consumers, added costs for businesses and a lack of responsiveness in policy making.
 - There are gaps and inconsistencies in the policy and enforcement tool kit and weaknesses in redress mechanisms for consumers.
 - These problems will make it increasingly difficult to respond to rapidly changing consumer markets, meaning that the associated costs for consumers and the community will continue to grow.
- Addressing these problems will have significant direct benefits for consumers. Also, by better engaging and empowering consumers and furthering the development of nationally competitive markets, reform will enhance productivity and innovation.
- A set of clear objectives and supporting principles is required to anchor the future development of consumer policy.
 - The overarching objective should be to improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith.
- A pressing need is to put in place institutional arrangements that are more compatible with the increasingly national nature of Australia's consumer markets and which will deliver more timely and effective policy change than the current regime.
 - In keeping with many of the other key policies governing commerce in Australia, greater responsibility for consumer policy development and enforcement should reside with the Australian Government.
- The first step in this process should be the introduction of a single generic consumer law applying across Australia, based on the consumer provisions in the Trade Practices Act (TPA), modified to address gaps in its coverage and scope.
 - The Australian Government, through the Australian Competition and Consumer Commission (ACCC), should be responsible for enforcing the product safety provisions nationally, though possibly with scope for States and Territories to implement, time limited, interim product safety bans.
 - The remaining provisions should be jointly enforced by the ACCC and State and Territory consumer regulators, though individual States and Territories should have the option to refer their enforcement powers to the Australian Government.
 - The new law should include a provision voiding 'unfair' contract terms that have caused consumer detriment.
 - In addition to the enforcement tools currently in the TPA, it should provide for civil pecuniary penalties, banning orders and substantiation and infringement notices.

(Continued next page)

Key points (continued)

- Responsibility for regulating the provision of consumer credit and related advice by finance brokers and other intermediaries should also be transferred to the Australian Government as soon as practicable, with ASIC as the primary regulator.
- CoAG, in consultation with the Ministerial Council on Consumer Affairs, should oversee a general reform program for industry-specific consumer regulation to:
 - identify and repeal unnecessary industry-specific consumer regulation, with an initial focus on removing regulations that apply in only one or two jurisdictions;
 - identify other areas of specific consumer regulation where divergent requirements and/or lack of policy responsiveness are particularly costly; and
 - determine how these costs should be reduced, including explicit consideration of the case for transferring policy and, where appropriate, enforcement responsibilities to the Australian Government.
- In addition:
 - Some particular regulatory requirements for consumer credit, utility services and home building should be modified.
 - Consumers' access to remedies where they suffer detriment from breaches of consumer law, should be enhanced by consolidating some ombudsman arrangements; streamlining small claims courts' procedures; making it easier for regulators to bring representative actions; and increasing funding for legal aid and financial counselling services.
 - Mandatory disclosure requirements should be improved by more 'layering' of the information provided to consumers and greater testing of its comprehensibility and relevance to them.
 - Subject to appropriate governance arrangements, there should be additional public funding for consumer advocacy and for policy related research, including to enable the establishment of a National Consumer Policy Research Centre.
- Many of the Commission's proposals would benefit vulnerable and disadvantaged consumers, with some being primarily designed to assist these groups. However, for some groups, specific additional strategies may be required.
- The proposed changes would also further the economic integration goals of the Australian and New Zealand Governments.
- Though only very broad quantification is possible, the Commission's reform package could provide a net gain to the community of between \$1.5 billion and \$4.5 billion a year.
- A tabular representation of the Commission's individual proposals, and the benefits they would provide, is presented at the end of this summary.

Summary

Why this inquiry?

Australian consumers have benefited greatly from recent economic reforms. Most notably, reductions in trade barriers and competition policy reforms have put downward pressure on prices, enhanced product quality and increased consumer choice. Indeed, almost all economic policies are ultimately aimed at improving consumer wellbeing (figure 1).

However, within this broad policy array is a suite of measures designed to directly enhance outcomes for consumers by creating a framework that:

- protects them from unconscionable or deceptive conduct, and from unsafe or defective goods and services;
- provides them with remedies when they suffer loss from such conduct or products; and
- assists them in making better purchasing decisions by, for example, ensuring that they receive appropriate product information.

By making consumers more confident about participating in markets, and penalising inappropriate business conduct, these measures also assist reputable suppliers. Put simply, effective competition is stimulated by empowered consumers and responsive suppliers that trade fairly.

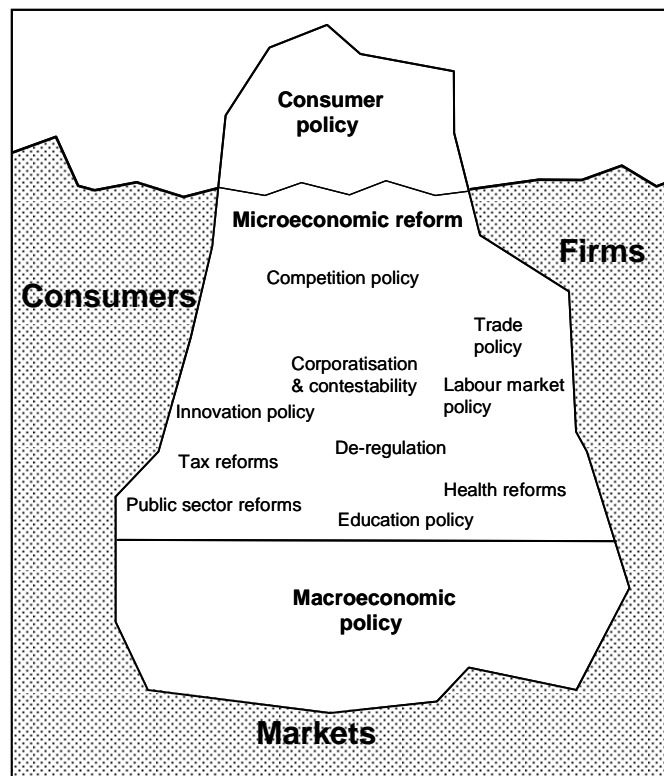
Key elements of this ‘consumer policy’ framework are the generic legislative provisions in the Trade Practices Act (TPA) and State and Territory Fair Trading Acts (FTAs). There are also many industry-specific consumer regulations, as well as ombudsman and co- and self-regulatory arrangements, and consumer education initiatives.

This framework has been evolving in response to the changing market environment in which consumers operate (box 1) and to the growing recognition that:

- some regulatory measures to protect and empower consumers can have significant, and often unintended, costs for businesses and consumers alike; and

- consumer policies should be evidence-based and take account of how consumers, businesses and regulators actually behave.

Figure 1 **Many policies influence consumer wellbeing**



However, not all new consumer policy measures have been subject to adequate scrutiny. And evaluation of existing measures has often been similarly deficient. Also, good policy making and implementation has been complicated by the dual responsibilities of the Australian and State and Territory Governments in this area.

Accordingly, the Commission was asked to undertake a broad ranging review of how the consumer policy framework might be improved, including through: promoting harmonisation and coordination of consumer policies across jurisdictions; revising or repealing regulation that is not of net benefit to the community; and making better use of self and non-regulatory approaches. The full terms of reference are reproduced at the front of this summary.

How has the Commission approached the task?

As this is a forward looking review, the Commission has sought to map out a policy framework that will both better address current circumstances and accommodate

Box 1 How are consumer markets changing?**A more competitive market environment**

Most Australian markets are much more competitive than in the past — in large part because of economic reforms and growth of the Internet. This means that businesses that fail to respond effectively to consumers' preferences are now more likely to suffer in the marketplace. Of itself, this will reduce the need for government intervention.

A greater variety of goods and services

The wider range of products now available — partly due to the more competitive market environment — has been of major direct benefit to many consumers. As well, it has helped to make consumers more demanding and thereby reinforced the competitive disciplines on suppliers. But it has also increased the investment required to compare alternatives, which may disadvantage some consumers.

Growing product complexity

Many goods and services have become more complex. This has led or contributed to:

- greater reliance by consumers on skilled intermediaries;
- widespread use of standard form contracts. Though offering cost and price savings, consumers' inability to vary terms has raised unfairness concerns;
- more emphasis on regulated (and often complex) information disclosure; and
- the growth of sometimes prescriptive, industry-specific consumer regulation.

Changes in spending patterns

Around 80 per cent of household income is now spent on services. For some services, gauging quality and suitability before and even after purchase can be difficult, meaning that consumer confidence and trust in the supplier is important.

The influence of technological change

As well as contributing to greater choice, growing product complexity and changes in spending patterns, technological change has, via the Internet, given consumers better access to information on goods and services and new ways to purchase them. But the growth in Internet transactions has raised new redress issues; created additional opportunities for fraud; heightened related problems such as unsolicited approaches (spam); and added to the global dimensions of consumer policy.

Changing consumers with higher expectations

As a result of better education and access to the Internet, many consumers are now more confident and informed. But greater product complexity, and demographic changes — such as population ageing — may have simultaneously increased the pool of vulnerable consumers. So too may have the increasing market participation of young people. And higher community expectations are leading to demands for less risky products and mandatory provision of new product information.

new market developments and policy pressures in the decades ahead. Given past experiences, those developments and pressures are likely to be substantial.

The Commission has concentrated on key institutional and procedural aspects of the policy framework and on the generic regulatory provisions in the TPA and FTAs. However, it has looked in more detail at the specific regulations applying in some areas of particular importance to consumer wellbeing.

The Commission has also considered the insights from behavioural economics and their implications for future policy settings, and been cognisant of the ethical, social and fairness dimensions of consumer policy. For example, policies commonly put a premium on the interests of vulnerable and disadvantaged consumers even if this imposes some costs on other consumers.

As well, the Commission has taken account of the significant linkages and interactions between consumer policy and competition policy.

- In some cases these can be reinforcing — for instance, policies that foster more confident and informed consumers can invigorate competition between suppliers and thus promote efficiency and innovation.
- But there can also be trade-offs. In particular, consumer policies that impose significant compliance burdens on businesses, or dull competitive market incentives for them to improve productivity, can lead to higher prices, as well as to lower incomes and therefore reduced household spending power.

Such complementarities and trade-offs, and the scope to improve consumer welfare in other ways, means that ‘consumer policy’ cannot be formulated in isolation.

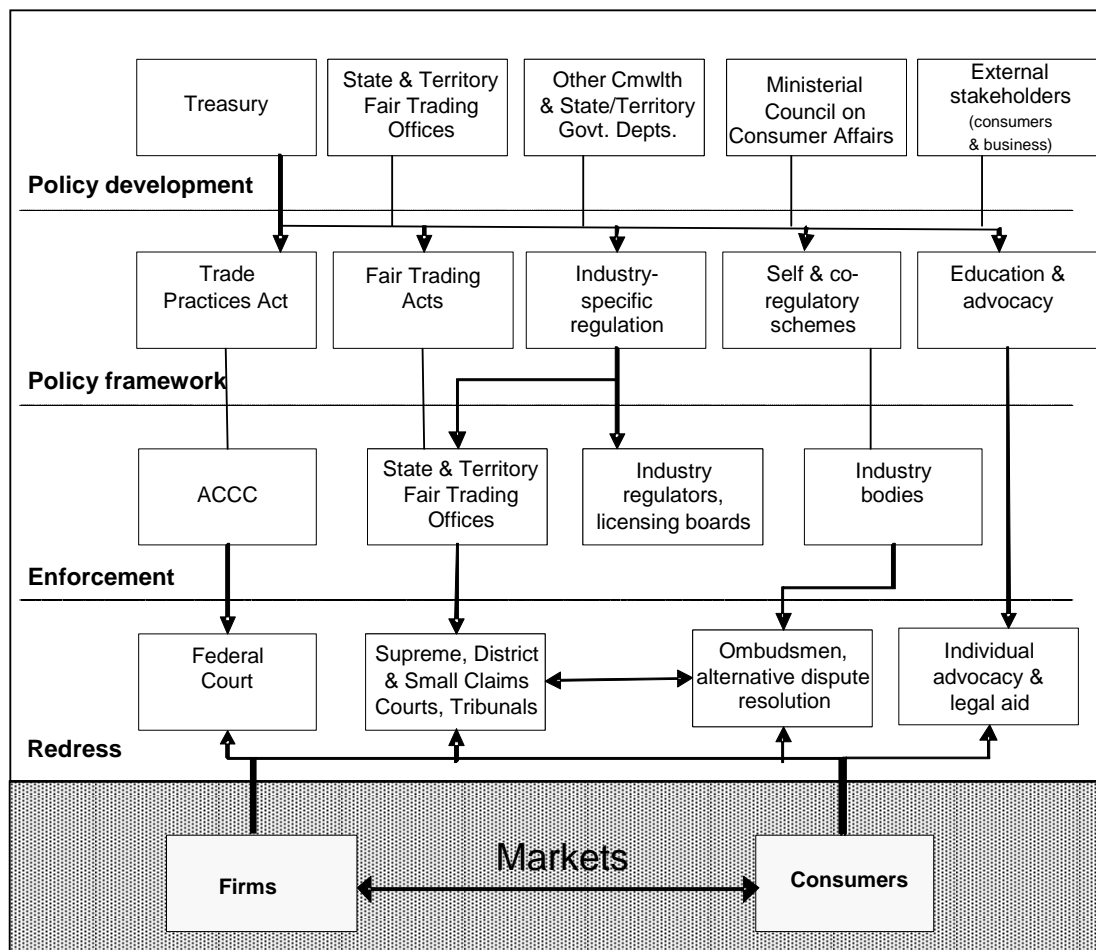
Finally, though the Commission has focussed on consumer policy as it relates to the market sector of the economy, many of the principles and good practice measures that underlie its analysis and recommendations could have application in the provision of government and other non-market services.

How well does the current regime measure up?

Some important strengths

In a number of respects, Australia’s current consumer policy framework (figure 2) is sound. In particular, without excessive prescription, the generic regulatory regime operating through the TPA and FTAs provides a broad platform for consumer protection for most products and services.

Figure 2 The consumer policy framework



The framework does not rely solely on black letter law, with various self and non-regulatory approaches complementing the generic and industry-specific regulation. As noted above, it is also a framework that has shown *some* capacity to adapt to changing circumstances and consumer needs. And a comparison with overseas frameworks suggests that the thrust and coverage of Australia’s arrangements is broadly appropriate.

Significant weaknesses

However, evidence submitted to this inquiry highlights that systemic impediments in the framework detract substantially from its effectiveness in protecting and empowering consumers and thereby from its role in promoting competitive markets.

Some specific examples of problems are provided in box 2 and in subsequent sections of this summary. But, thematically, these systemic impediments can be grouped in the following way.

Box 2 **Some examples of shortcomings in the current arrangements**

Regulatory complexity

- Telecommunication customer contracts are subject to at least 6 pieces of regulation.
- Depending on its precise nature, consumer protection for financial products and services may occur via the Australian Securities and Investments Commission Act, the Corporations Act or the TPA (all Federal), or via the state-based Uniform Consumer Credit Code, separate State and Territory credit regulation, or state-based real estate acts.

Costly variation in regulation with few or no offsetting consumer benefits

- Jurisdictional variations in door-to-door sales regulations applying for some services mean that nationally-based suppliers must use different disclosure forms to provide consumers with essentially the same information.
- Food retailers are apparently sometimes required to engage in 'regulatory roulette', deciding which jurisdictional requirements to comply with and which to breach.

Perverse outcomes for consumers

- The website of the Hairdressers Registration Board in Western Australia states that one goal of licensing is to protect incumbents from competition by preventing 'unqualified people from opening a salon next to you and practising as a hairdresser in an attempt to impact on your established clientele'.

Lack of policy responsiveness to emerging needs

- According to the Victorian Government, agreed changes to the Uniform Consumer Credit Code typically take between 3 and 5 years to implement.
- Over 30 reviews in the past 10 years have failed to deliver nationally effective protection and redress for consumers having a home built or renovated.

Problems relating to contract terms and information disclosure

- Contracts subject to mandatory disclosure requirements are often very long and complex. Mobile telephone contracts of 500 pages are an extreme example.
- A prominent Internet-based ticket seller allows just three minutes for a user to read extensive contract documentation before the tickets are returned to the pool.
- Since 2003, credit providers have been required to display a 'comparison rate' for fixed term loans. A recent study found that only 28 per cent of borrowers knew the purpose of the comparison rate and only 16 per cent understood what was included in the rate. Despite this, the requirement has been rolled over without, as yet, any modification.

Complex redress arrangements for consumers

- There are a plethora of bodies which handle consumer complaints, including over 100 consumer regulators across Australia, more than 20 consumer ombudsman's offices, multiple private dispute resolution bodies, legal aid offices, small claims courts and various consumer tribunals.

A lack of coherent and clearly enunciated objectives

Clear specification of objectives is particularly important in an area like consumer policy where specific problems can be addressed in different ways, where there are often trade-offs between different classes of consumers, and where the short term and longer term outcomes for consumers from intervention can sometimes diverge. As well as providing guidance to policy makers and regulators, clear objectives can also help to condition the expectations of consumers and suppliers and thereby promote more effective interactions between them.

However, under the current consumer policy framework, there is no generally agreed set of objectives to provide such guidance. This has contributed to differences in regulatory interpretation at the jurisdictional level, and to tensions with initiatives from outside of consumer policy aimed at promoting consumer wellbeing. More broadly, it has detracted from a unity of purpose amongst stakeholders in seeking to address specific problems and to identify ways in which the policy framework could be made to work better for consumers, businesses and the community.

An inappropriate delineation of responsibilities at the government level

Shared responsibility between the Australian and State and Territory Governments for the development and application of consumer policy has benefits (see below).

However, such sharing has led to inconsistencies, gaps and overlaps in the framework and its enforcement — problems that have proved difficult to remedy despite the fact that one of the principal goals of the Ministerial Council on Consumer Affairs (MCCA) is to achieve ‘legislative consistency of major elements of consumer protection laws’. And it has contributed to inertia in amending the policy framework, even when there is agreement that changes are required.

As well as diminishing the effectiveness of the policy framework, these inconsistencies, gaps and overlaps in the policy framework impose unnecessary costs on firms operating nationally — which are passed on to consumers in the form of higher prices. Moreover, this division of responsibility does not align well with the increasingly national nature of consumer markets.

Inadequate evaluation processes for assessing consumer regulation

While there are procedures in place in all jurisdictions for assessing new or amended regulation and for periodically reviewing existing regulation, these have not always been applied in a sufficiently rigorous or comprehensive manner. This

has created an environment where there have sometimes been few constraints on quick fix responses to particular consumer problems and where it has often proved difficult to get outdated or redundant consumer regulation off the statute books.

Missing or deficient policy instruments

Timely and cost-effective application of the generic consumer law is made more difficult by gaps in the regulatory tool kit, as well as by deficiencies in alternative dispute resolution and other redress mechanisms where consumers suffer detriment from breaches of that law. This has reduced the effectiveness of the generic regime in protecting consumers and thereby increased the likelihood that more prescriptive industry-specific measures will be employed.

Also, mandatory information disclosure requirements have not worked well — sometimes confusing rather than informing consumers. And current approaches on consumer advocacy, education and policy research require modification if they are to better meet the needs of consumers and the community in the years ahead.

There is scope to do much better

As well as directly benefiting consumers, addressing these deficiencies in the policy framework would help to promote productivity growth and innovation — the cornerstones of Australia's strong economic performance over the last two decades.

Indeed, without remedial action, the changing nature of consumer markets and the growing expectations of consumers themselves, mean that the costs of the current deficiencies will almost certainly grow. It is with an eye to the future as well as to the present, that the Commission has concluded that aspects of the framework are in need of an overhaul. (Some quantitative estimates of the potential gains are provided later in this summary.)

Objectives for the future consumer policy framework

In proposing various reforms to the current consumer policy framework, the Commission has given careful consideration to: the rationales for government intervention in the consumer area (box 3); the costs of intervention and the constraints on what it can achieve; the importance of reinforcing the important role for competition in improving consumers' welfare; and the role of consumers themselves in enhancing their capacities to operate effectively in the marketplace.

Box 3 The rationale for a consumer policy framework

For the vast bulk of transactions, consumers experience no problems. Moreover, where problems do arise, they are often resolved through negotiation with the supplier.

However, consumers' lack of information about some goods and services can expose them to significant detriment. Behavioural biases — such as over-confidence and an excessive focus on short term benefits and costs — and information overload can similarly lead them to make poor and potentially costly decisions.

As well as the direct consequences for individuals, such features of consumer markets can make it easier for bad or poorly performing businesses to survive. They can also make consumers less willing to deal with unfamiliar suppliers. These effects will in turn weaken competition and lead to higher prices, reduced quality and less innovation. This illustrates that competition policy alone cannot always be relied upon to deliver well-functioning markets and the attendant benefits for consumers and the community.

Of course, information gaps and poor decision making by some consumers are part and parcel of virtually every market and do not automatically justify government intervention. This is especially the case as markets themselves will often generate effective solutions to more widespread problems confronting consumers. For example, intermediaries may emerge to assist consumers make complex purchases and many businesses invest heavily in their reputation and/or offer warranty protection. Also, most consumers learn from their experiences and thereby become less susceptible over time to making mistakes. And there are limits on the extent to which intervention can improve on market outcomes, especially given its compliance and other costs.

The broad implications of the rationales for consumer policy are therefore little different from those relating to other 'market failures' such as externalities and public goods. While all provide a conceptual underpinning for intervention, none give rise to a generally applicable case for doing so. Rather, case-by-case assessment is called for that establishes not only that the conceptual concern gives rise to a *material* problem in the market concerned, but also that it can be effectively remedied by intervention and that the likely costs of that intervention do not outweigh the prospective benefits.

This in turn illustrates why a set of coherent objectives and implementation principles, indicating when and how to intervene, can help to improve policy making.

However, to provide an identifiable platform for these proposals and guidance to those charged with adjusting policy in the future, the Commission has codified these considerations in an overarching set of policy objectives — an approach widely supported by key stakeholders.

Specifically, the Commission considers that the high level objective for the future policy framework should be:

‘to improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith.’

supported by the following set of operational objectives:

The consumer policy framework should efficiently and effectively aim to:

- *ensure that consumers are sufficiently well-informed to benefit from, and stimulate effective competition;*
- *ensure that goods and services are safe and fit for the purposes for which they were sold;*
- *prevent practices that are unfair or contrary to good faith;*
- *meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage;*
- *provide accessible and timely redress where consumer detriment has occurred; and*
- *promote proportionate, risk-based enforcement.*

In the body of the report, the Commission has also spelt out some best practice design and implementation principles to help ensure that consumer policy interventions provide a net benefit to the community, and employ the most effective policy instruments. These principles give rise to a ‘decision-making tree’ (figure 3) similar to that recently developed by the OECD.

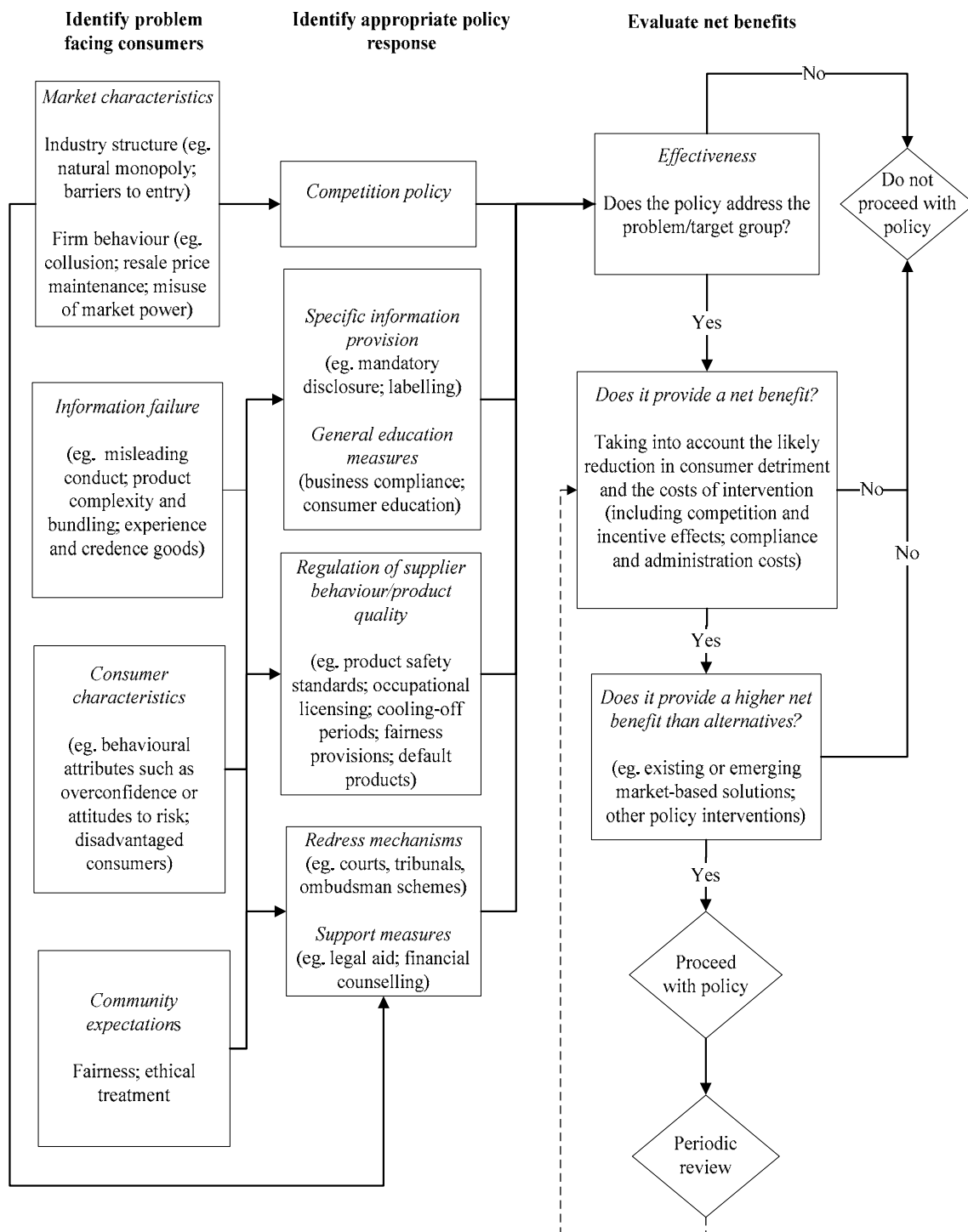
More effective and responsive institutional arrangements

Shared responsibility has benefits

The involvement of both the Australian and State and Territory Governments in the development and enforcement of consumer policy has some advantages:

- Consumer policy requirements will occasionally differ across jurisdictions. For example, catering for Indigenous consumers will be a greater issue in Queensland, Western Australia and the Northern Territory than elsewhere. And building standards will often need to reflect climatic factors.
- There may be opportunities for individual jurisdictions to learn from the experiences — good and bad — of their counterparts in regard to the configuration and application of consumer policy measures. For example, experiences with the Contract Review Act in NSW informed the subsequent introduction of unconscionability provisions into the TPA.

Figure 3 A policy decision-making tree



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- A number of participants perceived that state-based regulators will be better placed than national regulators to apply consumer laws to local issues in a timely fashion — even if the laws themselves are nationally uniform. Moreover, there are synergies between the generic and industry-specific enforcement functions of State and Territory consumer regulators, and also with other State and Territory bodies involved in the application of those laws.

These sorts of advantages are recognised in various aspects of the current consumer policy framework. For example, in enforcing the generic consumer law, the State and Territory Fair Trading Authorities largely focus on local matters, while the ACCC concentrates on nationally significant issues.

But the division of responsibility needs to change

These advantages do not, however, mean that the current division of responsibilities across the two levels of government is appropriate. In the Commission's view, and the view of many consumer and business groups (box 4), locating greater responsibility with the Australian Government would lead to a more effective, responsive and efficient policy framework. And though not necessarily the view of all of those responsible for consumer policy at the State and Territory level, CoAG has also recently endorsed a transfer to the Australian Government of responsibility for some key parts of the policy framework (see below).

Australia's consumer markets are becoming more national

For most goods and services, the expectations, preferences and needs of consumers are much the same across Australia. Thus, for example, 'comparable' consumers in different regions display similar spending patterns, with those patterns mainly influenced by factors such as age and household income and type, rather than by where people live (figure 4).

Reflecting this, (as well as factors such as economies of scale and the removal of import barriers and impediments to interstate trade), around 50 per cent of consumer needs are now met by suppliers operating in multiple jurisdictions. And for communications services, the share is close to 90 per cent. Moreover, the overall market share of national suppliers has grown by some 6 percentage points over the last decade, with further rises likely given Australia's openness to international competition and ongoing developments in supply chain management and e-commerce.

Box 4 Consumer and business views on the current division of responsibilities

Choice (sub. 88, p. 42)

Australia’s consumer policy framework has failed to develop to reflect the fact that our market is now overwhelmingly national in character. ... The Federal/State split of responsibilities slows policy making processes and frustrates businesses and consumers. ... For businesses trading across State boundaries – many of the major players in key consumer industries – [it] means additional compliance costs which in turn means increased prices for consumers.

Consumer Credit Legal Centre (sub. 95, p. 40)

The pace of legislative change ... has been painfully slow. ... there are numerous examples of changes which have been agreed to in principle and have unilateral support but which have taken, or are taking years to implement.

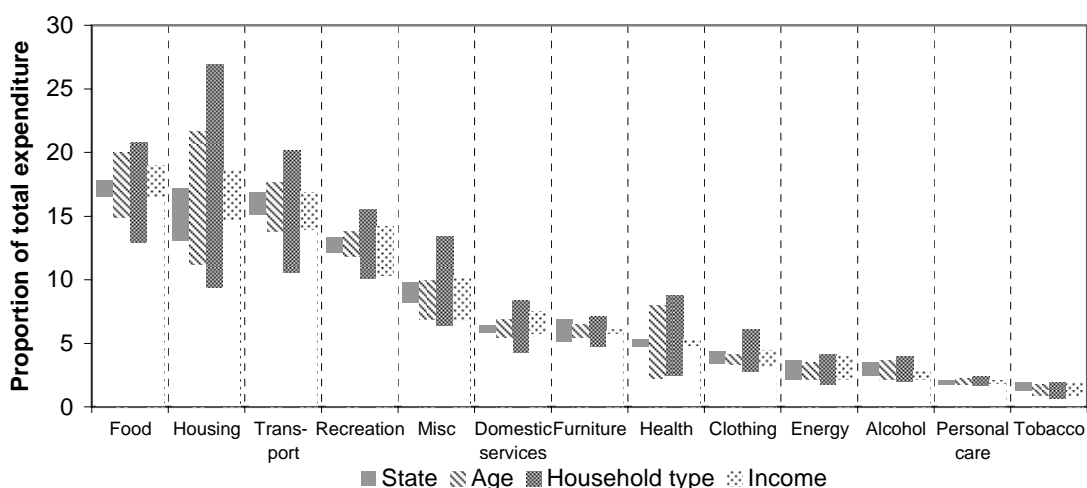
Real Estate Institute of Australia (sub. 39, p. 9)

The ... timeliness of government policy development in consumer protection ... is generally much too slow to respond to rapidly emerging consumer issues, sometimes resulting in a ‘stop gap’ piecemeal approach by various jurisdictions awaiting outcomes. Despite being on the MCCA agenda, there is sometimes no practical solution implemented for many years ...

Australian Retailers Association (sub. 71, p. 4)

Currently consumer regulation is extremely burdensome for retailers with myriads of enforcement agencies, multiple statutes, inconsistencies across states, and multiple licensing systems. Poorly designed regulation not only leads to excessive compliance costs, but in some cases may be the cause of non compliance.

Figure 4 Location is not a major influence on consumer spending



The expenditure shares in the figure portray the range of spending across different categories of consumers. In the case of food, for example, the range of expenditure shares by State is around 1.5 per cent of total average spending, compared to variations of 5 per cent, 7 per cent and 3 per cent by age, household type (single person, family with or without dependents etc.) and income, respectively.

The ‘mismatch’ in markets and policy responsibility raises costs

Superimposing multi-jurisdictional and somewhat divergent policy regimes on those suppliers servicing the Australian market (or large parts of it) raises their costs of doing business. Apart from the added compliance costs, variations in requirements may reduce opportunities to realise economies of scale through centralising functions. A large part of these cost increases will be passed on to consumers in the form of higher prices.

While such costs may often be quite modest for individual suppliers, this does not mean that the collective impact can be dismissed as unimportant, with some referring in this context to the ‘tyranny of small differences’. And even where there are no regulatory differences, some suppliers confronting multiple policy regimes may still incur costs in satisfying themselves that this is in fact the case.

The current arrangements penalise consumers in other ways

A further consequence of the current division of responsibility for consumer policy is that the protections and redress options for consumers confronting the same problem can sometimes depend on where they live. Such differences detract from fairness in outcomes and also from consistency in the signals to consumers and businesses about their rights and responsibilities.

Most importantly, the lack of policy responsiveness in the current arrangements creates the potential for significant detriment to consumers across Australia. Through MCCA and related coordination mechanisms, governments have sought to ensure that the need to secure agreement from nine jurisdictions for changes to the generic consumer law, or for national approaches in key areas of specific regulation, does not unduly delay policy analysis and decision making. However, a widely held view is that these arrangements have often been ineffectual.

There are several reasons for this, with various parties ‘at fault’ at different times (see below). But this is unlikely to be of much consolation to consumers who have suffered as a result of the ensuing policy inertia. Very slow progress on the regulation of finance brokers — those engaged in providing advice on the suitability of mortgage and other credit products — is a prime example. After several years on MCCA’s policy agenda, a draft consultation bill has only just emerged.

A more nationally coherent approach is needed

The precise roles that the Australian and State and Territory Governments should have in the future consumer policy framework can reasonably be debated.

But it is clear that the benefit-cost calculus for the current delineation of responsibility is now different from even a decade ago. The increasingly national nature of consumer markets; the gradual — but now substantial — shift away from the largely consistent generic consumer law agreed to in the 1980s; and the often ineffectual processes to facilitate timely policy change; together mean that the current framework has become more costly for consumers and businesses, with few or no counterbalancing benefits. Moreover, as noted earlier, the costs will almost certainly continue to rise.

Indeed, it is notable that the current approach in the consumer policy area stands apart from the largely national approach for many other key arms of policy governing the commercial operations of firms — such as corporations law, business taxation and industrial relations arrangements, and anti-competitive conduct rules. As such, it is likely to detract to some extent from the role of these other policy arms in fostering the further development of competitive national markets and the attendant price, choice and productivity benefits that this will deliver for consumers.

The need to improve the current regime is not in dispute, with considerable time and effort already devoted to doing so. But the persistence of significant problems suggests that an efficient and effective policy framework is unlikely to emerge under the current institutional arrangements. In the Commission's view, a more nationally coherent policy framework is required, with the location of greater responsibility for the framework with the Australian Government being a pre-requisite for achieving this.

A single national generic consumer law should be implemented

Though involving nine separate pieces of legislation, much of the generic consumer law is broadly consistent across Australia.

However, as a report prepared for this inquiry by Professors Stephen Corones and Sharon Christensen (available on the Commission's website) demonstrates, there are many small variations in the detailed requirements — even in regard to the definition of a consumer. And a small number of more significant differences have emerged in recent years, including as a result of:

- the unilateral introduction by Victoria of provisions dealing with unfair contract terms; and
- different approaches by Victoria and NSW in regard to telemarketing.

Differences in enforcement intensity and/or priorities at the jurisdictional level can similarly lead to divergent requirements for businesses (and variable outcomes for consumers).

The costs of divergences in the requirements or application of the generic law should not, of course, be overstated. Even the more significant differences may not necessarily require businesses that adhere to ethical standards to employ tailored compliance strategies.

Nonetheless, as indicated above, the cumulative costs of even individually small differences can be material. And because many of them are seemingly needless, they can also be a source of significant frustration for businesses.

More importantly, a continuation of the recent regulatory ‘break-outs’ will see the compliance burden increase in the future. It will also (inimically) increase as unnecessary specific consumer regulation is repealed (see below) and the generic law becomes the sole means of protecting consumers in a wider range of areas.

In any event, there is little reason for *any* variation in the content of the generic consumer law.

- The generic law reflects broad notions of efficiency, fairness and equity, which the vast majority of consumers and businesses would regard as appropriate and reasonable irrespective of where they live or trade.
- The broad, principles-based, nature of the generic law allows for its application to a wide variety of particular circumstances. This largely removes any case for variations in the *law* itself to account for specific local requirements.

In the Commission’s view, the intrinsic case for introducing a single national generic consumer law applying across Australia is therefore compelling — a view supported by many consumer and business organisations and several State and Territory Governments. Importantly, this would be a readily implementable first step in developing a regulatory regime that better matches the increasingly national nature of consumer markets and commercial arrangements generally. It could also facilitate efforts to deliver the same sort of national focus in industry-specific requirements — a much more complex and time consuming process (see below).

The TPA should be the ‘stepping’ off point for the new law

As a matter of principle, the new national generic consumer law should embody the most appropriate regulatory principles and requirements rather than simply replicating those in any one of the contemporary pieces of legislation.

But it would not be sensible to develop the new law through a ‘line by line’ consideration of the existing set of multi-jurisdictional legislation. A more practical approach would be to start with the TPA — the foundation for all of the existing generic laws — and then augment or modify its requirements where there is general agreement that they are not adequate to deal with particular issues. The Commission itself is proposing that the new law include a provision dealing with unfair contract terms and a wider range of enforcement tools than in the current TPA (see below). Other requirements in State and Territory Fair Trading laws that might warrant inclusion in the new national law include those relating to mock auctions and door-to-door selling.

Who should enforce the new law?

Consistent with the high level objectives for consumer policy enunciated earlier, the enforcement approach adopted for the new national generic consumer law should be the one most capable of delivering effective, consistent and efficient enforcement outcomes. Against these criteria, the two broad options — a single national regulator or the current approach of separate regulators in each State and Territory, plus the ACCC — each have pluses and minuses. The choice between the two is finely balanced, as reflected in the different views of inquiry participants (box 5).

The main advantages of the one regulator model are that it should help to:

- ensure that the intent of the single law in promoting consistent treatment for consumers and businesses across the country was not undermined by unwarranted variations in enforcement approaches or intensity at the jurisdictional level;
- preclude wasteful duplication of regulatory effort where the same issue is needlessly pursued by more than one regulator; and
- allow for the linkages between consumer and competition policy to be reflected in all enforcement of the generic consumer law, rather than only in the ACCC’s more limited current enforcement remit in the consumer policy area.

Against this, the multiple regulator model provides for the capture of synergies (economies of scope) between State and Territory enforcement of the generic consumer law and their various industry-specific laws. As well as potentially contributing to more effective outcomes for consumers, such synergies are likely to provide cost savings for consumers as taxpayers. In particular, for as long as the States and Territories have a major role in enforcing industry-specific consumer law (see below), making a national regulator solely responsible for enforcing the generic law would inevitably entail some additional regulatory overheads.

Box 5 Views on the enforcement of a national generic consumer law

Australian Food and Grocery Council (sub. DR150, pp. 4-5)

Consumer protection is a broad and complex area interfacing with many industries, community sectors, regulatory and legal systems. ... It is appropriate for these issues to be dealt with centrally and nationally. Indeed, the consumer protection provisions of the Trade Practices Act and activities of the Australian Consumer and Competition Commission ... illustrate that some fundamental issues such as prevention of fraud and deception and anti-competitive behaviour can be provided for at a foundation level by national legislation enforced by a national agency.

South Australian Government (sub. DR219, p. 7)

... consumers' needs are best met by having a local regulator who has a grass roots understanding of local issues and who can respond sensitively and quickly to issues that arise. This does not preclude improving methods of information sharing through engagement, accountability and cooperation ...

ACCC (sub. DR176, p. 6)

Setting aside the constitutional and infrastructure difficulties, the proposal for a single regulator turns on the assumption that the associated benefits arising from a consistent application of the generic consumer law to local consumer issues are greater than the benefits associated with having a range of consumer and related laws enforced by local regulators who can utilise a full range of compliance tools associated with these laws to deliver outcomes for consumers. The ACCC does not believe the [case for a single regulator] has convincingly [been] made ...

In addition:

- Constitutional restrictions on the scope of the Australian Government's activities would, if unaddressed, detract from the effectiveness of the one regulator model.
- Maintenance of an 'equivalent' enforcement and related educative capacity under a one regulator model could require a significant transfer of enforcement resources. The associated transactions costs might be considerable.

Also, there is clearly some scepticism about the ACCC's likely preparedness to assume and appropriately prioritise the sort of local enforcement functions currently undertaken by the State and Territory consumer regulators.

In the Commission's view, this scepticism does not appear to be well founded. Under the current regime, the ACCC's focus has sensibly been on applying the consumer provisions in the TPA to nationally significant issues. But intrinsically, there is no reason why an appropriately tasked and resourced national regulator could not effectively apply the new law at the local level. The capacity of national dispute resolution services — such as the Banking and Financial Services Ombudsman — to deal with local issues, and the strong local presence of Australian Government entities such as the Australian Taxation Office, Centrelink and

Medicare, are illustrative of this. Indeed, the ACCC indicated that it has taken enforcement action on local issues where lack of resourcing has prevented a State or Territory from doing so.

Nevertheless, if not acknowledged and addressed in some way, such perceptions could make it very difficult to secure consensus for a one regulator model. Again, the costs of doing so need to be factored into the decision making calculus. So too must be the costs of any new mechanisms required to allow the States and Territories to convey their enforcement concerns and priorities to the ACCC.

A contingent approach with a referral of powers option

The Commission considers that the option of making the Australian Government, through the ACCC, solely responsible for enforcing the new national generic law has intrinsic merit, especially in the longer term.

But while the States and Territories remain responsible for enforcing a large body of specific consumer regulation, the loss of regulatory synergies and the costs of creating a parallel regional office network are powerful arguments against implementation of the one regulator model. More pragmatically, in the face of considerable jurisdictional opposition to the one regulator model, packaging it with the implementation of a new national generic law, could put the latter at risk. As indicated above, implementation of this new law is a critical first step in creating a more nationally coherent consumer policy framework that could deliver more efficient and effective outcomes for consumers and the wider community.

The Commission has therefore concluded that, for the time being — and with the important exception of the product safety provisions (see below) — the new national generic law should be jointly enforced by the Australian Government and the States and Territories.

However, individual States and Territories should have the option of referring their enforcement powers to the Australian Government, with enforcement to be undertaken by the ACCC. This could be attractive to some of the smaller jurisdictions where enforcement overheads are proportionately more significant.

Moreover, if the intent of the new law in delivering uniform and effective outcomes for consumers and businesses across Australia is undermined by inconsistencies in enforcement, then the one regulator model should be revisited. It should also be revisited if the review process detailed below leads to a significant reduction in the role of the States and Territories in enforcing industry-specific consumer laws. In these circumstances, one of the key arguments for maintaining a multi-jurisdictional enforcement model — regulatory synergies and avoiding duplication of regulatory

overheads — would carry less weight. Indeed, to ensure there is appropriate future consideration of these matters, there should be a review of the enforcement regime, no later than ten years after the new national generic law is implemented.

Enforcement of the consumer product safety provisions

Product safety issues are generally national in nature, with most products being imported and sold across Australia. Product safety problems can also have potentially severe consequences for some consumers if not promptly addressed. Hence, the risks to consumer wellbeing under a system that requires nine jurisdictions to take quick and effective action are likely to be higher than for other parts of the generic law. The case for making the Australian Government, through the ACCC, solely responsible for enforcing the product safety provisions of the new national generic law — as recommended in the Commission’s recent study into Australia’s consumer product safety system — is therefore much stronger than for the rest of the generic law.

Reflecting this, CoAG has recently agreed that the Australian Government should assume greater responsibility for regulating product safety — with MCCA, through CoAG’s Business Regulation and Competition Working Group, to develop a detailed implementation plan for a national system by July 2008. CoAG has further indicated that, under this national system, States and Territories could retain the power to impose interim product safety bans (an ‘intermediate’ model that was not examined by the Commission in its consumer product safety study).

Within an otherwise national enforcement model, such an interim ban arrangement would cater for any imperative for a State or Territory to take remedial action when a product safety issue arises in their jurisdiction. In so doing, it could also provide a way of moving forward on what has so far been a contentious reform area.

However, any state-based interim product safety ban arrangement would need to be carefully crafted to ensure that it did not become the source of significant and ongoing differences in product safety requirements across jurisdictions. Accordingly, the Commission is recommending that if the States and Territories are given the power to issue interim product safety bans, these should lapse after 30 days if not extended nationally by the responsible Australian Government Minister on advice from the ACCC. This would facilitate prompt, but still nationally consistent, responses — in contrast to the current arrangements that have been characterised by a multiplicity of jurisdictionally-based permanent bans and standards.

The generic law should apply to all relevant activities

In a range of areas, the application of the generic consumer law overlaps with industry-specific regulation. However, financial services regulated by the Australian Securities and Investments Commission (ASIC) are expressly exempted from the consumer provisions of the TPA. While there are mirror provisions in the ASIC Act, this exemption has occasionally given rise to some uncertainty about which piece of legislation applies to certain financial service activities and thus whether ASIC or the ACCC has jurisdiction.

More generally, statutory ‘carve outs’ of this nature can potentially provide unscrupulous operators with opportunities to make minor changes to their activities so as to slip between the regulatory cracks. To avoid this, there should be no exclusions of particular sectors from the new national generic consumer law.

Of course, wherever there is ‘dual’ or concurrent coverage, effective coordination protocols will be required to prevent duplication of regulatory effort and the attendant compliance costs for businesses. Thus, in the financial services area, the presumption would be that ASIC would have primary enforcement responsibility, with any involvement of the generic consumer regulators being the exception rather than the rule and subject to prior consultation with ASIC.

A dedicated review program for industry-specific consumer regulation

Current approaches are deficient in various respects

As Australia’s consumer policy framework recognises, generic laws (and competitive markets) will not always be sufficient to protect consumers and provide the right incentives to suppliers. Hence, industry-specific approaches will sometimes be warranted (box 6). Indeed, there are few significant areas of consumer spending that are not subject to some specific consumer regulation.

However, there continue to be problems with the way that specific regulation is developed and employed in the consumer area.

Unwarranted divergences in specific regulations and their interpretation and enforcement appear to be more costly than variations in the generic law. This is partly because these laws are typically more prescriptive than the generic law and there is thus less scope for businesses to circumvent needless regulatory differences by operating in an ethical way, or complying with the most stringent requirement.

Box 6 When is industry-specific regulation most appropriate?

Industry-specific consumer regulation explicitly seeks to prevent certain behaviours rather than rely on the deterrent effect of the threat of prosecution for breaches of general law and possible liability for compensation. Its use may be desirable when:

- the risk of consumer detriment is relatively high and/or the detriment suffered if things go wrong is potentially significant and possibly irremediable. (Such considerations are the primary reason why specific regulation is employed in the medical and consumer credit areas); and
- the suitability and quality of services is hard to gauge before or even after purchase (the ostensible rationale for many other professional licensing regimes and 'objective' standards for technically complex products).

There are also some more fundamental deficiencies in the specific regulatory component of the policy framework that detract from good outcomes for consumers and the community.

- A need to supplement the generic consumer law is not always clearly demonstrated — with industry-specific regulation sometimes introduced mainly because of a reluctance to enforce the generic law and/or a lack of resources to do so; or to provide quick responses to problems raised by vocal interest groups.
- Some of this specific regulation is overly prescriptive, reducing the responsiveness of suppliers to changing consumer needs and raising costs and therefore prices.
- And certain regulations appear to be primarily designed to protect existing businesses from competition, rather than to assist consumers.

Driving necessary change

Application of recent CoAG commitments to enhance regulatory assessment and review should help to ensure that industry-specific consumer regulation is more judiciously and effectively used in the future. So too will application by consumer regulators of the more specific decision making tree set out in figure 3 above. Also, the Commission's proposals to add to the suite of enforcement tools available to generic consumer regulators (see below) may reduce the incentive to use specific regulation on the grounds that application of the generic law is too slow and costly.

But without some overarching driver, dispensing with unnecessary or outdated statutes, and improving the efficiency, effectiveness and jurisdictional consistency of the remaining stock of specific consumer regulation, could be a slow process.

Further, such assessments would not of themselves provide a vehicle for examining whether responsibility for some, or much, of the large body of State and Territory specific consumer regulation that remained in place would better reside with the Australian Government.

The Commission is therefore proposing that CoAG's Business Regulation and Competition Working Group (BRCWG), in consultation with MCCA, instigate and oversee a review and reform program for industry-specific consumer regulation, akin to the processes for reviewing anti-competitive legislation under National Competition Policy (NCP). Specifically, this program would:

- identify and repeal unnecessary specific consumer regulation, with an initial focus on requirements that only apply in one or two jurisdictions;
- identify other areas of specific consumer regulation where unnecessary divergences in requirements or lack of policy responsiveness impose significant costs on consumers and/or businesses; and
- determine how these costs would be best reduced, whilst maintaining protection for consumers, with explicit consideration of:
 - the case for transferring policy and, where appropriate, enforcement responsibilities to the Australian Government; and
 - a process and timetable for harmonising and streamlining currently divergent specific regulation that remains the responsibility of the States and Territories.

In proposing that regulations applying in only one or two jurisdictions be an initial focus for review, the Commission is not suggesting that all such measures should be repealed. As indicated above, some may well be warranted. However, with common sense application, a focus on regulatory 'outliers' seems more likely to deliver some early regulatory streamlining than other potential identification mechanisms. Occupational licensing arrangements (box 7) appear to warrant particular attention in this context.

National regimes for credit and energy services

Consumer credit

While most financial services are regulated at the national level by ASIC, credit providers, and intermediaries providing advice to consumers on credit products (hereafter referred to as finance brokers) are regulated by the States and Territories.

Box 7 Scope to streamline occupational licensing requirements

Occupational licensing rules variously specify: educational and professional qualification requirements to work in the occupation; the tasks that a licensed provider can engage in; proscribed forms of conduct; and sanctions for breaches.

The need for licensing requirements in some areas is not at issue. For example, the difficulty for consumers of establishing the quality of medical services before and even after the event, and the potentially severe consequences of poor services, suggest that licensing of medical providers is highly desirable.

But licensing has costs. Apart from compliance and administration costs, by restricting entry, it can reduce competition with the usual adverse outcomes for consumers. Hence, it is important that licensing is not over-used.

Significantly, of the total of nearly 100 occupations licensed by the States and Territories for consumer policy reasons, more than 30 are licensed in only one or two jurisdictions (table 1). In some cases (eg hairdressing), the prima facie case for specific requirements seems very weak.

Table 1 Occupations licensed in only one or two jurisdictions

Aboriginal health worker	Hydraulic services designer	Property inspector (pre-purchase)
Acupuncturist	Inbound tourism operator	Quantity surveyor
Chinese medical practitioner/dispenser	Introduction agent	Rehabilitation provider
Energy Assessor	Kit home supplier	Shopfitter
Engineer (building industry)	Marine designer	Site classifier
Entertainment industry agent/manager	Marine surveyor	Specialised contractor
Firearms instructor	Motor vehicle repairer	Speech pathologist
Firearms repairer	Optical dispenser	Steel fixer
Floor finisher and coverer	Passive fire equipment installer	Strata manager
Hairdresser	Plumbing plan certifier	Structural landscaper
Hawker	Professional engineer – chartered	Venue consultant
	Property developer	Wool, hide and skin dealer

- The overarching piece of regulation is the Uniform Consumer Credit Code (UCCC). Its main focus is on promoting truth in lending through prescribed disclosure requirements.
- There are also various separate pieces of State and Territory credit regulation, including interest rate caps in three States and a licensing regime for credit providers and finance brokers in Western Australia.

These arrangements for consumer credit are deficient in several respects.

- There are gaps in service coverage. The absence of a comprehensive national approach for regulating finance brokers is widely acknowledged to be a major deficiency in the current regime.
- The jurisdictionally-based arrangements have resulted in differential protection for consumers and have imposed added burdens on service providers, which ultimately will be passed on to consumers in the form of higher prices.
- The inter-jurisdictional processes for changing the UCCC have led to prolonged delays in implementing necessary reforms. Such delays have compromised the effectiveness of protections for those acquiring credit and related advice, especially as this is a market where products and practices are evolving rapidly.

Reflecting these deficiencies, there is widespread support for transferring regulatory responsibility for finance brokers and consumer credit providers to the Australian Government, with enforcement undertaken by ASIC (box 8). Provided that ASIC was proactive in addressing the full range of credit provision and intermediary issues, and appropriately resourced to do so, then such a shift in responsibility has the potential to significantly improve the effectiveness of protection for consumers, and provide some cost savings to credit providers/advisors and their customers.

Significantly, at its most recent meeting, CoAG agreed in principle to the Australian Government assuming regulatory responsibility in the consumer credit area, and in the related area of margin lending (box 9). Following consideration by MCCA of recommendations in this report, CoAG has proposed to agree to a new national approach in October of this year.

As discussed in the body of the report, a range of complex issues will have to be addressed in developing this new national regime. However, in the Commission's view, the new regime should:

- cover all consumer credit products and all intermediaries providing advice on such products (including through electronic or other arms-length means); not just those advising on mortgage products;
- retain the UCCC as a self standing set of regulatory requirements within the broader financial services regulatory regime; incorporating changes to the code that have been agreed to by MCCA, but not yet implemented;
- incorporate generally agreed requirements in state and territory credit legislation outside of the code, where these pass a benefit-cost test;

Box 8 Support for transferring responsibility for consumer credit to the Australian Government

Victorian Government (sub. DR226, p. 50)

In principle, transferring responsibility for credit (including finance broking) at an appropriate time to the Commonwealth is considered to be desirable given the national character of credit markets and the Commonwealth primacy in financial markets regulation. However, whether it would work in practice depends on: what the regulatory scheme is to look like; how future policy settings would be determined; whether there would be a single regulator; and what level of funding and resources would be committed.

Finance Brokers Association of Australia (sub. DR177, p. 5)

Positive steps have been made by State Governments to introduce legislation which would provide for uniform regulation of the industry. However, as States continue to develop and negotiate on a legislative approach to the industry it has become apparent to the FBAA that the only way a satisfactory uniform national regulatory regime can be established is through the Federal Government taking the lead and implementing a nationally consistent legislative framework.

Anglicare (sub. DR191. p. 6)

Anglicare wholeheartedly supports the transfer of regulation of finance brokers and ... credit providers to the Australian Government and the appointment of ... ASIC as the regulator ... This is an issue of particular concern for Anglicare's financial counselling clients, especially in relation to fast finance and fringe lending. ... A national regime ... would overcome many of the concerns in relation to the length of time it takes to obtain essential amendments to the Uniform Consumer Credit Code and the many gaps in regulation that currently exist.

Box 9 Recent CoAG decisions on the regulation of consumer credit

At its March 2008 meeting, CoAG agreed, in principle, to the Australian Government assuming responsibility for regulating the following credit/financial services products and advisory services:

- mortgage credit and advice, including persons and corporations engaged in mortgage broking;
- margin lending; and
- lending by non-deposit taking financial institutions.

The BRCWG, in consultation with MCCA, is to develop detailed proposals by October 2008, drawing on this report.

CoAG has also requested the BRCWG to identify any other financial services providers that best sit within the Australian Government's responsibility, citing as possible examples pay day lenders and 'fringe' credit providers. The BRCWG is to report back to CoAG by July and develop implementation plans by October of this year.

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- include a national licensing system for finance brokers, and a licensing or registration system for credit providers that would give consumers guaranteed access to an approved ADR service; and
 - allow, over time, for the streamlining of the current UCCC in the light of requirements within the broader financial services regime, where net benefits are likely.

There may also be benefits from implementing the new regime in a phased way. For example, immediately bringing the UCCC within the Australian Government's jurisdiction, and introducing an interim national licensing system for finance brokers based on the draft proposal developed by MCCA, and enforced by ASIC, would give credit consumers some early additional protections. As well, it might be possible to quickly implement those changes to the UCCC that have been agreed to by all jurisdictions, so that the impetus for change is not lost.

The Commission further notes that there are linkages between the regulation of financial services providers and consumers' access to credit products. Hence, those tasked with the detailed development of the new national regime should consider how 'responsible lending' issues might impact on the new regulatory structure.

A national consumer regime for energy services should be the goal

The process of creating national energy markets and laws to overcome the costly fragmentation of the previous jurisdictionally separate frameworks is now underway. But some key consumer policy measures — including retail price regulation, alternative dispute resolution and service performance standards — will not be covered by a new 'national' consumer policy framework scheduled for introduction around 2010. Moreover, detailed implementation of some of the measures that are encompassed by that framework will be left to individual States and Territories. And though not explicitly a consumer protection measure, renewable energy requirements designed to shift consumers' spending patterns, also vary considerably across the States and Territories.

The continuation of such divergent arrangements will add to regulatory compliance costs for national energy suppliers and thereby to the price of energy, and can also be expected to lead to different levels of protection for consumers depending on where they live.

Within a national energy market, the specific consumer protection regime should also be nationally-based. However, for several reasons, this may not be feasible in the short term:

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- In the face of evident opposition from some jurisdictions, seeking to move in this direction now could undermine support for, and further slow progress in implementing, national energy market arrangements in the broad.
 - Differences in supply arrangements across jurisdictions, and in the extent to which electricity and gas supply have been deregulated, could make it difficult to develop a workable set of national arrangements that went much beyond enunciation of desired outcomes.

Accordingly, Australian Governments should agree to the longer term goal of a single set of consumer protection measures for energy services to apply across Australia, but leave their development and implementation until the process of creating national energy markets is further progressed. In the meantime, State and Territory Governments should agree to implement the new non-price regulatory requirements for retail energy services with minimal jurisdictional variations so as to enable a smooth transition to a uniform national regime at a later date.

Other initiatives in some key specific areas

As well changes to ombudsman arrangements in the financial and utility services areas (see later), the Commission is proposing that all retail price regulation applying to telecommunications products and services and to contestable energy services should be removed. In these markets, competition among suppliers will best serve to keep prices in check.

Consistent with the objectives for the new consumer policy framework, it is of course important that there is adequate support for low income and other disadvantaged consumers of these products and services. But such support is most efficiently provided through transparent community service obligations and supplier hardship policies.

The Commission has also pointed to the need for more effective consumer protection measures in the home building sector. Specifically, it has suggested that the current national review of ‘last resort’ Home Builders’ Warranty Insurance (HBWI) by the Senate Economics Committee should also examine how to improve ‘early stage’ consumer protection measures in the sector, including through:

- providing all consumers purchasing or renovating a home with guaranteed access to effective dispute resolution services; and
- better linking licensing requirements for builders to their performance.

In addition, that inquiry could usefully look at means to improve consumer awareness of what HBWI does and does not cover, and at the case for ‘rebadging’ the product to more accurately represent its coverage to consumers.

Some supporting changes to institutional arrangements

Elevating the importance of consumer policy

The Commission’s framework recommendations would, over time, see the Australian Government assume progressively greater responsibility for consumer policy matters.

Sometimes there will be scope to facilitate shifts of responsibility through initiatives specific to particular areas of consumer policy development and enforcement. Thus, as noted earlier, the Commission sees some advantages in giving the States and Territories power to issue interim product safety bans within an otherwise national enforcement model.

However, general initiatives to overcome the perception in some quarters that consumer policy has been a low priority for the Australian Government could also play a useful role.

The recent decision to create a Minister for Competition Policy and Consumer Affairs — responsible for formulation, implementation and administration of competition and consumer policy, including consultative arrangements with the States and Territories and industry bodies — will be helpful in this context. But there is still a need for more effective arrangements to coordinate activities across the different areas of the Australian Government involved in consumer policy development and its enforcement, and to more generally promote consistent policy approaches and outcomes. Similar sorts of initiatives are also required in some States and Territories.

To further improve the prominence and effectiveness of consumer policy at the Australian Government level, the Commission is recommending changes to the Commonwealth Consumer Affairs Advisory Council (CCAAC). With some modest additional resourcing, and with a membership providing greater access to core consumer policy expertise and greater capacity to bring a national perspective to bear, CCAAC could play a more influential role in advising on emerging, nationally significant, consumer policy issues. It could also be an important source of advice on information gaps and issues which require further research (see later).

Facilitating timely and effective policy changes

CoAG has announced that the BRCWG, in consultation with MCCA, will be responsible for the development of enhanced national approaches to improve the consumer policy framework — drawing on the recommendations and analysis in this report. The intention is that CoAG will agree on a new national approach in October 2008.

This implementation arrangement will have several benefits. It will provide necessary national oversight of the reform program; help to ensure that changes are made in a timely fashion; and take advantage of MCCA's consumer policy expertise in the many detailed implementation issues that will inevitably arise.

But though critical to developing a more efficient, effective and nationally consistent consumer policy framework, these immediate policy changes will not be the end of the story. As markets and consumers' needs and characteristics evolve, further changes to the policy framework will be required. On the presumption that the States and Territories continue to have a significant policy and regulatory role, MCCA will in turn remain a potentially key player in facilitating effective and timely policy change.

However, without changes to address MCCA's generally acknowledged problems, it is unlikely to be effective and influential in this role.

Several factors have contributed to these problems, including the requirement for all jurisdictions to agree to policy changes; lack of resourcing for the MCCA secretariat to undertake policy development work; and inadequate transparency and accountability which has reduced the external discipline on MCCA to improve its performance. The Commission is recommending a number of changes to help address these shortcomings.

Dealing with 'unfair' contract terms that cause detriment

What is the concern?

Most of the generic provisions dealing with unfair practices and conduct — for example, the prohibitions on misleading or deceptive conduct — appear to be working well.

However, the absence of dedicated measures in the TPA and most of the FTAs to deal with unreasonable and one-sided contract terms, or so-called 'unfair' terms, is

widely viewed as a deficiency in the current generic framework. Examples of the sort of terms commonly cited as being unfair include those giving a supplier the right to vary contracts at any time for any reason, or removing the liability of an essential service provider for interruptions in supply.

The biggest concerns arise for ‘standard-form’ (non-negotiated) contracts, commonly used for products and services like mobile phones, rental cars, credit and computer software. Such contracts have advantages for consumers — in competitive markets, the cost savings for businesses will flow through as lower prices. But they are offered on a take-it-or-leave-it basis, with the terms apparently rarely read. The contention is that consumers can be exploited if things go wrong.

Accordingly, Victoria has enacted specific legislative provisions to deal with such contract terms (as have the UK and the EU). Several industry codes also address them. But attempts by MCCA to devise national legislation along the lines of the Victorian model have so far failed to meet regulatory impact assessment requirements and have stalled.

A new national provision is warranted

There are sound in-principle economic and ethical reasons for proscribing unfair contract terms that cause consumer detriment. And while the unconscionability provisions in the generic consumer law can theoretically be used to address abuse of unfair terms, that route is very costly and slow, and there is a lack of clarity about its precise applicability in this area.

Even so, there are some arguments against a specific new regulatory response.

- There is only limited information on the extent of consumer detriment resulting from the use by suppliers of notionally unfair contract terms, in part because such data is inherently hard to collect.
- Inappropriate regulatory interference with apparently one-sided contracts could be costly for consumers. For example, lending institutions will need scope to unilaterally change their interest charges if they are to avoid renegotiation of contracts with every customer each time interest rates change. Also, such terms may provide a means for suppliers to deal with inappropriate behaviour by some purchasers, to the benefit of consumers as a whole.

But in those countries and jurisdictions that have introduced new regulations, there is little evidence of significant compliance costs or other burdens for business (and therefore consumers). In fact, some businesses in Australia have supported such

regulation, and many are used to complying with provisions against unfairness in industry codes.

Moreover, without a national approach in this area, there is a risk that some other jurisdictions may implement their own (possibly divergent) measures. A national approach could also remove the need for some industry-specific arrangements dealing with the issue of unfairness, thereby contributing to the development of a more streamlined consumer policy framework.

In the Commission's judgement, these latter considerations tip the balance in favour of incorporating a carefully crafted unfair contracts provision in the new national generic consumer law.

How should the new provision operate?

Whatever its precise form, the new provision should:

- provide clarity about what constitutes unfairness;
- provide for the broader public interest to be considered;
- apply only to non-negotiated contracts and preclude action in regard to up-front prices (the UK rather than the Victorian approach);
- provide guidance to consumers and businesses, through indicative lists of terms that would usually fail a fairness test (taking account of requirements dealing with unfair contract terms in existing industry codes);
- give businesses reasonable time to make necessary changes to their contracts;
- allow for effective private and regulator-led representative actions; and
- be accompanied by inter-jurisdictional protocols to promote general consistency in enforcement and to prevent particular unfair contract issues being pursued by more than one regulator.

But the overarching design issue is whether these requirements should be embodied in an *ex ante* or *ex post* enforcement model. The former would allow the regulator to pre-emptively rule out contract terms on the basis that they are likely to cause material detriment to consumers (something along the lines of the Victorian and UK models). The latter would restrict action by the regulator to situations where a consumer (or consumers) had actually suffered detriment (akin to the approach underlying the current unconscionability provisions).

The choice between the two is not as significant as might first appear to be the case. Thus, a well enforced *ex post* model could be expected to provide considerable

incentives for firms to pre-empt possible regulatory action by modifying questionable terms. Similarly, under a prudently applied ex ante model, the regulator would focus on more egregious unfair contract terms that might well be the source of successful court action under the alternative approach.

Nevertheless, there is a trade-off between more ready pre-emption of unfair terms on the one hand, and the reduction in the risk of regulatory overreach on the other. Given the uncertainty about the severity of the underlying problem, the Commission favours an ex post approach. It is also recommending that the proposed new national provision be reviewed within five years of implementation, at which time further information would be available to help assess whether an ex ante model would be a better approach.

Guarding against unsafe and defective products

Unsafe or otherwise defective products impose various costs on consumers and the broader community, ranging from simple dissatisfaction with a purchase, through to physical injury. Apart from the direct costs for the individuals concerned, the latter can reduce the economy's productive capacity.

Reputable firms do not, of course, intentionally set out to produce and market defective goods. But some products are inherently risky and, as consumers' purchasing patterns reveal, there are always trade-offs between higher quality and safety and the extra costs that such improvements entail.

Even so, there are a range of legal mechanisms to encourage suppliers to market products that meet reasonable standards of safety, quality and performance, including those in the TPA and FTAs that:

- imply statutory warranty conditions into contracts that products are of 'merchantable quality' and 'fit for purpose';
- provide specific protections against the supply of unsafe products, including through bans, product recalls, warning notices and mandatory standards; and
- provide statutory rights to consumers to seek refunds and compensation in the event they suffer injury or loss from defective products. (These statutory rights are additional to those applying under common law.)

Improving awareness of the implied warranty provisions

It is apparent that most consumers are not fully aware of the protections and redress options available under the implied warranty provisions. In particular, many do not

appear to understand that these provisions may offer an avenue for redress even after a manufacturer's voluntary warranty expires. As a result, consumers often purchase expensive extended warranties — even though these may provide little extra protection beyond the statutory provisions.

Hence, a greater effort by consumer regulators to inform consumers and businesses about their rights and responsibilities under these provisions would be desirable. Specific enforcement actions in cases of misleading marketing and sale of extended warranties may also be appropriate.

More broadly, the ACCC and others raised questions about the adequacy and/or clarity of aspects of the provisions themselves. Potential clarification should be considered as part of the development of the new national generic consumer law.

Where next on consumer product safety?

In 2006, the Commission completed a major study for the Australian Government on the consumer product safety provisions of the TPA and the equivalent parts of the FTAs (box 10). In this inquiry, the Commission has not revisited most of the detailed matters dealt with in that study — though it has proposed that the Australian Government, through the ACCC, become responsible for enforcing the product safety component of the new national generic consumer law (see above).

It has also reiterated its call for Australian Governments to implement, as soon as practicable, the full suite of recommendations in the consumer product safety study designed to improve information on the incidence and costs of product-related injury — ideally as part of the development of the new national generic law. As well as helping to inform the future content and application of the product safety provisions in the new law, a better information base would assist in monitoring whether recent civil liability reforms and other factors have had any material impacts on incentives to supply safe products.

Improving access to remedies and enforcement

Accessible remedies for consumers and effective and efficient enforcement by regulators are essential parts of a well-functioning consumer policy regime. Both play a role in providing redress to consumers who suffer loss from breaches of the law. And both provide more general deterrence to inappropriate supplier behaviour.

Box 10 The Commission's consumer product safety study

In its 2006 review of Australia's consumer product safety system, the Commission found that the combination of market forces, product liability laws, media scrutiny and organised consumer advocacy provide reasonable incentives for most businesses to supply safe products. However, it argued that significant regulatory inconsistencies between governments reduce the overall efficiency and effectiveness of the system.

The Commission made a number of recommendations for improvement, including:

- introducing a single national product safety law administered by the ACCC or, if this is not achievable, harmonisation of core legislative provisions across jurisdictions;
- adopting a national basis for permanent bans and mandatory standards even under a harmonised model;
- developing a broadly based hazard identification system;
- establishing a national system for the exchange of complaints information;
- requiring suppliers to report products associated with serious injury or death;
- providing better regulatory information to consumers and businesses through a 'one-stop-shop' Internet portal;
- adopting a hazard-based approach to mandatory safety standards and streamlining the standards making process to improve timeliness;
- undertaking a review of existing product recall guidelines to improve their effectiveness; and
- establishing a national clearinghouse for relevant information and analysis, complemented by a comprehensive study of consumer product-related injuries.

As indicated in the text, CoAG has now agreed that the Australian Government should assume greater responsibility for regulating product safety — with MCCA, through the BRCWG, to develop a detailed implementation plan for a national system by July 2008.

To facilitate these roles, future redress and enforcement provisions should:

- provide ways to quickly direct consumers who have suffered detriment to the right redress option. Otherwise, consumers may be deterred from pursuing even significant complaints;
- encourage efficient use of the resources available for redress and enforcement, relating the level of resourcing to the benefits generated. Hence, only low cost mechanisms should be used to provide redress to individual consumers for low level detriment. Similarly, enforcement efforts by regulators should focus on systemic breaches of regulatory requirements, or cases where the collective detriment suffered by consumers is substantial; and

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- recognise that some consumers, especially those who are disadvantaged, may need other parties to assist them in securing effective redress.

While much of what is required is already in place, there is scope for improvement. The proliferation of complaints handling bodies — there are more than 20 consumer ombudsman’s offices alone — is likely to confuse some consumers. There are gaps and overlaps in the coverage of industry-specific ADR bodies. Not all regulators have a sufficient range of enforcement tools to cost-effectively deal with some more serious breaches of the requirements. And, according to many, under-resourcing of some Fair Trading Authorities has led to patchy enforcement of the generic law and thereby contributed to over-reliance on industry-specific regulation.

A layered system of redress

Better direction of consumer complaints

Most consumers suffering detriment initially and appropriately complain to the business concerned. But in the relatively few cases where this does not provide a resolution, they have many choices about whom to contact next. These contacts vary depending on where the consumer lives, the type of good or service and the nature of the complaint.

Though on-referral of misdirected complaints appears to generally work well, the effectiveness of aspects of the system, and the related arrangements for sharing complaints information, can be improved.

- The ACCC should provide an enhanced web-based information tool for guiding consumers to the appropriate dispute resolution body.
- And all consumer regulators should participate in AUZSHARE, a national database of serious complaints and cases.

Making better and more use of ADR arrangements

Though having its limitations, alternative dispute resolution can deal with many consumer complaints at lower cost than tribunals or the small claims courts. Indeed, there is widespread stakeholder support for the range of ADR mechanisms currently available, including industry-specific ombudsmen in key financial and essential service areas; and dispute resolution services provided by Fair Trading Authorities and other government departments.

Again, however, improvements are possible. As part of the proposed transfer of responsibility for consumer credit to the Australian Government, new licensing/registration requirements for finance brokers and credit providers would require them to participate in an ASIC-approved ADR service. This would address a current gap in ADR coverage in the financial services area. In addition:

- To address potential consumer confusion about where to pursue telecommunications complaints, the remit of the Telecommunications Industry Ombudsman should be immediately extended to pay TV services. And the scope for further consolidation — including through a single consumer entry point for communications complaints, or an umbrella arrangement encompassing all individual dispute resolution services in this area — should be reviewed.
- In keeping with the development of national energy markets, and to facilitate the future introduction of a national energy ombudsman, the processes of state-based energy ombudsmen should be made more consistent. And to provide for some more immediate cost-efficiencies and pooling of expertise, there should also be investigation of the scope for early bilateral combination of some jurisdictional energy ombudsman services.
- Providers of ADR in the financial services area should institute an umbrella scheme extending the existing role of the Financial Ombudsman Service (FOS), with one referral and complaint pathway, but with provision for independent governance of subsidiary schemes. This would provide a common entry point for consumers, but preserve the flexibility in the current arrangements to tailor ADR approaches to the different issues that arise in individual financial services areas. As well:
 - to prevent further fragmentation, access to any new ADR providers in the sector should be through the current FOS ‘gateway’ service; and
 - to avoid unnecessarily forcing complaints into the court system, consumers with claims exceeding the ceiling for a particular financial ADR service should be able to waive that excess.

There should also be more effective ADR arrangements to deal with consumer complaints not covered by industry-specific ombudsmen. These arrangements should be properly resourced, government funded and provide for consistent treatment of like complaints across Australia. However, the best means of giving effect to such arrangements requires further analysis, having regard to the general consumer dispute resolution services that are already available.

Finally, there would be value in a formal mechanism to periodically review the nature and structure of ADR services in the light of changing market circumstances and consumer needs.

More effective judicial procedures

The judicial system must be accessible and effective for consumer regulators wishing to establish precedents or punish more serious breaches of the law (see next section). But it must also provide ‘lower level’ access to consumers seeking recompense for detriment. To this latter end, there are small claims divisions of the magistrates’ courts and/or tribunals in all of the States and Territories.

However, there are differences in the ceilings for minor claims and in the availability of fee waivers for disadvantaged individuals, meaning that consumers’ access to cheaper, less formal, court proceedings varies across the country. There is little reason not to standardise these arrangements, especially as the current differences appear to be accidents of history.

Also, tribunals and small claims courts should have greater scope to make judgements without the need for ‘in-person’ testimony. In particular, allowing for decisions based on written submissions could reduce compliance costs, be less intimidating for many consumers, and sometimes lead to speedier resolution of disputes. Retaining an option for either of the parties to request an ‘in-person’ hearing should address any natural justice concerns associated with this procedural streamlining.

Removing impediments to representative actions

Representative actions — where one person or organisation takes court action on behalf of a number of people affected by a common problem — is provided for in many Australian courts.

The scope for private representative actions raises some complex legal questions, with legislative clarification or amendment possibly required to facilitate appropriate use of this redress option.

Also, there is an impediment to consumer regulators bringing representative actions on behalf of those who have suffered loss from contraventions of the generic consumer law. Specifically, a requirement for regulators to have the written consent of all of the consumers concerned has discouraged them from bringing such actions in cases involving a large number of consumers. In one instance drawn to the Commission’s attention, the difficulty of mounting an action potentially deprived up to 300 000 consumers of millions of dollars of redress.

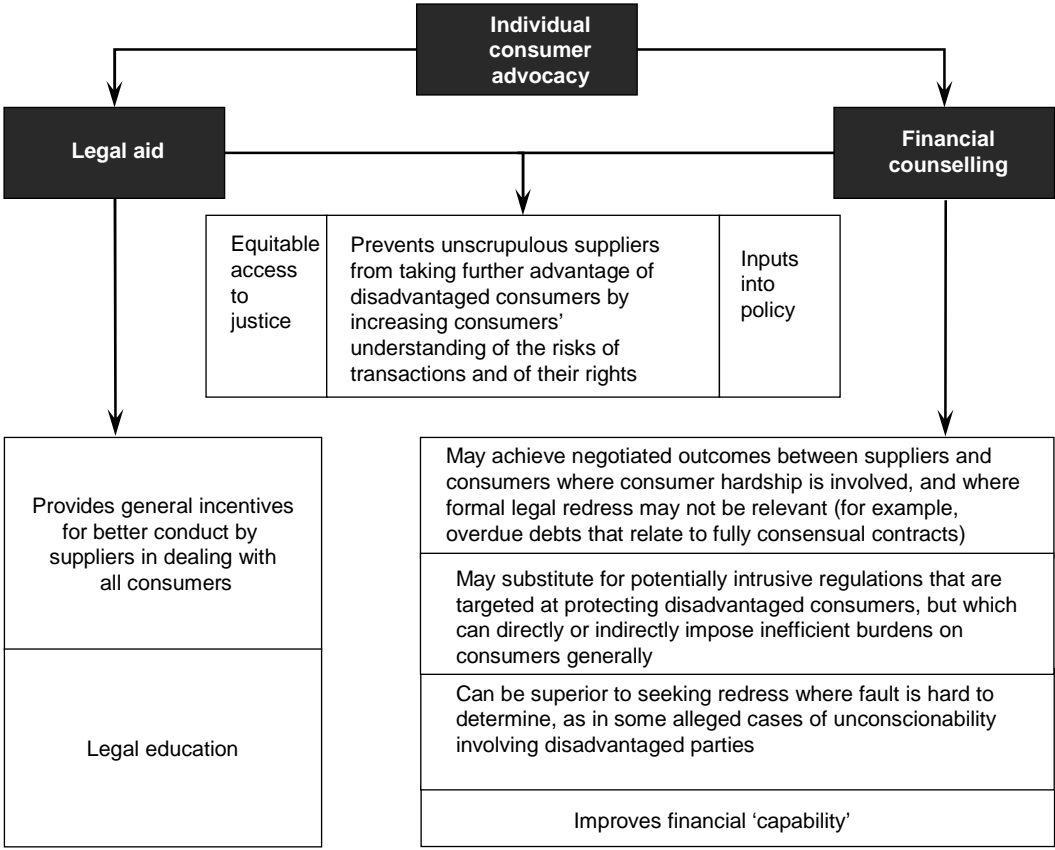
This feature of the current arrangements is likely to reduce the deterrent effect of the generic consumer law on business misconduct, to the detriment of consumers and efficient outcomes more generally. Hence, the new national law should

explicitly give regulators the power to bring representative actions on behalf of affected consumers, whether or not they are parties to the proceedings.

Better redress for vulnerable and disadvantaged consumers

The measures outlined above would lessen some of the difficulties that vulnerable and disadvantaged consumers currently face in obtaining redress. Nonetheless, further targeted support appears warranted — in particular, an increase in the funding for the legal aid and financial counselling organisations that often act on their behalf. As well as facilitating more effective third-party representation for disadvantaged consumers, extra funding could strengthen the incentives for suppliers to better meet the needs of all consumers, and thereby lead to more competitive and better functioning markets overall (figure 5).

Figure 5 The roles of individual consumer advocacy



Encouraging proportionate and effective enforcement

Enforcement of Australia's consumer laws occurs in various ways. Reflecting the complexity of the regulatory framework, there are more than 100 consumer regulators across the country. These regulators use a mix of formal court-based enforcement, education and other compliance programs and 'media spotlight' to encourage businesses to meet their legal obligations. Pressure from consumer organisations can also have a powerful impact on business behaviour.

In facilitating effective and efficient enforcement outcomes, the balance between legal action and other enforcement strategies is an important consideration. In many cases, the latter approach will prevent behaviour which might otherwise cause detriment for consumers and require expensive court-based enforcement action.

However, to the extent that this balance can be improved, the evidence suggests that there has probably been too little rather than too much court-based enforcement. Moreover, without the back-up of an effective enforcement tool kit, education and other business compliance programs are likely to be less effective.

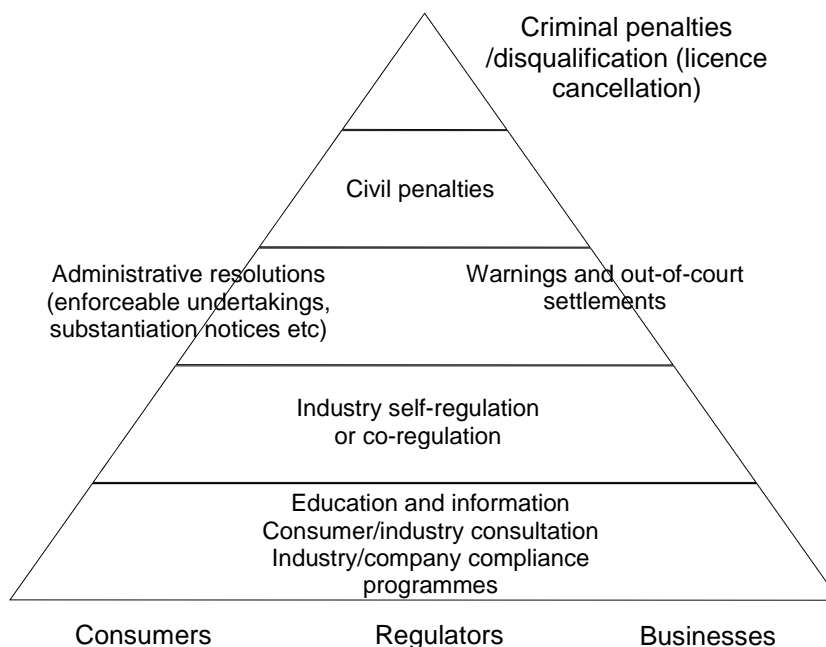
A wider suite of enforcement tools

Australia's consumer regulators have access to a range of tools for dealing with breaches of the law, including: criminal penalties (for higher level breaches); civil remedies (used for restorative purposes); administrative settlements (such as enforceable undertakings); and persuasion, liaison and education programs. Collectively, these tools comprise what has been termed an 'enforcement pyramid', with sanctions of escalating severity (and enforcement cost) used to deal with increasingly serious breaches of the law (figure 6).

However, the precise range of instruments available to individual regulators varies (as do the penalties for particular breaches of the generic law). In particular, in enforcing the TPA, the ACCC does not have several of the powers available to some or most of the Fair Trading Authorities when enforcing the mirror provisions in the FTAs.

In considering the range of enforcement tools that should be incorporated in the new national generic law, the Commission has been cognisant that it is difficult to conclusively demonstrate that the absence of particular tools in some jurisdictions has been detrimental to consumers. Moreover, even with safeguard mechanisms, adding to the enforcement tool kit is likely to involve some additional compliance costs for firms and increase the risk of regulatory errors.

Figure 6 **The enforcement pyramid**



(Adapted from Robin Brown, sub. 63)

Equally, the Commission considers that the current range of enforcement tools in the TPA and some of the FTAs is inadequate to provide for effective and proportionate enforcement — a view shared by many inquiry participants. Indeed, without some augmentation to these tools, support for a new national generic consumer law is likely to be undermined. The Commission is therefore proposing that, in addition to the current enforcement tools in the TPA, the new generic law should make provision for the ACCC and the Fair Trading Authorities to:

- seek the imposition of civil pecuniary penalties, including the recovery of profits earned by a supplier from illegal conduct;
- apply for a ban on an individual from engaging in specific activities after a court has found that a breach of the law has occurred; and
- issue substantiation and infringement notices (box 11).

As well, the possible inclusion of ‘naming and shaming’ powers should be further examined by governments. And aspects of the evidence gathering rules applying to consumer regulators should be reviewed by an appropriate legal authority.

Box 11 What additional enforcement tools are required?**Civil pecuniary penalties**

At present, criminal actions are the only means by which offenders can be penalised for contravening the generic consumer law. Moreover, for various reasons, consumer regulators are constrained in pursuing criminal actions, including by their cost and time consuming nature; and the higher burden of proof that applies.

Access to civil pecuniary penalties would provide a middle ground between criminal penalties and civil remedies (which focus on restoration for specific detriment, rather than deterring inappropriate conduct more generally). As such, their availability would contribute to a more cost-effective, timely and proportionate enforcement approach. Civil pecuniary penalties are already available for breaches of the restrictive trade practices provisions of the TPA and of the Uniform Consumer Credit Code.

Banning orders

Banning orders are a form of court injunction preventing individuals from continuing to engage in conduct found to be in breach of the law. Because they specifically target individuals, they are likely to be more effective than civil remedies in deterring inappropriate conduct — for example, they can prevent serial offenders from routinely establishing new corporate entities. Such orders are already available for breaches of the restrictive trade practices provisions of the TPA and of the Corporations Act. As well, most States and Territories allow courts to make cease trading orders, with similar effect to a banning order.

That said, given the potentially serious personal and financial consequences for someone subject to a banning order, the Commission's support for their inclusion in the new national generic consumer law is conditional on there being safeguards in place to minimise the risk of inappropriate application to legitimate traders.

Substantiation and infringement notices

There is also a case for giving consumer regulators the power under the new national generic law to require suppliers to substantiate claims and representations (replicating powers already available in most State and Territory FTAs). Especially given the increasing number of complex claims, applied prudently, substantiation requirements could provide for more cost-effective and timely remedies than ex-post court action using the misleading or deceptive conduct provisions.

Scope to issue infringement notices, imposing (modest) fines on suspected offenders, would similarly enable consumer regulators to deal with minor breaches of the generic law in a cost-effective manner. Again, they are already provided for in some State and Territory FTAs and, if accompanied by objective assessment criteria, should not entail undue risk of serious regulatory errors. However, implementation of these provisions will need to take account of some constitutional issues, which are currently being examined by the Australian Treasury.

More consistent enforcement

Implementation of a national generic consumer law would help to promote more consistent outcomes than under the current arrangements. However, aside from the product safety provisions, the new law would continue to be enforced at the jurisdictional level. Moreover, though the Commission's proposed review process for industry-specific consumer regulation could in future see considerably more of this regulation enforced nationally by single bodies, much of the specific component of the policy framework will continue to be enforced at the state and territory level. Hence, there remains the possibility that differences in the intensity and focus of enforcement in individual jurisdictions will detract from the consistency of treatment for consumers and businesses that an efficient and effective enforcement regime should provide.

Addressing the resourcing constraints facing some jurisdictional consumer regulators is one way of encouraging more consistent enforcement. In this regard, two of the Commission's proposals — to allow individual jurisdictions to refer their enforcement powers for all of the new generic law to the Australian Government and for investigation of opportunities for bilateral combination of some current energy ombudsman services — could help to meet concerns about the enforcement resources available in some of the smaller States and Territories.

Making consumer regulators accountable for their enforcement performance is also important. While consumer regulators are subject to performance reporting requirements, in most jurisdictions, there does not appear to be sufficient reporting on enforcement problems (including coordination issues), steps taken to address them, and their impacts. Yet it is this sort of reporting that can help to deliver more consistent enforcement outcomes under a multi-jurisdictional model. Accordingly, the Commission is proposing that all jurisdictions take steps to ensure that their consumer regulators are required to report annually and publicly on these matters.

Empowering consumers

Confident and informed consumers are the first line of defence against inappropriate supplier conduct. 'Empowered' consumers will not only be less likely to suffer detriment, but will invigorate competition between suppliers with all of the flow-on benefits for themselves and the community.

While consumers have a range of rights, to a significant extent, it is their responsibility to take steps to become more confident and informed. To this end, they have access to a wide range of information on products and services from a multitude of sources.

However, that information will not always be credible or pertinent to consumers' particular circumstances, or presented in a way that helps them to understand the implications for the product they are purchasing or the contract they are signing. Various behavioural traits may prevent consumers making good use of even well presented information. And constraints on individuals' capacity to influence policies that affect them as consumers may further inhibit their empowerment.

More useful disclosure requirements

In recent years, information disclosure measures have become an increasingly important component of consumer policy around the world. In Australia, mandatory disclosure requirements apply in a range of areas, including: financial services and consumer credit; food; therapeutic goods; motor vehicles; and real estate.

Relative to other policy tools, disclosure requirements have some important advantages. In particular, unlike licensing arrangements and product standards, they do not of themselves curtail the range of goods or services available to consumers, nor impede new suppliers from entering the market.

However, if the information provided is not clear and comprehensible, it is unlikely to help consumers and may even serve to confuse them. Hence, there will be no benefits to set against the costs of designing and testing disclosure rules and of collecting and presenting the required information.

'Getting it right' on disclosure has not proved easy. The information provided is frequently overly complex and long — often to protect the supplier or regulator rather than assist the consumer. And disclosure often fails to distinguish between 'information' and specific knowledge that will actually help consumers to make better purchasing decisions.

Doing better in the future will require a greater focus on the comprehensibility and relevance of the information provided to consumers.

- More emphasis on layering disclosure requirements is one important requirement. In particular, suppliers should only be required to initially provide key information necessary for consumers to plan or make a purchase. Additional information should instead be available by right on request, or through other channels (as advised in the information disclosure statement).
- There should be much more evaluation of the effectiveness of mandatory disclosure requirements on their target audiences. Specifically, the broad content, clarity and form of disclosure should be consumer tested prior to and/or after implementation, and amended as required. Experience in Australia and

elsewhere indicates that such testing and refinement of requirements can greatly assist consumers to understand and appropriately use the information provided.

Whether such consumer testing is best undertaken by suppliers — with the costs passed on to consumers as the ultimate beneficiaries — or by regulators, will depend on the circumstances. Suffice to say that the respective roles and responsibilities of regulators and suppliers in regard to testing, and to the content of mandatory disclosures and their amendment, should be understood and agreed at the outset.

Given the evident problems with mandatory disclosure requirements in the financial services area, mooted change to these requirements should be progressed as a matter of urgency in accordance with the above principles. The first two principles are also generally relevant to effective information provision, even when it is not mandated.

Better consumer information and education programs

In addition to providing general information to consumers through the media and official websites, governments sometimes undertake or sponsor broader consumer education programs. Examples include the Financial Literacy Foundation established by the Australian Government and various initiatives to help prevent consumers from becoming the victims of scams.

However, to be effective, like disclosure requirements, such programs must provide information in a form that is accessible to those consumers who need it. For instance, some consumers will be unable to readily access information provided via the Internet. Other challenges include how best to reach consumers at the time they need the information and to promote effective use of the information concerned.

More broadly, there does not appear to have been sufficient evaluation of existing consumer education programs to be reasonably sure about what works best in particular circumstances. Accordingly, there would be value in a cross-jurisdictional assessment of the effectiveness of a sample of current education programs and prospects for improving them. A taskforce recently established by MCCA to provide it with advice on consumer education issues could conduct this assessment. The assessment should also include an evaluation of the proposed school-based financial literacy program, drawing on evidence from similar programs overseas.

Enhancing consumer input into policy making

The case for public support for general consumer advocacy

Australia's many consumer advocacy bodies play an important role in ensuring that consumers' views and needs are taken into account in the policy making process.

There is a prima facie case for governments to provide some support for these activities. Given the often large number of constituents that consumer advocacy bodies represent, 'free rider' problems are likely to be a greater impediment to private funding than in the business sector. Indeed, it is clear that resourcing constraints have sometimes prevented advocacy bodies from participating in policy development, even when requested by governments to do so. Provided that there are effective governance arrangements in place to ensure that taxpayer support is well spent (see below), the Commission's judgement is that there would be a net benefit to the community from an increase in the currently low level of public funding for these advocacy functions.

More support for research on consumer policy issues is also warranted

This inquiry has highlighted the paucity of relevant data and information necessary to properly assess many consumer policy issues (box 12). Also, the results of the research that is undertaken are not always disseminated effectively. Nor does there appear to be a coherent process for assembling and disseminating the lessons from the considerable body of research on consumer issues undertaken in other countries.

How should this additional support for advocacy and research be delivered?

Delivering this support through the creation and public funding of a body like the UK's National Consumer Council would have some advantages. For example, it would consolidate and build relevant expertise and it could become a 'one stop shop' for government agencies seeking a consumer perspective on policy issues. And it would be easier to avoid duplication of research effort than under a 'diffuse' funding model.

However, there is a possibility that such a body could crowd out the views of the more specialised consumer interests that are currently an important part of the advocacy landscape in Australia. Also, lack of contestability for the research funding component could limit 'competition for ideas', and possibly increase the risk that funding would be diverted to looking at non-core consumer policy issues.

Box 12 Potential research topics in the consumer policy area

Matters on which further policy-related research and analysis could be particularly beneficial include:

- the extent of policy-relevant consumer detriment across Australia as a whole;
- the relative merits of different approaches and tools for addressing consumer problems;
- the extent to which consumer learning and the use of practical ‘rules of thumb’ helps to overcome various cognitive limitations and behavioural biases;
- the role of social marketing campaigns and how the lessons from behavioural economics can be used to enhance their effectiveness;
- what information consumers need to make sensible purchasing decisions, and how they respond to different types of disclosure — again drawing on the insights of behavioural economics; and
- the determinants and changing nature of consumer vulnerability and disadvantage and how the needs of these groups of consumers might be best addressed.

In addition, participants suggested a wide range of other research topics, including:

- conflict of interest issues arising in markets with incentives-based remuneration for suppliers (Choice, sub. DR194);
- the benefits and costs of consumer regulators giving greater emphasis to ‘market inquiries’ examining the adequacy of regulatory and other requirements in ‘problem’ areas (Joint Consumer Groups, sub. DR228, Louise Sylvan, sub. DR253);
- the benefits and costs of more widespread unit-pricing requirements (Queensland Consumers Association, sub. DR123);
- the impacts of price discrimination on vulnerable and disadvantaged consumers (Foundation for Effective Markets and Governance, sub. DR122); and
- the impacts on consumer behaviour of specific disclosure requirements in the credit area (GE Money, sub. DR208).

While the Commission has not specifically examined whether these various suggestions could usefully be part of the future consumer policy research agenda, they do serve to illustrate that this agenda is potentially broad.

Therefore, the Commission is proposing an intermediate approach, involving additional public funding to:

- help support the operating costs of a representative national peak consumer body;
- assist the networking and policy functions of consumer advocacy bodies; and
- enable an expansion in policy-related consumer research.

The latter research funding component would be split into two pools: the first and larger pool to support the creation and operation of a dedicated National Consumer Policy Research Centre (NCPRC); and the second to provide for contestable grants for research on specified consumer policy issues. As noted earlier, the Commission envisages that a revamped CCAAC, (along with MCCA and the Australian Government), would play an ongoing role in helping to inform the new Centre's research agenda. The effectiveness of the Centre in delivering beneficial research outcomes should be independently reviewed after five years.

More broadly, the new funding arrangements should be subject to appropriate guidelines and governance arrangements to help ensure that taxpayer support delivers high quality advocacy and policy research in priority areas, and that the national interest is appropriately represented.

Helping vulnerable and disadvantaged consumers

Australia's consumer policy framework must continue to pay particular attention to the needs of vulnerable and disadvantaged consumers. The Commission's proposed objectives for the future framework explicitly reflect this.

Catering for these needs in a practical and efficient fashion raises some significant challenges. An undue policy focus on the interests of vulnerable and disadvantaged consumers is likely to impose costs on other consumers, particularly where restrictions on choice or reductions in competition are involved. More broadly, there are limits on what can be achieved for disadvantaged consumers in particular using 'conventional' consumer policy tools, as opposed to more targeted approaches.

Nonetheless, there is scope to better assist vulnerable and disadvantaged consumers. Indeed, some of the Commission's general recommendations will be especially beneficial for these consumers, such as those relating to: credit market reform; unfair contract terms; improved access to redress; a wider range of enforcement tools; more useful disclosure statements; and increased resources for legal aid, financial counselling and consumer advocacy. As well:

- It will be incumbent on those responsible for the future framework to closely monitor developments impacting on the extent and sources of vulnerability and disadvantage, and what these mean for policy settings. The increasing significance of both younger and older consumers and the evolution of electronic and mobile commerce are among the developments likely to be relevant in this regard. Successful policy adaptation to such developments will in turn be assisted by an effective research capacity (see above) able to generate the necessary supporting information.

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- Drawing on the findings of behavioural economics, it will similarly be important to give attention to how vulnerable and disadvantaged consumers are likely to behave in various market situations and what this means for policy measures designed to assist them make better purchasing decisions.

Depending on what such monitoring and analysis reveals, specific additional strategies to deal with the circumstances of some disadvantaged groups may also be required. The National Indigenous Consumer Strategy is the contemporary example of this approach. But it may be appropriate for some other groups in the future.

Other considerations bearing on the future framework

Facilitating economic integration with New Zealand

The Australian and New Zealand economies are becoming increasingly integrated, with growing emphasis on common regulatory frameworks. Hence, any significant divergences in consumer policy approaches would clearly be a cause for concern.

To minimise the risk of such divergences, there is a high degree of cooperation between the two countries at the consumer policy development level, with New Zealand represented on MCCA and the Standing Committee of Consumer Affairs Officials. Moreover:

- Though there are some differences between the Australian and New Zealand generic consumer policy regimes, the Commission has previously found that these are unlikely to impede an integrated Trans-Tasman business environment.
- There is a high degree of cooperation in the enforcement area between the ACCC and New Zealand's Commerce Commission.

However, like Australian firms operating nationally, some New Zealand businesses have experienced difficulties and added costs because of jurisdictional differences in Australia's generic and industry-specific consumer laws. Thus, the Commission's proposals directed at creating a more nationally coherent consumer policy framework in Australia — including as an initial step the implementation of a single national generic consumer law — would contribute to future economic integration between the two countries.

Responding to developments in electronic and mobile commerce

Rapid and ongoing evolution of electronic and mobile commerce is fundamentally changing the market landscape in which consumers operate (box 1).

Many of the problems that consumers may face in the on-line world — such as undelivered orders, warranty disagreements and misleading advertising — are little different from those in the traditional purchasing environment and can ostensibly be addressed using the existing generic consumer law. Indeed, there are reasons to be cautious in considering targeted consumer regulation in this area.

- The constraints on what can be achieved through regulatory intervention are likely to be greater than in the traditional purchasing environment.
- In such a rapidly developing market landscape, targeted regulation is more likely to become quickly outdated and stifle innovation.
- As in other countries, there have already been various policy and industry initiatives to address related issues such as:
 - the security of the on-line payment process; and
 - new marketing and information collection practices such as spam, spyware and cookies, and their use for sometimes fraudulent purposes.

Even so, as e- and m-commerce continue to develop, it will be necessary to monitor the adequacy of consumer laws to meet emerging issues. Also, the further growth in cross-border transactions will put a premium on effective cooperation between regulatory agencies, both within Australia and with their counterparts overseas. To this end, some new measures may be required — especially to facilitate information sharing and cooperative enforcement activity with other countries. As well, privacy matters and identity security issues may require further specific attention.

Small business considerations

Small businesses feature in Australia's consumer policy framework in two ways: as suppliers of goods and services, and as consumers dealing with larger businesses.

In specified circumstances, the consumer provisions of the TPA and the FTAs apply to the purchase of goods and services by businesses of any size. There has also been a trend to provide explicit protection to small businesses. For example:

- The TPA contains specific provisions protecting small businesses from unconscionable conduct in their dealings with larger firms.

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- Many specific consumer protection measures encompass small businesses. Thus, the consumer provisions in the financial services regulatory regime extend to products or services purchased by small businesses. Also, the self-regulatory Code of Banking Practice applies to small business as well as personal banking.

A more efficient and effective policy framework would benefit small businesses

A consequence of the Commission's proposal to use the TPA as the stepping off point for the new national generic consumer law would be to increase protection for small businesses in those jurisdictions that currently employ more restrictive definitions of a consumer. More generally, small businesses would benefit from the Commission's proposals to enhance the effectiveness of the generic law (including in relation to unfair contract terms), and to improve redress for those suffering detriment from breaches of the law. And like other consumers, they would also be assisted by the proposed improvements in disclosure requirements and by additional funding for consumer advocacy and research.

As well, the Commission's proposals aimed at addressing jurisdictional divergence in consumer-related regulatory requirements and their application, would reduce compliance costs for some smaller businesses. So too would its proposal to allow small claims courts and tribunals to resolve consumer complaints on the basis of written submissions.

How big is the prize?

The net gains would appear to be considerable

On qualitative grounds, there are good reasons to expect that the Commission's policy package (table 2) would provide a substantial net benefit to the community.

Most of the direct benefits would come not from introducing new regulations, but rather from either improving the effectiveness of *existing* measures and their enforcement, or lowering compliance costs for businesses — including through removing redundant or outdated regulation.

Moreover, over the longer term, many of the proposals would serve to improve the functioning of consumer markets by:

- strengthening the sanctions on poor business practice and conduct;
- removing constraints on the capacity of suppliers to respond effectively and innovatively to changing consumer requirements;

-
- equipping consumers to make better purchasing decisions;
 - increasing their confidence in dealing with unknown suppliers; and
 - reducing the search and other transactions costs involved in purchasing goods and services.

In turn, the combination of more responsive and innovative suppliers and better informed and more demanding consumers could be expected to invigorate competition and deliver the same type of price and productivity benefits as competition policy. And there would be some other benefits, including the intangible gains for consumers and the community from seeing fairer outcomes for others and, most importantly, the likelihood of more responsive policy making.

There would of course be offsetting costs for both governments and businesses, with the latter passed on to consumers.

However, the ongoing costs — such as those resulting from the transfer of risk from consumers to businesses under the proposed unfair contract terms provision — seem unlikely to be large in overall terms. Moreover, the potentially more significant transitional costs of some of the Commission’s proposed initiatives could be moderated through ‘common sense’ implementation. For example, required modifications to firms’ contracts and disclosure documents could be aligned with commercially driven changes in the product cycle.

Some experimental estimates support this conclusion

As elaborated on in the body of the report, it is not possible to undertake a precisely quantified benefit-cost analysis of the proposed policy package, or even of the individual components within it. Apart from the lack of robust data on key problems that the policy framework is intended to address, the difficulties of separating out the impacts of consumer policy from the many other influences on consumer wellbeing and the intangible nature of some key benefits and costs, make any quantification exercise problematic. Accordingly, such exercises cannot be a substitute for rigorous qualitative assessment.

Nonetheless, consistent with its terms of reference, the Commission has attempted to put some broad orders of magnitude on the prospective gains from its suite of policy proposals (box 13). Based on what it emphasises is an experimental methodology, the Commission estimates that its policy package could provide a net gain to the community of between \$1.5 billion and \$4.5 billion a year in today’s dollars. The main contributors to this estimated gain are reduced direct detriment for

consumers and increased productivity/innovation (about 40 per cent and 30 per cent of the total, respectively).

Box 13 The Commission’s quantification approach

As far as the Commission is aware, there have been no previous attempts in Australia or overseas to undertake a benefit-cost analysis of the consumer policy framework as a whole. Hence, the methodology it has used for this purpose is an experimental one.

That methodology is described in detail in the body of the report. In essence, however, the Commission has:

- calculated a net benefit for the package as a whole, rather than seeking to estimate and aggregate a similar set of net benefits for each of the components of the package. (This higher level approach better allows for synergies between the various components of the package);
- specified conceptually sound, functional relationships between key variables and as far as possible checked parameter values against available evidence; and
- examined the sensitivity of the results to the choice of parameter values.

Importantly, the methodology provides for an explicit and quantifiable linkage between reductions in consumer detriment ensuing from soundly-based consumer policy, and improvements in productivity and innovation as a result of greater consumer willingness to participate in new markets and/or deal with unfamiliar suppliers. And it provides for a similar linkage between policy-induced improvements in ‘transacting efficiency’ and reduced private investments by consumers to lessen their risk of experiencing detriment (such as search costs and the employment of intermediaries).

A eye to the future as well as the present

Australia’s consumer policy framework has some important strengths. But some ineffectual and inefficient institutional arrangements, an excessive reliance on industry-specific regulation, and deficiencies in particular policy approaches, detract significantly from the outcomes it delivers for consumers, businesses and the community. Hence, there is scope to do much better.

Moreover the soundness of the framework cannot be judged solely in terms of how well it is coping at present. A key question is whether it can respond in an effective, efficient and timely fashion to the significant changes in the consumer environment that lie ahead. On this score, the adequacy of the framework is even more problematic, with the costs of its shortcomings for consumers and businesses almost certain to increase over time.

A pressing need is to put in place institutional arrangements that are more compatible with the increasingly national nature of Australia's consumer markets and which will be less prone to policy inertia than the current regime. To this end, and in keeping with many of the other key policies governing commerce in Australia, greater responsibility for consumer policy development and enforcement should reside with the Australian Government. But institutional and related procedural reforms are not by themselves enough. Changes are also required to sharpen and augment the consumer policy tool kit.

Though only very broad and speculative quantification is possible, the net benefit from implementing the Commission's proposed policy package would be significant. Australian Governments therefore have the opportunity to put in place a policy framework that will serve consumers, businesses and the wider community well, in the decades ahead.

Table 2 A summary of the Commission’s proposals

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Objectives for the future policy framework		
Lack of agreed overarching objectives contributes to differences in regulatory interpretation and enforcement, and to tensions with other policies aimed at assisting consumers.	All Australian Governments to adopt common objectives for consumer policy, with the overarching objective being to ‘improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith.’ New policy initiatives to be designed and implemented in accordance with ‘best practice’ principles.	Improved consumer policy design and application, enhanced responsiveness to changing circumstances, and better policy evaluation.
Institutional reform		
Current delineation of responsibilities for consumer policy among Australian Governments makes levels of protection for consumers partly dependent on where they live; adds unnecessarily to business compliance costs and thereby to prices for consumers; reduces the responsiveness of policymaking to changing consumer needs; and detracts from the further development of national markets.	Facilitation of a nationally coherent consumer policy framework through: <ul style="list-style-type: none"> • introduction of a single national generic consumer law (applying to all sectors, including financial services); • making the Australian Government, through the ACCC, responsible for enforcing the product safety provisions of the new law nationally, but possibly with scope for States and Territories to issue interim product bans; and scope for individual jurisdictions to refer all their enforcement powers for the new law to the Australian Government; • streamlining industry-specific consumer regulation, including through the transfer of responsibility for some areas to the Australian Government (see below); and • increasing the profile of consumer policy within government and improving the effectiveness of MCCA. 	More effective, efficient, consistent and responsive policy and regulation, leading to better outcomes for consumers and greater certainty and lower costs for business. Contribution to the further development of a national commercial regulatory framework.
Industry-specific regulation		
Jurisdictional variations in industry-specific consumer regulation add to business compliance costs. Need to supplement generic law with specific statutes not always established. Ad hoc reform likely to be a slow process.	CoAG, in consultation with MCCA, to oversight a program to: repeal unnecessary specific consumer regulation; and determine how costly divergences and lack of policy responsiveness in other areas should be reduced — including through transfer of policy and/or enforcement responsibility to the Australian Government, and harmonisation of jurisdictional requirements.	A more streamlined and less costly specific regulatory regime, with price savings for consumers. Added impetus to the development of national markets and a national commercial policy framework.

Table 2 continued

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Industry-specific regulation (continued)		
<p>Deficiencies of jurisdiction-based regulation of consumer credit well established.</p> <p>Gaps in the regulation of credit providers and intermediaries providing advice on credit products mean that some consumers face excessive risks and have no guaranteed access to alternative dispute resolution.</p>	<p>Transfer responsibility for regulating consumer credit to the Australian Government, with enforcement by ASIC. The new regime to:</p> <ul style="list-style-type: none"> • cover all credit products and intermediary services; • retain the Uniform Consumer Credit Code within the broader financial services regulatory (FSR) regime; • incorporate changes to regulatory requirements already agreed to by MCCA; • incorporate other <i>appropriate</i> State and Territory credit regulation; • include a licensing system for finance brokers, and a licensing or registration system for credit providers (with both requiring participation in an approved ADR scheme); and • allow, over time, for streamlining of current credit regulation, given requirements in the broader FSR. 	<p>More effective protection for those acquiring and seeking advice on credit products. More timely adjustment of policy settings to changing requirements.</p>
<p>Despite the move to national energy markets, some key aspects of energy-related consumer policy will continue to be subject to divergent State and Territory regulation.</p>	<p>Australian Governments to agree to the longer term goal of a single set of consumer protection measures for energy services to apply across Australia.</p> <p>State and Territory Governments to agree to implement the new non-price regulatory requirements for retail energy services with minimal jurisdictional variations to enable a smooth transition to a uniform national regime at a later date.</p>	<p>Lower regulatory compliance costs for energy retailers putting downward pressure on energy prices.</p>
<p>Unnecessary retail price regulation of contestable utility services, with some potential for unintended adverse consequences.</p>	<p>Abolish retail price regulations applying to telecommunications services and contestable energy services.</p> <p>Assist disadvantaged consumers through community service obligations and supplier hardship policies.</p>	<p>Removal of redundant regulation which involves some risks to longer term supply, and which is not a good or transparent way of helping disadvantaged consumers.</p>

Table 2 continued

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Industry-specific regulation (continued)		
Protection for consumers in the home building sector is inadequate in most jurisdictions.	The current national review of 'last resort' Builders Warranty Insurance to also examine how to improve 'early stage' protection, including through providing guaranteed consumer access to ADR; and more effective licensing arrangements for builders.	Greater and more uniform protection across Australia for those having a home built or renovated.
Unfair contract terms		
The capacity for businesses to use one-sided contract terms can sometimes unfairly and inefficiently cause detriment to consumers.	The new national generic consumer law to include a provision to address the use of 'unfair' contract terms. This provision to allow regulators or consumers to take action where detriment has been suffered as a result of the use of an unfair term.	More timely and cost-effective redress for those suffering detriment related to the use of these terms. Better incentives for fairer contracts that assign risks efficiently between consumers and suppliers.
Defective products		
Lack of understanding about the rights conferred by the statutory warranty provisions in the generic consumer law.	Regulators to devote more resources to publicising these rights, and to ensuring compliance by suppliers. The need for changes to the legislation itself to be examined in developing the new national generic consumer law.	Raised consumer and business awareness, with fewer consumers purchasing possibly unnecessary extended warranties from suppliers.
Lack of information on the incidence and costs of product-related injury.	Implement all of the remedial measures proposed in the Productivity Commission's Consumer Product Safety study.	Improved design and application of product safety requirements; insights on any impacts of civil liability reforms and other factors on the incentives to supply safe products.
Redress		
Consumers are sometimes confused about where to seek help, and information on complaints is not always effectively used by regulators.	All jurisdictions to participate in the national consumer complaints database (AUZSHARE). Improve the ACCC's web-based information tool — <i>Consumers Online</i> . A somewhat wider role for the telecommunications ombudsman; processes to encourage further integration of financial sector ADR services; investigation of how best to give effect to an ADR service for general consumer complaints; and a process for periodically reviewing whether the structure of ADR services remains appropriate to consumer needs.	Better access to help for consumers where they suffer detriment; greater incentives for suppliers to meet legitimate consumer needs; and improved intelligence about the nature of emerging serious complaints.

Table 2 continued

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Redress (continued)		
Procedures for pursuing small claims in courts and tribunals vary by jurisdiction and can be onerous for consumers.	Standardise arrangements, including claim ceilings and fee waivers for disadvantaged consumers. Court processes to allow for judgements based on written submissions and other forms of non 'in-person' testimony.	Equal treatment of consumers across jurisdictions; more cost-effective access to redress for smaller problems; and better access to the court/tribunal system for disadvantaged consumers.
Representative and class actions face practical obstacles.	Allow regulators to take representative actions on behalf of consumers, whether or not they are parties to the proceedings, and examine workability of private class action arrangements.	More effective redress when many consumers suffer modest detriment from the misconduct of a single supplier.
Resource constraints for legal aid and financial counselling make it harder to assist disadvantaged consumers.	Provide additional funding for these services.	More equitable outcomes for disadvantaged consumers.
Enforcement tools		
Gaps in the tool kit for enforcing the generic law impede a layered approach linked to the seriousness of the breach, and may reduce incentives for suppliers to comply with the law.	The new national generic consumer law to include provision for: civil pecuniary penalties (including recovery of profits from an unlawful activity); banning orders; substantiation notices for questionable claims made to consumers; and infringement notices for minor breaches of the law. Further examination of the case for including 'naming and shaming' powers.	More efficient, cost-effective, deterrence and redress through regulatory action better tailored to the nature of particular breaches.
Promoting consistent enforcement		
Reporting requirements for consumer regulators do not always assist in promoting consistent and coordinated enforcement.	Greater focus on reporting on problem areas/coordination difficulties and how they have been solved.	More prompt and effective attention to enforcement gaps. Less likelihood of overlapping or inconsistent enforcement.
Empowering consumers		
Disclosure documents are overly long and complex, confusing some consumers and being ignored by many.	Require 'layering' of disclosed information to enhance its comprehensibility and relevance to consumers. Greater evaluation of the effectiveness of mandatory disclosure requirements, prior to and/or post implementation.	Enhanced consumer decision making.
Insufficient evaluation of the effectiveness of consumer information and education campaigns.	Cross-jurisdictional review of a sample of existing campaigns by the recently established MCCA taskforce on consumer education issues.	More accessible, effective and better targeted education campaigns.

Table 2 continued

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Empowering consumers (continued)		
<p>Funding constraints limit the ability of many general consumer advocacy bodies to contribute to policy debate.</p> <p>A paucity of information needed to properly assess consumer policy issues.</p>	<p>Additional taxpayer support for the operating costs of a peak national consumer body; for networking between consumer advocacy groups; and for specified research, including through the establishment of a National Consumer Policy Research Centre.</p> <p>Guidelines and governance arrangements to help ensure that this support delivers high quality advocacy and policy research in priority areas, and that the national interest is appropriately represented.</p>	<p>Higher quality consumer input into policy making, including through better access to the views of front-line consumer agencies.</p> <p>A richer information base on which to anchor future consumer policy development.</p>

Recommendations

Chapter 3 — Objectives for consumer policy

RECOMMENDATION 3.1

Australian Governments should adopt a common overarching objective for consumer policy:

‘to improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly and in good faith’.

To provide more specific guidance to those developing and implementing consumer policy, this overarching objective should be supported by six operational objectives.

The consumer policy framework should efficiently and effectively aim to:

- *ensure that consumers are sufficiently well-informed to benefit from, and stimulate effective competition;*
- *ensure that goods and services are safe and fit for the purposes for which they were sold;*
- *prevent practices that are unfair or contrary to good faith;*
- *meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage;*
- *provide accessible and timely redress where consumer detriment has occurred; and*
- *promote proportionate, risk-based enforcement.*

Chapter 4 — A new national generic consumer law

RECOMMENDATION 4.1

Australian Governments should implement a new national generic consumer law to apply in all jurisdictions. The new law should be based on the consumer protection provisions of the Trade Practices Act (TPA), amended to:

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- *reflect other recommendations in this report;*
 - *incorporate additional provisions from State and Territory Fair Trading Acts in those cases where the TPA is generally agreed not to be adequate to deal with a particular generic issue; and*
 - *ensure that the new law covers non-corporate entities and accommodates jurisdictional differences in court and tribunal arrangements.*

RECOMMENDATION 4.2

The new national generic consumer law should apply to all consumer transactions, including financial services. However:

- *the Australian Securities and Investments Commission (ASIC) should remain the primary regulator for financial services, with any involvement by the Australian Competition and Consumer Commission or State and Territory consumer regulators in this area only occurring after prior consultation with ASIC; and*
- *financial disclosures currently only subject to ‘due diligence’ requirements should be exempted from the misleading or deceptive conduct provisions of the new law.*

RECOMMENDATION 4.3

Responsibility for enforcing the consumer product safety provisions of the new national generic consumer law in all jurisdictions should be transferred to the Australian Government and be undertaken by the Australian Competition and Consumer Commission (ACCC).

If the Council of Australian Governments determines that the States and Territories should retain the power to issue interim product safety bans, these should lapse after 30 days if not extended nationally by the responsible Australian Government Minister, on advice from the ACCC.

RECOMMENDATION 4.4

The remainder of the new national generic consumer law should be jointly enforced by the Australian Competition and Consumer Commission (ACCC) and State and Territory consumer regulators. However, individual States and Territories should have the option to refer their enforcement powers for all of the new law to the Australian Government, with enforcement to be undertaken by the ACCC.

The enforcement arrangements for the new national generic consumer law should be subject to an independent review within ten years, with explicit consideration of the benefits and costs of moving to a single national regulator model for all of the law, having regard to:

- *any evidence that differing enforcement practices or regulatory ‘break-out’ are leading to divergent outcomes for consumers and businesses across Australia;*
- *experiences and outcomes in any jurisdictions that have referred their powers of enforcement for the new national generic consumer law to the Australian Government; and*
- *the implications of any shifts in enforcement responsibility for industry-specific consumer policy to the national level (see recommendations 5.1 to 5.3).*

Chapter 5 — Industry specific consumer regulation

CoAG’s Business Regulation and Competition Working Group, in consultation with the Ministerial Council on Consumer Affairs, should instigate and oversee a review and reform program for industry-specific consumer regulation that, drawing on previous reviews and consultations with consumers and businesses, would:

- *identify and repeal unnecessary regulation, with an initial focus on requirements that only apply in one or two jurisdictions;*
- *identify other areas of specific consumer regulation where unnecessary divergences in requirements, or lack of policy responsiveness, have significant costs; and*
- *determine how these costs would be best reduced, whilst maintaining protections for consumers, with explicit consideration of:*
 - *the case for transferring policy and, where appropriate, regulatory enforcement responsibilities to the Australian Government and how this transfer might be best pursued; and*
 - *a process and timetable for harmonising and streamlining currently divergent specific regulation that remains the responsibility of the States and Territories.*

RECOMMENDATION 5.2

Responsibility for the regulation of credit providers and intermediaries providing advice on credit products ('finance brokers') should be transferred to the Australian Government, with enforcement to be undertaken by the Australian Securities and Investments Commission (ASIC).

Amongst other things, the new national credit regime should:

- *cover all consumer credit products and all intermediaries providing advice on such products (including through electronic or other arms-length means);*
- *retain the Uniform Consumer Credit Code (UCCC) as a self standing set of requirements within the broader financial services regulatory regime; incorporating changes to the Code that have been agreed to by the Ministerial Council on Consumer Affairs (MCCA), but not yet implemented;*
- *incorporate requirements from state and territory credit legislation outside of the code, where these pass a benefit-cost test;*
- *include a national licensing system for finance brokers, and a licensing or registration system for credit providers that would give consumers guaranteed access to an approved dispute resolution service; and*
- *allow, over time, for the streamlining of the current UCCC in the light of requirements within the broader financial services regime, where net benefits are likely.*

Also, CoAG should give consideration to implementing the new national regime in a phased way, including as initial steps:

- *importing into the Australian Government's jurisdiction the current UCCC — modified to reflect changes agreed to by MCCA, but not yet implemented — and making ASIC responsible for its enforcement; and*
- *introducing an interim, ASIC enforced, national licensing arrangement for finance brokers, based on the draft proposal developed by MCCA.*

RECOMMENDATION 5.3

Through the Ministerial Council on Energy (MCE), Australian Governments should agree to the longer term goal of a national consumer protection regime for energy services, with a single set of requirements to apply in all jurisdictions participating in the national energy market. Those requirements should be enforced by the Australian Energy Regulator.

The specific requirements for that regime should be developed under the auspices of the MCE after the Australian Energy Market Commission has completed its reviews of the effectiveness of competition in each of the jurisdictional retail energy markets.

Through the MCE, State and Territory Governments should also agree to implement the new non-price regulatory requirements for retail energy services, scheduled for introduction around 2010, with minimal jurisdictional variations so as to enable a smooth transition to a uniform national regime at a later date.

RECOMMENDATION 5.4

The Australian Government should remove all retail price regulation applying to telecommunications products and services.

Also, where the Australian Energy Market Commission finds a jurisdictional retail energy market to be fully contestable, the State or Territory Government concerned should remove all retail price regulation in that market as soon as practicable.

Ensuring that disadvantaged consumers continue to have sufficient access to utility services at affordable prices should be pursued through transparent community service obligations, supplier-provided hardship programs, or other targeted mechanisms that are monitored regularly for effectiveness.

RECOMMENDATION 5.5

In examining how to improve 'last resort' home builders' warranty insurance, the Senate Economics Committee should also consider how to enhance the effectiveness of earlier stage consumer protection measures in the home building sector, including through:

- *providing for guaranteed access to effective ADR across Australia; and*
- *better linking licensing schemes to actual builder performance.*

Chapter 6 — Supporting institutional changes

RECOMMENDATION 6.1

As part of the transfer of greater responsibility for consumer policy to the national level, the Australian Government should ensure that there are effective arrangements in place to:

- *facilitate enhanced coordination between Treasury and other relevant government portfolios;*

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- *promote consistent consumer policy approaches and outcomes across portfolios; and*
 - *enhance the profile of consumer policy across government generally.*

States and Territory Governments should similarly ensure that their current governmental structures promote coordinated and consistent consumer policy approaches and outcomes and give sufficient profile to consumer policy across all relevant portfolio areas.

RECOMMENDATION 6.2

The Australian Government should enhance the capacity of the Commonwealth Consumer Affairs Advisory Council to advise the Minister on emerging, nationally significant, consumer policy issues and on other consumer matters requiring further research (see recommendation 11.3). Specifically the Government should:

- *provide additional resourcing to support the Council’s advisory role; and*
- *ensure that membership of the Council is selected to provide the necessary core consumer policy expertise and to bring a national perspective to its advisory functions.*

RECOMMENDATION 6.3

Australian Governments should agree to the following changes to improve the effectiveness of the Ministerial Council on Consumer Affairs (MCCA).

- *The Council’s voting rules should be altered such that future policy changes would only require the agreement of the Australian Government and three other jurisdictions (a similar arrangement to those for competition and corporations law).*
- *The MCCA secretariat should be sufficiently resourced to carry out policy development work (including the preparation of regulation impact statements) as well as administrative functions.*
- *MCCA should be made more accountable for its performance through improved public reporting of meeting agendas and outcomes. It should also seek greater stakeholder input on its strategic agenda and performance.*

Chapter 7 — Unfair contracts

RECOMMENDATION 7.1

A provision should be incorporated in the new national generic consumer law that addresses unfair contract terms. The Commission's preferred approach would have the following features:

- *a term is established as 'unfair' when, contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract;*
- *there would need to be material detriment to consumers (individually or as a class);*
- *it would relate only to standard form, non-negotiated contracts;*
- *it would exclude the upfront price of the good or service; and*
- *it would require all of the circumstances of the contract to be considered, taking into account the broader interests of consumers, as well as the particular consumers affected.*

Where these criteria are met, the unfair term would be voided only for the contracts of those consumers or class of consumers subject to detriment, with suppliers also potentially liable to damages for that detriment. The drafting of any new provision should ensure the potential for private (and regulator-led) representative actions for damages by a class of consumers detrimentally affected by unfair contract terms.

Transitional arrangements should be put in place after enactment, which would give businesses the time to modify their contracts.

The operation and effects of the new provision should be reviewed within five years of its introduction.

Chapter 8 — Defective products

RECOMMENDATION 8.1

Australia's consumer regulators should:

- *raise awareness among consumers and suppliers about the statutory rights and responsibilities conferred by the implied warranties and conditions in the generic consumer law; and*
- *where appropriate, take specific enforcement action against misleading marketing and sale of extended warranties.*

The adequacy of existing legislation related to implied warranties and conditions should be examined as part of the development of the new national generic consumer law.

RECOMMENDATION 8.2

Consistent with the recommendations in the Productivity Commission’s Review of the Australian Consumer Product Safety System, Australian Governments should:

- *develop a hazard identification system for consumer product incidents;*
- *introduce mandatory reporting requirements for voluntary product recalls; and*
- *require suppliers to report products associated with serious injury or death or products which have been the subject of a successful product liability claim or multiple out-of-court settlements.*

Ideally, these measures should be implemented as part of the development of the new national generic consumer law (see recommendation 4.1).

RECOMMENDATION 8.3

Drawing on the mechanisms proposed in recommendation 8.2 and on the baseline study examining product related accidents prepared for the Ministerial Council on Consumer Affairs, Australian Governments should monitor trends in product safety, including any impacts of the civil liability reforms, with a view to assessing whether the incentives to supply safe products continue to be adequate.

Chapter 9 — Access to remedies

RECOMMENDATION 9.1

To facilitate more effective referral of complaints to the right body and sharing of information on complaints:

- *all consumer regulators should participate in the shared national database of serious complaints and cases, AUZSHARE; and*
- *the Australian Competition and Consumer Commission should provide an enhanced national web-based information tool for guiding consumers to the appropriate dispute resolution body, as well as providing other consumer information. It should be subject to consumer testing to ensure that it is easy to use and has the appropriate content.*

Australian Governments should improve the effectiveness of alternative dispute resolution (ADR) arrangements for consumers by:

- *extending the functions of the Telecommunications Industry Ombudsman to pay TV and reviewing options for further consolidation, including through a single consumer entry point for communication services complaints, or an umbrella arrangement (similar to that proposed below for financial services) encompassing all individual dispute resolution services in this area;*
- *reducing the inconsistencies in the complaint-handling and reporting processes used by energy ombudsman and assessing the scope for some jurisdictions to immediately combine their energy ombudsman offices on a bilateral basis, prior to the ultimate formation of a national energy ombudsman;*
- *further enhancing financial ADR services through:*
 - *integration of the existing bodies into a single umbrella scheme to provide one referral and complaint pathway, while allowing independent governance of its subsidiary schemes;*
 - *the requirement that any new industry ADR services, including for credit, be accessed through the gateway service, the Financial Ombudsman Service;*
 - *timely and coordinated revision of ceilings on the value of transactions subject to ADR, with ceilings differentiated according to the relative risks of consumer detriment for the relevant classes of products; and*
 - *allowing a consumer with a claim exceeding any given ceiling to waive the excess and have their claim met up to the limit;*
- *ensuring there are effective, properly resourced, government-funded ADR mechanisms to deal consistently with all consumer complaints not covered by industry-based ombudsmen; and*
- *establishing a formal cooperative mechanism between the various regulators, ADR schemes and other stakeholders to re-assess every five years the nature and structure of ADR arrangements to achieve best practice and address redundancies or new needs.*

Australian Governments should improve small claims court and tribunal processes by:

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- *introducing greater consistency in key aspects of those processes across jurisdictions, including:*
 - *common higher ceilings for claims;*
 - *common criteria for fee waivers for disadvantaged consumers; and*
 - *allowing small claims courts and tribunals to make judgments about civil disputes based on more flexible forms of testimony, including written submissions and video-conferencing, unless either of the disputing parties requests otherwise.*

RECOMMENDATION 9.4

In the light of the Victorian Law Reform Commission’s Civil Justice inquiry and recent decisions by the Federal Court of Australia regarding third-party financing of private class actions, Australian Governments should assess the desirability of clarification (or amendment) of the relevant legislation and the use of other policy approaches to facilitate appropriate private class action, taking into account any risks of excessive litigation or other unintended effects.

RECOMMENDATION 9.5

Australian Governments should ensure a provision is incorporated in the new national generic consumer law that allows consumer regulators to take representative actions on behalf of consumers, whether or not they are parties to the proceedings.

RECOMMENDATION 9.6

Australian Governments should provide enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counselling services, especially for vulnerable and disadvantaged consumers.

Chapter 10 — Enforcement

RECOMMENDATION 10.1

The new national generic consumer law should give consumer regulators the capacity to:

- *seek the imposition of civil pecuniary penalties, including the recovery of profits from illegal conduct, for all relevant provisions;*
- *apply to a court to ban an individual from engaging in specific activities after the court has found that a breach of consumer law has occurred;*

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- *issue notices to suppliers requiring them to reasonably substantiate the basis on which claims or representations are made; and*
 - *subject to guidelines informed by the current Treasury review of infringement notice powers under corporations law, issue infringement notices for minor contraventions of consumer law.*

The possible inclusion of naming and shaming powers in the new law should be the subject of further examination and consideration by the Australian and State and Territory Governments under the auspices of the Ministerial Council on Consumer Affairs.

RECOMMENDATION 10.2

The Australian Government should commission a review by an appropriate legal authority of the merits of giving consumer regulators the power to gather evidence after an initial application for injunctive relief has been granted, but prior to substantive proceedings commencing.

RECOMMENDATION 10.3

Australian Governments should ensure that all of their consumer regulators are required to report annually on the nature of specific enforcement problems, their consequences, steps taken to address them (including enforcement strategies and priorities) and the impact of such initiatives. Such reporting should be informed by input from stakeholder groups.

Chapter 11 — Empowering consumers

RECOMMENDATION 11.1

Where a need for mandatory information disclosure requirements has been established, the regulator concerned should require that:

- *information is comprehensible, with the broad content, clarity and form of disclosure consumer tested prior to and/or after implementation, and amended as required, so that it facilitates good consumer decision-making; and*
- *complex information is layered, with businesses required to initially provide only agreed key information necessary for consumers to plan or make a purchase, with other more detailed information available (including by electronic means) by right on request or otherwise referenced.*

Also, the respective roles and responsibilities of regulators and businesses in regard to such matters as consumer testing, content and amendment should be understood and agreed at the outset.

Consistent with these principles, prospective reform of mandatory disclosure requirements for financial services should be progressed as a matter of urgency.

RECOMMENDATION 11.2

Through the National Education and Information Advisory Taskforce, Australian Governments should commission a cross-jurisdictional evaluation of the effectiveness of a sample of consumer information and education measures, and the prospects for improving them. The evaluation should focus on campaigns in areas where the benefits from changing consumer (or supplier) behaviour are likely to be most significant. It should also include an evaluation of the proposed school-based financial literacy program, drawing on evidence from similar programs overseas.

RECOMMENDATION 11.3

Within the broader consumer policy implementation framework agreed to by CoAG, the Australian Government, in consultation with MCCA, should take the lead role in developing arrangements to provide additional public funding to:

- help support the basic operating costs of a representative national peak consumer body;*
- assist the networking and policy functions of general consumer advocacy groups; and*
- enable an expansion in policy-related consumer research.*

Part of the latter funding component should be used to establish and support the operation of a dedicated National Consumer Policy Research Centre (NCPRC), with the remainder provided as contestable grants for research on specified consumer policy issues. An independent review of the effectiveness of the NCPRC in delivering beneficial research outcomes should be conducted after 5 years.

The new funding arrangements should be subject to appropriate guidelines and governance requirements to help ensure that taxpayer support contributes to high quality advocacy and policy research in priority areas, and that the national interest is appropriately represented.