

Consumer Policy Framework

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Introduction

[1] Consumer policy has a long history. With evidence from ancient Rome that warranties were implied against latent defects, the appropriate framework for consumer protection and the policy that supports it, is not simply a topic of recent thinking. However, the current regime for consumer protection largely finds its genesis in the rise of the Industrial Revolution, increasing disposable consumer income post WWII, and the escalating production of goods and services for which defects were undiscoverable even by the most prudent of shoppers. However, it should not be forgotten that the original focus of what we now know as consumer law was not directed towards the consumer, but the merchant.¹ It was not confined to consumer transactions,² and extended to any contract involving the sale of chattels. This allowed the obligations of the merchant to be limited, or even excluded. In response the common law sought to ameliorate the advantages given the commercial operator. This saw courts develop principles dealing with misrepresentation,³ duress,⁴ undue influence,⁵ and unconscionability.⁶ But this was not enough. A flood of legislative reforms to assist consumers began post Second World War, and reached its zenith with the introduction of the *Trade Practices Act 1974*. State based reforms to assist have since followed.⁷ This has seen the introduction of a prohibition against deceptive and misleading conduct,⁸ statutory extensions to common law unconscionability,⁹ offences for a range of unfair practices,¹⁰ the implication of implied terms into consumer sales,¹¹ strict liability for defective products,¹² and greater remedial flexibility than that provided by the common law.¹³ Underlying much of this reform lay three fundamental points:

- ✚ A marked contrast between the bargaining position of vendor and purchaser;
- ✚ Information asymmetry; and
- ✚ An imbalance in the available resources for enforcement between the two parties.

[2] Despite this extensive legislative scheme, or perhaps because of its complexity and ad hoc transmutation, consumer law has failed to adapt to many situations within the

contemporary environment. Consumer law seems to have responded by establishing processes which should support consumers in the role as purchaser and which should improve the quality of the outcomes (e.g. improved disclosure should lead to better decision making), but which in many cases doesn't seem to have improved the consumers decision making (i.e. Consumers are consumer or overwhelmed by disclosure, or choice). Thus, even though the policy prescript may indicate that once the information is provided, caveat emptor should prevail; empirical evidence may illustrate that adding more information may worsen consumer outcomes. This failure has been brought about, or at least exacerbated by the introduction of electronic commerce, the use of online auctions, the shrouding of products (where many costs are disguised from the initial price – e.g. premium services on mobile phones), changing technology and the increase in the range of goods and services available. A further factor which has impacted is the recognition that the traditional economic welfare paradigms that arguably served a goods-based consumer model is less correctly predictive of consumer behaviour in the service oriented nature of many modern consumables (e.g. gym memberships and Pay TV). This has seen behavioural economics, and other aspects of industrial organisation theory move in and challenge the traditional view of the consumer freely choosing to maximise their individual welfare.¹⁴ There are also considerable doubts as to what is meant by consumer policy. Is it designed merely to assist the market and improve the operation of the 'invisible guiding hand of production',¹⁵ or should it be about restoring consumer sovereignty and countering the economic force of 'strong sellers'?¹⁶

[3]. However at its heart, a consumer problem can simply be stated. What has caused the bad bargain and led to the expectation of the consumer not being met? How can that matching of consumer and producer expectations be more appropriately attained? Consumer law, with its basis in the economic foundations of contract law, is a largely efficient process.¹⁷ There is no doubt that the court should intercede where there are clear policy grounds – such as duress or misrepresentation, but beyond this, freedom of contract should see an outcome that maximises both consumer and producer satisfaction.¹⁸ If it is not efficient, then the economic question is one of causality – why has the transaction not met this standard. Today, however, the mass production of complex consumerables, the globalised nature of this transacting, political priorities and Federal/State differences potentially lead to a greater number of bad bargains.¹⁹ If this is correct, (and this is one reason why a national publicly funded body is needed – to determine if it is correct) when and how is reform to occur? In effect, when does the government **intervene** directly into the marketplace, or when should its intervention be simply about **empowering** the consumer. In this context, consider the following ten basic consumer principles put forward by the European Union,²⁰ with Figures 1 and 2 illustrating how intervention has already empowered the consumer

(with the italicised points suggesting some improvements to our current regime (some of these fine tuning, others more substantive (see Issues Paper, 16)):

- ✚ Buy what you want, where you want;
- ✚ If it doesn't work, send it back;
- ✚ High safety standards for food and other consumer goods;
- ✚ Know what you are eating;
- ✚ Contracts should be fair to consumers;
- ✚ Sometimes consumers can change their minds;
- ✚ Making it easier to compare prices;
- ✚ Consumer should not be misled;
- ✚ Protection while you are on holiday;
- ✚ Effective redress for cross-border disputes [and I would add here - access to justice issues].

	Choice	Quality	Safety	Eating	Fair Contracts
Empowerment	Supply a competitive marketplace	<i>Consumer empowered if onus on seller to prove that goods and services comply with these obligations when item has been purchased within 6/12 months. At present consumer must show that item is not of merchantable quality or fit for purpose.</i>	<i>Legislate to include a general provision that only safe goods be put into the marketplace, (obviously a matter previously rejected by the Productivity Commission). This would also give protection to those consumers vulnerable or disadvantaged.</i>	Food labelling laws	<i>National Unfair Contract legislation with this empowering the consumer and consumer organisations to challenge one-sided bargains. Operation of this will also improve overall market conduct.</i>
Intervention	Part IV TPA Competition Policy Reform Legislation	Imply non-excludable terms as merchantable quality and fitness for purpose (eg. S68 TPA).	Product legislation	Safety <i>Improved labelling, e.g. GMO requirements; health claims.</i>	Part 2B Fair Trading Act (Vic); European Union directive; Japanese reforms, NSW Standing Committee on Law and Justice, Report No. 32, 'Unfair terms in Consumer Contracts'.

Figure 1

	Change of Mind	Compare Prices	Don't Mislead	Holidays	Cross – Border/Access
Empowerment	Exercise cooling off periods where available.	e.g. The introduction of comparison interest rates in credit legislation empowered the consumer.	<i>Mandate default clauses in certain scenarios (e.g. exit fees from financial products)</i>	<i>Is greater coverage required where advertised products don't match the reality (e.g. quality</i>	<i>Empower the consumer by providing legal standing to consumer organisations to intervene. Fund consumer advice bureaus as has been done in some European jurisdictions. Better harmonisation amongst Australian States and</i>

				of hotel)?	Territories through establishment of National Body
				Greater protection for delayed/cancelled flights.	Empower the consumer by requiring mandatory dispute resolution mechanisms for online providers Empower the consumer by putting in place safeguards for online purchases.
Intervention	e.g. Door to Door Selling legislation; <i>Mandate greater use of cooling off periods (e.g. some States such as Tasmania are presently considering a cooling off period for residential real estate – this following the lead of some other jurisdictions).</i>	<i>Mandate unit pricing (particularly with grocery items).</i>	e.g. Sections 52/53 TPA 1974. Fair Trading legislation	e.g. Travel protection legislation	e.g. The introduction of industry based dispute resolution services (eg Financial sector); Industry ombudsman (eg Telecommunications/Legal).

Figures 1 and 2: Matrix of Principles with Empowerment/Intervention Axis.

How do we decide to intervene?

[4]. The Issues Paper poses the question. Is the Current Consumer Framework fundamentally sound? It is suggested that this can't be answered unless the more seminal question is resolved – how do we as a society know when a consumer problem exists? Once this is identified, then is it possible to articulate a model from which the most appropriate regulatory response can be identified. Assisting these shaping questions is a detailed analysis by the UK Office of Fair Trading,²¹ which sought to identify a series of empirical indicators that would provide evidence (from the top-down) of particular sectors that represent significant consumer concerns. In undertaking this work, a number of information sources were accessed. These could be grouped as follows: industry information,

corporate information, external industry reports and private research organisation information (such as AC Nielsen). Regulatory information was also available (this including comprehensive analysis and reporting of consumer complaints). Thirty-two empirical indicators were identified, with it being possible for these to be clustered into nine categories:

- ✚ Barriers to entry;
- ✚ Productivity;
- ✚ Concentration;
- ✚ Profitability;
- ✚ Prices;
- ✚ Consumer complaints;
- ✚ Innovation;
- ✚ Switching Costs; and
- ✚ Others.

[5]. These factors provide a starting point for intervention, and when accompanied with a market-by-market analysis, and the input of extensive data (with consumer complaints (direct and indirect – e.g. industry ombudsman; consumer advocacy agencies²²) providing a rich source of evidence of how the participants are behaving), markets for investigation can be identified. From this, the methodology for investigation can then be chosen. As noted in the OECD report on Demand-Side Economics for Consumer Policy,²³ “[t]he critical question at the centre of this discussion is what information and what analytical tools and methodologies should we focus on in order to strengthen our ability to take considered policy decisions which ensure that consumer interests are at the heart of competition and consumer policy decision making.”

Having decided intervention is required

[6]. Once a consumer problem is identified, how is it possible to decide what regulatory response is required. The following model²⁴ seeks to assist in that process:

- ✚ First, identify the relevant market and see if there are any competition law reasons as to why the consumer problem is not being corrected. It may simply be the case that the structure of the market can be corrected to redress consumer concerns. Examples of where this occurred are telecommunications and banking. Deregulation brought about a

- greater range of services at a lower cost. However, deregulation can create its own consumer concerns, (i.e. supply into non-profitable regions)). Sylvan outlines this competition, consumer interface in more detail,²⁵ with this link highlighting how improving competition outcomes may well exacerbate consumer outcomes. Therefore, in any response to a monopolistic, oligopolistic market, care needs to be taken to ensure that deregulation will not simply result in worse consumer outcomes.
- ✚ Second, are there any factors that would impinge upon the consumer maximising her or his own welfare. The consumer may not be able to make an effective choice because disclosure is inadequate, or the industry standards lack strength. A response to this may well see greater levels of disclosure, the revision of standard form contracts (for which competition has failed to deliver competitive outcomes), or the imposition of industry codes of conduct (e.g. real estate agents). These measures simply seek to ensure that the economic paradigm is met – i.e. that the consumer is maximising their satisfaction. However, in considering this, behavioural economics may tell us that the consumer is not the rational agent so beloved of welfare economics and that he or she will not always maximise their own satisfaction.²⁶ In doing this, he or she will be boundedly rational²⁷ and undertake a limited number of searches prior to purchase. Consumers will also routinely exhibit a number of biases, such as imperfect self control, and inadequate assessment of risk when purchasing. They will also demonstrate an inability to understand and fully comprehend what is being disclosed; disclosure is not enough, it must be ‘good disclosure’.²⁸ Behavioural economics therefore needs to be taken into account. In addition to this, a government may seek to impose consumer measures based on paternalism (e.g. controls on the sale of guns), or to redistribute wealth (e.g. price controls on pharmaceuticals, price controls on local telephone calls). In other words, the values relevant to consumer decision making, and the known behaviour of consumers must be articulated to demonstrate why the traditional economic model has been rejected or modified in the name of consumer protection.²⁹ Nevertheless, the starting point should always be that consumers do maximise their own welfare – it is only when this is appropriately challenged that the basis of challenge must be understood.
 - ✚ Third, having established the market and the values and consumer behaviour sought to be protected in the name of consumer protection, what regulatory measure can deliver the benefits at the lowest cost. In identifying this it is necessary to work with the institutions³⁰ in that industry. That is, will self-regulation work, should there be enforceable codes of conduct, should the product be banned, or will a warning serve to protect consumer autonomy but allow low cost disclosure.³¹

Specific Matters

- [7]. The difficulty in establishing the framework cannot be underestimated, but within this framework there are a number of specific matters which could be addressed and which would then feed into the building this framework. In effect, I see these changes as assisting the development of the model, and not necessarily flowing from its inception.

Establishment of a National Consumer Council³²

- [8]. There is no doubt that consumer law has not attracted the same level of analysis as compared with the rich jurisprudence of competition law, a point noted by Louise Sylvan.³³ This research vacuum is simply the result of any significant private incentive to do it. For this reason, the public purse must fill the void, and in doing so, bring together the resources, input and guidance from the disparate consumer centres that presently exist around Australia. This central facility is the key to effective consumer policy. A body such as this will better harmonise and coordinate consumer policy across all jurisdictions. (see Issues Paper, 7). For example at the moment, there is no consensus on what is a consumer transaction, whether the implied consumer warranties should exist at the State level,³⁴ It can also work to identify the two key components presently missing in consumer policy – how do we know when something is wrong, and what model can be used to work through the problems.

Introduction of national unfair contracts legislation

- [9]. This has been recently canvassed by the New South Wales Standing Committee on Law and Justice.³⁵ The conclusion of that Committee was to enact unfair contracts legislation similar to that already in place in Victoria. That is a recommendation that I strongly endorse. Applying this issue to the model previously outlined identifies why interventionist legislation is necessary.
- [10]. First, despite very competitive industries (e.g. telecommunications, package holidays, gym memberships, online auctions), consumers are still bound to agreements where there appears to be little competition on the terms of the agreement, despite there being fierce competition on price. In effect, the competitive marketplace has failed to deliver genuine competition on the terms of any contractual agreement. Competition law reforms will not fix the consumer problem.
- [11]. Second, mandating some form of disclosure is unlikely to assist the consumer in these instances. For example with online purchases, the evidence of behavioural economics

would be that the 'box' is simply checked indicating an understanding of the terms and conditions, without them being read. It would be a rare occasion that these would be studied in depth, the consumer recognising that he or she would probably not understand the terms and conditions, and second, they are offered on a take it or leave it basis. The consumer has little interest, particularly given the size of most consumer transactions to become aware of the fine print – by contrast the seller has an economic incentive to maximise its position through the standard form contract that it offers to a large number of people. Resources are misallocated as either the consumer is not getting what they want, or there is economic surplus passing from the consumers to the producers. Welfare economics or distributive reasons support intervention.

[12]. Third, the least cost regulatory measure is to allow contracts to be challenged by a regulator (such as in Victoria), with this quickly working to achieve a more efficient balance in the contractual provisions. Alternative options such as prohibiting standard form contracts is inherently inefficient, as is requiring negotiation on all terms. Furthermore, industry specific contractual provisions have a limited focus. By contrast, the initial evidence from Victoria replicates what has happened in Europe. Standard form contracts will be quickly rewritten to reflect the reasonable expectations of both consumer and producer. Measures such as this will empower the consumer, while at the same time offering protection to the disadvantaged and vulnerable, without needing to find some definition of what constitutes vulnerable or disadvantaged (see Issues Paper, 7).

Reconsideration of Enforcement Mechanisms

[13]. A recent OECD study on the effectiveness of enforcement regimes for consumer policy,³⁶ (included in this was a case study of Australia) illuminated a number of issues associated with the enforcement of consumer law and policy within Australia. This report recognised that there were a number of enforcement approaches – they could be summarised as follows (with the following table indicating the variety of approaches taken in a number of jurisdictions.³⁷

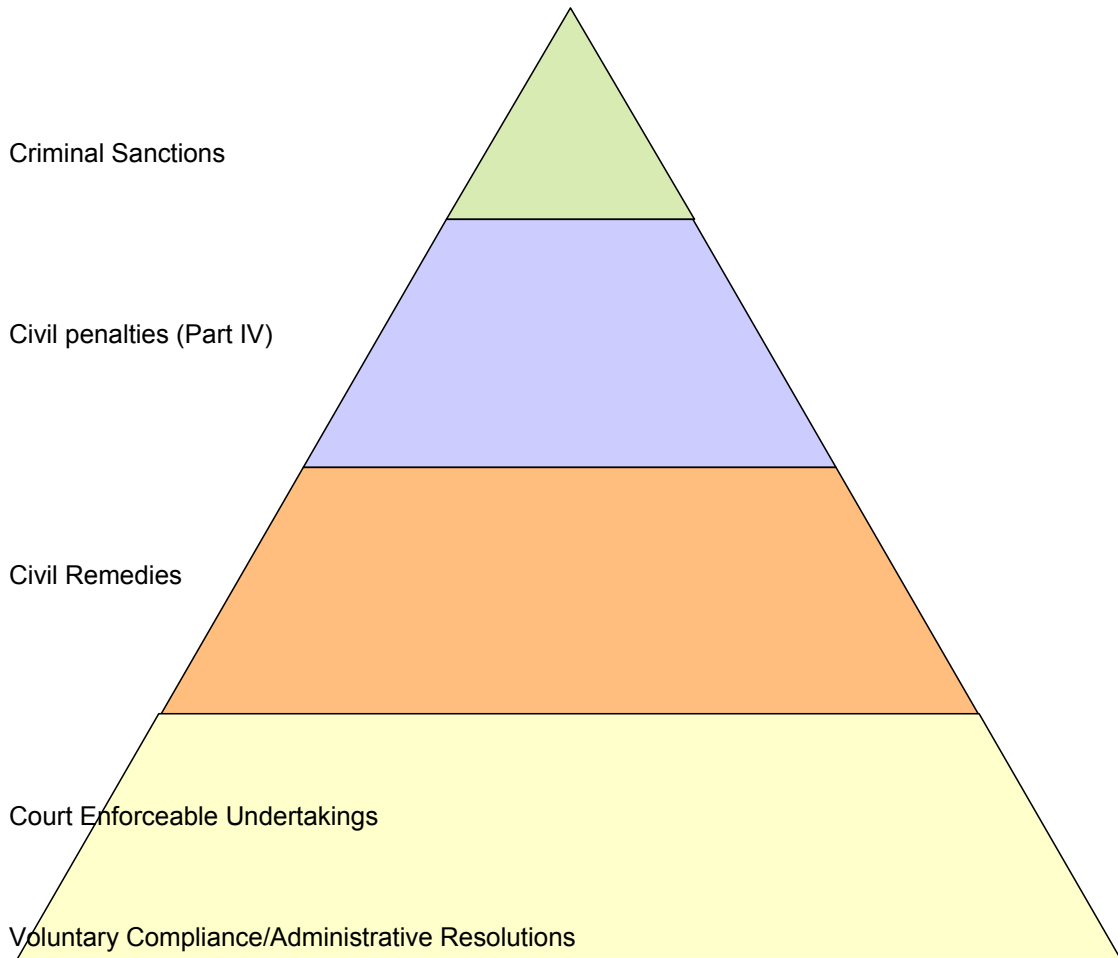
1. Jurisdictions which extensively monitor and then rely on criminal sanctions;
2. Jurisdictions which monitor but then rely on proceedings within the civil courts;
3. Jurisdictions which monitor, with the regulator then having the capacity to impose administrative penalties;
4. Those jurisdictions which rely on an official such as an Ombudsman; and

5. Jurisdictions with little monitoring and reliance is imposed on individual consumers and consumer advocates.

Model/ Country	Australia	Belgium	Canada	Germany	Denmark	UK	Hungary	Japan	NZ	Sweden	USA
1.						✓		✓			
2.	✓		✓			✓					✓
3.		✓					✓	✓	✓	✓	✓
4.					✓					✓	
5.				✓							

Table 1: Comparison of enforcement regimes in a number of jurisdictions

[14]. The Australian approach is represented by the following pyramid.³⁸



[15]. In terms of remedial flexibility and regulatory input, Australia is represented well. However, consideration could be given to the imposition of administrative fines (subject to administrative review), the imposition of civil penalties for consumer offences,³⁹ as well as the generic option of suspending relevant business licences (such as can presently occur in some professions, e.g. medical/legal/real estate). These could only serve to increase the remedial smorgasboard, and given the confidence and integrity within the Australian judicial system, additional options available to the decision makers arguably serve no harm.

Access to Justice

[16]. There is no doubt that access to justice remains a pivotal factor and policy concern of consumer protection. Given the small size of many transactions, the consumer, unless provided with a relatively cheap and easy means to resolve the dispute will simply wear the loss. Many measures have been taken to address this, most notably small claims courts, tribunals, industry ombudsman and less formal dispute resolution mechanisms. One particular option should be canvassed, and which would provide a cost-effective way to redress consumer concerns is to allow private agencies the capacity to bring representative consumer complaints (e.g. with unfair terms in contracts). For example in Australia, this could work with an organisation such as Choice, subject to the approval of the ACCC, being given the right to institute proceedings on behalf of a class of consumers.

Conclusion

[17]. Consumer policy is a much more complex beast than it was 20 years ago. The virtual marketplace is rapidly replacing the physical, with economic growth tied inexorably to the consumer, rather than the producer. For this reason, it is imperative the consumer policy meet the needs of flexible, mobilised non-site specific community. This requires that the time for intervention must be clear – there must be a signal that an issue is pending or occurring. From this point, and then through the application of a generic model, consumer problems can be identified and then resolved to the betterment of the economy. It is also suggested that pending this development that a number of specific matters can be addressed - first, the establishment of a national body to activate consumer policy and through this, harmonisation of consumer policy; the modification of the monopoly created by the standard form contract; the enhancement of remedial flexibility, and improving access to justice. By these measures, consumer policy can meet the challenges of this century and not merely respond to the last.

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¹ As evidenced by Sales of Goods legislation: see *Goods Act 1958 (Vic)*; *Sale of Goods Act 1923 (NSW)*; *Sale of Goods Act 1896 (Qld)*; *Sale of Goods Act 1895 (SA)*; *Sale of Goods Act 1895 (WA)*; *Sale of Goods Act 1896 (Tas)*; *Sale of Goods Act 1954 (ACT)*; *Sale of Goods Act 1972 (NT)*.

² Section 4B *Trade Practices Act 1974*: "a person shall be taken to have acquired particular goods as a consumer if, and only if:

- i) the price of the goods did not exceed the prescribed amount (\$40,000); or
- ii) where that price exceeded the prescribed amount – the goods were of a kind ordinarily acquired for personal, domestic, or household use or consumption or the goods consisted of a commercial road vehicle;

and the person did not acquire the goods...for the purpose of resupply...or [for] transforming them..."

- ³ *Vadasz v Pioneer Concrete (SA) Pty Ltd* (1995) 184 CLR 102; [1995] HCA 14.
- ⁴ *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40
- ⁵ *Johnson v Buttress* (1936) 56 CLR 113; [1936] HCA 41.
- ⁶ *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447; [1983] HCA 14.
- ⁷ *Fair Trading Act 1987* (NSW); *Fair Trading Act 1999* (Vic); *Fair Trading Act 1989* (Qld); *Fair Trading Act 1987* (SA); *Fair Trading Act 1987* (WA); *Fair Trading Act 1990* (Tas); *Fair Trading Act 1992* (ACT); *Consumer Affairs and Fair Trading Act 1990* (NT).
- ⁸ Section 52 *Trade Practices Act 1974*.
- ⁹ Sections 51AA-51AC *Trade Practices Act 1974*.
- ¹⁰ See ss53-65 *Trade Practices Act 1974*.
- ¹¹ Parts V, Division 2 and 2A *Trade Practices Act 1974*.
- ¹² Part VA *Trade Practices Act 1974*.
- ¹³ See Part VI *Trade Practices Act 1974*.
- ¹⁴ See generally, M. Trebilcock, 'Rethinking Consumer Protection Policy', in *International Perspectives on Consumers Access to Justice*, (C Rickett & T. Telfer eds), Cambridge University Press, 2003, 68
- ¹⁵ This was of course the seminal argument of A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Printed for W Strahan and T Cadell, 1776.
- ¹⁶ For a broad discussion of this matter, see KJ Cseres, *Competition Law and Consumer Protection*, Kluwer Law International, The Hague, The Netherlands, 2005.
- ¹⁷ JS Johnston, "The Return of Bargain: An economic theory of how Standard-Form Contracts enable cooperative negotiation between businesses and consumers", (2006) 104 *Michigan Law Review* 857.
- ¹⁸ See J Vickers, 'Economics for Consumer Policy', British Academy Keynes Lecture, 29 October 2003 at 8.
- ¹⁹ This leading to substantially different consumer law paradigms: see AB Overby, 'An Institutional Analysis of Consumer Law', (2001) *Vanderbilt Journal of Transnational Law* 1219 at 1224.
- ²⁰ European Commission, Health and Consumer Protection Directorate-General, *Consumer Protection in the European Union: Ten Basic Principles*, September 1, 2005 (copy held with author).
- ²¹ Office of Fair Trading United Kingdom, *Empirical Indicators for market investigations*, September 2004.
- ²² But note the cautionary note by D. Tennant, 'Australia's desperate need for a National Consumer Council', *mimeo*, 1-9 at 6: "Because of the roles [consumer advocacy and service agencies] they play and the consumer contacts they have these services are a rich source of information, providing a window on current and emerging market failures or sharp practices. Valiant efforts are made at connecting this information across jurisdictional and regional boundaries, but the services are neither structured nor resourced for undertakings of that type. Where there used to be peak bodies like the Consumers' Federation of Australia funded to coordinate the interchange of consumer information and the preparation of policy and law reform comment, they are now well meaning, overworked volunteers who struggle to keep the organisations afloat."
- ²³ OECD, Directorate for Science, Technology and Industry – Committee for Consumer Policy, "Roundtable on Demand-Side Economics for Consumer Policy: Summary Report", DSTI?CP(2006)3/Final, available at www.oecd.org (page 19 of printed version).
- ²⁴ The model draws from the work of GK Hadfield, R Howse and MJ Trebilcock. See those authors "Information-Based Principles for Rethinking Consumer Protection Policy", (1998) 21 *Journal of Consumer Policy* 131; MJ Trebilcock, "Rethinking consumer protection policy", above n 14
- ²⁵ L. Sylvan, 'Activating Competition: the consumer-competition interface', (2004) 12 *CCLJ* 191.
- ²⁶ See generally OECD, Directorate for Science, Technology and Industry – Committee for Consumer Policy, 'Roundtable on Demand Side Economics or Consumer Policy: Summary Report', (available at www.oecd.org).
- ²⁷ R. Korobkin, 'Bounded Rationality – Standard Form Contracts and Unconscionability', (2003) 70 *University of Chicago Law Review* 1203.
- ²⁸ For evidence of when consumers were still confused despite extensive disclosure, see J. Malbon, 'Shopping for Credit: An Empirical Study of Consumer Decision-making', (2001) 29 *ABLR* 44; P. O'Shea & C. Finn, 'Consumer Credit Code Disclosure: Does it Work' (2005) 16 *JBFLP* 5.
- ²⁹ See AJ Duggan, 'Some Reflections on the Consumer Protection and Law Reform Process', (1991) 17 *Monash Uni LR* 252.
- ³⁰ The importance of institutions recognised by AB Overby, 'An Institutional Analysis of Consumer Law', (2001) *Vanderbilt Journal of Transnational Law* 1219.

³¹ See K. Viscusi, WA Magat and J. Huber, 'Informational Regulation of Consumer Health Risks: an Empirical Evaluation of Hazard Warnings', (1986) 17 *Rand Journal of Economics* 351, noted in Trebilcock, above n 14 at 75-76.

³² See generally D. Tennant, 'Australia's desperate need for a National Consumer Council', *mimeo* (copy held with author).

³³ Sylvan, above n 25. An excellent start point is J. Vickers, 'Economics for Consumer Policy', British Academy Keynes Lecture, 29 October 2003.

³⁴ For example a number of jurisdictions (Tas, ACT, Qld, SA, Vic, WA) have no equivalent to Part V, Division 2A). There does not appear to be any logical reason why people in different States have different rights.

³⁵ New South Wales Standing Committee on Law and Justice, *Unfair terms in consumer contracts*, Report No 32, 2006.

³⁶ OECD, Directorate for Science, Technology and Industry, Committee on Consumer Policy, *Best Practices for Consumer Policy: Report on the Effectiveness of Enforcement Regimes*, December 20, 2006 (available at www.oecd.gov.au).

³⁷ For the full table, see OECD, above n 36 at [52].

³⁸ OECD, above n 36 at [82]. See also the Braithwaite Enforcement Pyramid, cited in Productivity Commission Research Report, *Review of Australian Consumer Product Safety System*, 16 January 2006 at 47.

³⁹ This has been under active consideration. Ministerial Council of Consumer Affairs, *Civil Penalties for Australia's consumer protection provisions*, Discussion Paper, September 2005.