

James McDougall
Director
National Children's & Youth Law Centre
Phone +61 (0)2 9385 9588
Fax +61 (0)2 9385 9589
Mobile +61 (0)419 243 179
Website www.ncylc.org.au

18 February 2008

Ms Jill Irvine
Review of Australia's Consumer Policy Framework
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
By email: consumer@pc.gov.au

Dear Ms Irvine

Review of Australia's Consumer Policy Framework

The National Children's and Youth Law Centre thanks the Productivity Commission for the opportunity to make contributions to its Inquiry.

Our comments on the draft report are attached.

Yours sincerely

James McDougall
Director

Comments on Draft Report

Review of Australia's Consumer Policy Framework

18 February 2008

James McDougall, Director
National Children's and Youth Law Centre

1 National Children's and Youth Law Centre

- 1.1 The National Children's and Youth Law Centre ("NCYLC") is a national community legal centre working for and with children and young people. NCYLC promotes the rights and interests of Australian children and young people through advocacy, advice and information, strategy casework and policy development.
- 1.2 NCYLC thanks its volunteers for their assistance in preparing this submission; in particular Katie Walsh, Aditi Kogekar and Sandra Ewig.

2 Introduction

- 2.1 NCYLC welcomes the opportunity to comment on the draft report of the Productivity Commission's ("**Commission**") Review of Australia's Consumer Policy Framework ("**Inquiry**").
- 2.2 We maintain our position as outlined in our initial submission to the Inquiry on 11 May 2007¹ ("**2007 submission**") that children are entitled to rights as consumers, and that these rights must be promoted and protected. Children are not only consumers in their own right – which of itself is sufficient reason to uphold their rights – but they also influence the choices made by adult consumers and are the consumers of the future. The need to enhance the participation of children in our society as active, empowered and protected consumers is paramount.
- 2.3 As noted in our 2007 submission, most young consumers do not know their consumer rights, nor are they aware of or equipped to access the complaint mechanisms that are available. Even if they *do* understand their rights, they are not likely to seek to enforce those rights or to pursue remedial action if those rights are violated, often due to a lack of confidence either in themselves or the mechanisms available.²
- 2.4 NCYLC supports the objective of the Commission to create a nationally coherent consumer policy framework. However it is our submission that this policy framework should contain specific policy initiatives that are aimed at improving the inclusion, education and empowerment of Australia's children and young people as consumers. The current Australian consumer policy framework provides little direct protection to the rights of children and young people as consumers, and is inadequate in ensuring that children are aware of these rights and able to enforce these rights.
- 2.5 NCYLC endorses the general approach proposed by the Commission in its Draft Report. However there must be measures developed that take clearer account of the needs of children and young people as consumers.

¹ NCYLC, Submission to the Productivity Commission on the Inquiry into the Consumer Policy Framework in Australia, 11 May 2007 ("**2007 submission**").

² See Australian Law Reform Commission ("**ALRC**") and Human Rights and Equal Opportunity Commission ("**HREOC**"), Report No 84, *Seen and Heard: priority for children in the legal process* (1997) ("**Seen and Heard Report**"), Chapter 11; cited in 2007 Submission.

- 2.6 While a number of suggestions are outlined in this submission, ultimately further consultation is required. This should include consultation directly with children and young people.

3 The need for an approach tailored to children and young people

NCYLC supports a rights-based approach

- 3.1 The United Nations' Convention on the Rights of the Child ("CROC")³ provides a universally accepted rights-based framework that has been adopted and ratified by Australia.⁴ NCYLC repeats its earlier submission that the consumer rights of children should be seen as part of a holistic framework for the promotion and protection of the rights and interests of children.
- 3.2 NCYLC supports the Commission's focus on the development of "those policies explicitly designed to protect and empower consumers"⁵. Although the objective, namely to "promote the confident and informed participation of consumers in competitive markets in which both consumers and suppliers trade fairly and in good faith"⁶, does not explicitly endorse a rights-based approach, it is clear that the six operational objectives *do* adopt a practical rights based approach⁷.

The Commission's recommendations must be tailored to young people

- 3.3 As already stated, and as noted by the Commission itself,⁸ children and young people can be characterised as vulnerable consumers. NCYLC calls for measures specifically targeted to ensure that the consumer rights of children and young people are protected and upheld. It is our contention that to the needs of children and young people will not be addressed by generic policies aimed at either consumers generally or at vulnerable consumers in particular.
- 3.4 The need for an approach tailored to children and young people is highlighted by a number of situations in which young people, as consumers, are likely to suffer disadvantage, hardship and lack of access to effective remedies. We referred to the issues of youth debt and mobile phones in our 2007 submissions. We briefly revisit these issues in this submission.

Case example: Youth debt

- 3.5 In our 2007 submissions we referred to the evidence of the growing rate of youth debt. A 2003 report prepared for the Office of Fair Trading found the following:

³ United Nations, *Convention on the Rights of the Child*, United Nations Treaty Series, vol. 1577, p. 3 (entry into force 2 Sep 1990).

⁴ On 17 December 1990.

⁵ Commission, Draft Report, Ch 1.3, p 9.

⁶ Commission, above n 5, Draft Recommendation 3.1.

⁷ Commission, above n 5, Draft Recommendation 3.1.

⁸ Commission, above n 5, Ch 12.1, p 235.

- the average debt among people under 18 years is \$3,300 and almost \$6,000 for youths aged 18-24;⁹
- of the 6000 people declared bankrupt in NSW in 2002/2003, 465 were under the age of 25;¹⁰
- 55% of surveyed young people had either been in debt themselves or knew someone who had; and
- according to their own or their parents' assessment of the situation, approximately 10% of under 18 year olds had experienced debt that had caused them some grief.¹¹

3.6 The sources of youth debt in Australia are varied and include car repayments, fines, personal loans, rent arrears, gambling, HECS and Centrelink debt.¹² However the nature of debt that is most encountered by young people is from mobile phone bills.¹³ Credit card debt is also one of the main incidences of debt.¹⁴

Case example: Mobile phones

3.7 According to the OECD, Australia has one of the highest levels of mobile phone ownership in the developed world,¹⁵ to the extent that 23% of children aged 6-13 own a mobile phone.¹⁶ Young Australians have integrated mobile phones into their lifestyle. In a report prepared for the Commonwealth Consumer Affairs Advisory Council in July 2002 found that:

- mobile phones rank as probably the most important issue for young people, due to the prevalence of mobile phone use coupled with a lack of consumer information; and
- mobile phones symbolise "freedom, growing up, independence, excitement and fun. Negatively, it has become a "must have" for teenagers to achieve social acceptance.¹⁷

3.8 As noted in our 2007 submissions, many young consumers have become entangled in debt, having fallen victim to the complexity of the standard-form contracts adopted by most mobile phone companies. This can be exacerbated by the use of "premium services" (such as ring-tones, wallpapers and songs) that are often marketed to be particularly attractive to young people and that are typically charged at a high rate.¹⁸

⁹ Dangar Research, "Youth Debt: a report prepared for the NSW Office of Fair Trading" (2003); <www.fairtrading.nsw.gov.au/pdfs/corporate/youthdebtreportnov03.pdf> viewed 31 Jan 08, p 19.

¹⁰ NSW Office of Fair Trading, Youth Debt, <http://www.soapcreative.com/solutions/youthdebt/page_3.html> viewed 31 Jan 08.

¹¹ Dangar Research, above n 1, p 8.

¹² Dangar Research, above n 1, p 9.

¹³ Dangar Research, above n 1, p 18.

¹⁴ Dangar Research, above n 1, p 18.

¹⁵ C Downie and K Glazebrook, "Mobile phones and the Consumer Kids", *Australia Institute Research Paper No. 41* (2007), p 3, citing Organisation for Economic Cooperation and Development, *OECD Communications Outlooks 2005*, OECD, Paris;

<<http://www.tai.org.au/documents/downloads/WP97.pdf>> viewed 4 Feb 08.

¹⁶ Mobile phones and the Consumer Kids, above n 5, p 3.

¹⁷ Colmar Brunton Social Research, *Consumer Issues and Youth: A Research Report into Best Practice in Consumer Education Targeting Young Australians*, report prepared for Commonwealth Consumer Affairs Advisory Council, July 2002, p 13;

<http://www.consumeronline.gov.au/downloads/youth_jul2002.pdf> viewed 7 Feb 08.

¹⁸ See 2007 Submission, Sections D and E.

- 3.9 We also note the development of “M Commerce” – which enables a wide variety of products including drinks at vending machines, taxi services, movie tickets and groceries to be bought directly through mobile phones and be billed for later.¹⁹

4 Approaches to protect and enhance the rights of the child

- 4.1 NCYLC commends the information, education and advocacy initiatives proposed by the Commission. The proposed policy recommendations should be tailored, in consultation, to the needs of children and young people. We note some potential strategies in the areas of education and information, hardship programs, complaint mechanisms and consumer advocacy.

Improving access through knowledge: information and education

- 4.1 We noted in our 2007 submission the lack of uniformity in consumer education across all States and Territories. We support the Commission’s proposal that Australian Governments undertake a cross-jurisdictional evaluation of information and education measures and improvement prospects²⁰. Such an evaluation should include a specific focus on children and young people. The outcome should be a nationally coordinated educational framework to inform children and young people of their rights as consumers, and how to assert and defend those rights.
- 4.2 This educational strategy should be delivered by at least two means: by curriculum development and by the use of targeted community-based approaches. The incorporation of a secondary education program into the national curriculum would be a means of developing the skills of children and young people attending school.
- 4.3 NCYLC supports the development of the National Consumer and Financial Literacy Framework. This framework, endorsed by the Australian Education Systems Officials Committee on 4 November 2005, is due to be adopted by the school curriculum of all states and territories this year. The framework must be evaluated to ensure it is incorporated into school curriculum and is effective in building skills and knowledge.
- 4.4 Community-based strategies can often be built around web-based resources. These strategies can also target children and young people that are no longer receiving formal schooling. There are already a number of Australian homepages that provide information for young people.²¹

¹⁹ The Hon Ms A D’Amore, “Youth debt”, *Matter of Public Importance Debate, NSW Parliament*, 28 October 2003, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20031028025> viewed 7 Feb 08.

²⁰ Commission, above n 5, Draft Recommendation 11.2.

²¹ See e.g. Australian Security and Investments Commission, *Financial Tips and Safety Checks for Young People*: <<http://www.fido.asic.gov.au/fido/fido.nsf/byHeadline/Young%20Investor>> viewed 24 Jan 2008; NSW Office of Fair Trading and the Department of Education, *Money Stuff!*: <<http://www.moneystuff.net.au>> viewed 24 Jan 2008; and Government of South Australia, *Consumer Youth Website*: <<http://www.b4usplashcash.ocba.sa.gov.au/>> viewed 24 Jan 2008; Consumer Affairs Victoria, *Stuff Magazine*: <<http://www.consumer.vic.gov.au/CA256F2B00224F55/page/Publications-Shopping+&+Trading+for+Goods+&+Services-Stuff+Magazine?OpenDocument&1=80-Publications~&2=920-Shopping+&+Trading+for+Goods+&+Services~&3=0-Stuff+Magazine~>> viewed 12 Feb 2008.

- 4.5 We support the development of such resources and encourage the ACCC to support the coordination and development of such resources by government and statutory agencies²². The ACCC could also undertake to ensure the coordination of the development of these resources with the national schools curriculum development.
- 4.6 A cross-jurisdictional evaluation could also look to international practice. We note the European Union's "European Consumer Diary".²³ The Diary is an online educational tool covering most of the topics that concern young adults, such as money, sustainable consumption, shopping etc. It is accompanied by a teacher's guide, containing background information on different consumer questions.
- 4.7 Another good example of an online educational resource is New Zealand's "ACE Consumer",²⁴ an educational tool designed by the Ministry of Consumer Affairs for Social Studies teachers and students in New Zealand. ACE Consumer is a teaching and learning programme which consists of two linked parts: providing a downloadable teachers' resource with a classroom teaching and learning programme, and giving students access to a set of online activities which allow web-based learning. The aim is to enable teachers to give their students the information they need to become critical and inquiring consumers. It focuses not only on financial literacy but also ensures that students become aware of their rights as consumers.
- 4.8 Other strategies could target parents. Younger children are more likely to approach their parent or guardian for guidance and may have less access to online services themselves. Such initiatives as the "Mobile phones – child safety checklist" provided by the Australian Communications and Media Authority are a good example of the educational resource that the internet can be.²⁵ The ACCC could coordinate and provide guidance to other government bodies as to programs that can be introduced with this educational objective in mind.

Hardship programs for young people

- 4.9 NCYLC supports the Commission's recommendation that supplier-provided hardship programs are developed particularly in the utilities sector.²⁶ The development of programs such as flexible payment plans, additional time to pay and financial counselling, would go a long way to alleviating the problems faced by young people.
- 4.10 NCYLC also supports the proposal to introduce nationally consistent cost-effective means of dispute resolution.²⁷ Young people often face hardship through comparatively small claims. The availability of fee waivers to young people would be commendable. Attention should be given to ensure that such mechanisms are accessible to young people.

²² Again, see Government of South Australia, *Consumer Youth Website*: <<http://www.b4usplashcash.ocba.sa.gov.au/>> viewed 24 Jan 2008 for a good example of a user friendly and information website.

²³ European Commission, *The European Consumer Diary*: <http://ec.europa.eu/consumers/cons_info/consumer_diary_en.htm> 24 Jan 2008.

²⁴ New Zealand Ministry of Economic Development, *ACE Consumer*: <<http://www.consumeraffairs.govt.nz/education/>> viewed 24 Jan 2008.

²⁵ Australian Communications and Media Authority, *Mobile phones – child safety checklist*: <http://www.acma.gov.au/web/STANDARD//pc%3DPc_100694> viewed 12 Feb 2008.

²⁶ Commission, above n 5, Draft Recommendation 5.4; Box 5.7.

²⁷ Commission, above n 5, Draft Recommendation 9.3.

Complaint mechanisms

- 4.11 Currently young consumers do not use the complaint mechanisms that are available. This issue requires coordinated action to ensure that there are effective avenues for complaint that young people will use; and that information about those complaint mechanisms is disseminated to and understood by young people.
- 4.12 We note the Commission's proposal that all consumer regulators participate in a shared national database of serious complaints and cases.²⁸ Attention must be given to how this database can incorporate information about the issues faced by children and young people as consumers – given that current conventional complaint mechanisms are not used by children and young people.
- 4.13 NCYLC supports the proposal that the ACCC provide an “enhanced national web-based information tool” to guide consumers to the appropriate dispute resolution body.²⁹ However it is essential that as a part of this proposal the specific needs of children and young people are addressed.
- 4.14 NCYLC calls for consultation with children and young people themselves to ensure the development of mechanisms that children and young people will trust and use.

Funding for consumer advocacy

- 4.15 NCYLC supports the recommendation that the Australian Government provide increased funding for legal aid and financial counselling services, particularly for vulnerable and disadvantaged consumers.³⁰ This should include services that are designed for children and young people.

5 Conclusion

- 5.1 There is a clear and urgent need to address the current lack of knowledge and enforcement of the consumer rights of children and young people.
- 5.2 The Draft Recommendations of the Commission go some of the way to meeting this objective. However beyond general initiatives redressing Australian consumers generally, there must be initiatives that are directed at children and young people. To support and enforce their rights as consumers will provide broader benefits to the whole of the Australian community.
- 5.3 NCYLC thanks the Commission for the opportunity to being involved in the consultative process of this Inquiry.

²⁸ Commission, above n 5, Draft Recommendation 9.1.

²⁹ Commission, above n 5, Draft Recommendation 9.1.

³⁰ Commission, above n 5, Draft Recommendation 9.6.