

**Joint submission to the
Productivity
Commission's Review of
the Consumer Policy
Framework from WA
community organisations**

Consumers Association of WA

Consumer Credit Legal Service (WA)

Council on the Ageing

Financial Counsellors' Association of
WA

Financial Counsellors' Resource
Project

Gosnells Community Legal Centre

Health Consumers' Council

Injury Control Council of Western
Australia

Kidsafe WA

Sussex Street Community Law Service

Western Australian Council of Social
Services

May 2007

Introduction

This is a joint submission to the Productivity Commission's Review of Australia's Consumer Policy Framework, from the following community organisations in Western Australia:

- Consumers Association of WA
- Consumer Credit Legal Service (WA)
- Council on the Ageing
- Financial Counsellors' Association of WA
- Financial Counsellors' Resource Project
- Gosnells Community Legal Centre
- Health Consumers' Council
- Injury Control Council of Western Australia
- Kidsafe WA
- Sussex Street Community Law Service
- Western Australian Council of Social Services

Within this document, agencies will be referred to as members to the submission. Where a suggestion has been made by some, but not all, members, it has been noted.

The submission addresses the following matters that form part of the Review's *Scope of Inquiry*:

Scope of Inquiry # 1: ways to improve the consumer policy framework so as to assist and empower consumers, including disadvantaged and vulnerable consumers, to meet current and future challenges, including the information and other challenges posed by an increasing variety of more complex product offerings and methods of transacting.

Scope of Inquiry # 4: the scope for avoiding regulatory duplication and inconsistency through reducing reliance on industry-specific consumer regulation and making greater use of general consumer regulation.

Scope of Inquiry # 5: the extent to which more effective use may be made of self-regulatory, co-regulatory, consumer education and consumer information approaches and principles-based regulation in addressing consumer issues.

The opinions and recommendations of the members to this submission are presented in headings linked to the above inquiry areas.

All agencies to this submission thank the Commission for the opportunity to participate in the Review and support the work of the Review to identify broad level areas for reform in Australia's consumer policy framework.

1. Ways to improve the framework so as to assist and empower consumers

1.1 Objectives of the policy framework

A good consumer policy framework allows consumers to effectively function in markets. This not only benefits consumers, but also the market. It has been widely argued that effective consumers are good for competition (Sylvan 2004). Consumers not only benefit from competition, they activate it - and one of the purposes of the consumer policy framework is to ensure that they are in a position to do so. This requires good policy and law making; effective redress, monitoring and enforcement; and services which assist individual consumers as well as represent them in the systems and processes that make up the framework.

The framework must acknowledge that consumers are a diverse group and that not all consumers receive the same advantages of competition. Some consumer groups and some markets require particular mechanisms for protection.

Whilst governments develop policy in discrete areas, such as consumer policy, social policy and fiscal policy, people's lives are not experienced that way. The consumer affairs policy framework should not be considered in isolation from the general thrust of government policy objectives, nor disregard the effect on individuals and groups of policy changes in other areas of life. It is vital that unintended adverse consequences of consumer policy do not arise as a result of changes in the discrete area under consideration. A whole of government approach is required which identifies the "winners and losers" as a result of changes in consumer affairs policy, to ensure that those who are adversely affected by changes are protected or compensated in some way. This may be, for example, in terms of adjustments to income maintenance or taxation policy, to ensure that access and equity is maintained.

1.2 Investing in consumers

The Organisation for Economic Co-operation and Development (OECD) has acknowledged the need for effective partnerships between government, industry and consumers to deal effectively with market threats and failures (OECD 2003). As articulated by Kanoute (2001:1):

Governments have increasingly recognised the link between strong, independent consumer organisations and accountable, transparent governance, efficient markets, poverty eradication and sustainable production and consumption.

In addition, the UN Guidelines for Consumer Protection identify the development of independent consumer groups as a key objective of consumer policy (section 1.1(e)).

There is currently a general lack of investment in consumer capacity in Australia. Consumers participate in research, policy development and monitoring from a significantly unequal position of power and resourcing compared to industry and government.

Australia needs to resource different layers of consumer assistance and advisory processes, at both individual and collective levels. These include:

- At the 'coal face' level, advice and advocacy services for consumers who cannot afford to pay for professional services. This is particularly required at the entry points to complex contracts and when there is a dispute.
- Consumer organisations that have the capacity to work on systemic issues, including system advocacy. Consumer organisations that can quickly identify and respond to problematic trends can be part of early warning systems and can provide valuable information and suggestions to regulators, as well as participate in policy and law making processes.
- Consumer organisations that have an ability to develop policy knowledge so as to better 'sit at the table' with government and industry in reviewing and monitoring the policy framework. This requires an ability to link systemic problems with policy research and undertake independent consumer research.
- Consumer organisations that have an ability to provide resourced and informed consumer representatives. There is an increasing demand for consumer representatives to participate in initiatives such as standards committees, code development, monitoring, and advisory bodies. However, there is little resourcing in the way of recruiting, supporting and training consumer representatives. Good consumer representatives do not just appear out of nowhere, they are formed and supported through the organisation of consumers.
- Coordination of consumer organisations within industry areas and between industry areas. In particular, a strong, independent and resourced consumer agency is required at a national level, along with state and territory consumer agencies.

Consumers, through prices, pay for resourcing industry bodies and the participation of industry in policy decision making. However, there is insufficient investment in the resourcing of consumer voices. Whilst both industry and

government have a responsibility to resource consumer organisations, it can often be preferable for industry resourcing to be more indirect, with government or independent entities as the primary funder, so as to reduce conflict of interest problems that may arise.

1.3 Vulnerable and disadvantaged consumers

Consumers are not a homogenous group of people and some participate in the market place from a more disadvantaged position than others. Much of the work undertaken by members to this submission is with clients who can be regarded as vulnerable or disadvantaged consumers. In using these terms, reference is made to definitions of vulnerability and disadvantage, as articulated by Consumer Affairs Victoria (2004:3):

Consumer vulnerability is exposure to the risk of detriment in consumption due to the interaction of market, product and supply characteristics and personal attributes and circumstances. The main cause of vulnerability is this interaction resulting in inadequate information, poor access to information and/or ineffective use of information by a consumer or in the deterrence of complaint or the pursuit of redress by a consumer.....A vulnerable consumer is a person who is capable of readily or quickly suffering detriment in the process of consumption.

Consumer disadvantage is a persisting susceptibility to detriment in consumption. A disadvantaged consumer is a person in persistent circumstances and/or with ongoing attributes, which adversely affect consumption thereby causing a continuing susceptibility to detriment in consumption. As a result, a disadvantaged consumer repeatedly suffers consumer detriments or, alternatively expressed, generally obtains below-average satisfaction from consumption.

This submission will not attempt to detail the types of consumers who may be vulnerable or disadvantaged and the reasons for this, acknowledging that work has already been published on this matter, which, no doubt, the Commission has reviewed.

Market practices can have a disproportionate effect on vulnerable and disadvantaged consumers and members to this submission argue that they need particular assistance in a number of ways:

- a. Community education for vulnerable and disadvantaged consumers requires specific targeting and tailored solutions. This includes information being provided in simple to understand and readily accessible forms.

- b. Relying upon consumer education alone however, is often not sufficient and these consumers need access to socio-legal advice to assist with decision making, particularly at the point of entry.
- c. In addition to information and advice, such consumers often need access to consumer advocacy services that will assist them with problem resolution.
- d. Hardship provisions are required in essential service markets that ensure that access is compatible with ability to pay.
- e. Vulnerable and disadvantaged consumers are often targeted by sections of the market that are outside mainstream regulation e.g. pay day lenders and scams. While such areas may not appear to be a priority for regulation for the bulk of consumers, they can have a disproportionate effect on vulnerable and disadvantaged consumers.
- f. Mechanisms such as disclosure can have limited effect in ensuring fair transactions. General provisions such as unfair contract terms are particularly important for this section of consumers.
- g. Some consumers, such as children, are heavily marketed to, yet often not represented in decision making. Vulnerable and disadvantaged consumers require a form of specialist consumer representation in policy formation, as exemplified in the legal concept of *amicus curiae* (friend of the court).

It should be noted, however, that we can all be vulnerable or susceptible to vulnerability in the market place - particularly as new technologies, increased competition and complex packaging of products (including bundling) results in an ever increasing need to understand and respond to highly complex information and methods of transaction. The ability to be fully informed can be a challenge to all consumers. In addition to complexity, unfamiliarity influences consumers' ability to be informed, as happens to all consumers when new technology enters the market place.

Initiatives that seek to address issues for vulnerable and disadvantaged consumers can benefit all consumers. The matters that affect these groups of consumers often flag problems in the market place as a whole.

1.4 Policy leadership

Consumer policy requires leadership at a state and national level with well coordinated approaches between the two levels of government. This requires proper resourcing and profile.

The members to this submission support the reinstatement of a federal Minister for Consumer Affairs, together with a well resourced agency at a federal level and better coordination of organisations with consumer policy and protection responsibilities. A specific, national agency that addresses consumer affairs can assist in the development of consumer policy across all government portfolio areas and not be limited to commercial consumer transactions.

The need for stronger national leadership is not to suggest that there is not a role for state based jurisdictions. There are arguments for different policy responses to meet the various circumstances of different states and territories. However, more can be done to lead and resource national coordination, cooperation and harmonisation.

A stronger consumer focus within government needs to be coupled with stronger national consumer organisations that are properly resourced to participate in the policy framework. The need to invest in consumer organisations, as previously noted, cannot be separated from policy leadership.

Consumer protection requires the capacity nationally to ensure fairness and equity on a national and international scale, including taking responsibility for meeting the United Nations Guidelines for Consumer Protection.

Example 1: ensuring that manufacturers, importers and retailers are able to supply spare parts in a timely, cost effective manner.

Example 2: producing national standards on sustainable consumption and monitoring the effect of consumption on the environment, such as water usage and carbon emission management.

National data collection systems need to be designed that can assist with identifying and tracking problems. Such data would assist with early intervention, policy and legislative development, compliance and research.

1.5 Research

The policy framework should be based upon sound research that is independent and broad based. Many of the debates in competition and consumer policy are based upon a theoretical understanding of how consumers and markets operate rather than evidence based knowledge.

There is a need for greater investment in consumer policy research at both a national and state level. The recent launch of a Centre for Advanced Consumer Research at the University of Western Australia, in collaboration with the WA government, is a positive example of an initiative which will value add to policy development.

1.6 Enhancing policy tools

Currently there is an over reliance on disclosure and consumer education as a policy tool, the logic being that informed consumers can operate freely in the marketplace. However, these strategies have limited effectiveness. Increased complexity in consumer contracts along with initiatives such as bundling can make it difficult for consumers to be fully informed or compare one service to another. The problems with understanding complex information make real informed consent difficult for all consumers, and can be especially difficult for vulnerable and disadvantaged clients

The ability to unilaterally alter contract conditions has a significant impact on consumers and the case study provided in Appendix 1 highlights some of these problems. Generic policy tools such as unfair contract legislation have an important role to play in protecting consumers. Evidence from the Victorian experience indicates that the introduction of such legislation has had a significant, positive impact on some areas of industry, such as telecommunications. Reducing barriers that prevent consumers from switching between providers can increase competition and accountability.

Another key area of improvement that is required in the policy framework is timeliness. At present there is all too often long delays between the early indications of a market problem and a systems response. This applies not just within legislative change, but also in compliance responses and the adoption of change in self regulatory initiatives.

1.7 Early warning

Needless to say, prevention is better than prosecution. It is generally felt by members to this submission that more can be done to build early warning and early response mechanisms into the consumer policy framework. Trebilcock (2003:69, cited by CAV 2004:25) stresses:

the special importance of devising early warning systems to alert policy-makers to potential problems in their incipency so that pre-emptive action is facilitated. Timeliness is a prerequisite of effective government action. Markets are likely to solve most information problems, given time, although many consumers may be prejudiced in the meantime. A central issue thus is whether government can abridge these market lags.

A greater investment in building the capacity of consumer organisations is one way of enhancing early warning systems, as it is often consumer organisations that can sign post emerging problem areas.

Another method is to increase the independence, transparency and accountability of self-regulatory mechanisms, such as voluntary codes and industry dispute resolution schemes. This area is discussed later in the submission.

Consumer protection agencies at a state and federal level must improve the monitoring of consumer complaints and early responses to compliance issues. It is felt by members of this submission that consumer protection agencies have often failed to respond to problems or potential problems in a timely manner - often waiting until significant losses have been suffered, media attention gained or, in some cases, deaths, before responding.

Early intervention requires a cultural shift in the thinking of some agencies, as well as complaint information and analysis systems that provide adequate data on market problems. As exemplified by the report on online auctions undertaken by the Communications Law Centre (Moustakas 2006), data collection systems have largely failed to adapt to changes in the market place, resulting in little national data on problems with online transactions.

One member of the group notes that a barrier to early action can be the threat of libel, which may inhibit consumer organisations making public their concerns about certain corporations. It has been suggested that this Review investigate to what extent the threat to use the laws of libel by large corporations have interfered with business competition and the protection of consumers and investors.

1.8 Improving redress and compliance

The option of industry based alternative dispute resolution schemes (ADR) can offer consumers a quick and affordable means of redress, outside general regulatory provisions, particularly for matters of small monetary value. The best ADR schemes are accessible, independent and transparent. Members see that some, such as the WA Energy Ombudsman Scheme, works well.

Difficulties with industry based ADR schemes can be around compliance and the ability of such mechanisms to address systemic problems, rather than just addressing individual ones. Another problem can be when the supply chain is complicated, as in the case of intermediaries, and it is difficult to hold suppliers responsible for the actions of middle players.

Difficulties also include a lack of transparency, where information related to complaints and outcomes are not publicly available. Where an ADR scheme focuses solely on the resolution of individual complaints and lacks a mechanism to translate common trends to systemic resolution, there is a danger that the

scheme can mask market problems and slow down initiatives that aim to be preventative.

Coverage of industry based ADR is limited and can be inconsistent within one product type. For example, in the case of financial services, a client's ability to access ADR is dependent on the type of lender that they have used - banks, building societies and credit unions have an industry based ADR scheme but the scheme is not available to consumers who received credit from other sources.

Self-regulatory options, such as ADR schemes, must act in a complementary way to general regulatory redress provisions and cannot replace complaint investigations and compliance measures undertaken by statutory regulators. There is a general sense amongst members to this submission that more can be done to improve compliance responses.

The OECD's report (2006) on the effectiveness of enforcement regimes shows that Australia tends to focus on civil proceedings in enforcing the law, with limited criminal proceedings. Data provided by the ACCC to the OECD gives a picture of compliance practices:

Over the period July 2004 to June 2006, the ACCC recorded almost 4 200 complaints and enquiries relating to pricing. In 92% of these cases, no further action was taken by ACCC other than the provision of advice or information. From the remaining 8% (350 cases), 32 in-depth investigations were commenced. The others, revealing insufficient evidence of breach, were referred to other (usually State) agencies, were resolved administratively or were, for other reasons, discontinued. Of the 32 in-depth investigations, 9 traders agreed to cease the conduct and implement a compliance programme (1 of the traders provided 13 affected customers with AUD 500 in vouchers), 6 signed agreements of compliance, 6 were resolved administratively, and 2 warning letters were sent. The remainder are the subject of ongoing investigations. During this period, the ACCC continued one misleading pricing case in criminal proceedings, and judgements were made in the civil jurisdiction in two misleading pricing legal proceedings. (2006:24).

The OECD report noted that some States and Territories in Australia have the power to impose sanctions that are not available to the ACCC, such as “name and shame” powers, the power to issue infringement notices or “show cause” notices, and the power to seek “cease trading” injunctions (2006:24).

The Ministerial Council on Consumer Affairs acknowledged that the cost of current civil remedies to some businesses may not outweigh the benefits of breaching the law and have produced a discussion paper on the potential use of civil penalties as one type of enforcement that could be introduced (2005).

This submission supports initiatives to expand and enhance compliance options, so as to ensure effective deterrence and appropriate penalties.

1.9 Specific areas

Priority areas that have been identified by the members to this submission requiring attention:

a. *Use of intermediaries* Whilst able to offer a benefit to consumers, intermediaries can also create difficulties. One problem with intermediaries is conflict of interest. They can also increase the supply chain, which, in turn, can affect accountability. Self regulatory mechanisms, such as ADR schemes, can have decreased affect when trying to assess where the responsibility lies.

b. *Disclosure* There is a tendency for over reliance on disclosure as a 'fix it all' tool for empowering consumers. It is not just a question of providing consumers with information; information must be understood and able to be utilised. It is often a problem of receiving too much inaccessible information, as well as not enough appropriate information. As exemplified in housing products marketed to seniors, consumers often need assistance and advice in understanding what information has been disclosed and what it means - in both the long and short term. In some cases, this advice is not just legal, but includes a need to understand the social and cultural implications of a transaction.

The utility of disclosure also needs to be understood within the context of the cognitive abilities and circumstantial choices of the consumer. For example, complex contracts being entered into by people with a cognitive disability or credit products that are marketed to consumers who are generally precluded from mainstream lending. Disclosure in itself has little effectiveness if the consumer involved does not understand the information being disclosed or has little choice in the market.

c. *Sustainable Consumption* The members support the United Nations Guidelines for Consumer Protection's principle (section 4) to achieve and maintain sustainable consumption patterns. This guideline must underpin all consumer policy to protect both the personal costs and the environmental impact of over consumption. Product labelling should include ways to 'reduce, reuse and recycle'. The need to bring environmental impacts into the consumption/market/public interest equation is an important contemporary consideration that must begin to inform the policy framework.

2. Industry specific and general consumer regulation

The members to this submission support the enhancement of strong, generalist consumer policy whilst cautioning the use of general regulation as a replacement to industry specific regulation. In some areas there is an

argument for industry specific regulation in addition to general provisions. If generalist regulation is seen as a base line, industry specific regulation builds upon this, rather than replacing it, creating comprehensive protection for consumers and certainty for members of the industry. Features of an industry that may indicate a need for specific regulation include:

- Essentiality of a service, such as housing, utilities and telecommunication.
- Complexity of technical specifications of the industry, such as telecommunications and credit.
- High degree of exposure to loss and level of risk by a consumer, such as investment packages.
- Immature market (new market or significant change in the market) e.g. in process of opening up to competition.
- Targeting of vulnerable and disadvantaged consumers, such as scams, door to door selling and pay day lending.
- Failure of agreement on consumer rights and industry responsibilities.
- The risk associated with particular products in relation to their safety which may result in injury or death e.g. standards for motorcycle helmets.

Whilst there is often an argument that regulation adds to the cost of products, which results in higher prices to consumers, it also needs to be noted that by not regulating certain markets there can be a cost to society and good regulation can be beneficial. Regulatory impact assessments must include all the costs and benefits of regulation, not just those that have an immediate cost. For example, our society holds certain values in regards to social justice and fairness, as well as international obligations - these all must form part of the impact assessment. Increasingly, environmental considerations are likely to become an important factor in assessing the pros and cons of industry specific regulation.

In order to better assess, information and research evidence is needed. Comments made elsewhere in this submission about consumer research, self-regulatory accountability, consumer capacity and better coordination between consumer protection agencies all impact on Australia's ability to conduct effective regulatory impact assessments.

2.1 Industry specific areas

a. *Product safety* The current use of standards is largely self-regulatory. There needs to be some generic minimum standards around safety and labelling that all products are required to adhere to. Many products on the market are not required to meet minimum safety assessments before sale. The environmental impact of products, as well as their personal safety, is an area

where the public requires clearer information. A national call centre for products has been suggested by a number of members to this submission.

The Commission's (2006) own recommendations on reforms in this area are noted and the following initiatives supported:

- including 'reasonably foreseeable use' in the definition of 'unsafe';
- ensuring that services related to the supply, installation and maintenance of consumer products are covered by all jurisdictions;
- requiring suppliers to report products which are associated with serious injury or death.
- consistently making hazard identification and risk management more central to policy making, standard setting and enforcement;
- improving the focus and timelines for the development of mandatory standards;
- providing better regulatory information to consumers and businesses through a 'one-stop shop' internet portal; and
- establishing a national clearinghouse for gathering information and analysis from existing sources to provide an improved hazard identification system.

Consumer rights in relation to the safety of goods and services, and the provision of accurate information should sit as a regulatory given within the policy framework.

b. *New technologies* E-trade and scams in internet technologies are potential consumer risks that need greater attention. Difficulties are also beginning to be experienced by consumers who find themselves interacting increasingly with computer based services where decisions are effectively being made by computers, such as electronic transport cards.

c. *Essential services* Essential services require regulation that ensures access and includes hardship provisions that are outside the normal scope of regulation. These services have been deemed to be a necessity by our society and require particular protections. As argued by the Australian Senate Community Affairs Reference Committee:

Evidence indicated the importance of ensuring access for low income households to essential utilities such as electricity, gas, water and telephone services. These services provide the basic means by which any household is able to function in a modern society (2004:191).

Further defining of what is an essential service, what are community service obligations and what are agreed standards in access and hardship provisions is required. However, the members to this submission agree that a definition of essential services in Australia should include housing, water, electricity, gas, healthcare, pharmaceuticals, elementary education, postal service and public transport. It needs to be emphasised that the lack of these essential services can lead to a number of health and safety issues for people in our community

and result in costs being incurred through other systems, such as health, welfare and education.

3. Self regulation and co-regulation

Voluntary codes of conduct have been heavily encouraged as a form of self-regulation. The advantages of voluntary codes include the ability to agree to standards over and above legislative requirements, to be industry specific, and to be more flexible in meeting changes in the market place or consumer expectations. The disadvantages however, are that codes can contain anti-competitive practices, can lack real consequence (and therefore be ineffective) and can be difficult to transparently monitor.

Where voluntary codes are developed, they must sit alongside strong monitoring and verification systems and exist in conjunction with active legislative compliance. A plethora of voluntary codes may look good, but if they are not effective, they can hide and create more difficulties for the market place and consumer policy agencies than they solve.

At the moment, the ACCC offers non-binding guidelines for voluntary codes. One model is to move voluntary codes from a self-regulatory framework to a co-regulatory one, whereby industries choose to develop their own codes but it is within a regulatory framework that sets some minimums in process, content and accountability. For example, a set of required principles for a voluntary code could include the requirement for mechanisms of redress and standards of safety and to the need to include consumers in the code's development. It could also include a requirement for some external reporting of monitoring and compliance.

A similar approach could be taken with industry based alternative dispute resolution schemes. Industry based ADR schemes have the potential to offer alternative forms of redress that can be quicker, cheaper and as effective as legal procedures. But they can also have the effect of camouflaging systemic failures and delaying final resolution. Other difficulties with industry ADR schemes have been discussed previously in this submission.

Currently, there is a patchwork system of the extent to which self-regulatory tools are openly monitored and reported on. However, if consumers are being asked to put good faith in self-regulation, they have a right to timely information on what and how the issues are being dealt with, problem trends and outcomes.

Whilst mandatory principles for voluntary codes or dispute resolution schemes may seem like a contradictory term, if seen within a co-regulatory framework

they offer confidence and certainty to both industry and consumers that basic standards have been met in the formulation, content, implementation and accountability of such tools.

Where voluntary codes are not appropriate or effective, mandatory codes that are enforceable by consumer protection agencies are one option. It is the opinion of the membership of this submission, however, that this is often an under-utilised option. In some industries, such as health, there is a myriad of models of regulation within the one industry, depending upon the service, whether it is public or private and the type of professionals involved. Some areas, such as complimentary therapies, rely solely on self-regulation, although the vulnerability of the consumer is potentially not less (and may be more) than when health consumers interact with mainstream health services.

In the area of essential services, it is the opinion of members to this submission that self and co-regulatory arrangements are never sufficient in themselves and must be backed up by enforceable codes and regulation.

Finally, generic legislation, such as unfair contracts, can have a positive influence on the development self-regulatory codes. It would appear that this has been the case in Victoria with telecommunications.

4. Community education

Community education and information initiatives have been heavily relied upon as a consumer policy initiative over the past decade - often at the cost of other consumer protection or capacity building initiatives. It is easy to suggest that fully informed consumers will address risks in market transactions and, to an extent, this is true. However, an over reliance on community education risks being simplistic and problematic to the consumer, rather than addressing structural problems in market arrangements and practices.

Increased financial literacy for example, is, of course, a desired goal. But greater knowledge itself will not assist all consumers in all situations. For example, some consumers have limited choice in the services and products available to them, either through location or financial circumstances. For the majority of consumers, it is unlikely that they will ever be able to fully know and understand all the information that is required to make informed decisions in ever increasingly complex markets. Even when entering into a contract with a sense of being fully informed, some consumers find that the conditions of the contract have changed and they are now bound to conditions they did not agree to, as highlighted in the submission's case study, provided in Appendix 1.

Community education must be part of an overall framework that includes good policy, appropriate regulation, effective redress systems, early intervention,

timely compliance responses, meaningful penalties and/or punitive actions, and accessible support services that can assist consumers. Where community education is undertaken, it should draw upon the body of best practice knowledge that has been developed across jurisdictions and be tailored to meet the needs of all consumers. Consumers are a diverse group - as diverse as society as a whole, because we are all consumers. A 'one size fits all' approach to education does not work and risks missing the types of consumers who are most vulnerable. Targeted approaches to community education largely work better than generic campaigns.

By way of example, the National Indigenous Consumer Strategy (2005) highlights that consumer education needs to happen alongside the increased employment of Aboriginal consumer affairs staff, improved consumer advocacy, and policy and compliance initiatives that target the specific consumer concerns of Aboriginal people.

5. Principles based legislation

The proposal to build cornerstone principles into consumer policy and legislation is strongly supported by members of this submission. Agreed principles can act as a guide to policy, law reform and court decision making. Such principles can also provide a benchmark for self regulatory and co-regulatory initiatives. This submission does not attempt to formulate a set of proposed principles, but offers in Appendix 2, by way of example, a set of principles developed by the Western Australian Council of Social Services in relation to essential services; the UN Guidelines for Consumer Protection; and the set of consumer rights developed by Consumers International.

This submission endorses the principles for essential services developed by the Western Australian Council of Social Services. In developing a set of principles for consumer policy, members to this submission argue that the following needs should be met, as quoted from the UN Guidelines for Consumer Protection (General principles, 3):

- (a) The protection of consumers from hazards to their health and safety;
- (b) The promotion and protection of the economic interests of consumers;
- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
- (e) Availability of effective consumer redress;

- (f) Freedom to form consumer and other relevant groups or organisations and the opportunity of such organisations to present their views in decision-making processes affecting them;
- (g) The promotion of sustainable consumption patterns.

Members to this submission note that one area of consumer policy and protection, currently outside the scope of this review, is services for which a fee is not charged to the consumer and commerce or trade is not deemed to have occurred. This can include interactions between consumers and not-for-profit organisations and consumers and government services. Consumer policy in this area currently develops within different arenas to commercial consumer policy. An agreed set of principles, such as a right to safety, redress and transparency, could be used within other jurisdictions to set basic universal benchmarks. Theoretically at least, consumers of government services should be entitled to a comparable set of protections as consumers in the market place. Economic loss is not the only threat to consumers. An exploration of the similarities and differences between commercial and non-commercial consumer transactions and the potential for synergistic approaches to consumer policy is an area worth exploring further in the future.

6. Conclusion

In conclusion, this submission reiterates that the objective of consumer policy should be to better assist consumers to participate effectively and sustainably in markets, which in turn, benefits competition. A good consumer framework assists the achievement of economic, social and environmental goals.

An effective framework is made up of regulation that acknowledges the potential vulnerability of all consumers and the particular disadvantage of certain groups. It is based upon a solid legislative framework with mandatory minimums, a range of policy tools and effective penalties, from which self regulation and co-regulation builds. It is informed by sound research and data collection. Coordination between federal and state agencies is maximised and resourced systems for national cooperation and early warning intervention are developed.

Most of all, a consumer policy framework is about consumers. It ensures that consumers have access to meaningful information and redress schemes that are independent and transparent. Provisions are made to protect access to essential services. Finally, investment is made in building consumer capacity, from the provision of information and advice services to individual consumers, to the facilitation of networked, independent consumer organisations that can participate in the development, monitoring and evaluation of the consumer policy framework.

Appendix 1 Case Study

Provided by the Consumer Credit Legal Service of WA

Several clients received unsolicited promotional material from a well known financial institution in relation to a new credit product. This information invited them to transfer the balances from their other credit cards to this new credit account. The promotional material stated that there was a low interest rate per annum for the life of the balances transferred, no set up, application or ongoing fees and no ATM/EFTPOS or cash advance fees.

The clients opened these new accounts and transferred their balance from other credit card accounts. In or about October 2005, the clients received letters from the financial institution informing them that it was introducing a new credit facility fee of \$160.00. This fee was to be applied to their account on 30 November 2005 but would be refunded or waived if they spent \$1,000.00 or more between that time and 25 December 2005. The clients did not spend the required amount on the credit card and the fee was subsequently charged to their accounts.

The clients requested that CCLS advise them of their legal position, in particular whether the financial institution is able to introduce the credit facility fee after representing to them that it would not charge any ongoing, application or set up fees (or ATM, EFTPOS or cash advance fees). We advised the clients that section 21(3) of the Uniform Consumer Credit Code states that a fee or charge cannot be charged in respect of a credit contract unless the contract authorises it to be charged. We further advised the clients that if a credit provider introduces a new fee or charge, it must give the debtor a written notice setting out particulars of the change at least 20 days before it is charged.

We further advised the clients that Section 21 of the new account's credit terms and conditions allows the financial institution to introduce a new fee or charge. It follows that generally speaking the financial institution is able to introduce a new fee. However, the financial institution made representations in its promotional material that there was no set-up or ongoing fees.

On this basis, we advised the clients that the financial institution may be in breach of the Code of Banking Practice, the Uniform Consumer Credit Code and the Australian Securities and Investment Commission Act 2001 (ASIC Act). The clients instructed CCLS to make a complaint about the financial institution's conduct to the Banking & Financial Services Ombudsman (BFSO) and the Code Compliance Monitoring Committee (CCMC).

The complaint was referred to the BFSO, CCMC and ASIC and at least one adverse finding was brought down against the financial institution.

Appendix 2 Examples of principles

PRINCIPLES OF ESSENTIAL SERVICES

developed by the WACOSS Consumer Utilities Project

Affordability – Energy and water should be affordable for all consumers. Supply must be assured and never denied to any consumers on the basis of their capacity to pay, financial hardship or vulnerable circumstances.

Information – Consumers should have access to information about their essential services, be able to access education to support and empower them to be able to make informed choices about their energy and water consumption and to negotiate their interests with their service provider.

Representation – Consumers ought to be supported to have their interests represented and be able to participate in decision-making consultation processes.

Rights – Consumers have a right to use energy and water as an essential service for ensuring adequate standards of living and social participation. These rights are recognised in international Human Rights standards accepted by Australian governments and must be upheld.

Equity – Essential services should be provided to all people equitably so that pricing and service standards do not discriminate people according to their geographic location or ability to pay.

Respect – Essential services should be delivered in a way that respects all consumers and their diversity of needs and capacity to participate in water and energy markets.

Safety – Consumers should be protected from any dangers in the provision of essential services.

Quality – Supply should be of a high quality appropriate to the purpose at its point of consumption.

Reliability – Supply should be reliable and aim to ensure a continuous, uninterrupted delivery of service, as far as practicably possible.

Sustainability - Energy should be sustainable and derived from an appropriately secure mix of sources, including renewable energy sources. Water resources should be managed to ensure that the provision of an adequate level of water at an appropriate quality is sustainable and affordable. Energy and water should be distributed and consumed in an efficient manner so that demand reflects need and provides beneficial social and environmental outcomes.

Redress – Energy and water consumers should have access to free, fair and independent services for complaints resolution and compensation.

UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION

(As expanded in 1999)

www.un.org/esa/sustdev/publications/consumption_en.pdf

I. Objectives

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
- (h) To promote sustainable consumption.

II. General principles

2. Governments should develop or maintain a strong consumer protection policy, taking into account the Guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.

3. The legitimate needs which the guidelines are intended to meet are the following:

- (a) The protection of consumers from hazards to their health and safety;
- (b) The promotion and protection of the economic interests of consumers;

- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
- (e) Availability of effective consumer redress;
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- (g) The promotion of sustainable consumption patterns.

4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.

5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries.

6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.

7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)

8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

CONSUMER RIGHTS

developed by Consumers International

www.consumersinternational.org

1. *The right to satisfaction of basic needs* - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
2. *The right to safety* - To be protected against products, production processes and services which are hazardous to health or life.
3. *The right to be informed* - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
4. *The right to choose* - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
5. *The right to be heard* - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
6. *The right to redress* - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
7. *The right to consumer education* - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.
8. *The right to a healthy environment* - To live and work in an environment which is non-threatening to the well-being of present and future generations.

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