



Productivity Commission's Inquiry into Australia's Consumer Policy Framework.

**Response to the Draft Report
November 2007**

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Background

Since 1881 what is now known as Kildonan Uniting Care has been an integral part of the social fabric of Victoria. After the prosperity of the gold rush era diminished, the number of homeless and neglected children rose sharply. Moved by the despair they saw across Melbourne, two stalwarts of the Presbyterian Church established the Scot's Church Neglected Children's Aid Society to provide residential care for homeless and or neglected children.

Kildonan Uniting Care, an agency of the Uniting Church in Australia which operates the largest welfare network in Australia, as part of the Uniting Care Victoria and Tasmania Network. Based across five sites in the northern suburbs of Melbourne with 75 staff and over 80 volunteers, Kildonan works to make a positive difference with children, young people, families and individuals, through the provision of effective community services and addressing issues of social and economic hardship. Each year Kildonan provides vital support and assistance to over 4700 children, young people and families. In addition 6000 meals are provided, and over 2000 gifts distributed each Christmas.

For 127 years, the way in which Kildonan delivers care has developed to reflect the diverse and changing needs of communities, families and individuals. Services are provided within four different service areas; Family Services, Youth Services, Community Services and Social Advocacy Services. In 2006 two agencies, Hope Springs and Preston Creative Living Centre, merged with Kildonan. The services provided by these agencies, including mental health, men's behaviour change, and pre-employment training and experience opportunities, have increased the diversity of services offered. Kildonan works with the utilities and banking industries to advocate for the best possible outcomes for consumers, and have received two Prime Minister Business Partnership Awards in recognition of the outcomes of these initiatives. Kildonan is committed to the development of innovative, evidence based proactive services.

Introduction

Kildonan UnitingCare (Kildonan) welcomes the opportunity to respond to the Productivity Commission's Draft Report on the Review of Australia's Consumer Policy Framework. This document provides a brief response to the questions raised by the Productivity Commission's Draft Report, a response based on Kildonan's work in the financial counselling and energy sectors.

Chapter 3 – Objectives for a future consumer policy framework

Kildonan cautiously welcomes the common overarching objective for consumer policy and the 6 operational objectives in The Productivity Commission's Draft Report:

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

- 1) *ensure consumers are sufficiently well informed to benefit from, and stimulate effective competition;*
- 2) *ensure that goods and services are safe and fit for the purposes for which they were sold;*
- 3) *prevent practices that are unfair or contrary to good faith;*
- 4) *meet the needs of those who, as consumers are most vulnerable, or at greatest disadvantage;*
- 5) *providing accessible and timely redress where consumer detriment has occurred;*
- 6) *promote proportionate risk-based enforcement*

The imbalance of power affects different levels of the relationship between consumers and suppliers and often participation in the market place leaves disadvantaged consumers further disadvantaged.

Case Study

A woman who had no assets and whose income is a Centrelink pension owed \$3,000 to a finance company. She was committed to repaying the debt and did not want to enter bankruptcy. However her finance company viewed her as high risk and requested a guarantor (her father) and with an interest rate of 26% interest on an interest only loan. The debt is no longer just her responsibility. If she does not pay the debt her father would have the responsibility to pay. From a civil debt that she owed it has now become a moral debt and she feels a moral responsibility to her father to pay the debt. Even though the debt has added security the interest rate has not reduced accordingly. The woman is struggling to meet her commitment of interest only payments and often goes without basic necessities. She has no means in the foreseeable future of ever paying back the principle and the possibility of refinancing at a more reasonable rate is slim.

This situation is not uncommon. Kildonan supports the functioning of a competitive market however at times consumers can be at a disadvantage. Kildonan believes that the market could benefit from some rebalancing. If the market can offer high interest financial products, organizations that can offer low interest financial products should be encouraged into the financial market without high upfront costs to allow various micro credit products with lower interest and fees and charges onto the market to benefit disadvantaged consumers.

Behavioural Economics

It is very discouraging to see the evidence by behavioural economists mainly dismissed by The Productivity Commission as inconclusive or of little practical value. If this information is not relevant why are aspects of behavioural economics (for example prospect theory) standard text book requirements in assessing and understanding consumer risk behaviour in marketing? By understanding a consumers' internal risk analysis, marketing can proactively focus on turning the risks into benefits in the marketing

message, and thus overcoming significant perceived consumer resistance. Kildonan strongly suggests that findings from behavioural economics are reconsidered and incorporated into the consumer protection framework in order to address the large imbalance between individual consumers and suppliers.

One could argue that the sub-prime market failure is almost a text book case of behavioural economics in action. People discount the future are influenced by framing and do not always act in their best interests. Low cost loans were offered by suppliers and accepted by consumers with little consideration of ability to repay once the interest rate reflected the market rate after a set future time. The requirements to sell and meet targets, based on the attraction of commissions by suppliers and the dream of buying their own home by the consumer framed this transaction outside the pending future reality. The sub-prime market failure has shown that both consumers and suppliers may not act in their own best interests. Consumers are locked into loans they can barely afford often living a hand to mouth existence. In America, once the property is sold in a market that has plummeted consumers risk losing their only asset at a discount price as well as being left with the balance of the debt the house sale could not clear. Similarly, some large financial institutions have experienced significant losses while most financial institutions have experienced a world-wide credit crunch that has escalated the price and limited the availability of credit across the industry. It may appear that some significant suppliers did not exhibit the sophistication necessary to protect their own self interest.

Every major area of study has its critics, this should not deter from the overall merit of the behavioural economists findings. The Productivity Commission needs to consider and investigate behavioural economics in an unbiased manner as there may be applications for consumer protections that are currently not considered. Current markets depend on consumer choice as an expression of acting in consumers' best interests. If consumer choice does not result in consumer benefit it may not be that the consumer is unsophisticated but that a stronger safety net is required to balance market failures. A failure to acknowledge that at times consumers may not act in a completely rational manner and protect their self interests may overlook vital consumer protections.

Recommendations

Kildonan would like to see an additional operational objective:

- Provide consumers access to goods and services especially essential goods and services.
- Research and consultation into market imbalances especially in the area of financial products and services.
- Research and consultation in the area of behavioural economics and how this area of study can inform and strengthen consumer protections beyond mere information disclosure.

Chapter 4- A new generic consumer law

Five recommendations by The Productivity Commission's Draft Report.

- 1) *Introduce national generic consumer law based on TPA*
- 2) *Apply generic consumer law to all transactions*
- 3) *Move product safety regulation to the ACCC*
- 4) *Investigate moving to a national regulator*
- 5) *Allow States and Territories to refer enforcement powers to the ACCC*

Kildonan understands the need for National legislation for national markets. However there is concern that a very broad focus may be in danger of settling for the fastest and the lowest enforcement costs option. For example, Victoria has the strongest consumer protections around utilities in Australia. Victoria is the oldest privatized utility market in Australia and historically has a strong vocal consumer group. Using it's existing rational the Productivity Commission may find the Code of Conduct for Marketing Retail Energy in Victoria 2004 could in theory be already covered under the existing Trade Practices Act 1974 (TPA) or Victoria Fair Trading Act 1999. However due to market practices, the need arose for a specific marketing code due to the volume and nature of utility practices. Adverse market practices of an essential service could cause significant consumer detriment. Reporting by the Energy and Water Ombudsman Victoria (EWOV) consistently finds complaints about market practices around 20% of all complaints. Generic consumer legislation and regulation may not fully address the nature and requirement of the practices that affect access to essential services.

The case for a national consumer regulator needs greater clarity. From the perspective of a community organization advocating on behalf of disadvantaged consumers, it is not clear how disadvantaged consumers would benefit from a national consumer regulator. The state body, Consumer Affairs Victoria (CAV) focuses on market transactions between traders and consumers and has sufficient powers to enforce appropriate legislation, policy and actions. There is a need to further examine the detail, consult broadly on a model and weigh up the benefits of a national regulator before proposing such an action.

Recommendations

- Research into proposed national legislation and regulation of consumer protections especially in the area of utilities to ensure benchmarking of best practice and not simply adopt what appears at the outset to be the most cost effective model particularly where cost benefits can be realized latter.
- Research and consult further regarding the need and the benefit for a national regulator.

Chapter 5 – Industry specific consumer regulation

Kildonan will focus on the following recommendations in chapter 5 of The Productivity Commission's draft report.

- 1) *Transfer consumer regulation of energy services to the Australian Energy Regulator (AER)*
- 2) *Remove telecommunications and energy retail price caps, using community service obligations (CSO)s and supplier hardship programs to protect disadvantaged consumers*

And proposed priorities:

- 1) *Consumer credit and energy markets should be regulated nationally.*
- 2) *One national utilities ombudsman for telcos, energy and water.*

The process is in motion to transfer Electricity and Gas consumer regulation to the AER. The process has its own constraints and time frames and should not be rushed just for the sake of consistency. The concerns being a hurried process may result in unacceptable compromises of settling for lower standards than those enjoyed in Victoria and not consider the harder alternative of benchmarking best practice and striving to achieve best practice nationally.

Retaining CSOs and hardship programs is vital. However existing CSOs and hardship programs need to be strengthened to avoid possible disconnections of vulnerable consumers. When consumers are exposed to the removal of price caps and to pricing that reflects real wholesale market prices by the installation of interval meters there are real concerns. There may be few benefits and actual detriment for disadvantaged and low income consumers.¹ The existing hardship programs and CSOs do not address this issue. Currently retailers are protected by the wholesale pricing peaks through hedging and advanced intelligence by involvement through direct trade and by some retailers owning electricity generation. By their nature these protections are not available to disadvantaged consumers who have no hedging, have little market intelligence and may have few appliances to load shift or load shed. Without sufficient protection and appropriate tariffs the result may be higher bills. Therefore if The Productivity Commission is to recommend the transfer of electricity and gas consumer regulation to the AER, removal of price caps and reliance on CSOs and existing hardship programs for disadvantaged consumers, greater thought needs to be given to additional consumer protections to facilitate this transition because existing hardship programs and CSOs do not currently address price fluctuations and are therefore inadequate. Kildonan does not support the removal of price caps for utilities, because unaffordable prices for disadvantaged consumers due to extreme seasonal variation is a real possibility.

The electricity industry unlike other services has a natural monopoly business structure and the service cannot be duplicated by any other service to the standard and reliability of that supplied through existing poles and wires. Since electricity links us to the standard of living we all come to expect while living in Australia reduced access to an essential service because of reduced capacity to pay is unacceptable.

¹ Interval Meter Technology Trials and Pricing Experiments, Issues For Small Consumers, Institute for Sustainable Futures, University of Technology Sydney 2007.

Kildonan has concerns about consumer access to a national ombudsman service covering telecommunications, gas electricity and water. Our current Energy and Water Ombudsman Victoria (EWOV) is highly responsive to local consumer demands, conducts rural and regional consumer education and is accessible to disadvantaged consumers. A large interstate Ombudsman service may lose local responsiveness, care and knowledge. The energy and water needs of consumers vary from state to state depending on climate, access to transport, quality of housing stock and local facilities. The broadening of an Ombudsman jurisdiction for the sake of immediate cost benefit alone is likely only to limit an Ombudsman's capacity to handle consumer issues.

Recommendations

- Benchmark best consumer protection practice amongst utility companies nationally before a total transfer to AER.
- CSOs and hardship programs as well as consumer protections in legislation and codes need to be strengthened if interval meters are introduced and price caps are removed.
- There needs to be greater research into the benefits and disadvantage of a national Ombudsman service with the final analysis taking into account access issues for disadvantaged consumers not just the cost benefits of such a scheme.

Chapter 7 - Unfair contracts

The Productivity Commission recommends in their draft report that:

- *The generic legislation should include provisions that void unfair terms in standard form contracts.*

There is an exclusion on upfront contract price that is not in the Victorian legislation. The upfront contract price should not be seen in isolation to the overall contract since the consumer is signing the contract to purchase the goods or services.

Detriment and unfairness has to be proven in court on a case by case matter. This process may reduce access to disadvantaged consumers who may not have the financial capacity to fight matters in court or who may find the court process intimidating.

There needs to be broader stronger law around unfairness like the Unfair Contract Terms Act 2005 in the United Kingdom.

Recommendations

- National legislation that includes provisions that void unfair terms in standard form contracts should not exclude upfront contract price.
- The legislation would need a broader stronger basis and would need to be easily accessible by disadvantaged consumers.

Chapter 8 – Defective products

Product safety regulation can be complex and confusing. The onus should be on suppliers to ensure their products meet the regulated Australian standards. The omission of the obligation for business to check the relevant safety standard before taking the product or service to market results in business uncertainty and unacceptable risk to consumers. The onus on suppliers to ensure their products meet the regulated Australian standards can reduce overall policing and regulation and lift confidence in the market. If a supplier cannot afford the cost or effort in ensuring a safe product before they take it to market then they should not be in the market selling goods or services. Often unsafe products or services are offered on a catch me if you can basis. Ethical suppliers and consumers often bear the cost of such action. Raising consumer awareness about defective products almost always happens after the sale of goods and by then consumers may be exposed to harm. It is a reactive response to a critical issue. A product safety commissioner with powers to regulate goods and services and impose fines and enforceable undertakings would greatly enhance consumer protections.

Recommendations

- Establish a product safety commissioner with appropriate powers to regulate goods and services, monitor activities and impose appropriate fines and enforceable undertakings.
- Responsibility on suppliers to ensure their products meet the regulated Australian standards for safety.

Chapter 10 - Enforcement

The Productivity Commission recommends in its draft report:

- 1) *Additional enforcement tools should be added to the TPA and national law.*
- 2) *A legal authority should assess the benefits of extending powers to gather evidence following an interlocutory injunction*
- 3) *Agencies should report on enforcement problems and issues, to identify if national consistency is an issue and analyse consumer trends.*

Kildonan welcomes the recommendations made by The Productivity Commission in its draft report regarding expanding national enforcement action. However the potential loss of name and shame enforcement tool in Victoria is a concern. Currently CAV has the name and shame enforcement tool and at times is useful to warn the public before litigation or court action takes place. Timeliness in warning the public about particular trader practices or products is important in protecting the public good.

Recommendations

- If the national law is implemented name and shame enforcement tools should be included.

Chapter 11 – Empowering Consumers

The productivity Commission recommends in its draft report:

- 1) *Improve information disclosure*
- 2) *Cross-jurisdictional evaluation of the effectiveness of consumer education and information.*
- 3) *The Commonwealth should provide modest additional funding for consumer policy research, operating costs of national peak consumer bodies and networking and policy functions of consumer groups.*

Financial counselors witness the inadequacies of information disclosure alone as a tool to assist consumers make informed choices. Yet information disclosure appears to be the main focus of informing the consumer in the Productivity Commission's draft report. About 20% of the Australian population experience 'considerable difficulties' when using print material and an additional 28% experience "some difficulties" when using print material in their daily lives according to Australian Bureau of Statistics.² Evaluation of consumer education and evaluation is welcomed, however relying on education and information alone ignores consumer literacy levels and ability to process information. Information from behavioural economics may offer alternatives to information disclosure.

There is a need for a national consumer body to represent the interests of consumers across all areas of consumer protections. Breaking down state bodies and merging into the ACC means breaking down funding as well. If national regulation means a move to the Commonwealth will they pick up funding services like Financial Counsellors currently funded by CAV?

Kildonan welcomes the recommended money for general research or complex policy input as well as the recommended funding for networking including attending conferences but is concerned that unless otherwise stated the money may go to consultants rather than community organisations.

Recommendations.

- Research into consumer decision making and information disclosure to better tailor consumer protections.
- Establishment of a national consumer body to represent the interest of consumers across all areas of consumer protections.
- No loss of current funding for consumer advocates like financial counseling if national regulation moves to the Commonwealth.
- Funding for community organizations should be directed to community organizations and not consultants.

² ABS 4228.0- Aspects of Literacy: Assessed Skill Levels, Australia, 1996, released 9/09/1997. www.abs.gov.au.