

Submission - Productivity Commission

"Review of Australia's Consumer Policy Framework"

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INTRODUCTION

Thank you for the opportunity of participating in this review.

My name is David Price and I am the Director of Tortoise Technologies Pty. Ltd., a small private company incorporated in NSW in 2004 ; we see ourselves as one of the fleas referred to in the book by Charles Handy entitled ' The Elephant and the Flea '.

The role of Tortoise Technologies Pty. Ltd., is to facilitate the development of a healthy, sustainable corporate ecology within a business or an organisation .

The form of corporate ecology offered is one in which the business operations, compliance and marketing functions are mapped and then analysed, using a blend of business dramas, games, workshops, software, mentoring and other tools as may be appropriate to create an uncommon commitment to a common cause, that of remaining economically viable whilst being socially responsible .

Now, on to my submission.

OVERVIEW OF SUBMISSION

- (1) The Environmental Equation - does the Consumer Policy Framework work for or against environmentally sustainable business practices?
- (2) Policy Development - the difficulty of pleasing the elephants whilst protecting the fleas
- (3) Policy framework - does one exist?
- (4) Enforcement - punishment vs rehabilitation vs education
- (5) Redress - who are the beneficiaries of this ?
- (6) Recommendations :
 - rules for Ministers of Government Departments
 - rules for Regulators

THE ENVIRONMENTAL EQUATION -

does the Consumer Policy Framework work for or against environmentally sustainable business practices?

Consumer policy appears to have many makers but no one overall designer, which makes it hard for a business to reconcile all the competing demands that are made on them.

For example, let us look at seven of the major environments that a business or organisation operates in :-

POLITICAL

- we have recently had a change of Federal government ; one result of this is that the rules relating to industrial relations will be reviewed and then changed

VIRTUAL

- a growing volume of trade and commerce is being conducted over the internet, the governance of which transactions is uncertain

ECONOMIC

- with global trust and confidence in free fall, the economic environment is unstable and planning very difficult

PHYSICAL

- three levels of government , Federal, State and local, rarely agree on how the physical environment should be developed.

GLOBAL

- Australia is either a signatory to or a supporter of many international agreements. Foreign enterprises carrying on business in Australia have varying degrees of acceptance and understanding of our Consumer Policy Framework.

MARKET

- any business or organisation in Australia may sell or work in a variety of markets, each of which has its own particular environment

PSYCHOSOCIAL

- attitudes of regulators and consumers to cultural differences and practices raise complex issues that are very difficult to deal with through consumer policy frameworks .

At present, there is no agreement as to what are environmentally sustainable business practices that are appropriate for use by any business in Australia ; we need to come to such an agreement as part of any reform to our consumer policy frameworks, so that we

remain an economically viable and socially responsible nation .

POLICY DEVELOPMENT -

the difficulty of pleasing the elephants whilst protecting the fleas .

As disclosed in my introduction, I relate to the fleas described in the book by Charles Handy, a well known English Management Consultant, entitled " The Elephant and the Flea " .

In this book, Handy reflects on the relationship between 'elephants ' which are described as big organisations, whether of government or business parentage, that were the major employers of the 20th century and ' fleas', who are described as independent operators, who through choice or necessity, work for themselves .

The challenges outlined by Hardy for each of these include:-

CHALLENGES FOR THE ELEPHANTS

- the need for irritant individuals or groups to germinate innovations that are lying dormant
- growing bigger but remaining small and personal
- combining creativity with efficiency
- becoming and remaining prosperous whilst being socially responsible and acceptable
- rewarding the innovators within as well as the shareholders without
- facilitating 'alchemists' who are passionate, who go beyond the rational and the logical, to the improbable, who have the capacity to see what does not yet exist but is needed and go on to create it

CHALLENGES FOR THE FLEAS

- how to avoid becoming selfish, self centred, self satisfied
("The independent life is an invitation to selfishness and a recipe for a very privatized society . But where there is no responsibility for others there is no need for concepts of right and wrong" p.205)

- how to replace the sense of belonging, the sense of place, that goes with employment in an elephant ?
- dealing with the changed dynamics of life that "fleahood" brings with it

Meeting these challenges is very demanding, whether we are elephants or fleas; however, each group needs the other and any reform to the existing consumer frameworks needs to reflect the legitimate claims of both groups .

POLICY FRAMEWORK - *does one exist?*

Given that there are a number of drivers of policy frameworks, it is no wonder that there is no one over-arching policy framework.

" Whole of government" approaches to any subject cannot be delivered because, as is the case of Occupational Health and Safety, there are :-

- International Standards
- Australian Standards
- State and Territory rules and laws
- Public sector and private sector arrangements

which are often in conflict with one another. Regulators have their own responsibilities and duties and leave it to the business operators to resolve these conflicts.

On rare occasions, as in the case of those who died in the Granville Train Disaster, there has been an agreed whole of government approach, in this instance to the prompt administration of the estates of those who died in this disaster .

UNTIL the whole of government approach becomes the norm, rather than the rare exception, there will be a series of competing frameworks all with a limited area of operation and often in conflict with one another.

ENFORCEMENT -

Punishment vs. Rehabilitation vs. Education.

One question that needs to be asked but is probably impossible to answer is whose interests does enforcement serve and who is the client of the regulator , e. g . The State, The General Public, The Regulators, or even the regulated or their advisors??

There has been much discussion in the Compliance Community about the type of enforcement processes that facilitate the development of a culture of compliance with a business or organisation, such as that concept is outlined in Australian Standard AS 3806, on Compliance programs .

There is a continuum of positions on this, from the " hawk " position which is zero tolerance to the " sparrow" position, which is enlightened administration of the rules , according to the individual fact situation in each case .

I believe that applying the principles of natural justice and equity will reward those who make a serious effort to meet both the letter and the spirit of their legal obligations , whilst punishing those who make no effort to meet their legal obligations .

REDRESS -

Who are the beneficiaries of this ?

When a corporation is fined for breaches say of the Trade Practices Act, it is my understanding that the funds from that fine are available to the ACCC, for its use and purposes.

Whilst not denying that the ACCC is a worthy recipient of this money, what of those who have been damaged by the actions of that corporation, which gave rise to the levying of the fine ??

There should be a consideration of those who have suffered loss as a result of the actions of such a corporation, to avoid the necessary for class actions, which can take years and tie up the legal system whilst such actions grind their way through the various levels of our Courts .

Further, action is often taken against a corporation, rather than the individuals who may have directed the unlawful actions and fines are paid from the resources of the corporation.

Financial penalties are only a part of the process of redress ; what is needed is a wider range of options open to the judiciary, than are presently available, so that those who have been damaged by the actions have a say in the penalties levied .

RECOMMENDATIONS

Rules for Ministers of Government Departments

Once a year, a report on the Compliance of each Minister with the following requirements should be tabled in the relevant Parliament:

CHECKLIST – version 1 – for use with Ministers of the Crown

- ✚ Has the Minister met with the CEO of the Regulator in the past twelve months? If so, how often have they met?
- ✚ How many conferences has the Minister addressed?
- ✚ How often has the Minister referred matters, of whatever nature to the Regulator?
- ✚ Has the Minister held any round table meetings with representatives of the regulated?
- ✚ Are any Ministerial guidelines to the Regulator reviewed on a regular basis, by the Minister and the regulator?
- ✚ How often has the Minister met any of the regulated?
- ✚ Who, in the office of the Minister, has responsibility for ensuring that regulations are “user friendly”? How many meetings has this person had with senior officers of the regulator?
- ✚ Who, in the office of the Minister, meets, on a regular basis, their equivalents in offices of other Ministers, to discuss problems faced by regulators in general?
- ✚ What process is in place, for ensuring that regulations which have a sunset clause , are reviewed, around six months before the sunset clause comes into effect?
- ✚ If a new Minister is appointed, what protocols are in place for ensuring the new Minister understands the role of the regulators who now fall within his jurisdiction ?

CHECKLIST - *version two - for use with Regulators*

- ❖ Has a regulator obeyed the regulations it enforces?
- ❖ Is there are a balance between qualitative measurements of compliance and quantitative measurements?
- ❖ How many regulations were created in the past twelve months?
- ❖ How many regulations were removed in the same period?
- ❖ Has the staff of the regulator increased or decreased?
- ❖ What proportion of the staff of the regulator deal with those regulated?
- ❖ How many staff of the regulator conduct on -going educational events for other regulators, those representing the regulated and those who are regulated?
- ❖ How many of the regulated have accessed the complaints and /or dispute resolutions services of the regulators?
- ❖ How many times have enforcement proceedings been used?
- ❖ How often is the information on the website of the regulator updated ?

(Once a year, a report on the compliance of each regulator with these requirements should be tabled in the relevant Parliament, by the Minister responsible for that regulator)

Making Ministers of the Crown and Regulators accountable in such a transparent way would revolutionise the way businesses, organisations

and their advisers interact with each other and would lead to the development of policy frameworks that would be to the benefit of all consumers , whatever their role and status in this nation .

END OF SUBMISSION