

February 1, 2007

Review of Australia's Consumer Policy Framework  
Productivity Commission  
PO Box 1428  
Canberra ACT 2616

Via email: [consumer@pc.gov.au](mailto:consumer@pc.gov.au)

The Australasian Compliance Institute (ACI) would like to take the opportunity to thank the Productivity Commission for its invitation to make a submission in respect to its review of Australia's Consumer Policy Framework.

ACI is the peak industry body for the practice of compliance in Australasia. Our members are compliance, risk and governance professionals actively engaged in the private, professional services and Government sectors within Australia, New Zealand, Singapore, Thailand and Hong Kong.

ACI welcomes the review of Australia's consumer policy framework and would like to comment on the following areas in respect to the draft report that has been released by the Productivity Commission.

- The need for a more nationally coherent approach to consumer regulation and a national consumer protection law
- Candidates for national regimes with reference to Credit Regulation and Utility Services
- Complaints Handling
- Regulatory consistency
- Consumer policy and trans Tasman economic integration

**The need for a more nationally coherent approach to consumer regulation and the creation of nationally consistent Consumer Protection law**

In principle ACI supports any moves to create nationally consistent laws. For the most part, ACI members not only conduct business across all Australian states and territories but increasingly are also conducting business across international borders. Under these circumstances it is not logical for Australian based businesses to arrange their business practices so that they comply with various international regimes as well as several different jurisdictions domestically.

Principal Members



ZURICH



Blake Dawson



ACI can give examples of where its members are forced to be in breach of regulations in one Australian state in order to comply with those of another. This is most prevalent within the food retailing sector of the economy. This in turn gives rise to a form of 'regulator roulette' where organisations are forced to choose which state based agency to comply with and which to be in breach of. This decision is usually made on a risk minimisation basis by electing to comply with the regulator that can inflict the most 'harm' on the organisation in question by way of penalties for the infringement.

The proposition to create one uniform set of consumer protection laws that would be enforced by the Australian Competition and Consumer Commission (ACCC), with the exception of financial services, is supported by ACI. ACI is of the view that this approach would not only create certainty for consumers as they would be treated equally irrespective of their place of residence, but this approach would also reduce the amount of regulation Australian businesses would need to comply with.

ACI suggests consideration be given to replacing the state consumer affairs bodies with local offices of the ACCC. The ACCC, would however, need to adopt a lower threshold for investigations in the state and territory offices as currently the ACCC only deals with systemic issues and large dollar amounts.

In addition ACI would support future consumer protection legislation being administered solely through the ACCC.

This overall approach would reduce the regulatory burden faced by Australian businesses; reduce compliance costs which would add to Australian competitiveness; and be consistent with the new Rudd Government's overall aim to reduce the regulatory burden faced by Australian Businesses.

*ACI provides in principle support to Draft Recommendations; 4.1, 4.2; 4.3 and 4.4.*

### **Candidates for national regimes**

In terms of the issues raised in this section of the Draft report, ACI supports the comments made in respect to the regulation of credit providers. Rather than repeat what has already been stated by ACI on the public record, we have attached a copy of a submission ACI made to the House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry into Home Loan Lending Practices and Processes. This submission sets out some of the rationale for our support of taking the responsibility for the supervision of finance brokers and credit providers and handing them over to the Commonwealth. In addition ACI believes that to create consistency in respect to the supervision of credit provision, mortgage and finance brokers should be included in the transfer from state supervision to Commonwealth supervision and this responsibility be undertaken by ASIC.

The creation of a national energy network and the progressive removal of state ownership of power generation has called into question the need to retain a state based consumer protection framework for the electricity (and soon to include the supply of natural gas) markets.

In addition, the emergence of sophisticated financial products such as electricity derivatives which are used by energy suppliers to smooth out the supply, demand and pricing of their products currently come under the same regulatory regime as other more mainstream wholesale financial products at a national and international level.

Therefore given the shift away from its state based origins, ACI would also support the move towards the national regulation of Australia's energy services as a way to reduce the compliance costs faced by generators in Australia.

*ACI provides in principle support for Draft Recommendations 5.2 with the inclusion that Mortgage Brokers be included within the transfer of the regulation of credit provision from the states and territories to the Commonwealth.*

*ACI provides in principle support for Draft Recommendation 5.3.*

### **Complaints Handling**

An essential component of any successful compliance programme is the existence of an effective complaints handling mechanism. ACI is of the view that consumer complaints and concerns should be addressed to the satisfaction of customers by the businesses in question.

However, ACI understands that from time to time the complaints handling mechanism within organisations fails to address the complaint to the consumer's satisfaction. It is these circumstances that give rise to ACI's support of the creation of a single national dispute resolution referral body.

The creation of a single entity (similar to that of the UK based Consumer Direct or the New Zealand Complaints System) would achieve the following:

- Be consistent with the creation of a single piece of consumer protection legislation administered by a single regulator.
- Allow Australian Business to deal directly with one institution that would administer a common set of principles and operate under a singularly consistent set of procedures.
- Create easy access for consumers for dispute resolution services as they would not be required to have an understanding of the inter-relationships between a number of government agencies across different jurisdictions. A single point of call would mean that internal expertise would be able to direct the complainant to the appropriate area in an efficient manner.
- All Australian consumers would be treated equally irrespective of which jurisdiction they reside in.
- With increased level of domestic travel, a complaint resulting from a purchase of a good or service from a different state or territory than the consumer's home state or territory can be dealt with in the consumer's home jurisdiction.

*ACI does not support Draft Recommendations 9.1 to 9.6 as they currently stand however support is provided to Option C which is outlined on Page 153 of Volume 2 of the Draft Report. Option B would represent ACI's next preferred outcome if Option C could not be implemented.*

### **Regulatory consistency**

As indicated above, ACI supports attempts to produce regulatory consistency across Australia's states and territories however; there may be instances where 'generic' legislation may not meet the needs of all product and service classes. For example the disclosure requirements for food, alcohol, medication, financial services and electrical appliances may require higher safeguards than other goods and services. Therefore while it may be difficult to achieve consistency across all product and service classes, at a minimum there should be national consistency within product and service classes across jurisdictions.

At this point ACI would like to take this opportunity to suggest that further consideration needs to be given to service providers that require licences to operate. As recognised by the Commission's report, an increasing number of consumer transactions are for services, and many of these service providers are licensed- plumbers, electricians, credit providers, real estate agents, solicitors, financial advisers.

Consideration of complaints about such service providers raises the question as to whether there is a role for the licensing body in dealing with complaints. For example, this may involve the licensing body also undertaking the joint role of industry regulator and consumer protector. This dual function is currently performed to some extent by ASIC for example, with the ultimate enforcement action being the revocation of the organisation's licence to operate.

The consumer protection framework going forward may involve one overarching national body that can administer a single piece of generic consumer protection legislation that applies to all goods and services. However for those goods and services that are either more complex or hazardous in nature, a second or sub tier of consumer protection would exist via the bodies that are authorised to grant licences to operate. These same organisations would also be responsible for enforcing licensing conditions and should a serious enough breach of these conditions occur, revocation of the licence would be possible. That way consumers would remain protected as the regulators who understand these specific industry sectors would also take on a consumer protection aspect to their role.

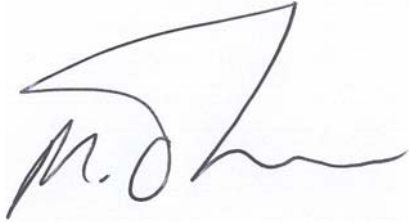
### **Consumer policy and trans Tasman economic integration**

ACI supports moves to streamline consumer protection laws between Australia and New Zealand. Increasingly more of ACI's membership is being drawn from New Zealand and we have noticed an increase in the amount of cross Tasman activity taking place amongst the membership. A large part of this is due to the current ownership structures of New Zealand's financial institutions.

As indicated above, as more Australian organisations undertake business that crosses international boundaries, ACI is of the view that, where possible, harmonisation of business related legislation and regulation should be actively pursued by respective governments. It is on this basis that ACI encourages the Productivity Commission to consult extensively with their New Zealand counterparts to place trans Tasman harmonisation high on the agenda with respect to any proposed reforms of Australia's consumer protection framework.

Once again ACI would like to thank the Productivity Commission for extending this invitation to comment upon the Review of Australia's Consumer Policy Framework. Should you require any additional information or seek clarification on the comments that appear in this submission, the please do not hesitate to contact ACI on (02) 9290 1788.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Tolar', with a large, stylized flourish above the name.

**Martin Tolar**  
Chief Executive Office



July 24, 2007

Andrew McGowan  
Inquiry Secretary  
House of Representatives Standing Committee on  
Economics, Finance and Public Administration  
Parliament House  
CANBERRA ACT 2600

### INQUIRY INTO HOME LOAN LENDING PRACTICES AND PROCESSES

Firstly, on behalf of the members of the Australasian Compliance Institute (ACI) let me thank the Committee for extending an invitation to ACI to participate in the Round Table due to take place on August 10, 2007 at Parliament House.

ACI is a professional body recognised as one of the global leaders in the promotion of compliance, ethics and good governance. Our members span the spectrum of regulators, corporations, professionals and academics. We operate across all compliance issues from Securities, Consumer Protection, Finance, Tax, Occupational Health & Safety and the Environment. At present we have approximately 2,000 members with some 60% coming from the financial services industry.

ACI has been requested to provide a brief overview of the key points it would like to raise during the course of the round table should time not permit all participants to fully express their views during the day.

Our key points are as follows;

- ACI believes an anomaly exists between those individuals who are permitted to provide financial services advice within the context of the financial planning, wealth management and insurance broking professions and those engaged in the provision of credit to consumers in their role as either mortgage or finance brokers.
- This anomaly exists because under the current financial services legislation (see regulation 7.1.06 for the definition of a credit facility), the provision of credit is not treated as a financial product and as a consequence those people engaged in the supply of credit to consumers are not governed by the same licensing and education requirements as those who are covered by ASIC PS146.
- As a result, anecdotal evidence has suggested those who could not or would not meet the requirements established by PS146 have moved from financial planning and insurance broking into mortgage and finance broking.
- In addition, a proliferation of mortgage brokers have entered the market and promoted mortgage broking as a franchise opportunity for those wishing to start their own business. Not all who have taken up this opportunity come from a financial services background.

### Foundation Members



George Weston Foods Limited



ZURICH



BLAKE DAWSON WALDRON  
LAWYERS





- As the number of mortgage broking firms have increased, the only way they have been able to obtain or protect their market share and meet promises made to new franchisees is to write more new home loan business. Anecdotally, ACI believes that market share has become a higher consideration for some mortgage brokers than customer affordability, and therefore there is a link between the increase in the number of new loans being written and a reduction in the rigours surrounding previous lending criteria.
- ACI also believes that in recent years there has been an increase in the numbers of providers of sub-prime lending, especially around the purchase of automobiles and other significant household items. Once again, ACI is of the opinion that the exclusion of credit as a financial product has led to this development and this also poses a risk to the ability of financially vulnerable households to service financial debt.
- If we place the impact both superannuation and home lending has upon total household income it is very surprising to see how tight the restrictions are for those who provide financial planning advice versus those who provide home loans. That is, in order to provide financial services advice of a personal nature, a financial planner must be PS146 accredited, however for the average Australian, superannuation only accounts for approximately 9% of their total income. However, based upon recently released research, mortgage repayments can account for between 30 to 40% of total household income, however no such training or education requirements exist for those who provide or sell mortgages.
- Finally, while not a central focus of this enquiry, ACI would like to draw to the attention of the Committee a relatively new development within the context of home lending; that being the Reverse Mortgage. As Australia's population continues to age and Australians find themselves asset rich and cash poor, the temptation to draw upon the equity in their homes will increase as they strive to maintain their current lifestyle. Especially for those Australians who have not had a full working lifetime to accumulate the superannuation they require to retire on. ACI believes it is essential for the Government to address this issue now by placing proper controls on those individuals and firms who are able to advise homeowners about making use of these products.

If the Committee would like any further information about ACI and its members or any clarification on any of the issues raised in this submission, please feel free to contact our office on (02) 9290 1788.

We look forward to making future contributions on this significant issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Tolar', is positioned above the printed name.

Martin Tolar

Chief Executive Officer