

The following submission from Suncorp represents a group view of the Productivity Commission's suggestions in their latest draft report for its inquiry Review of Australia's Consumer Policy Framework.

The response has been divided into sections,

- General Insurance – organisations represented include, AAMI, APIA, GIO, Shannons, Just Car Insurance, Suncorp Direct and two internet insurers, Bingle and InsureMyRide.
- Commercial Insurance – GIO, Vero and VeroProfin
- Home Warranty – Vero
- Banking - Suncorp.

Issues vary between these different areas of financial services. Under each section the name of the appropriate subject matter expert has been supplied for the Productivity Commission's information.

All questions or comments of the first instance should be directed to:

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General Insurance

Suncorp is Australia's third largest general insurance group. The general insurance business includes personal insurance products such as home and contents and personal effects cover, motor and boat, compulsory third party insurance, workers compensation and a range of commercial insurance products tailored to the small to medium business market such as property, marine, rural and liability.

In 2007 Suncorp's insurance operation contributed \$976 million before tax to the group profit.

Suncorp serves more than 6 million general insurance customers throughout Australia and New Zealand and provides personal and specialised insurances through well-known brands such as AAMI, Apia, Shannons and Just Car Insurance in Australia and Vero in New Zealand.

The following response to the Productivity Commission's Review of Australia's Consumer Policy Framework follows the same order as the draft recommendations, as contained in Volume 1 of their report.

Only those recommendations that are relevant to Suncorp's Personal and General Insurance line of business have been commented on.

Response to Recommendations

Draft Recommendation 3.1

Objectives for consumer policy

Australian Governments should adopt a common overarching objective for consumer policy:

'to promote the confident and informed participation of consumers in competitive markets in which both consumers and suppliers trade fairly and in good faith'.

Suncorp General Insurance supports this recommendation. A common framework across the country for consumer policy is highly desirable. Consistency from both a consumer and corporate aspect would ease confusion over consumer rights, compliance costs (as economies of scale from a corporate view would be achieved) and would increase overall understanding.

Draft Recommendation 4.1

A new national generic consumer law

Australian Governments should establish a new national generic consumer law to apply in all jurisdictions, enacted through applied (template) law arrangements.

Suncorp supports this recommendation. As above, one law is highly desirable. However caution needs to exist with drafting. The general insurance and other banking parts of the Suncorp business are already governed by the Corporations Act and the Insurance Contracts Act. Care would need to be taken in drafting to avoid additional requirements being mistakenly imposed on these areas. Layering of legislative requirements is not desirable. It becomes costly to

implement and would increase the amount of red tape that already sits upon Financial Services Licensees. It would also be incongruous to the Federal Governments position re the reduction of red tape.

Any changes to the consumer protection framework that is afforded under these Acts needs to be drafted with full consultation with industry.

Draft Recommendation 4.4

Beyond the enforcement of consumer product safety, Australian Governments should jointly consider the scope and means to overcome any obstacles to the introduction of a single national regulator for the new generic consumer law

From a consumer protection aspect, Suncorp supports ensuring that the ACCC is sufficiently resourced to be able to perform their new role effectively. However, with the taking up of the recommendation that ASIC be the financial services regulator – as a whole, it is also necessary to ensure that ASIC is appropriately resourced.

Draft Recommendation 5.2

Responsibility for regulating finance brokers and other credit providers should be transferred to the Australian Government, with the regulatory requirements encompassed within the regime for financial services administered by ASIC.

Suncorp would also like to see the Productivity Commission consider regulating financial services 'web aggregators'. Currently web aggregators are able to trade without requiring an Australian Financial Services Licence, despite the fact that they are dealing in financial services, in a very similar fashion to normal insurance brokers.

Web Aggregators provide an electronic comparison method of financial products via the internet. Usually they provide a summary of the product (often incomplete or inaccurate, e.g. Artog currently say that GIO/Suncorp do not offer choice of repair for comprehensive motor, they do) along with a quote. Often they are affiliated with an insurer (often off shore, e.g. Artog and Hollard – a South African Insurer). They promote this insurer's product on line, when providing comparisons with others. This is misleading for consumers, and as these financial service providers are unlicensed they do not have to provide consumers access to an ADR scheme.

Suncorp feels that these organisations can be seen to be providing financial product advice without being licensed or regulated by ASIC.

Draft Recommendation 7.1

A new provision should be incorporated in the new national generic consumer law that voids unfair terms in standard contracts ...

In essence Suncorp personal insurance supports the expansion of the Victorian Unfair Contracts provisions nationally.

Insurers are already required to act in Good Faith under the Insurance Contracts Act, and Suncorp sees the Unfair Contracts provisions as an expansion of this across other consumer products.

Suncorp personal insurance supports the concept that there should be a capacity for an industry or business to secure regulatory approval for 'safe harbour' contract terms that would be immune from any action under this provision.

For further comments or questions on this section, please contact:

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Commercial Insurance – Vero and VeroProfin.

Vero offers highly specialised insurance solutions via intermediaries, including brokers, corporate partners, agents and risk managers. Vero is known for its specialist underwriting insurance solutions and superior claims management.

Vero offers:

- marine and personal insurance through intermediaries, financial institutions, affinity groups and agents a range of insurance products including property, commercial motor, liability, travel, aviation,
- claims management services, and risk management services, as well as registration and emergency support services through Secure Sentinel
- deposit guarantees, through Deposit Power.

VeroProfin is a subsidiary of Vero.

Response to Recommendations

Draft Recommendation 4.1

A new national generic consumer law

Australian Governments should establish a new national generic consumer law to apply in all jurisdictions, enacted through applied (template) law arrangements.

Vero supports this recommendation. Any streamlining and centralising of legislation and its enforcement, so as to remove inconsistencies between States and Territories and the Commonwealth, will have cost-saving benefits to a national business such as Suncorp.

In relation to Vero, having nationally consistent legislation will potentially allow, for example:

- generic training to be developed therefore simplifying training issues and potentially reducing training costs,
- centralisation of claims handling resulting in costs efficiencies from economies of scale,
- for greater consistency in reserving on the basis that a similar claim, wherever arising, should result in similar quantum.

Draft Recommendation 4.2

The new national generic consumer law should apply to all consumer transactions, including financial services, but ASIC should remain the primary regulator for financial services.

As discussed earlier, Suncorp recommends that this process be undertaken with great care. Financial service providers already have a great deal of consumer focused regulation upon them, any additional requirements would be seen as onerous, especially in the absence of any proof that such is needed. Any additional reporting requirements that arise from this change, need to be carefully considered. They will lead inevitably to higher business management costs that eventually will be passed through to the consumer.

Draft Recommendation 5.2

Responsibility for regulating finance brokers and other credit providers should be transferred to the Australian Government, with the regulatory requirements encompassed within the regime for financial services administered by ASIC and a licensing system should be introduced for finance brokers that, amongst other things, requires participation in an ASIC approved ADR scheme

Vero's comments are applicable only to finance brokers. Credit providers such as ADI's are already subject to licensing by ASIC and prudential supervision by APRA and participate in a quality national ADR Scheme (BFSO). Refer Suncorp Banking's comments. To the extent that regulation imposes educational, training or experience as a prerequisite for obtaining a licence, and provides for on-going training, supervision, risk management as well as disciplinary functions, then nationwide regulation and licensing of finance brokers is seen by Vero as a positive step, as it should improve the level of service provided to the consumer.

From providers of professional indemnity cover to finance brokers or other credit providers (for example, mortgage brokers), this level of regulation has the potential to improve the risk profile of these professions and this in turn may result in fewer claims being made.

Draft Recommendation 8.1

Australia's consumer regulators should raise awareness among consumers and suppliers about the statutory rights and responsibilities conferred by the implied warranties and conditions in the generic consumer law.

As a result of the combination of raising consumer awareness of their rights and the availability of remedies and the Draft Recommendations in Chapter 9 in relation to simplifying access to justice for consumers, there is the potential for the volume of product liability claims to increase, which potentially could lead to increased policy costs.

Draft Recommendation 8.2 and 8.3

Consistent with the recommendations in the Productivity Commission's recent consumer product safety report, Australian Governments should, as soon as practicable:

- *commission a study to assess product-related injuries,*
- *develop a hazard identification system for consumer product incidents.*

8.3 - *Drawing on the mechanisms proposed in Draft Recommendation 8.2, Australian Governments should monitor any possible impact of the recent civil liability reforms on the incentives to supply safe products*

Although Vero supports this concept, it is seen as likely that, insurers, specifically claims departments, will be a major source of the data required in relation to product-related injuries and consumer product incidents.

Accordingly, this Draft Recommendation has the potential to result in additional reporting requirements similar to the existing APRA injury coding requirements.

This potentially involves capital expense in modification of computer systems to capture the data required and administrative time in training and providing

regular reporting. Government needs to work with the insurance industry to ensure that increased requirements on them re reporting are implemented in a cost effective manner. Any increased costs involved in the running of a business eventually find their way to the consumer.

Draft Recommendation 9.2

Australian Governments should improve the effectiveness of alternative dispute resolution (ADR) arrangements for consumers by:

- *encouraging further integration of financial ADR services*
- *ensuring there is an effective and properly resourced ADR mechanism to deal consistently with all consumer complaints not covered by industry-based ombudsmen*

The proposed expansion of ADR in consumer claims has the potential to result in a greater number of claims being made against suppliers and result in greater claims frequency for insurers.

The net effect of an increase in claim numbers on claim costs is hard to predict as on the one hand, even if the average cost of individual claims is relatively low, the volume of claims may offset it.

On the other hand, it is likely that the costs of defending such claims will be less as often such processes do not involve the use of legal representation and costs are not awarded.

Depending on the volume of claims, additional staffing and resources may be necessary.

In addition, if claim numbers increase, this has the potential to effect pricing, prudential reserves etc.

We believe the Commission should take into account the proposed convergence of leading financial services industry ADR schemes already underway and investigate what gaps if any warrant extra cost and effort.

This proposal should include a specific carve out for those entities who already subscribe to an industry-based ADR system and a supporting Code of Practice, otherwise it risks duplication of disputes and may encourage consumer jurisdiction shopping.

Draft Recommendation 9.4

The Australian Governments should assess whether further clarification or amendment of the legislation to facilitate appropriate private class actions is required, taking into account any risks of excessive litigation or other unintended effects resulting from third-party financing of private class actions.

The Productivity Commission should note that however, unlike the proposals in relation to ADR and changes to lower court procedure, which are aimed primarily at small claims; class actions are likely to involve more significant dollar value claims and result in significant legal costs. Funding for such actions has the potential to have a much greater financial effect on insurance portfolios, such as Corporate, SME and Profin. If the claims costs increase, the cost of the policy will do so as well. Care needs to be taken in considering this option.

Draft Recommendation 9.5

A provision should be incorporated in the new national generic consumer law that allows consumer regulators to take representative actions on behalf of consumers, whether or not they are parties to the proceedings

As the types of claims the subject of regulator sponsored representative actions are also like to be high dollar value claims, the comments made in relation to Draft Recommendation 9.4 are equally apposite to this Draft Recommendation.

For further comments or questions on this section, please contact:

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Home Warranty Insurance (HWI)

The following response is provided by Vero Warranty. Vero Warranty is a division of Vero Insurance Limited, a member of the Suncorp Group.

Response to Recommendations

Draft Recommendation 5.5

"Australian Governments should take early action to provide better and uniform protection for those having a home built or renovated. Specifically this should entail:

- *guaranteed access for consumers to alternative dispute resolution mechanisms;*
- *provision of greater scope to de-register builders who do not meet appropriate performance standards; and*
- ***a revamping of compulsory builders' warranty insurance to ensure that it is of genuine value to consumers [emphasis added] and that consumers understand the product"***

Vero Insurance Ltd (Vero) supports the non-highlighted parts of this recommendation. However, it is recommended that the report recognise the substantial progress made, especially in NSW post the Grellman Inquiry in this product area. In addition, the stable history and effectiveness of the South Australian and Western Australian schemes (see later) should also rate a mention, so that any untoward interpretation is avoided.

However, Vero questions the highlighted part of the recommendation and seeks to understand on what basis it was made so that Vero can properly respond.

Vero submitted to the Productivity Commission's Report into Reform of Building Regulation and took considerable comfort from the strong emphasis in Productivity Commission's Report into National Competition Policy on continuation of evidence-based regulation and reform.

Similarly, there was an expectation that the concurrent Victorian Competition and Efficiency Commission (VCEC) Inquiry into Regulation of the Housing Construction Sector and Related Issues and their report, *Housing Regulation in Victoria: Building Better Outcomes*, would be factored into the Productivity Commission's considerations.

In particular, VCEC's Report recognised the value and positioning of HWI in the consumer protection package, albeit in the context that further improvements could be made to the early intervention ('first resort') and transparency components of the scheme. Vero has been active in encouraging and responding to the Victorian government as it moves to implement the VCEC recommendations.

Vero notes that some of the same recommendations have been incorporated into Recommendation 5.5 of the draft Report. As stated above, Vero fully supports these improvements.

Compulsory HWI does represent genuine value to consumers as it provides a solution when the builder "cannot" (instead of "will not") complete the home or return to fix any defects. Further, the eligibility criteria for HWI applied by

prudent insurers like Vero contributes to ensuring only financially sound, technically competent builders, can access HWI. Given that HWI is a prerequisite to the registration/licensing process, this in turn minimises the risks of consumers dealing with at risk builders.

Neither the Productivity Commission's draft report nor related submissions provide much in the way of evidential support for home warranty insurance revamping.

In regards to the market failure argument, to provide balance, it should also be seen from a supply side aspect. In assessing the effectiveness of the compulsory privatised HWI schemes, regard must be had to the fact that a market cannot be made or sustained if it is not attractive to private capital. This was dramatically demonstrated in 2001 following the collapse of HIH and the withdrawal of reinsurance capacity for the 'first resort' HWI product. State regulators (outside of SA and WA - which have always had stable 'last resort' schemes) had to reshape the market. They understood the need to clarify the HWI claim triggers and eliminate the abrogation of responsibility and rotting that this lack of clarity and ineffective builder licensing regimes had created. The market inefficiencies of the 1996 - 2001 period remain a cost to this day.

Homebuilders are required by law to provide 'statutory' warranties. They are also required to provide home warranty insurance as backstop protection as they generically lack the capacity (or desire) to fund that risk. HWI insurers not only back up the defect warranty, they also assume the building contract non-completion risk. This has always been the principal risk and positions HWI in the credit & surety (rather than insurance) product category given the HIW insurer is effectively guaranteeing specified obligations of the builder. Similarly, HWI underpins a warranty unlike other consumer warranties (that generally back products delivered fully built).

Vero, in it's submission to the VCEC Inquiry, outlined in simple, clear and unequivocal terms why its private capital would never be used to make a 'first resort' HWI market. For a copy of our public submission please go to www.vcec.vic.gov.au.

Throughout the engagement with VCEC that followed, Vero provided further data and analysis that supported this position and demonstrated the continued effectiveness of 'last resort' HWI (as part of the overall public/private response to protection of new home buyers).

Vero extends the opportunity for a similar bilateral engagement with the Productivity Commission. Refer our covering letter.

Comments on other related matters covered in the draft report in regards to HWI.

National Regulation

The proposition that national regulatory bodies such as the ACCC, ASIC or APRA could effectively police state-level consumer protection does not appear to have addressed how this would occur in practice.

Vero's experience indicates a high degree of difficulty in creating and sustaining the operational span and technical depth of state-based home building regulators in a federal agency. In this regard The Productivity Commission should note that,

in NSW, the Government, through the HWI Scheme Board, has recognised a degree of inter-agency overlap via a MoU with APRA. This allows both parties to leverage the others supervisory speciality.

While the Insurance Council in their subsequent (2nd) submission touched on HWI, they concentrated solely on supporting nationally consistent regulation (or, at the least, harmonisation) without addressing the current effectiveness of the 'last resort' HWI environment for the same reasons as Vero.

The recommendations in the Insurance Council's original (1st) submission, e.g. 13 - prudential regulation and 14 - reducing inconsistent regulation, are broadly applicable to HWI. However, where state-based oversight comes into its own, another level of regulation is necessary. For example, the gate-keeping function of HWI, in limiting the potential for inappropriately capitalised/managed builders exposing consumers to loss, requires oversight to ensure insurers' practices do not result in systemic failure to deliver on this objective (as was the case in the years prior to the 2001 capacity collapse).

Evidence-Based Reform

The HWI 'first resort' and 'last resort' scheme debate makes it inevitable that comparisons between the Queensland and privatised schemes will continue. Given this and the elapsed time since that scheme's last National Competition Policy review, the Productivity Commission may be in a position to assist all stakeholders by providing a comprehensive analysis of the public and private schemes. This would certainly be appropriate if the Productivity Commission intended to maintain the draft recommendation.

Division of Responsibilities

One of the biggest risks to the confluence of 'first resort' and 'last resort' protection for the purchasers of new homes is the separation of the agencies responsible for regulation of suppliers (builders) and protecting consumers (home buyers). Risks are heightened with a consumer policy framework that favours such separation, especially where it currently doesn't exist. This industry segment is of such technical and environmental complexity and, with HWI straddling both categories, re-shaping the regulatory structure in such a manner is fraught with problems. The contrasting effectiveness of the current NSW and Victorian structures is a case in point.

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Suncorp Banking

The following response is provided by Suncorp Metway Limited (Suncorp).

Suncorp is Australia's 6th largest bank with \$61 billion in assets.

Suncorp's banking contributed \$569 million before tax for the year to June 2007.

Suncorp operates 233 retail and business banking outlets nationally, predominantly in Queensland, New South Wales and Victoria. The banking operations are divided between retail consumer banking and business banking, which caters predominantly for small to medium sized businesses.

Retail Banking provides home and personal loans, savings and transaction accounts, margin lending, credit cards and foreign currency services to over 800,000 customers through 173 retail outlets, ATMs, 24 hour call centres and on-line banking.

Business Banking focuses on the needs of small to medium sized businesses and has more than 76,000 customers.

Response to Recommendations

Draft Recommendation 5.1

CoAG should instigate and oversee a review and reform program for industry specific consumer regulation that would:

Identify and repeal unnecessary regulation, with a particular focus on requirements that only apply in one or two jurisdictions;

Drawing on previous reviews and consultations with consumers and businesses, identify other areas of specific consumer regulation that apply in all or most jurisdictions, but where unnecessary divergences in requirements or lack of policy responsiveness impose significant costs on consumers and/or business; and

Determine how these costs would be best reduced, with explicit consideration of the case for transferring policy and regulatory enforcement responsibilities to the Australian Government and how this transfer might be best pursued.

Suncorp in principle supports CoAG overseeing a review and reform program for industry specific regulation.

Suncorp provides in principle support for the repeal of unnecessary regulation with a particular focus on requirements, which apply in one or two jurisdictions only.

In general it is recommended that focus be given to 'fix' current policy shortfalls and jurisdictional inconsistencies before introducing new policy to avoid overlap/duplicated legislation.

Draft Recommendation 5.2

Responsibility for regulating finance brokers and other credit providers should be transferred to the Australian Government, with the regulatory requirements encompassed within the regime for financial services administered by ASIC.

In principle, Suncorp supports the recommendation that the Commonwealth assumes responsibility for consumer credit regulation.

However Suncorp does not support consumer credit regulation becoming part of the Corporations Act, in so far as replicating FSR requirements into credit. This would create onerous requirements on consumer credit management – which is already regulated by the States and under the Uniform Consumer Credit Code. Suncorp's preference would be to have this as a separate chapter, in the Corporations Act, which is quite distinct from the FSR regime. This would avoid the risk of duplicating regulatory requirements, which may confuse the consumer and be costly to the provider to implement.

Suncorp, in principle, supports the transfer of the UCCC to the Commonwealth after the current MCCA policy agenda for changes have been made.

Suncorp recommends that the outcomes of the 1999 review of UCCC be considered only in the context of the market at that time and not progressed without further industry consultation, impact analysis and consumer testing as to its relevance in today's market and future market direction.

It provides in principle support for the regulation of all credit providers (including brokers and non-bank lenders) under a national scheme administered by ASIC. In addition, any new regulation, if progressed, needs to ensure Suncorp's role as a lender in terms of its fiduciary obligations is not over engineered.

Suncorp recommends that the Productivity Commissioner obtains a table of current credit related initiatives (State and Federal) to clearly quantify and timeline existing proposed changes where applicable. This would give the Commission a clear understanding of future policy directions from a state perspective, will allow them to identify priorities and will hopefully reduce regulatory overlap.

Suncorp recommends that ASIC is clearly defined as the Financial Services regulator for all financial products/services, subject to our proviso above that regulated credit not be incorporated in the FSR regime. This would help avoid confusion with ACCC being introduced as the consumer regulator.

Draft Recommendation 9.2 – Dispute Resolution

Australian Governments should improve the effectiveness of alternative dispute resolution (ADR) arrangements for consumer by:

- *encouraging further integration of financial ADR services*

Suncorp provides in principle support for the consolidation of the financial services external dispute resolution schemes, as long as the requirements for those already participating in schemes are not exacerbated. We also support comments made by our related insurance entity Vero above on this topic and urge the Commission to factor into its findings the steady progress on convergence already planned by key existing financial services ADR schemes

Draft Recommendation 7.1

A new provision should be incorporated in the new national generic consumer law that voids unfair terms in standard contracts ...

Suncorp Banking does not support the "Unfair Contract term" proposals, so far as they relate to the inclusion of 'exception fees' or Suncorp's ability to 'unilaterally vary' its credit contracts. These are fundamentally intrinsic to an ADI's ability to manage the credit and operational risk inherent in a lending portfolio. Therefore these provisions should be considered under the 'safe harbour' contract terms proposal.

Draft Recommendation 9.6

Australian Governments should provide enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counseling services, especially for vulnerable and disadvantaged consumers.

In principle, Suncorp supports a solely Government funded arrangement of consumer advisory bodies with a focus on education for consumers in conjunction with more financial counsellors. The continuing concern regarding financial literacy should make this a priority.

Chapter 10 – Enforcement Powers

Suncorp does not support any increase to current enforcement powers – rather, Suncorp prefers to rely on existing comprehensive powers the regulators currently have available, or adoption of existing State powers such as those within the UCCC's to the federal sphere, but without increase.

Draft Recommendation 11.1

Suncorp recommends 'Mandatory Document Disclosure' changes under FSR continue under the Corporations Act rather than introducing a new process. The cost and operational impact of any roll back and/or new regulatory requirements needs to be rigorously considered including consumer testing and a RIS.

For further comments or questions on this section, please contact:

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