

**COMMONWEALTH CONSUMER AFFAIRS ADVISORY  
COUNCIL (CCAAC)**

**SUBMISSION TO**

**THE PRODUCTIVITY COMMISSION INQUIRY INTO  
AUSTRALIA'S CONSUMER POLICY FRAMEWORK**

**11 MAY 2007**

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## **1. EXECUTIVE SUMMARY**

The Commonwealth Consumer Affairs Advisory Council (CCAAC) is pleased to tender its submission to the Productivity Commission inquiry into Australia's consumer policy framework.

In preparing its submission to the inquiry CCAAC has been particularly guided by the notion of enhancing the wellbeing of Australian consumers. CCAAC considers that any improvements to structural arrangements, policy settings, or regulatory tools must ultimately result in demonstrable benefits for consumers.

Specifically, CCAAC has considered four broad areas of Australia's consumer policy framework — regulation; dispute resolution and complaint mechanisms; advocacy and research; and financial services. CCAAC's key conclusions from each of these areas are outlined below.

### **Consumer regulation**

- It is vital that the arrangements for policy and regulatory agencies ensure sound performance and accountability. However, the current multiplicity of agencies with a consumer policy function, and lack of coordination and accountability, does not facilitate a strong and focused approach to consumer policy development. CCAAC therefore suggests that agencies with a consumer policy/enforcement function have in place clear requirements to report on their consumer policy performance and that further development of the Australian Treasury central policy role be promoted.
- Both industry-specific consumer regulation and general consumer regulation play important complementary roles in consumer protection. In the experience of CCAAC members, there are many examples of industry-specific regulation (or co-regulation or self-regulation) which provide benefits to consumers and the relevant industry participants that are not provided by general consumer regulation alone. CCAAC urges the Commission to be careful not to assume that broad standards in general consumer regulation are a practical and effective substitute for all or most targeted industry-specific regulation.
- Unfair contract legislation should be implemented on a national basis as it can deal with systemic unfairness in consumer contracts without reducing consumer choice or creating additional complexity. It is potentially an effective alternative to excessive disclosure requirements, and can promote consumer confidence in the contractual relationships they enter — ultimately facilitating greater consumer interaction with the market.
- State and Territory legislative provisions for the protection of consumers with respect to the purchase of motor vehicles and houses at retail and auction level are relatively similar; however there are substantial differences in the enforcement of that legislation.

## **Dispute resolution and redress**

- Consumers should have access to dispute resolution mechanisms which are readily accessible, relatively inexpensive, independent of the service provider and publicly accountable. Courts and other tribunals provide one form of redress, however are often unable to satisfy the tests of accessibility and cost. CCAAC therefore recommends the development of dispute resolution mechanisms that are free to consumers, funded by industry sectors and universally available across a range of products. CCAAC also suggests that consideration be given to the gaps in the current dispute resolution landscape.
- Some members of the community can be excluded from dispute resolution mechanisms. For example, Indigenous consumers may be disadvantaged by their inability to comprehend the process, lack of skills/mechanisms to articulate their complaint, and cultural practice to defer to individuals of higher authority. Additionally, consumers in remote settings may not engage in complaint behaviour for fear of possible exclusion from the limited services available in the region.

## **Consumer advocacy and research**

- A long-term, independent, national consumer research body should be established in order to facilitate the design and delivery of effective consumer policy, inform policy debates, and assemble and disseminate the experiences of casework and direct service agencies. CCAAC suggests that this organisation be funded on an ongoing basis by the Australian Government, with the option of additional funding from other parties for specific research projects.
- An appropriately funded Consumers' Federation of Australia (CFA) submission to the inquiry would allow the CFA to co-ordinate input from its broad membership base. This would ultimately provide a unique and invaluable 'grassroots' contribution to the inquiry.

## **Financial services**

- Much of the innovation in financial markets, especially investment markets, is driven by supply-side imperatives, with less emphasis on genuinely consumer-focused products. This presents a key challenge for policymakers — to facilitate legitimate demand-driven innovation while discouraging products that are primarily designed to extract greater fees and/or inappropriately shift risks onto consumers. CCAAC considers Australia's consumer policy framework does not currently deliver this balance.
- The provision of information about financial products and services in the online setting is fundamental to consumer decision making. However, it is questionable whether the current financial product disclosure regime serves consumers' information needs, particularly in the online environment. CCAAC considers that further development of the product disclosure regime must be underpinned by a better understanding of consumer information needs, research into the true consumer costs and benefits, and genuine consideration of alternative approaches.

- The financial services sector operates under a highly prescriptive, input-focused set of regulations that ultimately increase business costs while delivering only limited tangible consumer benefits. CCAAC considers that output-focused information requirements would allow consumers to better assess both products and providers, facilitate greater corporate transparency and accountability, and drive improvements in business performance.
- Young people are particularly vulnerable to over-commitment in credit and subsequent problems with long term debt. This is driven by their general attitudes towards financial products and services, cultural pressure to purchase expensive consumer goods, ease of credit and heavy media consumption. CCAAC recognises that this is a complex problem and therefore recommends that further research be undertaken into effective ways to educate and empower youth concerning credit and debt.

## **2. BACKGROUND**

CCAAC is a non-statutory advisory body formed at the discretion of the Minister with responsibility for consumer affairs, currently the Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP. Its primary role is to provide the Minister with independent 'grassroots' advice on consumer affairs matters.

CCAAC consists of thirteen members (see Appendix A) from a range of industries and backgrounds, including both an Indigenous and a youth representative.

Further information regarding CCAAC is available upon request.

### **3. CONSUMER REGULATION**

#### **3.1 REGULATORY AND POLICYMAKING CULTURE**

As well as considering appropriate *structural* arrangements for Australia's consumer policy framework, it is vital that the arrangements for policy and regulatory agencies ensure sound *performance and accountability*.

At a general level, CCAAC notes that there have been more than 35 Ministers for Consumer Affairs at the state and federal levels since 2000. This does not facilitate a strong and focused approach to consumer policy development.

At an agency level, there is a good case for structural reforms to move greater responsibility to the Commonwealth. However, even if this was to occur, the reality is that there would still be multiple agencies that have consumer policy and/or administrative responsibilities. The goal then should be to ensure that there is consistently sound performance by agencies in this area and better coordination in the approach to consumer issues.

For example, at the federal level, Treasury is the central department with primary responsibility for consumer policy, but there are many other government agencies that have a significant consumer policy or consumer protection function. This includes both policy departments and regulatory agencies. A small sample includes:

- Departments such as Health and Ageing, and Communications, Information Technology and the Arts;
- ACCC;
- ASIC;
- Food Standards Authority of Australia and New Zealand;
- Therapeutic Goods Administration;
- Australia Communications and Media Authority; and
- Reserve Bank of Australia (e.g. payments system responsibilities).

These agencies have different statutory underpinnings and different policy or regulatory cultures. This picture is complicated further if state agencies are included.

These underpinnings and cultures impact upon each Commonwealth agencies' approach to consumer and industry consultation, their relationship with state agencies, their consumer education work, the effectiveness with which they deal with issues such as disclosure requirements, and their self-regulatory initiatives. The different performance of agencies in the area of consumer protection enforcement is particularly critical. In other words, the performance of these agencies differs widely in developing appropriate policy settings for consumer markets and regulating these markets. Those agencies which have developed a more consumer focused culture

over the last few decades, such as ACCC, have clearly contributed to improvements in competition and consumer outcomes in Australian markets.

CCAAC recommends that the following suggestions are taken into consideration by the Commission:

- That the Commission undertake a brief stock-take of agencies with a consumer policy and/or consumer protection role.
- That these agencies be required to produce an annual report that provides clear and consistent information about how they have addressed key elements of their consumer policy/protection function such as consumer consultation, consumer research, interaction with industry self-regulatory schemes. Clear information about consumer protection enforcement outcomes for those agencies with responsibilities of this sort is particularly important, as consistent information is very difficult to obtain at present.
- That Treasury, as the major central federal agency with consumer protection responsibility, monitor federal agencies with consumer policy responsibilities and ensure that they have common practices/standards in place which will facilitate good performance. For example, clear goals for their consumer policy activities, appropriate consumer consultation arrangements, and clear information provision on their consumer activities.

### **3.2 INDUSTRY SPECIFIC REGULATION**

The Commission has been asked to report on the scope for avoiding regulatory duplication and inconsistency through reducing reliance on industry-specific consumer regulation and making greater use of general consumer regulation.

CCAAC considers that both general consumer regulation (such as the prohibitions on misleading and deceptive conduct, unconscionable conduct and manufacturer's liability for defects in the *Trade Practices Act 1974*, TPA) and appropriate industry-specific regulation, as well as co-regulation and self-regulation, are important for an effective consumer protection framework.

In the experience of CCAAC members, there are many examples of industry-specific regulation (or co-regulation or self-regulation) which provide benefits to consumers and the relevant industry participants that are not provided by general consumer regulation alone.

Good industry-specific regulation can have several advantages over general consumer regulation:

- *It can be more targeted at particular issues and practices in the industry, and provide for more effective specific and detailed solutions than general consumer regulation.*



For example, the Code of Banking Practice now explicitly obliges banks to accept and promptly process a customer's cancellation of a direct debit authority in favour of a retailer. This provision was introduced to solve the problem where customers were confused as to their rights to cancel direct debits, as both banks and retailers often suggested the responsibility of cancellation lay with the other.

Another example is the Victorian Essential Services Commission's *Energy Retail Code* and *Electricity Customer Transfer Code* that deal with particular practices concerning bill content and disclosures, regularity of meter reading, effective customer transfer provisions, and cooling off periods to stop inefficient customer churning that was driven by aggressive telephone sales competition between retailers. None of those specific solutions to specific problems is likely to have been arrived at by seeking to enforce a general regulation such as the prohibition on misleading and deceptive conduct.<sup>1</sup>

- *Industry-specific regulation is more likely to be targeted and set clear specific behaviour requirements compared with the broad standards of general consumer regulation.*

As a result, it can be easier for industry and consumers to understand, apply, and use benchmarking compared with broad standards like unconscionable conduct.

Also as a result, the transaction costs of compliance are reduced by limiting the need to take legal advice and legal action to determine whether conduct is (or is not) consistent with the specific and targeted standards. With the broad standards of general consumer regulation there is more likely to be room for different interpretations as to the compliance of particular conduct, and therefore more incentive to hold out for and run test cases to obtain judicial or quasi-judicial guidance on the application of the broad standard to the particular case.

Legislated broad prohibitions on unconscionable conduct or misleading conduct can look attractive on the statute books. However, until they are interpreted and applied through expensive legal process (which the size and nature of consumer claims may not justify bringing) they may have only a diffuse deterrent effect.

- *Industry-specific regulation is more likely to involve consultation with the industry in finding solutions to problem. As such, outcomes are more likely to be accepted by industry and adopted through industry-owned behavioural change as much as by the threat of enforcement. Of its nature general consumer regulation is unlikely to have widespread industry buy-in at the level of specific behavioural change.*

CCAAC understands that industry specific regulation can be an opportunity for anti-competitive arrangements within an industry club. However, CCAAC sees the answer to this risk as having an independent authority (such as ASIC, a State or Territory Office of Fair Trading, or industry regulators like ACMA or an energy

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<sup>1</sup> For further examples see *Consumer Protection in the National Energy Market - the Need for Comprehensive Energy-Specific Consumer Protections*, Consumer Action Law Centre, November 2006.

authority) superintend the formulation of industry-specific regulation: ensuring that the process is public, transparent, and involves consumers as much as industry.

## **Conclusions**

CCAAC is not suggesting that all current industry-specific regulation is worthwhile. Nor is CCAAC suggesting that industry-specific regulation should replace general consumer regulation. In our view the two go together and, in many cases, good industry-specific regulation can be seen as a detailed, specific and applied (and sometimes improved) manifestation of the principles underlying the general regulation.

CCAAC recommends that the Commission consider carefully the advantages of industry-specific regulatory rules as outlined above. CCAAC urges the Commission to be careful not to assume that more targeted industry-specific regulation is redundant or duplicative simply because there is a broad standard in general consumer regulation which might one day, with sufficient litigation funding, be interpreted in the right case and in the right court to reach the same outcome as the industry-specific regulatory rule.

### **3.3 UNFAIR CONTRACT TERMS**

The introduction of prohibitions against unfair contract terms in Victoria is a reform that should be implemented nationally. This is a necessary part of the expansion in the toolkit for consumer policy that is urgently required to address contemporary market problems. CCAAC notes that this legislation has been successfully introduced in the UK. The most straightforward way of implementing such a reform in Australia would be to introduce amendments to the TPA.

Unfair Contract legislation is a flexible regulatory tool that allows regulatory agencies to achieve market-wide reforms. Unlike the “unconscionable conduct” provisions in the TPA, unfair contract legislation can be used to deal with *systemic* unfairness in consumer contracts, as it does not rely on the particular vulnerabilities of individual consumers that must be established in every case under consideration. It also focuses on *substantively* unfair provisions in consumer contracts, rather than the *process* for selling a product or service, which is the focus of unconscionable conduct law. In this way, unfair contracts legislation *complements* unconscionable conduct legislation.

Unfair contracts legislation is a cost-effective regulatory device. It does not reduce consumer choice as, typically, the impact of this regulation is to set a “minimum standard” for fair contracts in relatively complex markets, rather than imposing a “one size fits all” model. That is, unfair contracts legislation does not require identical contracts or identical offerings from suppliers: it simply requires that certain egregious elements be removed from such contracts.

There has been substantial research already undertaken on unfair contracts legislation, so CCAAC will simply make two additional points:

- Unfair contracts legislation is potentially an effective part of the solution to excessive disclosure requirements in many markets. If clearly unfair practices can be ruled out, then this ought to facilitate reductions in the amount of disclosure required. This link is deserving of further consideration by the Commission.
- Related to the above point, unfair contracts legislation will help to facilitate an increase in e-commerce and m-commerce. It is simply unrealistic, as well as inefficient, to expect consumers to read, understand and potentially seek to alter long contractual documents in the e-commerce environment. Unfair contracts legislation can help improve consumer confidence that contractual relationships are less likely to contain unfair terms, hidden costs, and penalty provisions, without having to download and digest every contract. This would facilitate greater commerce in these new environments.

### **3.4 JURISDICTIONAL SURVEY**

At the CCAAC meeting of 16 March 2007 Mr Robert Fitzgerald indicated that the Commission, in this inquiry, will examine issues of uniformity of legislation and enforcement across jurisdictions.

He was interested to know that CCAAC has carried out a cross-jurisdictional survey concerning the sale of motor cars and houses at retail and auction levels, and the degrees of protection accorded to consumers with respect to such transactions.

That survey also gathered information concerning the Parliamentary representation of consumers, the associated bureaucracy, and whether or not the Minister or Department publishes a report covering consumer matters.

The survey reveals that, in the two fields examined, that are similarities in the legislation as originally passed into law, but extraordinary differences have developed in the methods and degrees of enforcement.

At Mr Fitzgerald's request, the report of the survey is attached for the consideration of the Commission (see **Appendix B**).

## **4. DISPUTE RESOLUTION AND REDRESS**

### **4.1 DISPUTE RESOLUTION AND CONSUMER RIGHTS**

CCAAC believes that the consumers of products and services in Australia should have access to dispute resolution mechanisms which are readily accessible, relatively inexpensive, independent of the service provider and publicly accountable.

Those mechanisms should not be closely associated with the business in question or any industry association of which the business is a member. Furthermore, businesses should be required to disclose the existence of the independent dispute resolution mechanism when the business, in the first instance, does not resolve the dispute to the consumers' satisfaction.

The form which the dispute resolution mechanism takes can, of course, be a Court, government tribunal, or an industry-specific organisation providing dispute resolution services.

The issue for many dispute resolution mechanisms is satisfying the dual tests of accessibility and relative low cost. It has been, for many years now, the view of those representing the broad consumer interest that courts and other tribunals are often unable to satisfy the accessibility and cost tests. CCAAC is therefore of the opinion that consideration should be given to promoting the idea that dispute resolution mechanisms should be free to consumers, funded by industry sectors, and universally available across the range of goods and services available to the community.

There are 'gaps' in coverage for dispute resolution mechanisms, even where extensive coverage is available. For example, there are a range of mechanisms available in the financial services sector. These include seven ASIC approved dispute resolution schemes; a range of tribunals in existence in most States and Territories; Commonwealth Government tribunals; and jurisdiction in the State and Commonwealth Court systems to handle disputes about the provision of financial services.

Yet the accessibility to dispute resolution in relation to small credit advances to the most vulnerable (and thus the least sophisticated) members of the community is an area which requires further development, particularly as there is no readily recognisable dispute resolution mechanism in this industry. Similarly, in relation to complex disputes which can, from time to time, arise (for example, in the context of car rentals); consumers do not have any access to free services for dispute resolution.

It is therefore CCAAC's view that consideration should be given to, at the least, examining the existence of dispute resolution mechanisms and the extent to which the 'field' for dispute resolution is covered, in order to expose the gaps in coverage and make suggestions as to how those gaps might be filled. CCAAC itself is engaged in a study on this subject and will take the opportunity, as that study continues, to draw matters to the attention of the Commission which, in the view of CCAAC, should be dealt with in the context of this inquiry.

## **4.2 EXCLUSION FROM COMPLAINT MECHANISMS**

When considering the complaints process on the basis of equality and equity, the Commission should consider the following attributes that act to exclude individuals from making a complaint.

### **Indigenous community members**

Indigenous community members can be excluded from the complaints process based simply on their ability to comprehend the process and lack of skills or mechanisms to articulate their complaint. Indigenous community members have traditionally low levels of literacy and numeracy and, as such, will not (or can not) participate in any process that requires them to lodge a written complaint. This is further exacerbated for individuals for whom English is a second language.

The telephone complaints process does not fully address this issue as many individuals and families do not have access to a telephone. Where they can gain access, a drawn out, complex set of selections and connections (or being put on a long queue) will often result in the call being terminated.

Indigenous community members are similarly disadvantaged by their own cultural practices that will see individuals defer to someone of higher authority. In the cases of dealing with those in a position of authority or management, the individual will often simply accept a decision even though they may feel that they have a cause for grievance.

### **Lack of choice, particularly in regional settings**

Consumer choice is not as readily available in rural sectors as they are in metropolitan areas. In some instances choice is restricted to one provider or, in the case of larger corporations, to the network of businesses and companies that fall under their umbrella (i.e. the Coles Group through Coles, Kmart, and Target etc could comprise 80% of the retail sector).

In small rural communities the perception of the complaints process is that there is the strong likelihood of an adverse reaction. They, as an individual, could be excluded from access to services or, in the case where there is only one service (i.e. bank), the service could be withdrawn from the community as a whole.

The choice therefore is not to lodge a complaint.

## **5. CONSUMER ADVOCACY AND RESEARCH**

### **5.1 LONG-TERM, INDEPENDENT, NATIONAL CONSUMER RESEARCH BODY**

CCAAC proposes that a long-term, independent, national consumer research body be established. Consumer confidence is at the heart of an effective marketplace and such a body contribute significantly to that end.

It is recommended that the organisation have the following functions, funding and governance arrangements.

#### **Functions**

- The organisation should be a national centre of excellence for independent consumer research and analysis.
- It should undertake serious long-term consumer research in a way that builds community knowledge and information stores, as well as capacity for informed community debate on consumer issues. As well as undertaking research itself, it should be able to fund research projects proposed by stakeholders.
- It should complement the work of other bodies — not duplicate, replace or undermine that work.
- It should release and discuss its independent research and analysis publicly.
- It should strategically interface with other organisations, in particular community groups and consumer advocates.
- It should facilitate the drawing together of the experiences of casework agencies and direct service agencies, to inform policy debates and assist in the design of effective consumer protection frameworks.
- It should hold an annual forum for key stakeholders to identify and discuss ongoing and emerging consumer issues, and present information on research and policy projects.
- It should meet with the Standing Committee of Officials of Consumer Affairs (SCOCA) at least once a year to discuss SCOCA's priorities, proposed and current research, and emerging issues.
- It should also meet with CCAAC at least once a year for the same purpose.

#### **Funding**

- Core, ongoing funding for the organisation should be provided by the Commonwealth Government, with a commitment for at least five years in the first instance.
- It should also be able to seek funding from industry, ministerial councils, departments, regulators and agencies to undertake research on consumer issues

relating to specific industry sectors — particularly where major national industry restructuring is occurring.

## **Governance**

- The organisation must be independent — establishment on the basis of a company limited by guarantee (in the same fashion as many industry-based ombudsman schemes) would achieve this.
- It should have a Board (of between six and eight persons) and an independent Chair.
- The members of the Board should be remunerated (as is the case with industry-based Ombudsman schemes).
- The independent Chair could be appointed by the Minister for Consumer Affairs, after consultation with CCAAC members in particular.
- The Directors should be Board-appointed in accordance with CCAAC's *Principles for the Appointment of Consumer Representatives: A process for Governments and Industry*<sup>2</sup>.
- The Board should be supported by an advisory committee made up of consumer and community stakeholders.
- The advisory committee (with the approval of the Board) should have the power to:
  - set up specific project and/or industry sub-committees on an as-needs basis for limited periods;
  - co-opt members where appropriate; and
  - do other such things as necessary to achieve its agreed objectives.

## **5.2 FUNDING TO ASSIST THE CONSUMERS' FEDERATION OF AUSTRALIA (CFA) MAKE A SUBMISSION TO THE INQUIRY**

CCAAC is aware that the Commission has been meeting with some consumer organisations, including the Executive of the CFA.

While these meetings will be enormously useful to the Commission, they do not facilitate input into the inquiry from the more than 100 members of the CFA.

The CFA's network is unusually broad and diverse — its membership of over 100 organisations is drawn from all sections of the Australian community, including:

- financial counselling organisations;

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<sup>2</sup> Available at: <http://www.treasury.gov.au/contentitem.asp?NavId=014&ContentID=994>

- indigenous groups;
- country women's associations;
- multicultural services;
- seniors and pensioners;
- disability groups;
- church-based community services;
- community-based services in housing, health and education;
- community legal centres; and
- community information services.

All of these organisations work independently. Their day-to-day activities are funded in a variety of ways, but funding is usually limited and invariably closely tied to local issues. They keep in touch via the CFA network, on a basis which is essentially voluntary.

The CFA is a rare network, with a recognised capacity to present well-reasoned, well-researched and timely 'grassroots' perspectives. No other national consumer network offers the same diversity or capacity for 'grassroots' contribution.

CCAAC believes that an appropriately funded CFA submission to the inquiry, co-ordinating input from CFA's broad membership base on key issues, would provide a unique and invaluable 'grassroots' contribution to the inquiry.



## **6. FINANCIAL SERVICES**

### **6.1 INNOVATIVE FINANCIAL PRODUCTS**

The financial services industry illustrates both the benefits and problems of the current consumer policy framework. The expansion of competition in this industry has opened up access by retail consumers to financial services, on both the investment and credit sides, that were unimaginable at the time of financial deregulation. For example, consumers have much greater access to market-linked investment products than ever before, and many have been substantial beneficiaries of this access during a period of sustained growth in equity markets. Consumers have also had much greater access to home loan products with a much wider variety of features.

However, this development has also raised risks for consumers. Indeed the International Monetary Fund recently described households as the “shock absorbers of last resort” in the financial system. Innovation in financial markets has exposed consumers to greater levels of financial risk than ever before. For example, consumers increasingly bear the market and longevity risks in (compulsory) superannuation funds in ways that were not envisaged when the consumer policy framework was set in place.

In this environment, the challenge for consumer policymakers is to:

- facilitate the development of genuinely consumer focused financial products through appropriate regulatory settings; and
- discourage, where possible, the development of “innovative” retail financial products that seem to be primarily designed to extract greater fees and/or inappropriately shift risks onto consumers.

Unfortunately, too much innovation in financial services is driven by supply-side imperatives, with little concern for the ultimate consumer benefit. This is typical of a market characterized by complex products where consumers lack understanding and exhibit behavioural biases.

Thus, in the financial planning industry we see ceaseless innovation in the remuneration structures for investment products and associated financial advice in ways that benefit one or other of the key industry players (e.g. buyer of last resort arrangements, shelf fees, dealer “rebates” etc). But there is very little change in the fundamental conflicts of interest that underpin remuneration in this industry in ways that would benefit consumers.

Another example is the overabundance of investment options in most investment products – far more than would be warranted if consumers invested rationally and in a manner consistent with efficient markets. This overabundance of investment options is then used to justify a higher fee structure and gives advisers the ability to emphasise short term past performance in the sale of products (as usually one option will have performed well), which is actually inimical to longer term consumer interests.

A policy framework that targets the problem of conflicts of interest with tools other than disclosure would assist to minimize this sort of supply focused innovation.

On the other hand, it is important that innovative financial products that meet a genuine consumer need can be introduced without excessive regulatory obstacles. Where possible, it would be preferable if the policy framework helps consumers clearly identify such products. Reverse mortgages are a product for which there is clearly a consumer need, as many people have significant equity tied up in their houses at retirement. It is therefore disappointing that advice on this product is already being driven by a commission-based sales approach. This will undermine the aim of having an innovative product genuinely aimed at consumers' interests. Policy agencies need to be alert to emerging market issues of this sort and prepared to step in and deal with key industry players to drive better outcomes, rather than let poor practices become entrenched. At present this is not happening in Australia.

## **6.2 ONLINE INFORMATION REQUIREMENTS**

A major trend in financial services has been the rapid growth in online banking and other online financial products and services. Despite their growing popularity and obvious consumer benefits, online financial services pose considerable challenges such as fraud, identity theft and privacy. A more fundamental requirement is also to ensure that consumers have the information available to make sensible and informed decisions on what financial products and services are right for them.

Regulatory authorities (the most important one being the Australian Securities and Investments Commission, ASIC) have increasingly demanded that financial services companies provide comprehensive consumer information, culminating in the requirement for a detailed product disclosure statement (PDS) for every financial product and service on the market. For example, a PDS for a typical managed investment or superannuation product is very likely to exceed 100 pages.

This reflects the response of financial services providers to the regulator's efforts to ensure that consumers have "complete disclosure", essentially as a way of mitigating the financial service provider's own risks. It also reflects the clear preference of key players in the financial services industry (notably in the investment and financial planning sectors) during the financial services reform process for disclosure to be used as the only tool to address the vast majority of product features, advisory activities and market problems. In other words, the very heavy emphasis on disclosure in the current regulatory regime was not the result of strong consumer preferences.

The current regulatory approach extends to online financial services, which must also include a PDS. However the length and complexity of most PDS's make them a daunting prospect for consumers to absorb via a computer screen, and many consumers probably just click on the "I Agree" button and get on with using the service.

Policy reviews of, and possible improvements to, the current PDS regime should be underpinned by hard research on how consumers actually use the PDS, and whether

the regime serves their information needs. There is also a need for better establishing its true costs and consumer benefits as a step towards a more rigorous cost-benefit analysis of alternative approaches. It may be the case that there are regulatory tools other than disclosure that can facilitate improved market outcomes in this environment.

## **6.3 OUTPUT INFORMATION AND REPORTING**

### **Current Situation – Inputs Focused**

The financial services sector has been operating for the past three years under prescriptive legislation in the form of now the *Corporations Act 2001* (the Act), originally the *Financial Services Reform Act*.

This Act has prescribed financial service providers inputs in terms of:

- disclosure;
- compliance and risk management processes;
- training and supervision;
- dispute resolution processes (both IDR and EDR);
- conflicts of interest management processes; and
- organisational competence requirements.

It then has an overarching principle that organisations must do all things necessary to ensure that the financial services covered by the licensee are provided efficiently, honestly and fairly.

The Act started life as a set of principles, designed to bring all the diverse financial services providers and products into a single, uniform regime for licensing, market conduct and disclosure. That was an ambitious goal given the diversity of the financial services industry and the products it offers, and it is not surprising that over time it has become more and more prescriptive to manage the myriad differences in the types of products and industries being regulated under the one roof. There are now literally thousands of pages of legislation and policy sitting behind it. This has been driven by three things.

Firstly, as the Act focuses on inputs for all financial services licensees (from general insurers with relatively simple products, to superannuation providers with complex investment and management structures) it has been expanded to cover all the different industry-particular requirements.

Secondly, industry has driven the need for clarification (the Act is inputs focused, with severe ramifications if a licensee is not meeting its requirements), which has led to the publication of guidance from ASIC, many lines of product/industry specific regulation, and numerous class orders issued by ASIC.

Thirdly, the rapidly increasing levels of complexity that are being built into financial products create more features, benefits, risks and information to be disclosed. For example, it is very unlikely that a short disclosure document could explain all the features, benefits and risks of a complex multi-fund wrap account that embeds a set of structural conflicts of interest and complex fee structures..

This has led to:

- Increased costs of doing business with no clear consumer benefit. Indeed, products and services have increased in cost to meet the regulatory expense, despite businesses trying to minimise their own cost bases through internal efficiencies. Government has recognised this issue and has started looking at ways of reducing the regulatory burden on businesses<sup>3</sup>.
- Reduced innovation — financial service providers are required to implement similar management systems, and disclose benefits and features in a similar way. This harmonisation is leading to commoditisation of financial products and services (paradoxically this may be helpful for achieving disclosure and enabling consumers to compare products correctly).
- Confusion regarding legislative requirements — it is becoming so complicated that scores of corporate lawyers are required for an organisation to understand its regulatory obligations.
- Due to the expense of the required management and disclosure systems, the Act and surrounding policy provides a barrier to entry for new entrants to the market.
- Limited consumer benefit from the disclosure regime. Regardless of disclosure regimes and mandatory internal management systems, corporate failures continue to occur (e.g. WestPoint and Fincorp). These appear to have been driven in part by lack of morality, in part by badly designed regulation that is not focused on real market risks or consumer needs but relies too heavily on the disclosure of complex information to relatively inexperienced investors.
- It has not solved fundamental issues regarding consumer financial literacy. Disclosure (even in its simplest form) will not solve this issue.

### **An Alternative Approach**

Today it is relatively easy for consumers to compare insurance policies, benefits and premiums (but this is not necessarily the case for other financial services such as some forms of credit and managed investments, including superannuation). The internet (which can essentially now perform the more traditional broker role) has led to an evolution on how consumers obtain quotes – due to its accessibility and ease of application. However for general insurers this is only a part of their role: their major service comes about when they accept and manage a claim made by the customer.

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<sup>3</sup> A Simpler Regulatory System (for Corporate and Financial Services Regulation): Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business

In the insurance industry, claims management has been revolutionised over the years. In 2006 the General Insurance Industry updated and republished its *General Insurance Code of Practice* (the Code). The Code now covers all aspects of a consumer's interaction with a general insurer, including claims management. Principles based standards have been put in place to ensure the consumer receives the type of service they are entitled to. Additionally, breaches of the Code are publicly reported, as well as the General Insurance Industry's IDR and Industry Statistics by the Insurance Ombudsman Service<sup>4</sup>. This gives the consumer a good idea of how general insurers are performing in terms of sales and claims management, whether at the front-end or the back-end of their business.

Therefore, general insurers are becoming more transparent and accountable about their own levels of customer service. This gives the greatest incentive possible for insurers that find themselves off the pace, to improve the way they look after their customers.

The transparency concept is being supported by the increased numbers of corporations who are using public reporting processes to inform the consumer/regulators/others about their performance in non-financial areas of their business. A recent example of this is the release of the *ANZ Corporate Responsibility Report – What's the Difference?*<sup>5</sup> that covers many facets of their business, including their customer's satisfaction, governance, CSR, employee engagement, and environmental performance.

However this type of reporting is mainly confined to large multinational corporations. It is sophisticated, and requires complex management processes to be introduced to monitor and measure different indices.

However, the government could introduce a mechanism whereby an independent organisation researches and maintains an annual customer service scorecard across many industries. This could be similar to that provided by JDPower, in the USA<sup>6</sup>. This organisation publishes many indices regarding customer service, for example in the home insurance area it publishes a simple score card that shows overall experience, policy offering, pricing and contacting the insurer. It covers multiple products including telecommunications, health care, electronics, boats, and automobiles.

Alternatively, one could use a net promoter score (as developed by Frederick Reichheld<sup>7</sup>). This is an overall indicator which uses three identified metrics as best being able to predict customer loyalty: overall satisfaction with the product/service/brand, intention to repurchase, and the propensity to recommend it. Of these three metrics, it has been found that a measure of a customer's willingness to recommend a product or service to someone else was the best predictor of actual behaviour and/or future business growth. Additionally, Reichheld observed that satisfaction measures lack a consistently demonstrable connection to predict actual consumer behaviour.

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<sup>4</sup> IOS Annual Review 2006

<sup>5</sup> [www.anz.com.au](http://www.anz.com.au)

<sup>6</sup> [www.jdpower.com](http://www.jdpower.com)

<sup>7</sup> The Harvard Business Review, 12/03, *The One Number You Need to Grow* – Frederick Reichheld

Essentially, Reichheld identified three loyalty segments using a 0-10 point scale. The segments identified are as follows:

- *Promoters*: customers who were highly likely to recommend a company (i.e. ratings of 9 or 10) and exhibit the highest rates of purchase and referral behaviour;
- *Passive*: customers who were somewhat likely to recommend a company (i.e. ratings of 7 to 8) and exhibit moderate rates of purchase and referral behaviours; and
- *Detractors*: customers who were less likely to recommend a company (i.e. ratings of 0 to 6) and exhibit the lowest rates of purchase and referral behaviours.

Using this information, Reichheld suggests creating a *Net Promoter Score* derived by subtracting the proportion of 'Detractors' from the proportion of 'Promoters'. The *Net Promoter Score* then forms the basis of a single metric that allows management to benchmark company performance: identifying higher and lower performing areas of operations or service relationships, and importantly pinpointing areas for making performance improvements.

## **Conclusion**

Input based legislation, regulation, and voluntary or mandatory industry codes of practice can be limited in their ability to deliver the cultural change necessary to deliver improved customer service. In some cases they do promote cultural change, but in others what results are compliance systems for the sake of compliance, with relatively few consumer benefits.

However, if the government were to require outputs to be published (for example customer service indices or net promoter scores, product safety indices or environmental management scores) consumers would be able to make a more informed choice regarding which product or service they should access and from whom. This would increase corporate transparency and accountability, and encourage providers to improve their own performances.

## **6.4 YOUTH AND CREDIT**

Another issue is the use of financial services by young people who, these days, are more consumer-driven than ever. As heavy consumers of television, concerned with appearances, very responsive to advertising, capable of a high degree of brand recognition and keen to be technologically-savvy, they are a perfect consumer audience but also particularly vulnerable to exploitation.

While there has always been peer pressure to conform to a norm, we are now seeing very expensive 'must have' lifestyle necessities which include having a mobile phone, car, paying for an education, the latest fashion, clubbing and travel, all of which can now be easily obtained through loans and credit.

Many young people already have mobile phone and credit card debts, and are over-committed: yet they are often offered mobile phone plan upgrades and extensions on their credit card limits, further increasing this debt. Those in the lower income and education brackets, and in regional areas, are more susceptible to incurring debt. However, even recent school graduates will pay more to go to university and hence will incur a greater debt than previous graduates.

Changing the attitudes of young people towards credit poses some challenges, especially as youth tend to have a prevalent credit mentality of 'buy now, pay later', which has formed both from watching their parents and peers. However, it would be wise to conduct further research into the most effective methods of reaching young consumers to further educate and protect them against over-commitment in credit and subsequent long-term debt.

## **APPENDIX A — CCAAC MEMBERSHIP**

The current membership of the Council is as follows:

**Colin Neave AM (Chair)** — Banking and Financial Services Ombudsman

**Gregory Bartels AM** — Retired (former Commissioner for Consumer Affairs, NSW)

**Michael Kay** — CEO, AAMI Ltd

**Adriana Taylor** — Vice- President, Country Women’s Association in Tasmania Inc

**Diana Harvey** — Proprietor, Chalk Hill Winery

**John Knowles** — CEO, The Centre for Cerebral Palsy

**Peter Kell** — CEO, Choice

**Daniel Maurice** — Business consultant (formerly with Cisco Systems)

**Mark Sneddon** — Partner – Electronic Commerce, Clayton Utz

**David Warner** — Business Advisor (formerly Chief Information Officer, Flight Centre)

**Katherine Wynn** — student, Monash University (Youth representative)

**Karen Chalmers-Scott** — Consultant, Scott Concepts

**Adrian Appo** — CEO, Gambina (Indigenous representative)



## APPENDIX B — CROSS JURISDICTIONAL SURVEY

**Question: Does consumer affairs have its own Portfolio Ministry?**

**Question: If yes, what is its name?**

**Question: If no, what Ministry covers consumer affairs?**

New South Wales	Yes.	Minister for Fair Trading.
Victoria	No	Department of Justice
Queensland	Yes.	Department of Tourism, Fair Trading and Wine Industry Development.
South Australia	Yes.	Consumer Affairs Portfolio (Minister for Consumer Affairs)
Western Australia	Yes	Consumer Protection. The Department of Consumer and Employment Protection with separate Ministers for Consumer Protection and Employment Protection.
Tasmania	No	Attorney General and Minister responsible for Consumer Affairs and Fair Trading
Northern Territory	No.	Department of Justice
Australian Capital Territory	No	Department of Justice and Community Safety

**MAJOR CONSUMER PURCHASES**

**Question: what cooling off period, if any, applies to the following purchases:**

<i>Jurisdiction</i>	<i>Home – not at auction</i>	<i>Home – at auction</i>	<i>Used cars – not at auction</i>	<i>Used cars – at auction</i>	<i>Comments</i>
New South Wales	5 business days	Nil	1	Nil.	<p>Home (not at auction) - There is a five business-day cooling-off period after exchange of contracts. During this period the buyer has the option to get out of the contract as long as they give written notice. The cooling-off period starts as soon as exchange occurs and ends at 5pm on the fifth business day. Can be waived by giving the seller a “66W certificate”. This is a certificate that complies with Section 66W of the <i>Conveyancing Act 1919</i>. The certificate needs to be signed by the buyer’s solicitor or conveyancer. The certificate needs to be signed by the buyer’s solicitor or conveyancer.</p> <p>Home (at auction) - A successful bidder must sign the sale contract and pay the deposit on the spot. This is usually 10% of the purchase price. There is no cooling-off period when buying at auction. If the property is passed in at auction but a buyer at the auction ends up exchanging contracts on that same day, the cooling-off period does not apply.</p>

					Used cars - A one day, waivable cooling off period applies to purchases of new and used cars where the purchase is financed by a linked credit arrangement. Linked credit is where finance for the purchase is provided by or facilitated by the motor dealer selling the vehicle. Does not apply to private sales.
Victoria	3 clear business days (as long as land is not > 20 hectares or industrial/commercial)	None	None	None	Homes – if bought within 3 business days of auction (either side) no cooling off period.
Queensland	5 days	Nil	1 day	Nil	N/A
South Australia	2 clear business days.	Nil.	Nil.	Nil.	N/A
Western Australia	N/A	N/A	N/A	N/A	Cooling off periods are being considered in relation to real estate and motor vehicle purchases as part of the Department's review of the WA <i>Consumer Affairs Act 1971</i> and <i>Fair Trading Act 1987</i> .
Tasmania	None	None	None	None	N/A
Northern Territory	4 days	0 days	0 days	0 days	N/A
Australian Capital Territory	5 working days	Nil	3 business days	Nil	

**Question: is there access to some kind of claim or compensation fund if a consumer loses money due to the actions of a real estate agent or motor dealer?**

**Question: is there a statutory warranty for consumers purchasing a used car?**

**Question: if yes, what are the conditions that apply? (Eg age of car, kilometres travelled)**

<i>Jurisdiction</i>	<i>Real estate</i>	<i>Motor dealer</i>	<i>Used car</i>	<i>Conditions</i>
New South Wales	Yes. Property Services Compensation Fund.	Yes. Motor Dealers Compensation Fund	Yes	Age of car: Under 10 years old  Kilometres on odometer: Not travelled more than 160,000km  Price of Car: Must be under current “Luxury Car” limit  Other: Provides 3 month/5000km warranty – but does not include routine services, tune-ups, batteries, tyres (however, tyres must be roadworthy at the time of sale), defects that arise from an accident or misuse of the vehicle.
Victoria	Yes- grants are available under s76 (3) a-g of the Estate Agents Act 1980 through the Victorian Property Fund	Yes- claims may be made under s76 of the Motor Car Traders Act 1985. The Motor Traders Guarantee Fund	No	N/A

		is made up from fees for licensing and penalties paid for breaches of the Act.		
Queensland	Yes – The Claim Fund under the <i>Property Agents and Motor Dealers Act 2000</i>	Yes	Yes	<p>A three-month or 5,000km warranty (whichever comes first) covers a used car with an odometer reading under 160,000km and manufactured less than 10 years before the sale date.</p> <p>A one-month or 1,000km warranty (whichever comes first) covers a used car with an odometer reading above 160,000km or manufactured more than 10 years before the sale date.</p>
South Australia	Yes.	Yes, for second hand dealers only.	Yes.	<p>Age of car: &lt;15 years (no warranty)</p> <p>Kilometres on odometer: 200 000km (no warranty)</p> <p>Price of car: less than \$3000 – NIL; \$3001-6000, 3000 kms or 2 months; Over \$6000 – 5000 kms or 3 months.</p> <p>Other: ability to waive warranty through a JP.</p>
Western Australia	Yes. Administered by the Real Estate and Business	Yes.	Yes.	<p>Age of car: less than 12 years old at time of sale.</p> <p>Kilometres on odometer: travelled less than</p>

	Agents Supervisory Board.			<p>180 000km at time of sale.</p> <p>Price of car: \$4000 or more must be paid for the car.</p> <p>Other: statutory warranty applies to most used passenger vehicles that meet the above criteria. Vehicles not covered include: buses and vehicles licensed to carry more than 8 passengers; caravans and single rider motorcycles built for off-road use; and vehicles built to carry goods and materials used in business or trade that only have one row of seats.</p>
Tasmania	Yes – Auctioneers and Real Estate Council or Consumer Affairs can apply for civil remedies if it is a contractual claim or Consumer Affairs can prosecute if it's a breach of regulations.	Yes – there is no equivalent to the above for motor dealers so only Consumer Affairs can do the same thing for motor claims.	Yes – under certain circumstances	<p>Age of car: less than 7 years</p> <p>Kilometres on odometer: less than 120 000 kms</p> <p>Price of car: N/A</p> <p>Other: as long as it is not a commercial vehicle, 4 wheel drive or motor cycle.</p>
Northern Territory	Yes – where a person suffers pecuniary loss arising out of a defalcation of trust moneys or misappropriation of other property – s 96 <i>Agents Licensing Act</i>	No	Yes	<p>Age of car: 10 years</p> <p>Kilometres on odometer: 160 000</p> <p>Price of car: N/A</p> <p>Other: N/A</p>

Australian Capital Territory	Yes – Consumer Compensation Fund	Yes – Motor Vehicle Dealers Compensation Fund	Yes	Only condition is that claim must be lodged within 6 months of the applicant becoming aware of the loss (or further period allowed by the registrar).
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**Question: is there a mandatory register of bidders for house auctions?**

**Question: are auctioneers allowed to bid?**

**Question: if yes, is there any statutory limit to such bids?**

<i>Jurisdiction</i>	<i>Mandatory register?</i>	<i>Auctioneers allowed to bid?</i>	<i>Statutory limit to bids?</i>
New South Wales	Yes	No - however the auctioneer may accept one bid from the <u>vendor</u> and must announce to other bidders that it is the <u>vendors</u> bid. Amendments to be commenced in 2006/07 will allow the auctioneer to make one bid on behalf of the vendor.	N/A.
Victoria	No	Yes	Allowed to bid a vendor's bid, cannot bid for themselves – no limit, however there is a requirement that the advertised piece of property should be within 10% of final price.

Queensland	Yes	<p>Yes</p> <p>1. The Auctioneer can make bids for the settler up to the reserve price and must announce each time it is the vendors bid;</p> <p>2. The Auctioneer can buy property listed with them provided a consent is obtained from the vendor and no commission is changed by the auctioneer.</p>	<p>Yes.</p> <p>Up to the vendor's reserve.</p>
South Australia	No.	Auctioneers may make a vendor bid or accept a dummy bid.	N/A
Western Australia	No.	Yes.	<p>The conditions of auction contract between the vendor and the selling agent (auctioneer) normally provide for the agent to have up to 10 vendor bids which do not have to be disclosed as vendor bids during the auction. However, recent changes by the Real Estate Institute of Western Australia require its members in such situations to disclose vendor bids.</p> <p>Note that REIWA is an industry association and therefore these requirements are not mandatory.</p>



			The Auction Sales Act is under review and both
Tasmania	No.	Yes – in the present Act but only if the auctioneer discloses s/he is representing another bidder and is not making dummy bids. The auctioneer can bid on behalf of the vendor but needs to disclose that also.	No, but the reality is that no auctioneer bidding for the vendor would bid above the reserve. One company has recently decided not to bid on the vendor's behalf any longer.
Northern Territory	No.	Yes – on behalf of seller – <i>Auctioneers Act</i> , s 15.	No.
Australian Capital Territory	Yes	Yes	Auctioneers may make 1 bid for the seller if permitted by the conditions of the auction. This must be declared before the auction begins and the auctioneer states that a bid is being made for the seller.

**Question: what government facilities are there to resolve disputes between consumers and traders?**

New South Wales	The Consumer, Trader & Tenancy Tribunal is an independent adjudicative body. It receives approximately 60,000 applications annually.
Victoria	Victorian Civil and Administrative Tribunal (VCAT)
	Consumer Affairs Victoria, Dispute Resolution Branch
Queensland	The Office of Fair Trading provides a conciliation service at no cost to the parties concerned. If unsuccessful, consumers are referred to the Small Claims Tribunal.
South Australia	In the first instance mediation by Office of Consumer and Business Affairs. If unsuccessful the consumer may take legal action in the Magistrate's or District Courts.
Western Australia	Department of Consumer and Employment Protection (DOCEP) – DOCEP directly conciliates/mediates approximately 100 consumer disputes each week, ie 5000 per year. (This process is voluntary and does not always produce a conclusive outcome; however, successful outcomes are very commonly achieved).

	<p>Various occupational licensing Boards within DOCEP's jurisdiction including:</p> <p>the Real Estate and Business Agents Supervisory Board;</p> <p>the Settlement Agents Supervisory Board;</p> <p>the Motor Vehicle Industry Board;</p> <p>the Building Disputes Tribunal (as part of the Builders' Registration Board);</p> <p>the Finance Brokers Board; and</p> <p>the Hairdressers Registration Board.</p>
	<p>The Magistrates Court and in some circumstances the State Administrative Tribunal. .</p>
Tasmania	<p>Minor Civil Court (used to be called Small Claims Tribunal). Often Consumer Affairs will try to mediate on behalf of the claimant first.</p>
Northern Territory	<p>Community Justice Centre (mediation only, no legislative power).</p>
Australian Capital Territory	<p>Mediation by the Office of Fair Trading is usually successful, otherwise consumers have recourse to the Consumer and Trader Tribunal (for real estate and security matters), Small Claims Court, and the Motor Vehicle Repairers Dispute Resolution committee.</p>

**Question: complete the following table to describe how this body operates:**

<i>Jurisdiction</i>	<i>Matters covered</i>	<i>Maximum amount</i>	<i>Cost to file</i>	<i>Are lawyers allowed?</i>
New South Wales	Tenancy Division	\$20 000	\$30	Not prohibited but in normal circumstances, parties are required to run their own cases in the CTTT without legal representation. This reflects the ideal of keeping proceedings affordable, informal and uncomplicated.
	Home Building Division	\$500 000		
	Motor Vehicles Division	No limit for new vehicles for personal use. \$25 000 limit for other vehicles.	\$30 (up to \$10,000) \$61 (\$10,000 to \$25,000) \$163 (claims exceeding \$25,000)	
	Commercial Division (consumer credit contracts and some travel agents and real estate matters)	Up to \$125,000 for credit contracts signed before 5/11/2004. After that date, floating threshold indexed to ABS cost of new houses in Sydney.		
	Strata & Community Schemes Division	\$10,000	\$61	
	Residential Parks Division	\$10,000	\$30	
	Retirement Villages Division	\$10,000	\$30	

	General Division	\$25,000	\$30 (up to \$10,000) \$61 (\$10,000 to \$25,000)	
Victoria  (FTA= Fair Trading Act 1999)	Anti-discrimination	N/A	\$0	Yes
	Business licences	N/A	\$269.60	
	Civil Disputes/Small claims	FTA 1999 For amounts <\$10 000	\$33.30	
		FTA>\$10 000<\$100 000	\$276.30	
		>\$100 000	\$553.60	
		Motor Car Traders Act 1985	\$33.30	
	Credit contracts	Various acts	\$33.30 - \$1107.00	
	Domestic Building	FTA – as above  Other Acts	\$33.30 - \$553.60	
FOI/TAC and other	Various Acts	\$0 - \$276.30		

	Guardianship and Administration	Various Acts	Where VCAT appoints an administrator to act in the interests of a disabled person unable to manage their financial affairs a fee of \$100 per annum is required, unless waived due to financial hardship	
	Land Valuation	Various Acts	\$138.70 - \$276.30	
	Planning and Environment	Various Acts	\$33.30 - \$1107.20	
	Real Property	Various Acts (FTA as above)	\$33.30 - \$553.60	
	Residential Tenancies	Various Acts (FTA as above)	\$0 - \$553.60	
	Retail Tenancies	Various Acts (FTA as above)	\$276.30 - \$553.60	
	State Taxation	Various Applications	\$276.30	
Queensland	Dispute between consumer and trader, or trader and trader	\$7,500	\$13.00 to \$73 depending on the claim.	No. (Unless all parties agree.)
South Australia	Magistrate's Court	\$60 000	\$120	Lawyers are not allowed in claims under \$6 000 but are allowed in claims over that amount.

	District Court or Supreme Court	Above \$60 000	\$518 \$1036	Yes.
Western Australia	DOCEP – conciliation of complaints against traders made by consumers	No limit.	Nil.	N/A
	Occupational Licensing boards – conciliation of complaints and consideration of compensation fund claims.	No limit. (Note: maximum compensation fund claim capped in relation to motor vehicle repairers at \$6 000).	Nil.	N/A
	Building Disputes Tribunal (as part of the Builders’ Registration Board) – disputes regarding workmanship and contractual issues in relation to home building.	\$100 000 for contractual disputes.  No limit for workmanship.	\$27  \$16 (concession)	No, claimants must generally present their own case, however, representation permitted in certain circumstances.
	The Magistrates Court – civil matters that involve:			
	General procedure claims for debt of damages	\$50 000	\$257	Yes

	Minor case claims for debt or damages	\$7 500	\$63	No, unless agreed to by all parties or court grants special permission.
	Consumer/trade claims over the sale, supply or hire of goods or services.	\$50 000	\$257	Yes
	Residential tenancy matters	\$10 000	\$27.50 \$16 (concession)	Yes.
Tasmania	Any sort of claim for civil loss by a consumer against an individual or business.	\$5000	\$79, refunded if claim successful.	Not generally, only if a party is unable to represent him/herself and the Court and the defendant agree. Also if one of the parties is a lawyer.
Northern Territory	Mediation prior to litigation.	N/A	Nil.	No.
Australian Capital Territory		No limits except for Small Claims Court (\$10,000)	<\$2,000 - \$41 fee; \$2000 to \$10,000 - \$104 fee	Yes



**Question: any others comments about the dispute resolution process?**

New South Wales	The Office of Fair Trading provides an informal and free dispute resolution service that successfully resolves a high proportion (84% in 2005/2006) of the approximately 31,000 formal complaints it receives each year. Fair Trading will approach the trader to help the parties reach agreement – offering a speedy result for the consumer and helping cut government costs by reducing the load on the Consumer, Trader and Tenancy Tribunal.
Victoria	Consumer Affairs Victoria provides conciliation and mediation services to empower traders and consumers, where appropriate, to resolve dispute themselves. In 2004-05, more than 17,000 complaints were referred to the dispute resolution branch, of which 67% were resolved successfully and \$2.1 million returned to consumers.
Queensland	The Office of Fair Trading attempts to resolve complaints not involving breaches of legislation by intervening on behalf of customers and attempts to conciliate the matter. If unsuccessful, the customer may be referred to the Small Claims Tribunal. In 2005/2006, \$1.4 million in redress was obtained through conciliation.  The SCT covers matter such as: disputes re fences, mobile homes, residential tenancies (tenancy groups have argued these should be dealt with by a specialist tribunal).
South Australia	No.
Western Australia	No.
Tasmania	Nowadays disputes are often referred to industry dispute resolution bodies. Consumer Affairs often have the role of finding out who the claimant should go to in the first instance and then refer.
Northern Territory	No.
Australian Capital Territory	No

**Question: Does the relevant Ministry publish some sort of annual report that includes performance data?**

**Question: if so, complete the table below showing what prosecutions the office launched in the most recent financial year, and for what reason.**

<i>Jurisdiction</i>	<i>Annual report?</i>	<i>Prosecutions</i>	
New South Wales	Yes – the following information lists the successful prosecutions – which comprised 86% of all prosecutions begun. The number of prosecutions varies from year to year (319 successful prosecutions in 05/06) due to the mix between long, complex cases and shorter, simpler cases – which reflects marketplace activity. A further 822 cases were handled through penalty notices issued under the acts listed below (as well as some others). Many more regulatory breaches are handled through disciplinary action – ie licence suspensions, imposition of conditions etc.	Reasons for prosecution	Number of offences
		<i>Business Names Act</i>	2
		<i>Electricity Safety Act</i>	17
		<i>Fair Trading Act</i>	28
		<i>Home Building Act</i>	88
		<i>Motor Dealers Act</i>	94
		<i>Residential Tenancies Act</i>	1
		<i>Trade Measurement Act</i>	19
		<i>Travel agents Act</i>	3
		<i>Consumer Credit (NSW) Code</i>	2
<i>Co-operative Act</i>	3		

		<i>Crimes Act</i>			1
		<i>Motor Vehicle Repairs Act</i>			19
		<i>Property, Stock &amp; Business Agents Act</i>			39
		<i>Trade Measurement Administration Act</i>			3
Victoria	According to Consumer Affairs Victoria Annual Report 2004-05 over 70 prosecutions were led in the previous financial year.	Reasons for prosecution	Number of offences	With Conviction	Without Conviction
		<i>Fair Trading Act 1999</i>	78	58	20
		<i>Domestic Building Contracts Act 1995</i>	98	81	17
		<i>Building Act 1993</i>	5	1	4
		<i>Business Names Act 1962</i>	9	9	0
		<i>Sale of Land Act 1962</i>	1	0	1
		<i>Motor Car Traders Act 1986</i>	19	10	9
		<i>Introduction Agents Act 1997</i>	2	2	0

		<i>Funerals (Pre Paid Money) Act 1993</i>	10	10	0
		<i>Trade Measurement Act 1995</i>	8	0	8
Queensland	Yes	<p>Year 2005-06</p> <ul style="list-style-type: none"> <li>Finalised more than 3,125 enforcement actions against traders, including more than 113 actions before the courts and the Commercial and Consumer Tribunal, resulting in more than \$466,000 in fines, costs and compensation..</li> <li>Achieved more than \$2.9 million in redress for consumers.</li> </ul> <p><u>Finalised Prosecutions</u></p> <p>33 - Property Agents and Motor Dealers Act</p> <p>30 – Fair Trading Act</p> <p>13 – Trade Measurements Act</p> <p>1 – Introduction Agents Act</p> <p>8 – Censorship legislation</p> <p>28 - other</p>			
South	Yes.	Second Hand Vehicle Dealers Act (Fair Trading Act)			7

Australia		Security and Investigation Agents Act	8
		Building Work Contractor Act	5
		Plumbers, Gas Fitters and Electricians Act	3
		Fair Trading Act	4
Western Australia	Yes.	Application to wind up an association	1
		Consumer Affairs Act 1971 breach	1
		Credit Act 1984 settlement	1
		Door to Door Act 1987 breaches	6
		Fair Trading Act 1987	4
		Finance Brokers Control Act 1974 breaches	2
		Land Valuers Licensing Act 1978 breach	1
		Motor Vehicle Dealers Act 1973 breaches	5
		Real Estate and Business Agents Act 1978 breach	1
		Residential Tenancies Act 1987 breaches	2
		Retail Trading Hours Act 1987 breach	1

		Travel Agents Act 1985 breach	1
		Weight and Measures Act 1915 breaches	6
		Various disciplinary proceedings by occupational licensing boards	28
Tasmania	Yes, published in the Department of Justice Annual Report.	Housing Indemnity Insurance was a major issue currently and a number of winding back of odometers by car dealers.	I have not accessed the annual Report for last year. The Consumer Affairs Office didn't know accurately but estimates 40 to 50.
Northern Territory	Yes.	Breach of motor vehicle dealers licence – 1.	
Australian Capital Territory	Yes (2004-05)	<p>Classification (Publications, Films and Computer Games)(Enforcement) Act 1995 – 1 prosecution for selling unclassified or refused classified material</p> <p>Liquor Act 1975 – 23 prosecutions of minors and 6 adults</p> <p>Sale of Motor Vehicles Act 1977 – 1 prosecution</p>	