



25 September 2007

Consumer Policy Framework Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

By email: consumer@pc.gov.au

Dear Commissioners,

Inquiry into Consumer Policy Framework

Please find enclosed a joint submission prepared by the Consumers Federation of Australia, Care Inc Financial Counselling Service, Consumer Action Law Centre, Consumer Credit Legal Centre NSW, Griffith University Centre for Credit and Consumer Law, Public Interest Advocacy Centre and CHOICE.

The purpose of this submission is to provide to the Commission a more detailed description of the institutional arrangements and the principles underlying them as agreed by all the consumer organisations endorsing this submission.

Over twenty community and consumer organisations have already contributed to the Commission's review, including the contributors to this document. This supplementary submission builds on earlier contributions providing further detail on the institutional arrangements for consumer advocacy, research and policy development.

Due to time and resource limitations, it has not been possible to give this issue the full and proper attention it deserves. Following the success of the Commission's roundtable on behavioural economics, we recommend a roundtable be established to consider further the institutional arrangements necessary for consumer policy, research and advocacy.

If you require any further information please do not hesitate to contact me on 02 9577 3246 or grenouf@choice.com.au.

Regards

Gordon Renouf
General Manager Policy and Campaigns
CHOICE

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 Fax 02 9577 3377 Email ausconsumer@choice.com.au www.choice.com.au
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**Joint consumer group supplementary
submission to the
Productivity Commission Review of Consumer
Policy Framework**

**Institutional Arrangements for Consumer
Advocacy, Research and Policy Development**

September 2007

The Productivity Commission is currently conducting a review into the national consumer policy framework and will report on ways to improve the framework to assist consumers to meet current and future challenges.

Over twenty community and consumer organisations have already contributed to the review, including the contributors to this document. This supplementary submission builds on earlier contributions providing further detail on the institutional arrangements for consumer advocacy, research and policy development that will be needed to assist and empower consumers.

The purpose of this submission is to provide to the Commission a more detailed description of the institutional arrangements and the principles underlying them as agreed by all the consumer organisations endorsing this submission.

This submission to the Productivity Commission Review of Australia's Consumer Policy Framework has been prepared jointly by the Consumers Federation of Australia, CHOICE, Care Inc Financial Counselling Service and the, the Consumer Action Law Centre, Griffith University Centre for Credit and Consumer Law, the Consumer Credit Legal Centre NSW and the Public Interest Advocacy Centre and is endorsed by:

Australian Financial Counselling and Credit Reform Association
Brotherhood of St Laurence
Communications Law Centre
Consumer Law Centre of the ACT
Federation of Ethnic Communities Councils of Australia
National Children's and Youth Law Centre
Tasmanian Council of Social Service
Victorian Council of Social Service
WA Council of Social Services Inc
Ethnic Communities Council of Western Australia
Council on the Ageing WA
Injury Control Council of Western Australia (Inc)
Health Consumers Council Inc WA

Summary

Retail sales account for around 23 per cent of GDP and the sector is the biggest single employer with about 15 per cent of all jobs.¹ It is the role of competition and consumer policy to ensure these retail markets maximise benefits for consumers and to provide effective protection from the risks and threats consumers cannot tackle as individuals.

This submission argues that new institutions are needed in Australia to deliver consumer policy now and in the future. It argues for new institutions to deliver national leadership and prioritise consumer policy, research and advocacy.

This submission suggests that institutional design should be built around the following principles.

- For a market to be effective it needs to be responsible, fair, efficient and sustainable.
- Confident consumers are essential for effective markets
- Consumer participation in policy development is in the short and long term interests of consumers and economic efficiency.
- Competition and consumer policy must respond to disadvantage by connecting those who are disadvantaged to markets and/or addressing market failures.

The Productivity Commission has the bold objective to assist consumers to meet current and future challenges. The Commission has a reference to report on ways to improve the harmonisation and coordination, development and administration of consumer policy across jurisdictions in Australia. Achieving these outcomes requires major institutional reform.

We propose five changes to current institutional arrangements that will meet these goals and deliver a contemporary consumer policy framework. These reforms should form the key components of a new national consumer strategy:

1. **Leadership from a new Ministerial Portfolio:** The Commonwealth Government should take leadership for promoting responsible, fair, efficient and sustainable markets. This will be achieved through the joint consideration of consumer welfare and competition structures. For this reason, we propose a cabinet portfolio with responsibility for ensuring effective markets delivered by a Minister for Consumer and Competition Policy.
2. **Responsive policy development from a proactive bureaucracy:** The role and authority of the Commonwealth agency responsible for consumer policy should be enhanced. It is essential that consumer policy can be developed independently from other agendas, and so that agency needs to have a degree of independence from the Departmental hierarchy within which it is located. It is essential that it has direct access to the Minister. It is also essential, to avoid the debilitating effects of policy developed in silos, that the agency has

¹ Australian retail sales surprisingly strong, *Sydney Morning Herald*, August 31, 2007

the recognised role and necessary authority to influence the consumer policy activities undertaken by other Government departments and agencies. It should also be provided with additional resources to develop a national consumer strategy and to enable it to assist other Departments that contribute to consumer welfare, for example in telecommunications and copyright (Department of Communications, Information Technology and the Arts), health services including therapeutic goods (Department of Health), food (Food Standards Australia New Zealand) and energy (Department of Industry, Tourism and Resources).

3. **World-class research from a government-funded research body:** The nature of the marketplace and the way we understand consumer behaviour is changing. A statutory agency, independent of line agencies and with structured consumer input, would deliver impartial analysis and advice on policy development.
4. **A strong consumer voice from a fully funded consumer peak body:** Based on a mix of the direct experience of its members, commissioned research and targeted consumer engagement, a fully funded consumer peak can reflect priorities across different markets and speak with expertise and authority for all consumers in discussion with companies and with Government. The Consumers' Federation would be the logical choice for such a body within the current framework of consumer bodies.
5. **Individual advocacy from sustainably funded service providers:** Financial counselling and consumer law services are a key frontline element of consumer participation in the marketplace. Services currently suffer from lack of coverage and/or insufficient funding. A new funding model is needed to ensure equitable and adequate access for all consumers now and in the future. Priority should be afforded to ensuring these services can communicate effectively, can develop a reliable profile of consumer need across Australia, and to supporting appropriate standards of quality, training and professional development.

These proposals are considered in turn:

Leadership from a new Ministerial Portfolio:

Consumer policy in Australia suffers from the combined problem of low priority and diffusion of responsibility. Markets are increasingly national (and international) in nature but consumer policy has not developed a strong national leadership.

We believe the current Ministerial arrangements contribute to this lack of direction and leadership. The lack of leadership and priority exacerbates the protracted delays in action on key consumer concerns (such as reform of the regulation of mortgage brokers), the considerable disparity in consumer outcomes across different markets (such as gross disparities in penalties for market manipulation) and the lack of innovation in market reforms (for example, ensuring consumer interests are properly considered in privatisation, particularly in energy markets).

The consumer movement sees a great benefit in linking the competition and consumer portfolios at the cabinet level of the Commonwealth Government. It reflects the joint consideration of the demand and supply side of effective marketplaces. Ensuring the effective operation of markets so that they deliver benefits to consumers through improvements on both the supply and demand side would be a primary focus of the work of this Minister.

We therefore recommend the creation of a Minister for Consumers and Competition with responsibility for responsible, fair, efficient and sustainable markets.

Responsive policy development from a proactive bureaucracy:

National leadership on consumer policy requires co-ordination both across jurisdictions and across the various Departments and agencies that influence consumer welfare.

The Commonwealth Treasury currently is home to the Markets Group, one of five core groups reporting to the Treasurer. The Markets Group is notionally responsible for policy development in consumer policy, delivered through the Consumer and Competition Division, and three key regulators (Australian Competition and Consumer Commission, the Australian Securities and Investment Commission and the Australian Prudential Regulatory Authority) report directly to this Group.

The current review of the national consumer policy framework arises, in part, from a failure of policy to respond adequately to dynamic markets and associated consumer behaviour and impacts. A pro-active bureaucracy is needed to develop and implement a national consumer strategy, facilitate the funding of consumer advocacy and services and co-ordinate across Departments and agencies to deliver effective markets for consumers.

There are a number of clear weaknesses with current Commonwealth arrangements

1. The existing consumer policy development unit (that is the Competition and Consumer Group in the Markets Division of Treasury) has a limited role in developing consumer policy. It appears to administer the policy development in relation to particular legislation rather than have a role in policy development in relation to the broad range of consumer markets (that is including telecommunications, energy, therapeutic goods, food, intellectual property and many more)
2. We understand that the advice provided by the unit is mediated through the hierarchy of the Treasury and its particular lens on policy development
3. The unit has insufficient status and resources.
4. The unit is not balanced with or supported by a broader focussed research and policy advocacy capacity except to the extent that the Productivity Commission or others are asked to look at particular issues.

In addition, the processes for developing effective consumer policy in areas which are legislatively the responsibility of the States and Territories or jointly that of the States, the Territories and the Commonwealth frequently fail to deliver. If the Ministerial Council on Consumer Affairs/ Standing Committee of Officials on

Consumer Affairs (MCCA/SCOCA) structure is retained, each jurisdiction should commit dedicated human and financial resources to these processes. In conjunction with the existing MCCA/SCOCA secretariat, these positions would be responsible to progress the committees' work agendas between meetings. At present these processes are ludicrously slow; this undermines confidence in their ability to deliver effective outcomes. The failure of MCCA/SCOCA to operate effectively also leads to individual jurisdictions responding to problems on their own. Over time this increases regulatory inconsistency to the detriment of consumers, business and the economy.

Current bureaucratic arrangements fail to deliver innovative and responsive consumer policy. We recommend a major re-prioritisation of consumer policy leadership within the Commonwealth government departments and agencies.

We need an agency with an expanded role to develop a national consumer strategy and co-ordinate its implementation. This agency should have some independence from the Departmental hierarchy within which it is located. It is essential that it has direct access to the Minister. It is also essential, to avoid the debilitating effects of policy developed in silos, that the agency has the recognised role and necessary authority to influence the consumer policy activities undertaken by other government departments and agencies. If this function is to remain in Treasury then the role of the Markets Group and Consumer and Competition Division of Treasury should be enhanced in this way. It should also be provided with additional resources to develop a national consumer strategy and to enable it to assist other Departments that contribute to consumer welfare, for example in telecommunications and copyright (DOCITA), health services including therapeutic goods (DOH), food (FSANZ) and energy (DITR). If not within Treasury, the logical alternative home for policy development is the Commonwealth Attorney General's Department.

World-class advice from a government-funded policy research body:

More work needs to be undertaken to address the current challenges posed by dynamic, expanding and increasingly complex markets. And it is likely that the pressures already felt by consumers will greatly increase as we progress along the path towards markets with increasing use of intermediaries, e-commerce, confusing product design and marketing and ever-expanding international trade.

Australian governments are currently struggling to implement appropriate consumer policy in response to market developments. We believe that policy development in Australia suffers from a lack of resourcing of expertise in the consumer-side of the marketplace and uncertainty about policy solutions. For this reason, we believe a statutory policy research body is needed to investigate problems, analyse options and deliver solutions for fair, effective and sustainable markets. Such a body would be in a position to provide advice to State, Territory and Commonwealth departments and agencies based on sound consumer and market-based research. It would be able to consider medium and long term issues in addition to commenting on the immediate policy development challenges faced by all line agencies responsible for policy development for consumer markets.

We recommend that a statutory research and policy advisory body is established to undertake this highly specialised task. We recommend the statutory body incorporate an advisory council, representative of a range of consumer issue expertise, to advise on the research agenda. The executive of the statutory research body would be appointed by agreement between the state, territory and the Federal governments after appropriate consultation with consumer interests.

A strong consumer voice from a fully funded consumer peak:

Based on a mix of the direct experience of its members, commissioned research and targeted consumer engagement, a fully funded Consumers Federation of Australia can reflect priorities across different markets and speak with expertise and authority for all consumers in discussion with companies and with Government.

The Consumers Federation of Australia would coordinate consumer input into policy development across policy areas including food, health, financial services, public services, telecommunications, energy, water and general consumer law.

The Consumers Federation of Australia will have the unique position to draw on the front line services delivered by its member organisations. Often it is these organisations that best understand an emerging issue (such as the current predatory lending crisis). As we move towards an increasingly national delivery of consumer protections, these services also provide additional local access for referrals to complaint handling bodies and assist in promoting consumer awareness. The Consumers Federation of Australia has a critical role to play in co-ordinating these activities.

We believe there are a number of funding models that could be utilised to enable government, industry and private sector funding, as well as funding from successful regulator actions on consumer protection issues. For example, a licence levy trust fund drawn from telecommunication, credit providers, television and radio station licence fees, could allow for funding of the Consumers Federation of Australia and discretionary allocation in accordance with a trust deed.

Our recommendation is for a Canberra-based organisation of approximately 10 staff responsible for training, providing member services, policy and research, communication and coordinating consumer input into the policy process.

Consumer support and advocacy through appropriately funded and sustainable service providers:

Competitive processes produce winners and losers. Individual advocacy services help consumers to overcome the disadvantage they experience and assist to reconnect vulnerable consumers to the marketplace. Unfortunately, financial counselling and consumer legal services are chronically under-funded and/or failing to keep pace with increasing community need. We believe this review presents opportunities to increase the level of services and ensure their sustainable funding.

Consumer law centres should operate in every state and territory, with sufficient funding to deliver individual advocacy services, work on systemic and regulatory issues and contribute to capacity building in generalist services and to community development. An expanded civil law legal aid, either in-house or through independent consumer law centres, would underpin the availability of legal services to those who are adversely affected by market outcomes and cannot afford to seek the redress that would otherwise be available. Financial counselling services similarly suffer from chronic underfunding and great disparity in resourcing across borders. The dramatic growth in personal debt levels in Australia are producing increases in the level of demand and complexity which services funded at current levels are unable to meet. Consumer service providers should also be funded to have capacity to produce reliable, compatible and comparable data on an ongoing basis and stay abreast of training and professional development needs.

Priority should be afforded to ensuring these services can communicate effectively, can develop a reliable profile of consumer need across Australia, and to supporting appropriate standards of quality, training and professional development.

There are a number of models in place to facilitate funding of consumer advocacy. The National Energy Market arrangements include a levy on wholesale energy purchases to create a pool of funds for consumer advocacy. Ultimately, that cost is passed through to consumers, to the benefit of consumers. We believe that a levy could be applied to other industries to support other areas of intensive consumer advocacy and consumer advice, for example levying financial institutions to fund financial counselling services.

Financial counselling and consumer law services are a key frontline element supporting consumer participation in the marketplace. The future of Australia's consumer policy framework must ensure the sustainable funding of adequate services for consumers.

We recommend developing a new funding model to ensure the longevity of quality consumer services across Australia.