

11 February 2008

Please refer to:
5.1/JS257 661546.1

The Commissioners
Consumer Policy Inquiry
Productivity Commission
PO Box 80
Belconnen
ACT 2616
AUSTRALIA

Dear Sirs

Review of Australia's Consumer Policy Framework

This is a submission on the Productivity Commission's draft report on the Review of Australia's Consumer Policy Framework (the draft report), by the Australia New Zealand Leadership Forum's Working Group on Trans-Tasman Competition and Consumer Issues (the working group)¹. The working group represents Australian and New Zealand businesses with significant interests in trans-Tasman trade.

The working group supports the concept of a national consumer policy framework for Australia. Implementation of such a framework would result in significant benefits which would be shared equally by consumers, businesses and regulators. It will also contribute to the goals of the Governments of Australia and New Zealand to move towards a single economic market.

In the working group's view, a national consumer policy framework should include provisions that facilitate compliance education and the production of guidelines by regulators as a means of assisting consistency and certainty.

The working group considers that both a national regulator and state and territory based regulators have a role to play in the enforcement of generic consumer legislation. Specifically, the working group supports the enforcement of systemic issues that are national in nature by a single national regulator, with the States and Territories having responsibility for local issues. It is essential that the criteria used to make this judgement are clear and transparent.

The working group also supports the concept of industry specific consumer legislation being limited to only those areas where the generic framework does not adequately address the issues likely to arise and therefore provide appropriate consumer redress.

¹ This is a submission from the working group. Where individual members of the working group consider it necessary, they will make their own individual submissions.

For example, the working group notes that various telecommunications specific codes prescribe prescriptive requirements for the advertising and marketing of telecommunications products and services. The consumer protection provisions of the Trade Practices Act and Fair Trading Acts already impose general obligations not to mislead and deceive customers which effectively address and achieve the same ends.

Further, there are also many instances other than those identified in the draft report where inconsistencies between the jurisdictions, in relation to industry specific legislation, result in additional compliance costs for business, costs that are consequently passed on to all consumers. These divergences create significant compliance burdens, particularly for national operators.

Examples of such legislation include:

- Food: Although the Model Food Act has been adopted in most States and Territories, food safety legislation (for example, requirements relating to food safety programs) differs significantly from State to State. The Model Food Act has not been adopted in WA.
- Charitable fundraising: each state and territory regulates charitable fundraising in that state or territory. Increasingly, nation-wide fundraising activities are being undertaken by national retailers and the participants are required to comply with the various licensing, registration and information requirements that apply in each state and territory. This can cause delay in the conduct of the fundraising activity, and an increase in the costs, to the detriment of the beneficiaries of the proposed activity.
- Lotteries and trade promotions: each state and territory has its own legislation regulating trade promotions, for example, competitions conducted for the promotion of a particular trader or product. For example, the permit and advertising requirements differ state by state. Such promotions are increasingly conducted and advertised on a national basis, and should be subject to consistent regulation.
- Lay by sales: some states and territory have legislation regulating lay by sales. The requirements of that legislation differ, with no apparent policy justification. Other states have no legislation specifically regulating such sales.
- Tobacco: the Commonwealth and each state and territory have legislation regulating the retail sale of tobacco products, including prescriptive requirements as to the display of tobacco products. While there is a sound policy basis for regulating such sales, that regulation should be consistent throughout the jurisdictions.

Other opportunities for rationalisation of consumer policy include telephone marketing, door-to-door sales, trade promotions and trading stamps legislation.

Any changes to industry specific regulation must be made with a view to ensuring that the industry regulation is consistent between New Zealand and Australia. There is a danger that any asymmetry between the jurisdictions might have unintended consequences which will not benefit consumers. For example, the draft report recommends that the Australian government removes all retail price caps applying to telecommunications products and services (draft recommendation 5.3) Price caps are still a feature of the New Zealand telecommunications market through the TSO mechanism. While the TSO mechanism is under review in New Zealand, the Minister has announced that price control in relation to the TSO will remain in place in New Zealand.

The proposal to introduce provisions voiding unfair contract terms is not supported by the working group. In the group's view such provisions will create considerable uncertainty for business, particularly those businesses with large numbers of standard terms contracts. The draft report's concern about the possibility for regulatory overreach is noted. However, the proposed caveats on the reach of the provision will only serve to create uncertainty and increased costs. Similarly, the proposal to allow for prior regulatory approval of standard terms is misguided as it will significantly increase regulatory cost. It will always be difficult for a regulator to anticipate future industry developments that might subsequently render apparently innocent and desirable terms subsequently, unfair.

Overall, the working group supports the direction of the draft recommendations. In particular, the working group agrees that moving to a national generic consumer policy framework will result in significant benefits that consumers and businesses will both share equally. In addition, such a move will reduce the trans-Tasman barriers to a single economic market that the current inconsistencies between the jurisdictions cause. This would be a positive step towards the single economic market that has been promoted by the Governments of both countries.

Yours Faithfully



Paula Rebstock

Chair of the Australia New Zealand Working Group on Trans-Tasman Competition & Consumer Issues (Australia New Zealand Leadership Forum)

Level 6, 44-52 The Terrace, Wellington

Tel +64 4 924 3602

Fax +64 4 9243700

paula.rebstock@comcom.govt.nz