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CFA RESPONSE TO PC INQUIRY ON CONSUMER POLICY

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Section 1: Introduction

1.1 About the Consumers' Federation of Australia

The Consumers' Federation of Australia (CFA) is the national (unfunded) peak body for consumer groups in Australia. We have over 100 members including legal centres, health rights groups, local consumer organisations and public interest bodies.

CFA's role is to put the view of its member organisations to government and industry and advocate on behalf of consumers.

The objects for which the association is established are to promote the interests of consumers, in particular low income and disadvantaged consumers, through identifying areas in which the interests of consumers are being adversely affected:

- advocating policy and law reform changes to benefit consumers;
- conducting consumer awareness and information programs;
- liaising with other consumer and community groups to advance the interest of consumers;
- facilitating consumer responses to government, industry and regulators where specific funding or resources are available; and
- doing other things to further the interests of consumers

CFA was founded in 1974, with funding from the Federal Government. This funding was maintained continuously for nearly 25 years, under governments of different persuasions. The CFA operated a secretariat with a staff of five people. It had a high media profile and through the coordination of consumer group input, made significant contributions to policy formulation.

In 1996, however, funding was abolished completely. With the exception of some limited project income, the CFA now has no ongoing resourcing. As such work undertaken by CFA is performed voluntarily by members of the CFA Executive or member organisations.

Current members of the CFA Executive are:

Catriona Lowe (Consumer Action Law Centre)	Chair
Nicola Howell (Centre for Credit and Consumer Law)	Deputy Chair
Peter Gartlan (EACH Financial Counselling)	Treasurer
Alison Pidgeon (Consumer Credit Legal Service (WA))	Secretary
Nigel Waters (Australian Privacy Foundation)	Member
Kerry Connors (Consumer Utilities Advocacy Centre)	Member
Gordon Renouf (Choice)	Member
Paul Loney (Cape York Strategy Unit)	Member
Jane Hutchison (Hobart Community Legal Service)	Member
Amy Kirkpatrick (Consumer Law Centre ACT)	Member

1.2 About this submission

Due to the constraints imposed by a lack of funding or resourcing for CFA, we have not been able to prepare a submission to respond to the bulk of the issues raised by the Productivity Commission's Issues Paper. As noted above, members of the CFA Executive are employed in other organisations, and provide their services to CFA on a voluntary basis. Most of the members of the Executive are providing responses to this Inquiry on behalf of their employing organisations, and would not have the capacity to prepare a second detailed submission, for the CFA.

For this reason, this short submission will focus on two specific broad-based issues relevant to this Inquiry:

- resourcing a strong Consumer Voice (Section 4); and
- increasing the effectiveness of consultation, regulation and review processes (Section 3).

Further it references analysis of ACCC enforcement activity (lodged separately by CFA as an information paper) and makes some more general comments regarding enforcement.

Note that our comments on 'resourcing a strong Consumer Voice' were informed by a qualitative survey of nearly 40 key consumer and community advocates across Australia. This work was funded by the Australian Securities and Investments Commission's Consumer Advisory Panel, and we are very grateful to CAP for its support, and to Fiona Guthrie, who carried out this work. A copy of this report appears in **Appendix A**.

Finally the submission makes some general comments regarding a number of other important elements raised in the Productivity Commission's Issues Paper and references and adopts CFA member submissions on relevant points.

As a precursor to our comments, we will summarise what we think are the key guiding principles for an effective consumer policy framework (Section 2).

1.3 Encouraging member group submissions

In addition to preparing this submission, a number of CFA member organisations are expected to prepare their own submissions. CFA is concerned that the Inquiry hear from casework and grassroots agencies, who might not normally have the time or resources to get involved in an inquiry such as this. CFA has therefore encouraged its member organisations, and other consumer and community organisations, to get involved in this Inquiry by publishing and distributing a document that provides a background for the inquiry; suggested outline for submissions; and possible issues to consider in responses.

1.4 Importance of this inquiry

As many CFA members have noted in both the informal discussions and public hearings, this inquiry is a seminal one, and provides a rare opportunity to reconsider and reconfigure the consumer policy framework in Australia. In our view, consumer policy in Australia has not kept up with the changes in the marketplace, or society more broadly, since the framework legislation, the Trade Practices Act, was introduced in 1974. Since that time, the marketplace has become more complex, choices and risks have increased, and the onus on consumers to provide for themselves – in retirement, in education, in health, etc – has also increased. New products, new traders, new technologies, new means of transacting, and new types of intermediaries have been introduced. And new scams, rip-offs and unscrupulous traders have entered the marketplace, and some old scams have reinvented themselves in new forms, or with new technologies.

Our consumer policy framework has not kept up with these changes. While there have been some amendments to the TPA since that time (and to other consumer protection legislation at the Commonwealth and State/Territory level), there has been no comprehensive review. Reviews that have taken place have tended to focus on particular sectors without an attempt to fit initiatives within a unifying framework. This has of itself contributed to fragmentation.¹ The result is a level of inconsistency and incoherence in the framework, and in the objectives that it is seeking to achieve. At the same time, we have lagged behind developments in other comparable Western democracies.

Nor has our consumer policy framework kept up with changes in consumer behaviour, knowledge, and ideologies, or with changes in our understanding of consumer behaviour and decision-making processes.

This Inquiry by the Productivity Commission is therefore a very welcome and timely review. We also welcome the open and positive approach that the Commission has taken in this review to date, including through the opportunity for informal consultations at the early stages of the review, and the acknowledgement in the Issues Paper and elsewhere that:

... whether there is a role for government in the consumer area is not at issue.²

In our view, government involvement in consumer policy is vital, and we hope that this Inquiry will provide the opportunity for a comprehensive review of the rationale and scope for government involvement.

¹ To take just one example as a result of the Ralph review, the ACCC, which previously had economy wide responsibility for consumer protection have lost their jurisdiction in relation to financial services, which is now an ASIC responsibility. This is not to be critical of the manner in which ASIC have discharged these responsibilities but rather to note that the disbursement of jurisdiction has created problems and uncertainty. This is particularly the case in areas such as debt collection, property investment spruikers, book up and other products or services that appear to straddle the jurisdiction of the two regulators.

² Issues Paper at 13.

Section 2: Guiding principles for consumer policy

Although we do not have the resources to provide a response to each of the important issues raised in the Commission's Issues Paper, we would like to set out some guiding principles for consumer policy. Our starting point is that consumers in Australia are entitled to:

- fair, effective and sustainable markets
- affordable and equitable access to essential services;
- protection from unsafe or unfit products and services;
- products or services that are sustainable in terms of their environmental effects;
- fairness in transactions and conduct;
- information and education to assist them in making choices in an increasingly complex marketplace;
- accessible and effective remedies for failures and breaches of the law
- active monitoring and enforcement of consumer protection laws
- input through representative bodies to policy-making that affects their interests.

These rights in effect, become the objectives of consumer policy. Particular focus is required to ensure these principles are a reality for disadvantaged and vulnerable consumers. This is because, as has been noted by a range of commentators, disadvantaged and vulnerable consumers often miss out on the benefits of competitive markets and may indeed be worse off. For example Howell and Wilson note in their article *In competitive markets is there still a need for consumer protection and fair trading regulation*:

An added complication is the fact that consumers are not homogenous in their preferences, skills, ability, socio-economic status and other characteristics. It may not be possible to design consumer policy that meets the needs of all consumers, including the marginalised and the vulnerable. If this is the case, there are difficult issues to grapple with in a policy sense, including whose interests should prevail if a proposed policy response benefits one group of consumers, but does not benefit, or even harms, another.³

With these considerations in mind, CFA advocates preparedness to examine both general and targeted solutions, the latter being particularly appropriate where a more general response to problems experienced by disadvantaged and vulnerable consumers may impose costs on consumers in general.

CFA also takes the view that a flexible, evidence based approach is needed – one that focuses on the right tool for the right job, rather than automatic preferencing of one type of approach over others, or a linear approach that says X intervention must be tried before Y. We share Howell and Wilson's concern that current programs and approaches

Too strongly emphasise the merits of unfettered markets and the costs of regulation. It appears that reviewers focus on questions of 'How does this legislation impede competition?' and 'How much does it cost business?' For

³ Howell and Wilson (2005) at 17.

consumer protection matters, we suggest that it would be more appropriate to first ask 'What are the consumer problems and what is the most efficient and effective solution.'⁴

CFA submit that the above characterisation appropriately places actually solving the problem as the central question. CFA is aware that the Consumer Action Law Centre (a CFA member) has submitted to the Commission on these issues. CFA refers to and adopts Consumer Action's recommendations in this regard (see Section 4.3 Consumer Action Submission).

⁴ Howell and Wilson (2005) at 19.

Section 3: Regulating for, consulting with, and representing consumers

How effective are the current regulation making and review processes (at both the Commonwealth and State and Territory level) in facilitating the development of best practice consumer regulation? Are there ways to ameliorate some of the difficulties in measuring the benefits and costs of consumer regulation without compromising the integrity of the assessment process?

Beyond procedural inertia and/or delays in modifying regulations to take account of changed market circumstances, are there institutional factors that have helped to sustain regulation that does not provide a net benefit to the community? How could these be addressed? What other improvements could be made to current gate-keeping and review arrangements? (Issues Paper p 23)

3.1 Importance of consumer participation in policy making

The importance of consumer participation in policy making is, in many cases in Australia, merely given lip service. Many governments and government agencies provide the veneer of consultation, but do not provide the opportunity for adequate and informed consumer participation, including by consumer and community organisations. This is despite acknowledgement in many other developed economies of the value of participation by consumers and their organisations.

For example, the New Zealand government has released numerous documents and principles on its approach to consumer consultation. It notes that consumer/community participation in policy-making can:

Improve the quality of policies and services

When government agencies include diverse groups in decision-making and service delivery, we benefit from their first-hand understanding of the issues. We gain new perspectives that test our assumptions and serve as a reality check.

Help solve complex problems

Social, economic and environmental problems can be complex. By bringing different networks together, we gain new sources of information, build a sense of joint purpose, and increase the possibility of finding sustainable solutions.

Build trust and understanding

By building active relationships, we can reduce the sense of "us" and "them". People develop confidence in agencies that invite participation and genuinely listen. This can build a foundation of trust that is valuable when tough decisions need to be made.

Support active citizenship

By actively engaging citizens we are honouring their right to participate in decisions that affect them. We can encourage a participatory democracy in which everyone recognises that they have a stake and a part to play.

Ensure Maori participation

The Treaty of Waitangi places a responsibility on Government to ensure Maori are involved in making decisions on matters that affect them, and to take positive steps to ensure that interests of Maori are protected.

Help create an inclusive society

When Government acts in co-operation with diverse communities, people feel more powerful, more fairly treated and more valued. Creating an environment in which people can solve their own problems encourages self-reliance and innovation.

Measure progress more effectively

Collaboration with community and voluntary organisations can improve monitoring and evaluation of community-delivered programmes. Active relationships can also enable constructive feedback on your own agency's performance.

Build staff skills

Relationship-building with community, voluntary and Maori organisations offers opportunities for government agencies to build a range of communication and cross-cultural skills that are applicable in many other settings.⁵

Similar acknowledgement is found in the United Kingdom,⁶ and the OECD.⁷ Indeed, the OECD suggests a third model (broader than information or consultation) of active participation by citizens, described as follows:

Active participation: A relationship based on a partnership with government, in which citizens actively engage in the policy-making process. It acknowledges a role for citizens in proposing policy options and shaping the policy dialogue – although the responsibility for the final decision or policy formation rests with the government.⁸

Following from this, the OECD includes as one its guiding principles the following:

Governments benefit from active citizens and a dynamic civil society and can concrete actions to facilitate access to information and participation, raise awareness, strengthen citizens' civic education and skills as well as *to support capacity-building among civil society organisations.*⁹ (emphasis added)

Similarly, the International Association for Public Participation sets out the following values for public participation:

⁵ <http://www.goodpracticeparticipate.govt.nz/the-basics/benefits.html>

⁶ Civil Renewal Unit, Home Office, UK (2004). [The Benefits of Community Engagement: A review of the evidence](#)

⁷ OECD *Engaging citizens in policy-making: information, consultation and public participation*, PUMA Policy Brief No 10, July 2001, at <http://www.oecd.org/dataoecd/24/34/2384040.pdf>.

⁸ OECD *Engaging citizens in policy-making: information, consultation and public participation*, p 2.

⁹ OECD *Engaging citizens in policy-making: information, consultation and public participation*, p 5.

Core Values for the Practice of Public Participation

1. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.¹⁰

These values apply equally to consumer participation in policy-making.

In our view, while some governments, agencies and reviews do take a progressive approach to consumer participation in the policy process¹¹, many do not. There is not a consistent approach taken across all levels of government that adequately acknowledges the value of consumer participation, and demonstrates support for that participation.

We believe that an important outcome of this inquiry would be a recommendation for governments and agencies to develop consistent principles and practices for supporting consumer participation in the policy process.

More specific suggestions are set out below.

Recommendation 1: That MCCA and SCOCA develop consistent principles and practices for supporting consumer participation in policy processes, including the development of a statement of principles for publication.

3.2 Consultation timeframes

Too often, government inquiries and reviews are announced with insufficient time for interested parties to make comprehensive submissions (this inquiry being a pleasing exception). The short timeframes involved in many consultations often gives rise to a perception that the government is not really interested in hearing from the community, even if this may not be the case in practice.

¹⁰ <http://www.iap2.org/displaycommon.cfm?an=4>

¹¹ For example ASIC provides its Consumer Advisory Panel with a research budget. CAP directs the budget by consensus decision and it has resulted in many useful pieces of work. The Report *A Strong Consumer Voice*, annexed to this submission is one example.

It is not uncommon for government departments and agencies to provide periods of less than a month to respond to often complex and detailed material. This does not provide sufficient time for even a well-resourced organisation to review material, collect evidence and formulate and finalise a response – still less if the organisations itself desires to consult with members or stakeholders regarding the response.

This problem is compounded for consumer organisations, which are small in number, yet are called on to respond to important reviews on widely ranging subject matter.

Invitations to consult acknowledge that consumer organisations have importance information and perspectives to contribute to policy development – yet short consultation timeframes contribute to a failure to marshal this information and perspectives.¹² This is a failure in the policy making process.

It is particularly important that these failings are addressed as increased prominence is given to evidence based regulation in general and the development of regulatory impact statement in particular in the process of regulatory reform.

Short-time frames for consultations are inconsistent with a genuine consultative and participative approach of government, and should be eliminated, except perhaps in some exceptional circumstances.

The UK Government has developed a Code of Practice on Consultation that, among other things, suggests that consultation processes should allow ‘a minimum of 12 weeks for written consultation at least once during the development of the policy’, and that consultations over holiday periods should consider a period of longer than 12 weeks.¹³

We suggest that a similar approach should be adopted across all levels of government in Australia. We note that small, casework organisations in particular find it difficult to devote resources to policy work because of the demands that their casework practices necessarily impose upon them. We note, for example, the comments made by CCLC in the public hearings in Sydney that policy work is often done by staff after hours and in their own time.¹⁴ However, it is the input of casework agencies that is often most crucial in terms of assessing regulatory changes. Consultation processes should not place additional, unreasonable barriers to participation of these organisations in policy processes; and short time frames are likely to be one of the biggest barriers.

We note that a similar concern about consultation timeframes has been expressed by other stakeholders in the policy development process. For example similar concerns raised by business groups were reflected in the 2006 report on *Reducing Regulatory Burdens on Business* (“the Banks Report”).¹⁵ The Banks Report referred to the UK Code on Consultation, and recommended that there should be a whole-of-government policy

¹² This is also, of course, a question impacted by resourcing. Time without resources is not real time. This is discussed further in the context of a strong consumer voice below.

¹³ <http://www.cabinetoffice.gov.uk/regulation/documents/consultation/pdf/code.pdf>

¹⁴ Submission by Ms Karen Cox on behalf of Consumer Credit Legal Centre (NSW) at the Commission’s public hearings in Sydney.

¹⁵ Regulation Taskforce 2006, Rethinking regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Report to the Prime Minister and the Treasurer, Canberra, January (“The Banks report”) p 151.

on consultation requirements, setting out best practice principles that need to be followed by all agencies when developing regulation.

However, we are not aware of any minimum consultation period that the Government has adopted, nor of the development of a comprehensive policy in line with the recommendation.¹⁶

Recommendation 2: That MCCA and SCOCA develop a Code of Practice for Consultation timeframes that includes means by which compliance is monitored and reported against.

3.3 Information about consultations

A key component of policies on effective consultation relates to the availability of information about consultations. Again, business stakeholder concerns regarding this issue were reflected in the Banks Report. The Report went on to recommend:

A business consultation website should be established to allow registration of businesses prepared to be consulted on particular regulations, and to automatically notify business and government agencies of consultation processes in areas where they have an interest.¹⁷

The Government has since established this consultation website (through www.business.gov.au), and this appears to be a very valuable resource for businesses.

In our view, the challenges faced by individual consumers, community and consumer organisations in becoming aware of relevant consultation processes are as great as, if not greater, than the challenges facing businesses. It is disappointing therefore that similar efforts have not been made to inform and engage a broader range of stakeholders.

While it appears possible for individuals and community/consumer organisations to register their interest in consultations under the business.gov.au website, this sends fundamentally the wrong message to stakeholders regarding levels of interest in receiving their view point. Consumer and community stakeholders are not a subset of business – indeed their interests diverge as often as they align. It is important that these stakeholders and the importance of their views are acknowledged and seen to be acknowledged.

It is therefore preferable to develop a separate website specifically designed to facilitate consumer and community engagement in consultation processes. A second best alternative would be to rebrand the business consultation website as a general community consultation website – promoted to both business, individuals, and consumer/community organisations.

¹⁶ Response ‘The Australian Government agrees to the recommendation and is committed to improving mechanisms for consultation with industry.’ (p 78, Australian Government, Rethinking regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Australian Government’s response, 15 August 2006.

¹⁷ Banks report recommendation 7.7, p 154.

Too often, government agencies assume that interested parties are able to monitor their websites and/or that they will see public notices in newspapers. Neither assumption is safe or realistic. The onus should be on government agencies to proactively seek out and notify NGOs which are likely to be interested in particular issues, inquiries and reviews, and they should be held to account for the success of their efforts in this regard.

Recommendation 3: That MCCA commit to the development of a website specifically designed to facilitate consumer and community engagement in consultation processes.

3.4 Coordination – timing of consultations

The timing of consultations is also often a challenge for consumer and community organisations as well as other stakeholders. Rarely are consultations spaced out over a year. Often, there is a bulk of consultations, discussion papers, draft regulatory impact statements being released on similar issues, over a short timeframe.

We believe that more could be done to coordinate consultation processes between government agencies, and across jurisdictional boundaries, so as to facilitate involvement in the policy processes.

For example, the OECD Guiding principles include the following:

Initiatives to inform, request feedback from and consult citizens should be coordinated across government to enhance knowledge management, ensure policy coherence, avoid duplication and reduce the risk of ‘consultation fatigue’ among citizens and civil society organisations (CSOs). Coordination efforts should not reduce the capacity of government units to pursue innovation and ensure flexibility.¹⁸

Of course, the challenges involved in better coordinating consumer policy processes are not underestimated, particularly in a federal system with shared responsibility between the Federal and State governments. However, this is an area where we believe that MCCA and SCOCA, and their counterparts in other related policy areas should have an active role and could do much better.

Recommendation 4: That SCOCA is charged to take a role in better coordinating consumer policy processes and is provided with adequate resourcing to carry out this function effectively.

3.5 Acknowledgment / indication that views have been heard

Consultation processes must be genuine consultation processes, with the potential for involvement from consumers, consumer and community organisations to have an impact on the policy outcomes.

As the New Zealand Government has noted:

¹⁸ OECD *Engaging citizens in policy-making: information, consultation and public participation*, p 5.

If consultation is to meet its purpose then it must be a *genuine* exchange of views between people who have the knowledge and experience to confront the issues.¹⁹ (emphasis added)

The same paper refers the following quote from a High Court case in New Zealand:

“The essence of consultation is the communication of a genuine invitation to give advice and a *genuine consideration of that advice*. To achieve consultation sufficient information must be supplied by the consulting party to the consulted party to enable it to tender helpful advice. Sufficient time must be given by that consulting party to the consulted party to enable it to do that.”²⁰ (emphasis added)

Again, the perfunctory nature of much actual consultation, with little real listening because decisions had already been made, was a criticism made by business in the regulatory red tape review.²¹

Key to this component of the consultation process is a requirement for agencies to engage in informal consultations with key stakeholders as early as possible in the policy development process.

Recommendation 5: That the principles referred to in Recommendation 1 specifically include a commitment to undertaking consultation as early in the policy development process as possible.

3.6 Publication of submissions

The default assumption should be that submissions made to official inquiries or reviews or consultation should be made public – preferably on websites – within a short time after receipt. Too many agencies ‘forget’ to inform potential contributors of proposed approaches to publication, and then use the excuse of privacy or confidentiality to justify not publishing submissions. It is generally a misinterpretation of privacy laws to suggest that they prevent publication – specific notice that publication will occur unless there is a request to the contrary will certainly overcome any constraint, and even where notice has not been given agencies could rely on a reasonable expectation exception in privacy laws (e.g. IPP 11.1(a) in the Privacy Act 1988).

Where agencies do invite submitters to indicate a preference for confidentiality, this should only be respected where there are reasonable grounds, such as privacy of individuals, or genuine commercial confidentiality concerns. Certainly in relation to organisational submissions, there should be a presumption and expectation of a reciprocal obligation – organisations that expect to have an influence on public policy should be prepared to be publicly accountable. Too ready an acceptance of ‘commercial

¹⁹ Consumer representation – consulting consumers (2004), (p 2) at <http://www.consumeraffairs.govt.nz/aboutus/consumer-rep/Consulting.pdf>

²⁰ McGechan J, in *Air New Zealand Ltd v Wellington International Airport Ltd* (CP403/91, High Court, Wellington), quoted in Consumer representation – consulting consumers (2004), (p 5) at <http://www.consumeraffairs.govt.nz/aboutus/consumer-rep/Consulting.pdf>.

²¹ Banks report p 150-151.

in confidence' or government secrecy claims is corrosive of the principles of an open representative and pluralist democracy.

Recommendation 6: That government and agency consultation documents include as a matter of course, a statement submissions made will be made public unless a case is made for treatment of material as confidential.

Section 4: A Strong Consumer Voice

Would there be benefits from government support for a consumer advocacy body and would they outweigh the funding and other costs involved? Should such a body's role be limited to advocacy, or should it also be responsible for bringing forward consumer complaints? Do consumer advocacy bodies adequately represent the interests of all consumers? If not, what other means could be used to elicit the views of consumers? Is there a need for greater research into consumer and market behaviour to inform policy development? If so, who should be responsible for carrying out and resourcing such work? (Issues Paper, p 22).

The comments in this section are informed by research undertaken at the request of the Consumer Advisory Panel of the Australian Securities and Investments Commission *A strong consumer voice* by Fiona Guthrie.

The purpose of the research was to inform consumer advocates (and others) about the range of views within the consumer sector regarding current gaps in the consumer advocacy landscape and to provide a basis for making informed decisions about an overall platform for a strong consumer voice.

A short background paper was sent to identified advocates. CFA members were also advised by email of the opportunity to input into the research. The paper put forward some possible gaps and solutions and invited suggestions as to other gaps and solutions.

This information is presented in the research report in **Appendix A** (already submitted to the Productivity Commission as an information paper).

The research report identifies five key gaps that mean that a strong consumer voice is not a reality in Australia:

- The lack of an independent consumer research centre
- The lack of a funded peak body for consumer organisations
- Significant gaps in coverage of external dispute resolution
- Inconsistent and inadequate access to financial counselling and community legal services
- Inadequate attention to getting consumer representation and consultation right.

The research report also outlines interviewee's views on what should be done to address these gaps. The CFA supports these responses and makes the following specific recommendations:

- **Independent research capacity** - That the Commonwealth Government commits to funding an independent research centre. The centre should be separately incorporated and have an independent board (drawn from relevant stakeholder groups) and a reference group (made up of consumer and community stakeholders). The Centre's research work would be directed by the

reference group, with consultation with a broad set of stakeholders a key requirement of any research work.

The Centre must in particular be charged to link strongly with caseworkers but should not undertake casework itself. A Charter should be developed for the Centre that includes areas of focus. CFA recommends that these key areas include:

- Issues affecting disadvantaged and vulnerable consumers;
 - Actual consumer behaviour in markets
 - Monitoring the effectiveness and inclusiveness of policy making processes.
- **A funded peak body** – That the Commonwealth Government commit to funding a peak body for consumer organisations. Funding should be sufficient to employ a staff including at least, a CEO, a communications manager, a network manager, 2-3 policy officers and administrative support. The body should have a strong advocacy role based on a mandate from members. The body should be based in Canberra.
 - **Improved coverage of industry based external dispute resolution** - CFA members and the consumer movement generally are strongly engaged in dialogue regarding the optimum model for EDR and are generally agreed that consumers will benefit from a single entry point for resolving disputes with financial services providers.

Even more importantly however, there is also agreement that for convergence to work, and for consumers to have certainty that they will have access to EDR, it must be compulsory for all financial services providers to be in EDR.

At present most financial services providers must be a member of an approved EDR Scheme. A notable exception is in the area of credit. Banks, Building Societies and Credit Unions have to be in EDR because they are approved Deposit Taking Institutions. However, any other business involved in a loan transaction does not have to be in EDR at present. This is a "loophole" of significant proportions. It is particularly concerning in light of recent reports of increases in personal bankruptcies and forced sales of homes.

CFA recommends that urgent action is taken so that all of the parties in a loan transaction must be in an approved EDR Scheme. Other gaps in this area worthy of attention include credit reporting, motor vehicle sales and repairs, travel and tourism.

- **Improved direct service delivery** – That a comprehensive analysis be undertaken to identify service gaps across Australian states and territories including financial counselling services, specialist consumer legal services (including credit) and legal aid, particularly access to aid for civil disputes, with a view to filling those gaps.

- **Consumer representation** - The CFA refers to and repeats recommendations made in Section 3 above.

Recommendation 7: That the Commonwealth Government acknowledge the importance of a strong consumer voice and commit funding to:

- Independent consumer research capacity
- A peak body for consumer organisations
- Improved coverage of industry based ADR (funds in this regard would only need to be sufficient to scope needs given funding models that apply to the schemes themselves)
- More direct community based service delivery.

Section 5: General framework issues²²

CFA refers to and repeats its comments above regarding the objectives of a consumer policy framework. Using these objectives as a starting point many elements of the current consumer policy framework (or aspects of them) do work well. Examples include:

- EDR (where available)
- General fair trading principles set out in the TPA and FTAs (including prohibitions on misleading deceptive conduct and requirements such as fit for purpose)(though there are enforcement concerns here – see Section 5.5 for further information)
- Door to door sales provisions
- Instances where regulators are genuinely committed to consumer consultation including ASIC CAP and the ACCC CCC.
- Capacity building in the energy sector on behalf of small consumers through the National Electricity Market Advocacy Panel.
- Direct assistance for individual consumers (where available).
- Certain industry codes for example the Banking Code of Practice, the Insurance Code of Practice, including commitments to continuing improvement and review.

There are other elements of the framework that require attention.

5.1 Competition Law

Consumers have not been receiving the protection they require from reductions in competition through mergers, acquisitions and collusion. While the underlying competition law in Australia is sound, its detailed interpretation and application has produced less than satisfactory outcomes for consumers, including multiple mergers and acquisitions, and the approval of anti-competitive conduct through ‘authorisations’ without the proper application of the ‘net public benefit’ test.

We recommend a new, clearer definition of the ‘public benefit’ and a mandatory requirement for the public assessment of the ‘public benefit’ in all applications. We note in this regard the report prepared by the Consumer Action Law Centre *Public Benefit and Part VII of the Trade Practices Act*. We support and adopt the recommendations made in that report.

In addition we support a workable, balanced s.46 of the TPA, and the use of criminal sanctions for directors involved in hard-core cartels. We oppose mergers going direct to the Australian Competition Tribunal without proper consultation with the public and prior consideration by the ACCC. Further, the ACCC should not be able to approve a merger or grant an authorisation based on secret ‘undertakings’ which have not been the subject of public consideration.

²² We note these issues were the subject of oral submissions by Mr Nigel Waters on behalf of CFA to the Commission’s Public Hearings in Sydney

We also recommend a process for the enforcement of breaches of undertakings, including appropriate sanctions and remedies. Currently there is no system for monitoring or enforcing breaches of undertakings given to the ACCC when they approve a merger or grant an authorisation. Often there are no available sanctions or remedies for such a breach other than de-merger (which is a costly and unrealistic remedy). This reform would require the establishment of a new monitoring and enforcement regime with separate, realistic sanctions and remedies.

We note also the development of a body of work that examines the role of consumers in competitive markets and that recommends close attention by policy makers to consumers' ability to activate markets. This thinking needs to be built into responses by policy makers and regulators.

Recommendation 8: That the TPA is amended to:

- Clarify the definition of public benefit (in part VII of the Act)
- Give effect to the principles section 46 is intended to reflect
- Require that undertakings are public

Recommendation 9: That the ACCC is directed to:

- Develop a process for enforcing breaches of undertaking provided in merger clearances or the granting of authorisations.
- Develop a framework to aid consideration of demand side as well as supply side competition issues and impediments.

5.2 Elevating the importance of consumer policy at Government level

Consumers seek more effective and representative machinery for consumer protection policy development and delivery. The allocation of resources should more accurately reflect the benefits to the Australian community of informed, protected and confident consumers.

CFA seeks a commitment from governments to:

- Increase the status and resources of government consumer protection agencies
- Appoint a Federal Consumer Affairs Minister with Cabinet status
- Move the consumer policy function from the Treasury to a economic policy neutral agency such as the Attorney-General's Department. The location within Treasury has been not been successful. Whilst there is an extremely strong interactive relationship between consumer and competition policy, as noted above, consumer policy also incorporates social objectives. In CFA's experience

We note it has been argued that as the Treasurer has such high standing in government policy making arenas, locating consumer policy in the treasury portfolio gives it greater prominence and attention. As noted above, this has not been the experience of consumer advocates in practice.

5.3 A basket of tools not a linear approach

Self-regulation, Codes etc

The experience of our member NGOs is almost universally that self-regulation is a poor substitute for more effective rules backed by the force of law. Codes of practice can be useful and can provide greater flexibility and responsiveness but only as part of a co-regulatory framework preferably where membership and compliance is mandatory, and consumer input to code development is properly resourced. We note this view is increasingly widely held.²³

Better information necessary but not sufficient

Greater emphasis should be placed on ensuring that only safe and fair products and services are in the marketplace. This is not say that policy should aim to eliminate all risk, but we believe the tolerance for unsafe, unfair, unhealthy, and unsustainable products and services is currently far too wide.

Too much consumer policy in the last decade has been driven by a naïve assumption that competitive markets will work to the benefit of consumers if only they are given more information. The reality is that while extra information can be helpful and welcome, most consumers will be unable or unwilling to devote the time to make effective use of even more information, even were it comprehensible, which often it is not. Many products and service offerings are simply too complex for even the best informed consumers. Policy must acknowledge the clear findings of behavioural economics that consumers will frequently make sub-optimal choices. We note the Consumer Action submission on these issues and refer the Commission to its discussion on behavioural economics and choosing the right tools for the right job – Sections 3.2 and 5.1 respectively).

5.4 Active monitoring, enforcement & redress

CFA submits there are three key elements required in order to make good regulation effective in practice:

- Accessible redress for consumers
- Active compliance monitoring
- Strong enforcement culture

Easy and cheap access to effective dispute resolution processes is essential in all markets. In most markets this should be guaranteed through mandatory (legally enforceable) membership of an external dispute resolution (EDR) scheme meeting recognised standards²⁴) which require notice to consumers of their options. EDR schemes, whether co-regulatory or statutory bodies, must be monitored for performance. CFA's experience is that an absence of performance monitoring and accountability for outcomes too easily leads to unacceptable standards of accessibility, responsiveness

²³ See for example Graeme Samuel's address to the National Consumer Congress in March 2007.

²⁴ See for example ASIC Policy Statement 139.

and outcomes. We submit the Office of the Privacy Commissioner provides a case in point.²⁵

Too many areas of policy rely on a set of rules with at best a complaint process and no pro-active policing – effectively an ‘honour’ system of self-regulation. Experience suggests that this approach too often fails consumers in that by the time non-compliance comes to light, significant numbers of individuals or families have suffered loss or damage. Consumer affairs agencies need much greater resources to actively monitor and enforce consumer protection rules. Over the long term, increased spending on this end of the process will be much more cost-effective than dealing with the outcomes of major failures and breaches.

There must be a commitment to a strong enforcement culture. This means not only adequate resourcing and remedies for regulators but also encouragement from governments to use the powers provided to them. This should include a preparedness to take on ‘difficult’ cases that test the boundaries of the law and a full suite of remedies to choose from in addressing particular conduct. CFA refers to and adopts the recommendations made in the Consumer Action Law Centre submission in this regard (see section 5.4 of the CALC submission).

In particular, governments should consider the allocation of business fines and penalties to meet the needs both of directly affected consumers, for example through the establishment of cy pres trust funds, and of the wider population of future consumers, for example through funding of ongoing enforcement action, relevant research or other initiatives.

In this context, CFA notes it has undertaken analysis of enforcement action by the ACCC in recent years. The analysis is annexed in **Appendix B**. CFA has not had the resources to undertake a similar exercise for other relevant regulators such as ASIC, state and territory agencies or ACMA, however it is suggested that such an exercise would be informative.

In the past, the ACCC was generally considered to be Australia’s pre-eminent consumer protection regulator – indeed it often established world’s best practice, particularly in relation to enforcement. Whilst the ACCC remains a relatively active regulator when compared with other Australian regulators, CFA submits that attached analysis suggests that the ACCC has lost its edge.

The analysis is based on figures provided in the ACCC Annual Reports from 2001/02 – 2005/06 inclusive.

The first Table is a summary of the number of cases initiated in each year and undertakings accepted. Note that the figures provided are of cases which were initiated as a result of ACCC investigations; thus, the figures do not include cases brought against the ACCC, or cases where the ACCC is an intervenor (although both of course may well be important matters). As well, cases are not counted twice; for example, a

²⁵ See for example Consumer Action Law Centre Press Release [*17 April 2007: Appalling delays in handling privacy complaints are no secret*](#)

contempt proceeding brought in respect of failure to comply with prior court enforceable undertakings is not counted as a second case. Most notably the table illustrates a steady decline in consumer protection cases, with only 5 (4 discounting a matter that was discontinued very early in the proceeding) consumer protection matters commenced in the 05/06 year.

The second Table is a summary of the number of enforceable undertakings accepted in each year and the number of undertakings which involved refunds or compensation in any form. The ACCC, as a result of the decision in *Medibank Private Ltd v Cassidy*²⁶ in the 2002/03 year, is limited in the redress it can also seek on behalf of consumers when bringing an action for other remedies under the *Act*. This problem has led to the ACCC Chairman indicating publicly, that since the decision in *Medibank Private*, ACCC may prefer to take court-enforceable undertakings rather than litigate in order to ensure that consumers are able to get redress. Redress figures includes all forms of refunds or compensation negotiated (even when this is not remitted to individual consumers – see *footnote e*).

Notably, Table 2 illustrates an actual decline in the number of enforceable undertakings that include a redress component – from more than 50% in 01/02 to slightly more than 20% in 05/06.²⁷

Also attached is an Appendix with a brief summary of each case commenced in the relevant year.

Recommendation 10: That governments:

- Commit resources to undertake research to identify enforcement trends within consumer protection regulators.
- Commit to approaches that promote an active enforcement culture.

²⁶ [2002] FCAFC 290

²⁷ This may be in part explained by an increase in product safety undertakings obtained. Some product safety undertakings being directed at manufacturers may not always require a consumer redress component. Equally however product safety issues may involve loss on that part of consumers who have purchased faulty goods so the absence of a redress mechanism will not always be appropriate.

Appendix A – A strong consumer voice

A **STRONG** CONSUMER **VOICE**



A research project of the Consumer Advisory Panel,
Australian Securities and Investment Commission

MAY

07

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Preface

Researcher Observations

This research documents what people said in response to various suggestions for building a stronger consumer voice.

What is *not said* in interviews however, is just as interesting. Interviewees were not asked whether they thought the consumer voice was muted — this was implicit in the research design. No-one questioned this assumption and interviewees clearly agreed this was the case.

There was also a strong consensus position on nearly all of the issues raised.

Reading this research as a whole, it is clear there is the potential for significant improvements in policy development and decision-making in consumer affairs.

Should some of the suggestions in this paper be taken up, the result would be “A Strong Consumer Voice”.

Background

About this Research

This research was undertaken on behalf of the Consumer Advisory Panel (CAP) of the Australian Securities and Investments Commission.

The purpose was to “inform us about the range of views in our sector . . . and provide a basis for making informed decisions about an overall platform for a strong consumer voice”.¹

CAP sent a short Background Paper — “*A Strong Consumer Voice*” — to a number of consumer advocates from around Australia. The paper outlined five suggestions for filling current “gaps” in the consumer policy framework:

1. the establishment of an independent consumer research centre;
2. funding of the peak body, the Consumers’ Federation of Australia;
3. the establishment of external dispute resolution services in presently unserved areas;
4. improving access to financial counselling and community legal services; and
5. more extensive recognition of the need for consumer representation.

The paper also asked advocates to identify any ‘gaps’ not outlined in the paper. Both the “gaps” and the associated issues as set out in the Background Paper are repeated at the beginning of each section in this paper. The Background Paper is included as Appendix 1.

Methodology

- Telephone interviews were conducted with consumer advocates in late April and early May 2007. The researcher asked interviewees for their views on the gaps and issues set out in the Background Paper.
- Those people included in this research were either suggested by CAP, as those who were already active consumer advocates² or were self-selected after an email to a broad network of consumer groups asking for input.
- In total, 39 people were interviewed. Four people were unable to be contacted or did not respond to requests for their involvement. Appendix 2 lists those people interviewed. Notes from the interviews have been collated into a separate document and can be provided on request (comments are anonymous).

Direct quotes from interviewees are used in this paper to illustrate interview themes.

1 Consumer Advisory Panel, Australian Securities and Investments Commission, “*A Strong Consumer Voice*”, 2007, p 1.

2 The list included the President of each state financial counselling body, the executive of the Consumers’ Federation of Australia, the CEO and senior policy staff in Choice, advocates working in the telco and energy fields and legal aid agencies.

Acknowledgements

A sincere thanks to the people interviewed for this project. They were unfailingly helpful, thoughtful in their comments and generous with their time.

Thanks also to Catriona Lowe, David Tennant and Nicola Howell who put together the Background Paper and provided advice on the research approach as it unfolded.

Researcher

This research was undertaken by Fiona Guthrie, Creative Sparks Pty Ltd.

Graphic design and layout by Melinda Rene, Rene Graphics.

Executive Summary

Independent Consumer Research Centre

There was strong support for this proposal. The body would focus on research and policy advocacy, not individual advocacy.

The alternative option of funding existing agencies to undertake research was not supported, although some people suggested the national body could have a grant-making function.

The majority of people argued that research undertaken by the Centre should have a focus on vulnerable consumers, but it should not be exclusive.

Funding for the Peak Body (the Consumers' Federation of Australia)

There was overwhelming and unequivocal support for funding for a peak body. The role of such an organisation would include policy advocacy, networking, sharing information and coordinating consumer representation. Federal Government funding was seen as the only realistic funding source.

External Dispute Resolution (EDR)

Uniform access to EDR for consumers of credit products was identified as a significant gap. Interviewees said it was preferable to extend the membership of existing EDR schemes, rather than create new schemes, in this market.

Access to Financial Counselling, Community Legal Services

Interviewees agreed strongly that there was a significant need for additional financial counselling agencies and community legal services. The majority said the need is across the board — for additional resources for existing services as well as for the establishment of new services.

There were equally divided views on whether it would be useful to conduct a needs analysis to scope the problem. Many people thought it would. However, just as many thought such an analysis was unnecessary or were uncertain, arguing that it was obvious as to the areas of need.

Consumer Representation

Although consumer involvement works well in some places, generally interviewees were disappointed by the level of engagement. Consultation timeframes are too short, there are more requests than most agencies can handle, and consultations can be tokenistic.

The value of consumer representation in leading to better decision-making was highlighted by a number of interviewees.

1

An Independent Research Centre

Gap

An independent consumer research centre funded by government with an independent board (drawn from relevant stakeholder groups) and a reference group made up of consumer and community stakeholders) which would direct a certain portion of the research program, the remaining proportion to be directed by the organisation. The body would undertake research on consumer issues in the broadest sense. For example it would not be limited to financial services.

Issues:

Is there another model/s? Should the body undertake policy advocacy and/or individual case advocacy? Should the body also have responsibility to seek to ensure consumer inclusion in relevant debates (as does the National Consumer Council in the UK) or should this be addressed separately/across a number of organisations? Should funds be provided to enable existing organisations to undertake research activities, as an alternative or complement to establishing a new consumer research centre. Should an organisation of this type be directed to give specific consideration to the needs of vulnerable and disadvantaged consumers?

Response

“Serious, consumer-focused research is really important — it seems to me that much consumer research is actually market research.”

There was generally strong support for the concept of a Research Centre, with many people pointing to a similar model in the United Kingdom: the National Consumer Council.

Some interviewees, although supportive of this proposal overall, raised some concerns about how such a body would operate in practice, including how the research agenda would be set, whether the board/advisory body would be truly representative and whether the Centre would tend to drown out other voices.

Many people argued that it would be vital for this proposed Centre to link strongly with caseworkers. This was also seen as a critical to high quality research outputs.

“This is a good model, provided there is recurrent funding...but needs wide representation, including caseworkers, to make relevant to consumers.”

A couple of people raised the issue of where the Research Centre would be located. Some thought it would be well placed in an academic institution, whilst others had the opposite viewpoint.

“Not in an academic institution...It would be captive to the Uni, vulnerable to their agenda.”

“Not a bad thing to have in Unis...get synergies around economic, finance.”

Policy Advocacy and/or Individual Advocacy

“Not individual advocacy...casework takes over the work and research takes a back seat.”

Interviewees did not support the idea of the Centre also undertaking individual casework, as this was seen as detracting from the core functions of research and policy advocacy. This finding should be understood however in conjunction with the comments above, about the need for the Centre to link effectively with casework agencies.

Funding Existing Organisations Instead

The alternative of funding existing organisations to undertake research, rather than setting up a national body, did not receive much support. A national body was seen as preferable as it would reduce duplication, have a national focus, provide economies of scale (research and administrative) and be more strategic in its approach.

“The problem is that it remains piecemeal. We need a strategic development drive in consumer policy, that goes across the sectors, for example, behavioural economics...it sits across all areas of a policy.”

Some people suggested the question should not have been framed as “either/or”, and that both options could be possible. This would entail the Research Centre also having a grant making function:

“Not either/or but a bit of both. We need a specialist body but also specialist, specific research. Like competitive regulation...using the same analysis, we shouldn't put all our eggs in one basket.”

Focus on Vulnerable Consumers?

The majority of interviewees said the Research Centre should have a focus on vulnerable consumers, but it should not be exclusive.

“Vulnerability should not be the only focus. It is an area (the Centre) should be required to give explicit attention to and factor into the research program. The lesson from ACOSS is that you need to make the issue mainstream, or you get marginalized.”

“Both. It should have a specific brief to look at general things, but also a specific focus to look at disadvantaged, vulnerable, low income... There can sometimes be a tension between the two and sometimes they coincide... an example is basic bank accounts, or positive credit reporting which might mean higher interest rates for some and lower interest rates for others.”

“My view on vulnerable consumers is that the majority of consumers can be vulnerable... for example in building disputes... a lot of consumers are in dire financial circumstances.”

A small number of interviewees thought an exclusive focus would be best: *“If you help vulnerable people, it helps everyone.”*

A Funded Peak Body

Gap

The Consumers' Federation of Australia (CFA) exists as an unfunded peak and has maintained some capacity to make linkages between members. As a funded body with a small staff (CEO, Communications Manager, 2–3 policy officers and administration support for example) it could efficiently build on the bare bones currently in place.

Issues:

Do we need a peak body? What role(s) should it play — networking, information gathering, coordinating representation, etc? Is policy advocacy best provided by a peak body, and/or by providing resources to enable existing casework agencies to undertake policy advocacy? How should such a body be resourced and what might it look like?

Response

There was overwhelming and unequivocal support for a **funded** peak body.

“We need one. CFA does an incredible job. It is appalling that it isn’t funded. How can the consumer movement have a voice without a peak body.”

Role

Similarly there was near unanimous support for such a body to have a strong policy advocacy role, based on a *“mandate from members”*. The policy role would be complementary to the work of member groups.

The peak body was also seen as *“playing a facilitative, coordinating role”* amongst member groups. The importance of *“networking”* and *“information sharing”* was emphasised by many of those interviewed. Facilitating consumer representation was also supported.

Funding

The issue of the funding source for a peak body often drew a long sigh from interviewees, followed almost always by a comment along the lines of (in the words of one interviewee): *“no choice, it has to be the Government”*.

The hesitation many people felt when answering this question seemed to reflect an inability to suggest other funding sources instead — given that Government funding has not been available in recent years, interviewees vainly sought an alternative. For

this reason, some people mused that the real problem was how funding could be sustainable: *“to make (funding) non-party political”*.

Some interviewees suggested reasons as to why Government funding was the most appropriate source to fund CFA.

“These are national issues, the national Government should fund”; “They fund the ACCC... makes a lot of sense to fund something that engages with these bodies”; “No other way to do it. Has to be independently funded and maintain its fierce independence.”

Other funding sources suggested included membership fees — albeit with the caveat that these would not alone be adequate, an industry levy or industry funding, philanthropic trusts, revenue from fines and penalties or law firms. One person suggested that the Government set up a trust fund with a corpus of \$10 million and that this could provide CFA's operating budget.

Other Comments

Some people suggested that if CFA was re-funded, it needs to be based in Canberra if it is to be effective in its policy advocacy role.

A couple of people flagged the possibility that the same entity could be both the peak body and the independent research centre. Others saw the two organisations as having such different roles, that although they make work together, they needed to be separate.

Finally a couple of people commented that the model outlined in the paper was unambitious.

“Why start with a claim that such a body would only need a small staff?”

3

Access to Redress

Gap

The establishment of external dispute resolution schemes (EDR) in accordance with existing benchmarks in presently unserved areas including provision of credit by entities other than banks, building societies and credit unions

Issues:

What are the other gaps? Should new schemes be established or the jurisdiction of existing schemes extended? What is the right regulatory hook to ensure membership and compliance (options could include extension of the ASIC licensing regime, licensing at State and Territory level; legislative requirement)?

Response

“It is confusing to have too many schemes. The average consumer doesn’t know where to go. But they need to work properly.”

EDR in Financial Services

“Vulnerable consumers have access to fringe credit (but) don’t get access to EDR.”

“Credit is a big gap...it affects my work weekly...these companies are not open to negotiation.”

Uniform access for consumers of credit products to EDR was identified as a significant gap. Caseworkers in particular, noted the frustrations of not being able to access an independent dispute resolution body on behalf of their clients.

Interviewees said it was preferable to extend the membership of existing EDR schemes, rather than create new schemes, in the credit jurisdiction. A licensing regime, as exists now for some credit providers regulated by ASIC, was suggested.

Other Gaps for EDR

Individual interviewees identified other areas in the marketplace where industry-based EDR schemes could either be set up, or existing schemes could extend their memberships. These included: credit reporting; motor car repairs and sales, community and private sector providers of disability services; privacy; and the travel and tourist industries (issues such as failure to provide services, changing conditions).

The telco sector was mentioned specifically by a couple of interviewees. The existing EDR scheme, the Telecommunications Industry Ombudsman does not have jurisdiction over the full range of consumer disputes.

“In the telco space, there are more and more gaps because of convergence. Payday TV... very difficult to complain... we want one telecommunications ombudsman.”

General Comments

There were some positive comments about EDR schemes in general.

“EDR is a success.”

“I’m all for EDR. Coming from a small state, I’m all for this as it gives access.”

There were also some specific criticisms of EDR as not providing enough assistance to vulnerable and disadvantaged consumers.

The issue of scheme amalgamation was raised spontaneously by some interviewees. The overall tenor of comments is summed up by this quote.

“We don’t want small schemes, doing the same job. But we don’t want them to become big and bureaucratic. It is a case by case decision.”

Finally, one interviewee sounded a word of caution: *“An over-reliance on dispute resolution mechanisms is dangerous. We should get it right at the outset...”*

4

Direct Service Delivery

Gap

Improve access to financial counselling and community legal services (and Legal Aid services?).

Issues:

It is generally understood that there are significant levels of unmet need for these services. Lack of access is more significant in some areas than others. Is the long term aim additional support for existing agencies or the establishment of new ones or both? Is there sufficient agreement about the areas and levels of need? If not, is the first step a comprehensive needs analysis? Should this be undertaken by government with strong input from the relevant sectors or by the sectors themselves?

Response

The Need

The proposition in the Background Paper above “that there are significant levels of unmet need for these services”, was strongly endorsed by everyone interviewed.¹ A couple of people suggested this gap was the most significant of all.

Participants often pointed out specific service gaps in their own home state — for more financial counselling services, consumer credit legal services, legal aid and so on.

More Support for Existing Services? New Services? Or Both?

“Both. There are existing agencies and we can build on them... but we need new ones in areas that aren’t serviced.”

The large majority of interviewees said that the long-term aim should be to increase support for both existing services and for the establishment of new services. A small number of people suggested the focus should be on existing services only. No one argued that the focus should be entirely on lobbying for more new services.

¹ Apart from one person who felt they did not have enough experience to comment on this matter.

A Needs Analysis?

Whilst many people argued that it would be useful to conduct a needs analysis, just as many thought it wasn't needed or were uncertain.

Some typical comments from those endorsing the prospect of a needs analysis are below.

"There are some areas that are pretty thin on the ground... We should do a needs analysis."

"We need an independent analysis."

Those with reservations, generally argued that it was obvious as to the areas of need.

"We know where the services are needed... it is blatantly obvious."

There were a similar range of views about who should conduct a needs analysis if it were to be done. Some people suggested the government, others agencies and the peak bodies and yet others a combination, where say government funded the analysis, but agencies formed a reference group to oversee the process.

5

Consumer Representation

Gap

More extensive recognition of the need for consumer representation in decision making, and more support to ensure that this can happen.

Issues:

When (if at all) should Governments or industry fund consumer representation — on working groups, on Councils and committees, in consultative processes, etc?

Response

Although the Background Paper focused on the issue of the *funding* of consumer representation, interviewees were also asked to comment more generally on consumer involvement in decision-making.

What is Working

A number of people pointed to some specific examples of effective consumer involvement:

- Australian Securities and Investments Commission — Consumer Advisory Panel (CAP)
- Australian Competition and Consumer Commission — Consumer Consultative Committee; and
- consumer representation on the EDR schemes.

“ASIC CAP helps ASIC to target its work and know where the problems are . . . this could roll out to other agencies.”

Overall however *“it is very varied what happens out there”* and *“there is not enough of it.”*

What is Not Working

Interviewees were generally disappointed with many aspects of government and industry engagement with consumer groups and consumer advocates. Consultation timeframes are too short, there are more requests than most agencies can handle, and “consultations” are not always genuine.

“Government and other decision-makers are often willing to consult, but the restrictions, timeframes are ridiculous. Consultation has to be meaningful.”

“There is often a lack of consultation or token consultation . . . consumer representatives need to be taken more seriously.”

“We get invited to sit on all sorts of committees . . . more than we can handle.”

People from the smaller states reminded both their colleagues and decision-makers, that their voice is sometimes overlooked.

“Lots of things go on in the eastern States and we get forgotten about. We feel isolated and don’t get to have any input.”

A few people suggested that a whole-of-government approach was needed to improve consultation and consumer representation across the board.

Finally, some interviewees also raised some challenges for the consumer movement:

“Training, professional development is essential.”

“Special training for disadvantaged people to be involved (as consumer representatives) . . .”

“The hurdle is where do we find all these people (to be consumer representatives), unless they have real contact with services.”

The Value of Consumer Representation

The benefit to government and industry of consumer representation was mentioned by some interviewees.

“It is in the interests of industry and government to have a high level of consumer input and to provide the resources.”

“The most important thing consumer representatives can do is provide government and industry with experience.”

“Where it exists, it makes a big difference. We are missing opportunities to improve policy design and regulatory activity.”

“By glory, they get value for money!”

Funding

“Should be funded — at least costs should be covered.”

As a general principle, interviewees believed it was appropriate for government and industry to fund consumer representation. Some people suggested however that the issue of direct funding would need to be decided on a case by case basis:

“Funding . . . depends on the issue and whether there is a consumer organisation in the area and it is part of their core business . . . where there is no body, there should be funding. Where people are asked to travel, they should be funded.”

Gap

Given the qualitative nature of this research, it was natural that interviewees would spontaneously raise additional issues outside of those set out in the Background Paper. This sections pulls out some of the themes or interesting comments made by interviewees in this regard.

Comments

The Location of Consumer Policy in Government

In the Federal Government, the consumer policy function is located within Treasury. A couple of people were highly critical of this and suggested a more appropriate location was within the Federal Attorney-General's Department.

"It is a disaster in Treasury... the Treasury view always prevails... Treasury has no interest in consumer policy ... always subsumed by competition policy... whereas Attorney-Generals is policy neutral... a legal philosophy... Industry departments have an interest (a conflict)."

Comments on the "Gaps"

A few people wondered why "access to services" was included as a gap. This was not to downplay the importance of the need for more services, but rather they said, because the focus of this paper should primarily be on policy advice and advocacy.

A couple of people also suggested other "gaps", not picked up in the Background Paper, including the need:

- for more active monitoring and enforcement by regulators;
- for the consumer movement to understand and use the language of policy makers, especially *"economic analysis, competition policy and cost benefit analysis"*;
- to broaden the reach of the consumer movement, to better cover other areas of need, such as food: *"We are missing in action on all non-financial services stuff"*.

Another suggestion was that the focus on gaps and what is missing, was too negative. A better approach was to *"couch in the potential for contribution to significant and positive change"*. In other words, start with what was working and explain how it could be improved.

Appendix 1 - Background Paper

(This paper has been re-formatted from Word.)

A Strong Consumer Voice - Designing the Blueprint

Have your say

This project is funded by an ASIC Consumer Advisory Panel grant

We can all agree there are gaps that adversely impact the ability of consumer and community organisations to provide services where they are needed and to interact and feed into policy and agenda setting.

Articulating those gaps and how to fill them is less easy – but is an issue with which we are all concerned. Below are some thoughts on gaps and how to fill them. These are not presented as the last word – rather as a discussion starter. We want to hear your views on these questions.

We ask that you spend some time thinking and talking with others in your organisation about these questions. We have employed a consultant, Fiona Guthrie, to draw together the views of a range of organisations. Fiona will be undertaking this consultation over the period XX April to XX April 2007. If you want to be part of this conversation, please register your interest with Angela Russell at angela@consumeraction.org.au. Angela or Fiona will then make contact to arrange a suitable time.

You will not need to write anything down – Fiona will keep details of conversations and present them in a written form once interviews are complete. This report will better inform us about the range of views in our sector, including areas where more detailed communications might be beneficial, and provide a basis for making informed decisions about an overall platform for a strong consumer voice.

What is missing?

- The ability to undertake serious long term consumer research in a way that not only builds knowledge and available information but also capacity.
- The ability to draw together the experiences of casework and direct service agencies to inform policy debates and the design of effective consumer protection frameworks.
- The ability to connect consumer and community organisations to share knowledge and information and build advocacy capacity.
- Consistent and comprehensive access to direct services, particularly legal casework and financial counselling assistance for consumers who need them.

- Consistent access to redress, particularly alternative dispute resolution across consumer markets.
- Recognition that consumers and their representatives should have a seat at the table and/or be actively engaged where issues impact on the consumer interest.
- Ensuring appropriate coverage of consumer capacity across markets (most of what exists now is highly concentrated in financial services and even in that space there are obvious gaps like insurance and superannuation)
- Training, skills and professional development for consumer advocates and a capacity to develop and deliver appropriate practice standards.

How can we fill the gaps?

(A reminder that these are just some ideas; we welcome your thoughts on these ideas and others)

- An independent consumer research centre funded by government with an independent board (drawn from relevant stakeholder groups) and a reference group made up of consumer and community stakeholders) which would direct a certain portion of the research program, the remaining proportion to be directed by the organisation. The body would undertake research on consumer issues in the broadest sense. For example it would not be limited to financial services.

Issues: Is there another model/s? Should the body undertake policy advocacy and/or individual case advocacy? Should the body also have responsibility to seek to ensure consumer inclusion in relevant debates (as does the National Consumer Council in the UK) or should this be addressed separately/across a number of organisations? Should funds be provided to enable existing organisations to undertake research activities, as an alternative or complement to establishing a new consumer research centre. Should an organisation of this type be directed to give specific consideration to the needs of vulnerable and disadvantaged consumers?

- CFA exists as an unfunded peak and has maintained some capacity to make linkages between members. As a funded body with a small staff (CEO, Communications Manager, 2-3 policy officers and administration support for example) it could efficiently build on the bare bones currently in place.

Issues: Do we need a peak body? What role(s) should it play – networking, information gathering, coordinating representation, etc? Is policy advocacy best provided by a peak body, and/or by providing resources to enable existing casework agencies to undertake policy advocacy? How should such a body be resourced and what might it look like?

- The establishment of external dispute resolution schemes in accordance with existing benchmarks in presently unserved areas including provision of credit by entities other than banks, building societies and credit unions.

Issues: What are other gaps? Should news schemes be established or the jurisdiction of existing schemes extended? What is the right regulatory hook to ensure membership and compliance (options could include extension of the ASIC licensing regime, licensing at State and Territory level; legislative requirement)?

- Improve access to financial counselling and community legal services (and Legal Aid services?).

Issues: It is generally understood that there are significant levels of unmet need for these services. Lack of access is more significant in some areas than others. Is the long term aim additional support for existing agencies or the establishment of new ones or both? Is there sufficient agreement about the areas and levels of need? If not, is the first step a comprehensive needs analysis? Should this be undertaken by government with strong input from the relevant sectors or by the sectors themselves?

- More extensive recognition of the need for consumer representation in decision making, and more support to ensure that this can happen.

Issues: When (if at all) should Governments or industry fund consumer representation – on working groups, on Councils and committees, in consultative processes, etc?

Appendix 2 - People Interviewed

Interviewees



Kathleen Austin	Financial Counsellors' Association of Queensland
Tenzin Bathgate	Centre for Credit and Consumer Law
Robyn Banks	Public Interest Advocacy Centre
Carolyn Bond	Consumer Action Law Centre
Gerard Brody	Consumer Action Law Centre
Robin Brown	Foundation for Effective Markets and Governance
Kerry Connors	Consumer Utilities Advocacy Centre
David Coorey	Legal Aid New South Wales
Teresa Corbin	Consumers' Telecommunications Network
Karen Cox	Consumer Credit Legal Centre, NSW
Cherie Dalley	Queensland Consumers' Association
Elissa Freeman	Public Interest Advocacy Centre
Peter Gartlan	EACH Financial Counselling
Nicola Howell	Centre for Credit and Consumer Law
Clare Hughes	Choice
Jane Hutchinson	Hobart Community Legal Service
Lynda Johns	Financial Counsellors' Association of New South Wales
Peter Kell	Choice
Amy Kilpatrick	Consumer Law Centre of the ACT
Loretta Kreet	Legal Aid Queensland
Katherine Lane	Consumer Credit Legal Centre, NSW
Paul Loney	Consumers' Federation of Australia
Catriona Lowe	Consumer Action Law Centre
Jenni Mack	Consumer advocate
Marianne Maher	Financial Counsellors' Association of WA
Kath McLean	Tasmanian Council of Social Services
Denis Nelthorpe	Consumer advocate
Paul O'Shea	University of Queensland

Jan Pentland	Australian Financial Counselling and Credit Reform Association
Alison Pidgeon	Consumer Credit Legal Service - WA
Myra Pincott	Country Women's Association
Gordon Renouf	Choice
Tricia Ross	Financial counsellor - Northern Territory
Emma Ryan	Financial Counsellors' Association of Tasmania
David Tennant	CARE Financial Counselling Service
Catherine Uhr	Legal Aid Queensland
Nigel Waters	Australian Privacy Foundation
Rosalyn Williams	South Australian Financial Counselling Association
John Wood	Foundation for Effective Markets and Governance

Appendix B – ACCC enforcement analysis

TABLE 1 - ACCC Litigation and Undertakings – analysis of past 5 years (from ACCC Annual Reports^a)

SUMMARY – ACCC LITIGATION INITIATED^b and UNDERTAKINGS Accepted 2005/06 – 2001/02

	05/06		04/05		03/04		02/03		01/02	
	Litigation	Under-takings	Litigation	Under-takings	Litigation	Under-takings	Litigation	Under-takings	Litigation	Under-takings
Part V and VC – Consumer (including pyramid schemes)	4(5) ^c	32	11	29	12	19	17	15	29	12
Part V – Small Business (plus franchise code)	1	4	6	1	1	2	3	2	8	1
Unconscionable Conduct (Consumer)	0	1	1	1	2	0	1	0	3	1
Unconscionable Conduct (Small Business)	0	0	2	0	0	0	0	0	7	0
Product Safety	3	14 ^d	2	19 ^d	0	5	2	7	2	6
Part IV - Competition	5	3	7	5	4	7	14	6	6	7
TOTAL	13(14)^{ce}	54	29^f	55	19^g	33	37^h	30	55	26

^a For 2002/03 and 2003/04, the ACCC provided a Table of four summary figures: 1) the number of cases commenced in that year and concluded; 2) cases commenced and continuing; 3) cases commenced in prior years and concluded; 4) cases commenced in prior years and continuing. This clear reporting was discontinued from 2004/05 and only cases concluded and continuing were presented within the summary table – thus making the determination of litigation commenced much more difficult. [Prior to 02/03, tables were not presented and cases and undertakings were reported within categories of enforcement – eg. Telecommunications cases, advertising cases.]

^b The figures reflect only ACCC-initiated cases resulting from their investigations; the table does not include, for any of the years of analysis, cases brought against ACCC or interventions by ACCC in private cases (although some of these are undoubtedly important). The figures also do not include contempt or other proceedings arising from an existing matter – that is, cases are not counted twice.

^c 05/06 – one case discontinued by consent of parties approximately two months after the litigation was commenced - not counted.

^d Product safety enforceable undertakings policy appears to change in 04/05 and 05/06 with numerous undertakings in particular industries – eg 11 for woodheaters over the two years, 5 for jacks, etc. This may represent a welcome proactive policy of examining an industry sector more broadly when a problem with one company is reported.

^e The two other matters not counted are Dynacast (contempt proceeding) and IMB Group (litigation against the ACCC).

^f The two matters not counted are AMI (contempt proceeding) and Amcor (intervention in private proceeding).

^g The four matters not counted are NT Power (intervention in private proceeding); David Zero (contempt proceeding); Min for ITR (intervention in private proceeding) and Seven Network (litigation against the ACCC).

^h The two matters not counted are Sth Sydney DRL (intervention in private proceedings) and David Francis (contempt proceeding).

TABLE 2
REFUNDS included as part of s87B Enforceable Undertakingsⁱ

	05/06	04/05	03/04	02/03	01/02
No. of Enforceable Undertakings	54	55	33	30	26
No. of Refunds or Compensation arrangements	11	9	15	14	14
% of Enforceable Undertakings with Refunds or Compensation arrangements	20.4%	16.4%	45.5%	46.7%	53.8%

ⁱ Includes refunds and compensation for consumers and small business which was negotiated as part of an enforceable undertaking (s87B). Also includes *cypres* types of settlements designed to compensate consumers more generally when specific consumers cannot be identified for refunds (or when the amounts of financial detriment to each consumer affected is too small to justify the administrative task of locating them for refunds) - eg contributions to the funding of an anti-tobacco advertising campaign, lowering the price of goods in a market for a period of time, contributing to a research fund for research into consumer issues, etc

APPENDIX I
DETAIL OF ACCC LITIGATION – Commenced in 05/06

05/06				
Date Commenced	Company	Type of Matter	Brief Description	Notes
04-08-05	Auspine Ltd & others	Part IV - Competition	Price fixing of timber estimating services	Ongoing at end of 05/06
22-09-05	Cambur Industries Pty Ltd & another	Part IV - Competition	Resale Price Maintenance - kitchenware	Ongoing at end of 05/06
27-09-05	Seven Network Ltd & others	Part V - Consumer	Misleading or deceptive conduct - property	Ongoing at end of 05/06
04-10-05	Dynacast (INT0 Pty Ltd (formerly phoneflasher.com Pty Ltd) (see 03/04)	Contempt proceedings		Not counted (cases not counted twice)
04-11-05	G O Drew Pty Ltd & another	Part V - Consumer	Misleading and deceptive conduct - eggs	Ongoing at end of 05/06
09-11-05	Australian Abalone Pty Ltd & others	Part IV - Competition	Anti-competitive agreements - abalone	Ongoing at end of 05/06
24-11-05	CFMEU & others	Part IV – Competition	Secondary boycott at construction site	Ongoing at end of 05/06
25-11-05	The Original Mama’s Pizza and Ribs & others	Part V - Small Business	Misleading and deceptive conduct - franchising fast food systems	Ongoing at end of 05/06
20-12-05	Carrerabenz Diamond Industries Pty Ltd & another	Part VC - Consumer	Misleading and deceptive conduct – price comparisons in advertising diamonds	Ongoing at end of 05/06 Criminal
23-12-05	TWM Imports Pty Ltd	Product Safety	Non-compliance with product safety standard - vehicle jacks	Ongoing at end of 05/06
21-12-05	Visy Industries Holding Pty Ltd & others	Part IV - Competition	Anti-competitive arrangements – corrugated fibreboard containers	Ongoing at end of 05/06
29-12-05	LG Electronics Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct - mobile phone warranties	Ongoing at end of 05/06
02-03-06	IMB Group Pty Ltd	Litigation against		Not counted

		ACCC		
09-03-06	H & Y Trading Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – sock labelling	Discontinued By Consent on 22-05-06 Undertaking Not counted
31-03-06	Trade Quip Pty Ltd & others	Product safety	Non-compliance with product safety standard - vehicle jacks	Ongoing at end of 05/06
20-04-06	Skippy Australia Pty Ltd	Product Safety	Non-compliance with product safety standard and falsely representing standards	Ongoing at end of 05/06 Criminal

DETAIL OF ACCC LITIGATION – Commenced in 04/05

04/05				
Date Commenced	Company	Type of Matter	Brief Description	Notes
05-07-04	TWM Imports Pty Ltd	Product Safety	Non-compliance with safety standard – vehicle jacks	Concluded 09-12-04 By Consent
19-07-04	Vision Pursuit Pty Ltd, Break Free Events & another	Part V - Consumer	Misleading and deceptive conduct – property investment	Concluded 29-07-04 By Consent
19-07-04	Advanced Medical Institute Pty Ltd & another	Part V - Consumer	Misleading and deceptive conduct – erectile dysfunction treatments	Ongoing at end of 05/06
04-08-04	Bon Levi and Craig Cleary	Part V – Small Business	Misleading and deceptive conduct - franchises	Concluded 28-02-05
11-08-04	Contact Plus Group Pty Ltd, Mr Arthur Spencer	Unconscionable Conduct – Small Business	Unconscionable Conduct and misleading and deceptive conduct - franchises	Concluded 06-06-06 By Consent
11-08-04	Set Sale Realty Pty Ltd & another	Part V - Consumer	Misleading and deceptive conduct – real estate scheme (which claimed ACCC approval)	Concluded 29-10-04 By Consent
16-08-04	ICellNet LLC & others	Pyramid Selling	Pyramid Selling scheme	Concluded 06-12-05
17-08-04	RM Hall Pty Ltd	Part IV - Competition	Resale Price Maintenance – Armani figurines	Concluded 6-04-05 By Consent
17-08-04	Westminister Retail Pty Ltd		Resale Price Maintenance – Armani figurines	Concluded 16-09-05 By Consent
15-09-04	Ramon Lal Keshow	Unconscionable Conduct - Consumer	Misleading and deceptive conduct, unconscionable conduct – math tutoring programs	Concluded 21-07-05
16-09-04	Giann & Giann Pty Ltd & another	Part V - Consumer	Misleading and deceptive conduct – property investment services	Concluded 17-03-05
26-10-04	Morgan Pacific Pty Ltd & others	Part V - Consumer	Misleading and deceptive conduct – property investment services	Concluded 14-07-05 By Consent
27-10-04	Advanced Medical Institute Pty Ltd & another (see 19-07-04)	Contempt proceedings		Not counted (cases not counted twice)

04-11-04	Wizard Home Loans Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – employment advertising	Concluded 09-05-05 By Consent
15-11-04	Australian Communications Network Pty Ltd	Pyramid Selling	Pyramid Selling scheme - telecommunications	Concluded 02-06-06
01-12-04	Brambles Australia Ltd	Unconsonable Conduct - Small Business	Unconsonable conduct; also misleading and deceptive conduct – waste services	Ongoing at end of 05/06
02-12-04	Amcor Ltd v Mihelic & others	Intervention in private case	One-day intervention (to allow Amcor to provide confidential material to ACCC)	Concluded 02-10-04 Not counted
17-12-04	Admiral Mechanical Services Pty Ltd & others	Part IV - Competition	Anti-competitive agreements – air conditioning	Ongoing at end of 05/06
17-12-04	Globex Pty Ltd	Part V – Consumer	Misleading and deceptive conduct – office consumables and cleaning products	Concluded 12-08-05 By Consent
21-12-04	Pro Kit Pty Ltd	Product Safety	Non-compliance with safety standard – luggage straps	Concluded 22-12-04 By Consent
22-12-04	Archem Australia Pty Ltd	Part V – Small Business	Misleading and deceptive conduct – franchises	Concluded 13-03-06 By Consent
07-02-05	Edison Mission Operation and Maintenance by Loy Yang Pty Ltd & others	Part IV - Competition	Secondary boycott – electrical services	Ongoing at end of 05/06
14-02-05	Humax Pty Ltd	Part IV - Competition	Resale Price Maintenance – set top boxes	Concluded 10-06-05 By Consent
04-03-05	Office Support Services International Pty Ltd	Franchising Code	Breach of franchising code	Concluded 27-05-05 By Consent
10-03-05	L & L Supply Pty Ltd	Part V – Small Business	Misleading and deceptive conduct – office supplies	Concluded 27-05-05
15-03-05	Honeybank Corporation Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – solarium safety	Concluded 18-04-05
15-03-05	Barton Mines Corporation & others	Part IV - Competition	Anti-competitive agreements - industrial garnet	Ongoing at end of 05/06
28-04-05	Daniel Albert trading as Photosafe, DataVault and IE	Part V – Small Business	Misleading and deceptive conduct – business opportunities	Concluded 04-04-06 By Consent

	Networks			
28-04-05	Rural Network Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – introduction services	Ongoing at end of 05/06
24-05-05	Gullyside Pty Ltd	Part IV - Competition	Anti-competitive agreements - petrol	Concluded 30-11-05 By Consent
01-06-05	Stores Online Inc	Part V – Small Business	Misleading and deceptive conduct – Online web business opportunities	Concluded 09-05-06 Undertakings

DETAIL OF ACCC LITIGATION – Commenced in 03/04

03/04				
Date Commenced	Company	Type of Matter	Brief Description	Notes
18-08-03	National Chemical Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – Origin claims	Concluded 30-10-03 By Consent
19-08-03	Telstra Corporation Ltd	Part V - Consumer	Misleading and deceptive conduct – \$0 advertising of mobile phones	Concluded 20-08-04
05-09-03	Australian Aboriginal Art	Part V - Consumer	Misleading and deceptive conduct – Aboriginal art	Concluded 04-05-04
11-09-03	Sanyo Airconditioning Australia, Fujistu Australia Ltd, Daikin, Hitachi	Part V - Consumer	Misleading and deceptive conduct – refrigerants	Concluded 11-11-03 By Consent
12-09-03	NT Power Generation Pty Ltd v Power and Water Authority & Gasgo Pty Ltd	Intervention in private case	---	Not counted
24-09-03	David Zero Population Growth Hughes trading as Crowded Planet	Contempt proceedings	---	Not counted (cases not counted twice)
30-09-03	National Investment Institute Pty Ltd & another	Part V - Consumer	Misleading and deceptive conduct – Property investment	Concluded 23-03-05
02-10-03	Domain Names Australia Pty Ltd & another	Part V – Small business	Misleading and deceptive conduct – Domain name registration	Concluded 10-09-04
07-11-03	Leahy Petroleum Pty Ltd & others (Geelong)	Part IV - Competition	Anti-competitive agreements – petrol	Ongoing at end of 05/06
28-11-03	Ikuson Trading Company Pty Ltd, Ixon Japan KK	Part V - Consumer	Misleading and deceptive conduct – drink mislabelling	Concluded 29-08-05 By Consent
01-12-03	Worldplay Services Pty Ltd	Pyramid Selling	Pyramid Selling scheme - online gambling	Concluded 06-05-05
11-12-03	Radio Rentals Ltd, Walker Stores Pty Ltd	Unconscionable Conduct - Consumer	Household appliances hire - intellectually disabled consumer	Concluded 17-08-05
19-12-03	Gary Peer & Associates Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – Residential property	Concluded 12-04-05

19-12-03	High Adventure Pty Ltd & others	Part IV - Competition	Resale Price Maintenance - paragliders	Concluded 02-12-05
19-02-04	Showmen's Guild of Australasia & others	Part IV - Competition	Anti-competitive agreements – amusement services	Concluded 09-05-06 By Consent
19-02-04	Minister for Industry, Tourism and Resources v Mobil Australia Pty Ltd	Intervention in private case	Issue regarding pecuniary penalties	Not counted
24-03-04	Anglo Estates Pty Ltd & others	Part IV - Competition	Anti-competitive agreements – property development	Concluded 21-01-05 By Consent
31-03-04	Lloyd Brooks Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – Environmental claims	Concluded 25-05-04
08-11-04	Seven Network Ltd	Action against ACCC	Challenge to ACCC demand for information	Not counted
13-04-04	Fox Symes & Assoc Pty Ltd & others	Unconscionable Conduct - Consumer	Debt agreements	Concluded 10-06-06 Undertakings
03-06-04	Phoneflasher.com Pty Ltd & others	Part V - Consumer	Misleading and deceptive conduct – Health benefits of phone accessories	Concluded 03-11-04 By Consent
03-06-04	Chubb Security Australia Pty Ltd	Part VC - Consumer	Accepting Payment without intention to supply	Concluded 30-12-04 Criminal
28-06-04	National Training Conference	Part V - Consumer	Misleading and deceptive conduct - property	Concluded 29-06-04 By consent

DETAIL OF ACCC LITIGATION – Commenced in 02/03

02/03				
Date Commenced	Company	Type of Matter	Brief Description	Notes
11-07-02	FFE Building Services & others	Part IV - Competition	Anti-competitive agreements – fire protection services	Concluded 19-12-03 By Consent
12-07-02	Voyages Hotels and Resorts Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – tourism claims	Concluded 28-04-03 By Consent
12-07-02	Westil (Australia) Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – tourism claims	Concluded 16-05-03 By Consent -Refunds ordered
22-07-02	Synergy in Business Pty Ltd (in liquidation) and others	Code – Small Business	Breach of franchising code	Concluded 28-01-04 By Consent
06-08-02	South Sydney District Rugby League Goolball Club v News Limited	Intervention in High Court proceedings	Exclusionary conduct	Not Counted
05-09-02	Eurong Beach Resort Ltd & others	Part IV - Competition	Anti-competitive arrangements and misuse of market power – barge services	Concluded 15-12-05 By Consent
05-09-02	Fila Sport Oceania Pty Ltd & others	Part IV - Competition	Anti-competitive behaviour and misuse of market power – sports apparel	Ongoing at end 05/06
11-09-02	Transformation 2012 Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – internet health cures	Concluded 14-05-03 By Consent -Refunds undertaking
13-09-02	Internet Registrations Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – internet services	Concluded 29-11-02 By Consent -Refunds undertaking
17-09-02	Dodo Internet Pty Ltd	Unconscionable Conduct - Consumer	Unconscionable conduct; also misleading and deceptive conduct – internet services	Concluded 06-02-03 By Consent -Compensation ordered
25-09-02	Commonwealth Bank of Australia	Part V - Consumer	Misleading and deceptive conduct – banking	Concluded 09-12-03

03-10-02	Richard Chen	Part V - Consumer	Misleading and deceptive conduct – Sydney Opera House bookings	Concluded 27-08-03
17-10-02	FFE Building Services & others	Part IV - Competition	Anti-competitive agreements – fire protection services	Discontinued (see 11-07-02)
17-10-02	The South Australian Olive Corporation Pty Ltd, Inglewood Olive Processors Ltd	Part V - consumer	Misleading and deceptive conduct – olive oil origin claims	Concluded 14-07-03 By Consent
24-10-02	Telstra Corporation Ltd	Part V - Consumer	Misleading and deceptive conduct – pre-paid telephone cards	Concluded 15-11-02 By Consent -Compensation (<i>cy pres</i>) undertaking
28-10-02	BMW (Australia) Ltd	Product Safety	Non-compliance with product safety standard – vehicle jacks	Concluded 21-09-04
31-10-02	David Francis	Contempt Proceedings	Claims re weight loss	Not counted (cases not counted twice)
01-11-02	Baxter Healthcare Pty Ltd & others	Part IV - Competition	Anti-competition agreements, misuse of market power – medical fluids	Ongoing at end of 05/06 (appeal)
07-11-02	Harvey Norman Holdings Pty Ltd	Part V – Consumer	Misleading and deceptive conduct - software	Concluded 11-08-04
13-11-02	Pest Free Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – electronic pest devices	Discontinued by agreement 14-10-04
21-11-02	Dermalogica Pty Ltd	Part IV - Competition	Resale price maintenance – beauty products	Concluded 10-03-05
03-12-02	AK Freund Pty Ltd, Abraham Freund	Part IV - Competition	Anti-competitive agreement – medical services	Concluded 05-03-03 By Consent
05-12-02	George Weston Foods Ltd	Part IV - Competition	Anti-competitive agreement – wheaten flour	Concluded 25-08-04 By Consent
10-12-02	Trans Oriental Import and Export Pty Ltd	Product Safety	Supply of banned product	Concluded 14-05-03 By Consent
11-12-02	Woolworths (South Australia) Pty Ltd, The Arnhem Club Inc,	Part IV - Competition	Anti-competition agreements – takeaway liquor retailing	Concluded 18-02-04

	Rhonwood Pty Ltd			
28-01-03	McMahon Services Pty Ltd & others	Part IV - Competition	Anti-competition agreements – asbestos removal	Concluded 04-11-04
13-02-03	National Telecoms Group Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – telephony charges	Concluded 18-12-03 By Consent
19-03-03	Australian Icon Products Pty Ltd (in liquidation)	Part V - Consumer	Misleading and deceptive conduct – Aboriginal art	Concluded 06-05-04
19-03-03	Global Pre Paid Communications Pty Ltd & others	Part V – Small Business	Misleading and deceptive conduct – pre-paid telephone card vending machine distributorships	Court orders Feb 06 Some respondents have appealed – Ongoing at end of 05/06
22-04-03	Karmy Pty Ltd Trading as Schots Restoration Emporium	Part V - Consumer	Misleading and deceptive conduct – refund rights	Concluded 21-05-03 By Consent
24-04-03	Tasmanian Salmonid	Part IV – Competition	Anti-competitive arrangements – salmon industry	Concluded 24-04-03 By Consent
06-05-03	David Francis	Part V - Consumer	Misleading and deceptive conduct – Weight loss	Concluded 26-04-04 By Consent
16-05-03	AMWU/AWU/CEPU	Part IV - Competition	Secondary Boycott – gas plant	Concluded 30-04-04
23-05-03	Thorn Australia Pty Ltd trading as Radio Rentals	Part V - Consumer	Misleading and deceptive conduct – Appliance rentals	Concluded 28-02-04 By Consent
29-05-03	Billbusters Pty Ltd & others	Part V - Consumer	Misleading and deceptive conduct – telephone bill checking services	Concluded 10-01-05
26-06-03	Morgan Buckley Pty Ltd and another	Part V - Consumer	Misleading and deceptive conduct – solicitor/client billing	Matter discontinued 04-05-04 Undertaking
27-06-03	Midland Brick	Part IV - Competition	Anti-competitive agreements - bricks	Concluded 09-06-04
27-06-03	Liquorland Australia Ltd, Woolworths Ltd	Part IV - Competition	Anti-competitive behaviour – liquor retailing	Liquorland - Concluded 26-04-05 Woolworths Ltd - Ongoing at end of 05/06

27-06-03	Econovite	Part V – Small Business	Misleading and deceptive conduct – labelling	Concluded 10-09-03 By Consent
27-06-03	Australian Biologics Testing Services Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – medical services	Concluded 12-07-04

DETAIL OF ACCC LITIGATION (excluding GST matters) – Commenced in 01/02

01/02				
Date Commenced*	Company	Type of Matter	Brief Description	Notes
Date not specified	Autobarn Pty Ltd, Northern Accessories Pty Ltd and Dictomax Pty Ltd	Product Safety	Non-compliance with product safety standard – vehicle ramps	Concluded 29-04-02
Date not specified	Paul’s Victoria Ltd	Part V - Consumer	Misleading and deceptive conduct – fruit drink labelling	Concluded 13-09-01 By Consent -Compensation (<i>cy pres</i>) ordered
##-07-01	Telstra	Part V - Consumer	Misleading and deceptive conduct – transfer of mobile services from collapsed One.Tel	Concluded Dec 01 -Refunds ordered
11-07-01	Multigroup Distribution Services Pty Ltd	Part V – Small Business	Misleading and deceptive conduct – freight transport	Concluded 07-01-04 By Consent
17-07-01	Kabushiki Kaisha Sony Computer Entertainment v Stevens	Intervention in private case	---	Not counted
27-07-01	The Buyers Group Pty Ltd & ors	Part V - Consumer	Misleading and deceptive conduct – muscle stimulation device	Concluded 08-04-03 By Consent -Refunds agreed
27-07-01	Lux Pty Ltd	Unconscionable Conduct - Consumer	Vacuum cleaner sales to intellectually disabled persons	Concluded 24-02-05
09-08-01	Purple Harmony Plates Pty Ltd and others	Contempt proceedings	Internet health cures	Not counted (cases not counted twice) Criminal - trader jailed
15-08-01	Pauls Limited, Malanda Dairyfoods Ltd, Cooperative Food Ltd & ors	Part IV – Competition	Anti-competitive agreements – wholesale milk and unprocessed milk	Concluded 19-12-02
24-08-01	Merck KGaA, F Hoffmann-La Roche Ltd, BASF Aktiengesellschaft and	Part IV - Competition	Anti-competitive agreements - vitamins	Ongoing at end of 05/06

	Takeda Chemical Industries Ltd			
13-08-01	Berri Ltd	Part V - Consumer	Misleading and deceptive conduct – origin claims	Concluded 04-05-04 By Consent
17-08-01	Entee Food & Beverage Distributors and Wholesalers Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – origin claims	Concluded 21-08-01
02-09-01	GIA Pty Ltd trading as Tamar Knitting Mills & Eric Ian Thompson (former Managing Director)	Part VC - Consumer	Misleading and deceptive conduct – origin claims	Concluded 23-10-02 Criminal
07-09-01	Quality Bakers Australia Ltd	Part V - Consumer	Misleading and deceptive conduct – charity promotion associated with sale of Buttercup products	Concluded 21-12-01
07-09-01	Orbit Homes Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – home packages	Concluded 01/02 By Consent
17-09-01	Skybiz.Com Inc	Pyramid Scheme	Website pyramid scheme	Concluded 26-09-02
18-09-01	Suffolke Parke Pty Ltd and Gregory John Bradshaw	Unconscionable Conduct – Small Business	Conduct toward franchisee	Concluded 01/02 By Consent
21-09-01	Mitre 10 Australia Ltd	Part V - Consumer	Misleading and deceptive conduct – extent of price discounts	Concluded 23-04-03 By Consent
26-09-01	4WD Systems Pty Ltd and 4WD Systems Australia Pty Ltd	Unconscionable Conduct – Small Business	Franchising matters and supply to franchisees.	Concluded 13-08-03
26-09-01	Will Writers Guild Pty Ltd and Sidney James Murray	Part VC – Small Business	Misleading and deceptive conduct – Franchises – will writing	Concluded 07-02-03 Criminal (civil case also – Compensation ordered)
28-09-01	Commercial & General Publication Pty Ltd & Anthony Robert Hassett	Part VC – Small Business	Misleading and deceptive conduct – advertising - accepting payment without intention to supply	Concluded 01-11-02 Criminal
12-10-01	The Daniels Corporation International Pty Ltd and	Clarification of s155 powers	Privilege claim over information sought by ACCC under statutory	Concluded 07-11-02

	others		powers	
23-10-01	Hyundai Automotive Distributors	Product Safety	Non-compliance with product safety standard – vehicle jacks	Concluded 21-12-01
29-10-01	Woolworths Ltd	Part V - Consumer	Misleading and deceptive conduct – regional origin of meat	Concluded 20-08-02
29-10-01	Westfield Shopping Centre Management Co (Qld) Pty Ltd, Westfield Management LTd, Westfield Design and Construction Pty Ltd	Unconscionable Conduct – Small Business	Lease negotiations.	Concluded 17-01-04 Undertaking
05-11-01	NRMA Health Pty Ltd trading as SGIC Health and SGIO Heath, NRMA Insurance Ltd and Saatchi & Saatchi Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – private health insurance	Concluded 03-07-02 By Consent -Refunds ordered
14-11-01	Oceana Commercial Pty Ltd & others	Unconscionable Conduct – Consumer	Two-tier marketing of investment properties. Also misleading and deceptive conduct – property marketing	Concluded 05-07-04
26-11-01	Chaste Corporation Pty Ltd & others	Part V – Small Business	Misleading and deceptive conduct – weight loss distributorships Also Resale Price Maintenance	Concluded 02-09-05
30-11-01	Architectural & Structural Adhesives	Part V - Consumer	Misleading and deceptive conduct – origin claims	Concluded 14-12-01
07-12-01	Total Communications (Tas) Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – \$0 mobile phones	Concluded 12-12-01
07-12-01	Dell Computer Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – all-inclusive pricing	Concluded 20-12-02
14-12-01	Sensis Pty Ltd (formerly Pacific Access Pty Ltd)	Part V - Consumer	Misleading and deceptive conduct - yellow pages	Concluded 20-12-02
21-12-01	Dataline.net.au Pty Ltd	Unconscionable Conduct – Small Business	Internet-related services Also misleading and deceptive conduct – internet services	Ongoing at end of 05/06
17-12-01	Daewoo Australia Pty Ltd,	Unconscionable	Unconscionable conduct concerning	Concluded 06-12-02

	Daewoo Heavy Industries and Machinery Limited & Eui Hwan Kang	Conduct – Small Business	appointment of a dealer in heavy machinery. Also misleading and deceptive conduct – heavy machinery	
24-12-01	DM Faulkner Pty Ltd & others	Part IV - Competition	Anti-competitive agreements – scrap metal	Concluded 09-12-04 By Consent
16-01-02	Redmond Holdings, Toowoomba Furniture and Electrical (Furnelect)	Part V - Consumer	Misleading and deceptive conduct – furniture prices	Concluded 18-02-03
23-01-02	Western District Health Fund Ltd	Part V - Consumer	Misleading and deceptive conduct – private health insurance	Concluded 16-10-02 By Consent -Refunds ordered
07-02-02	Wizard Mortgage Corporation Ltd	Part V - Consumer	Misleading and deceptive conduct – cost of mortgage	Concluded 25-10-02
15-03-02	Alex Salter Pty Ltd trading as Salters of Moorooka	Part V - Consumer	Misleading and deceptive conduct – vehicle pricing	Concluded 03-04-02 By Consent
12-03-02	Arnold's Ribs and Pizza Australia Pty Ltd	Unconscionable Conduct – Small Business	Fast food franchises	Concluded 13-10-03 By Consent
22-03-02	Waterman Collections Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – debt services	Concluded 18-04-02
22-03-02	Cadbury Schweppes Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – labelling of cordial products	Concluded 29-04-04
28-03-02	IT & T AG	Part V – Small Business	Misleading and deceptive conduct - directory	Concluded 22-07-04
08-04-02	Universal Sports Challenge Ltd and Mr Michael Kotowicz (Shark Challenge)	Part V - Consumer	Misleading and deceptive conduct – Sports event	Concluded May 02 By Consent
16-04-02	Mark Leyden, Stephen Robson, Paul Khoo	Part IV - Competition	Anti-competitive agreements – boycott of no-gap billing by obstetricians	Concluded 31-10-02 By Consent -Refunds undertaking
17-04-02	Internet Name Protection Pty Ltd trading as Internet Name	Part V – Small Business	Misleading and deceptive conduct – domain names	Concluded 11-10-02 By Consent

	Group			
19-04-02	Advanced Medical Institute	Part V - Consumer	Misleading and deceptive conduct – erectile dysfunction	Concluded 02-12-03 By Consent
24-04-02	Kwik Fix International Pty Ltd & ors	Unconscionable Conduct – Small Business	Conduct in relation to franchising of mobile vehicle repairs	Concluded 09-09-03 By Consent
30-04-02	Allans Music Group Pty Ltd	Part VC - Consumer	Misleading and deceptive conduct – ‘was-now’ price	Concluded 13-12-02 Criminal
30-04-02	Fire Fighting Enterprises	Part V – Small Business	Misleading and deceptive conduct – Fire protection systems	Concluded 01/02
03-05-02	Danoz Direct Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – capabilities of Abtronic	Concluded 22-08-03
03-05-02	Virgin Mobile Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – mobile phone plan prices	Concluded 11-12-02 By Consent
06-05-02	Crakerjack Productions and Network Ten	Part V - Consumer	Misleading and deceptive conduct – employment ads	Concluded 30-08-02 By Consent
07-05-02	Qantas Airways Ltd	Part IV - Competition	Misuse of Market Power – air travel	Discontinued by Consent
17-05-02	Collagen Aesthetics Australia Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – collagen and hylaform products	Concluded 11-04-03 By Consent
17-05-02	Internet TV Australia Pty Ltd Trading as Free2aiR and James Young	Unconscionable Conduct – Consumer	Harassment and coercion in dealings with customers – internet services	Concluded 30-11-05 By Consent
21-05-02	Leahy Petroleum Pty Ltd & others (Ballarat)	Part IV - Competition	Anti-competitive agreements - petrol	Concluded 02-06-06

DETAIL OF ACCC LITIGATION – Commenced in 00/01

(These matters were instigated prior to the 5-year time period of this analysis, but are included for information purposes, and to provide some indication as to whether 01/02 was an unusually active year; the table is not complete)

00/01				
Date Commenced*	Company	Type of Matter	Brief Description	Notes
03-07-00	Rod Turner Consulting Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – professional qualifications	Concluded 02-10-02 By consent
19-07-00	Emerald Ocean Distribution Pty Ltd & others	Part V - Consumer	Misleading and deceptive conduct – electronic muscle stimulation product	Judgment 17-03-06 On appeal – ongoing at end of 05/06
27-07-00	Lux Pty Ltd	Unconscionable Conduct - Consumer	Selling vacuum cleaners	Concluded 24-02-05
21-07-00	Australian Medical Association (WA) and Mayne Group Ltd & others	Part IV - Competition	Anti-competitive agreements – medical rates	Concluded 09-07-03
04-08-00	Australian Industries Group Pty Ltd, trading as Half Price Shutters	Unconscionable Conduct – Small Business	Unconscionable behaviour towards franchisees. Also misleading and deceptive conduct.	Concluded 01-03-02 By Consent -Compensation ordered
28-09-00	CG Berbatis Holdings Pty td trading as Farrington Fayre Shopping Centre	Unconscionable Conduct – Small Business	Unconscionable Conduct – shopping centre leases	Concluded 09-04-03
26-10-00	Medibank Private Ltd	Part V - Consumer	Misleading and deceptive conduct – private health insurance	Concluded 13-05-04 By Consent
06-10-00	Michigan Group Pty Ltd & ors	Part V – Small Business	Misleading and deceptive conduct – orange juice machines	Concluded 04-02-03
10-11-00	ABB Transmission and Distribution et al	Part IV - Competition	Anti-competition agreements - transformers	Concluded 07-04-04
18-12-00	Michigan Group Pty Ltd, Queensland Juice Co. and others	Part V – Small Business	Misleading and deceptive conduct – Orange juice business	Concluded 04-02-03

22-01-01	Info4pc.com Pty Ltd & James Rae	Part V – Consumer (also contempt proceedings)	Misleading and deceptive conduct – computers	Ongoing at end of 05/06 Contempt proceedings concluded 31-07-02
08-02-01	John Bevins Pty Ltd (see also MBF below)	Part V - Consumer	Misleading and deceptive conduct – whether advertising agency knowingly concerned – private health insurance	Concluded 30-11-04
08-02-01	Medical Benefit Funds of Australia Ltd (MBF) (see also John Bevins Pty Ltd above)	Part V - Consumer	Misleading and deceptive conduct – private health insurance	Concluded 16-12-03
19-03-01	Signature Security Group Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – GST pricing	Concluded 29-04-03
28-03-01	Stephen Henry Wayt trading as com.au.register	Part V – Small Business	Misleading and deceptive conduct – domain names	Concluded 26-02-02 By Consent
03-04-01	Michael Kotowicz, Universal Sports Challenge Limited	Part V - Consumer	Misleading and deceptive conduct – Golf tournaments	Concluded 23-10-02
05-04-01	Guardian Finance & Insurance Consultants Pty Ltd	Pyramid Selling	Home loan scheme	Concluded 11-06-02
09-04-01	inthebigcity.com Pty ltd and APN Newspapers Pty Ltd	Part V - Consumer	Misleading and deceptive conduct – employment opportunities	Concluded 03-08-01
12-04-01	Esanda Finance Corporatation Ltd & ors	Unconscionable Conduct - Consumer	Debt collection - physical force, harassment	Concluded 25-11-03
27-04-01	Avanti Investments Pty Ltd and Dr Giuseppe Barbaro	Unconscionable Conduct – Small Business	Water charges to market garden leases	Concluded 01/02 By Consent
23-05-01	Purple Harmony Plates Pty Ltd, Neal Arthur Lyster and Helen Therese Glover	Part VC - Consumer	Misleading and deceptive conduct – health claims	Concluded 09-04-02 Criminal
25-05-01	Axxess Australia Pty Ltd, Benchmark Sales Pty Ltd,	Unconscionable Conduct -	'Slamming' of telephone services.	Concluded 13-03-02

	Peter Edward Russell Slaney & Stephen Vincent McGovern	Consumer		
##-05-01	Quality Bakers Australia Ltd	Part V - Consumer	Misleading and deceptive conduct – Charity contributions from sale of 'Buttercup' products	Concluded 21-12-01 By Consent
05-06-01	Greenstar Cooperative Ltd, Bio Enviro Plan Pty Ltd, and others	Pyramid Scheme	Earthworms and organic fertilisers	Concluded 13-04-04
29-06-01	Solutions Software International Pty Ltd & ors	Unconscionable Conduct - Consumer	Conduct in relation to betting software Also misleading and deceptive conduct	Concluded 03-09-02
Date not specified	Apollo Optical (Australia) Pty Ltd & Monza Imports Pty Ltd	Product Safety	Non-compliance with product safety standard - sunglasses	Concluded 17-10-01