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VALS' submission to the Productivity Commission in response to the 'Review of Australia's Consumer Policy Framework Draft Report' – sent 20 March 2008

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INTRODUCTION

Thank you for the opportunity to comment on the 'Review of Australia's Consumer Policy Framework Draft Report' This submission focuses on how to improve the consumer policy framework for vulnerable and disadvantaged consumers, such as Indigenous Australians.

VALS argued in its submission in response to the Issues Paper sent 28th May 2007:

- Consumer policies should be framed around achieving a fairer system where aggregate improvements as well as specific improvements to disadvantaged groups of consumers are prioritised.
- A culturally inclusive approach should be taken to enable the Indigenous Australian perspective to be considered early rather than later in the decision making process. It is wise to develop a system which will work for the most disadvantaged families and then look at how it fits middle and upper class families.

VALS argues that there are positive elements to the Draft Report, but they can be improved and these improvements should be incorporated into the Final Report. Also there are concerning elements of the Draft Report.

Positive

VALS argues that the following measure is positive and will benefit Indigenous Australians.

Fee Waiver

Equal access to fee waiver for disadvantaged consumers is positive as it can be barrier for people of low socio-economic status to lodging a complaint.

Enhancements

VALS argues that the following elements of the Draft Report are positive in that they are likely to have a positive impact on vulnerable and disadvantaged consumers. VALS has some suggestions on how the recommendations can be enhanced and go

further, especially in light of the proposal to create a generic consumer protection system (see below).

Funding

Enhance recommendation 9.6 relating to increased funding by specifically targeting Indigenous Australians.

VALS argues that recommendation 9.6, relating to enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counselling services, is positive. It has the potential to benefit vulnerable and disadvantaged consumers whose access to support services is effected by the inadequate funding of such services. For instance, the Commonwealth Government removed \$120 million in 1996 from the legal aid system and since then civil legal aid in Australia has been virtually non-existent and VALS' funding has not increased since 1995. The recommendation can be enhanced by some of the funding being specifically targeted at Indigenous Australians. For instance, a worker for Indigenous Australians should be employed at a Community Legal Centre and Financial Counselling Service. Without effective access to regulatory enforcement most disadvantaged consumers will be continue to miss out on assistance. Even in cases where the monetary value of the matter is relatively small the relative significance to a person of low income may be great and systems need to reflect these issues.

ADR

Enhance suggestion relating to Alternative Dispute Resolution by explicitly ensuring ADR targets Indigenous Australians

VALS agrees with the Report comments on making more use of ADR and the limitations of ADR. VALS adds that Indigenous Australians will find ADR better, and consequentially make more use of it, if it is targeted to meet their needs. VALS recently prepared a submission that attempts to address some of the limitations of ADR for the Indigenous Australian community. The submission relating to culturally appropriate ADR is at Appendix A.

Written submissions

Enhance recommendation 9.3 by adding the requirement that:

- a) people have legal advice before making a written submission*
- b) free assistance be complete written submissions be available*
- c) solicitors should be consulted about the content of the written submissions.*

Recommendation 9.3 (allow small claims courts and tribunal to make judgements about civil disputes based on written submissions) is positive. However, it can be made better by ensuring legal advice and assistance to complete written submissions is available. Also, to ensure that the written submissions contain all relevant information solicitors should be consulted on what information can be included in the written submissions. The risk is that the format of the written submission will result in relevant information not be presented to the court/tribunal.

Empowering consumers -education

Recommendations relating to education can be enhanced by including a specific education campaign for Indigenous Australians

Recommendation 11.1 is positive, provided the layered method does not obscure important information. Also, education should be accessible to Indigenous Australians and target them. VALS provided information on how to do this in the last submission which can be summarised as:

1. Outreach;
2. Education campaign that targets the Indigenous Australian community;;
3. Information is important, but consumers need to be skilled up and Empowered;
4. Education of Mainstream services (ie: cultural awareness training) not just Consumers (see below).

VALS also argued that the action of educating the Indigenous Australian community should be balanced with the simplification of processes and provision of a fair system.

Advocacy (11.3)

Recommendation 11.3 can be enhanced by requiring that the advocacy body is independent of Government, culturally appropriate and advocates in relation to Indigenous Australian specific and public interest issues.

Recommendation 11.3 relating to additional taxpayer support for the operating costs of a national peak consumer body and for networking between advocacy groups with guidelines to ensure that support is well spent is positive. There is a need for such a body to advocate for the disempowered. However, the Draft Report does not specify that the advocacy body is independent and at arms length to the Government and it should. Also, the body should be culturally appropriate and advocate in relation to Indigenous Australian specific issues. It is nonsensical that the advocacy body cannot address public interest issues as such issues are relevant to consumer advocacy.

Questionable measures

The following recommendations are questionable in relation to the impact they could potentially have on disadvantaged and vulnerable consumers, such as Indigenous Australians. As a result, caution should be exercised and the measures should not be implemented without considering the needs of disadvantaged and vulnerable consumers which is a potential new objective of the consumer policy framework.

Interpretation

The Final Report should contain a clear interpretation of the terms vulnerable and disadvantaged consumers. This should be the case whether or not research has been done on this issue between now and the release of the Final Report.

Despite asking for advice on a suitable interpretation of the term ‘vulnerable and disadvantaged consumer’ in the Productivity Commission Consumer Policy Framework Issues Paper (January 2007), no light is shed on a definition in the Draft Report. The Draft Report recommends further research into the determinants of vulnerability (recommendation 11), but it is the opinion of VALS that there is ample evidence that Indigenous Australians are vulnerable and disadvantaged consumers. For instance, Indigenous Australians have low socio-economic status and are over-represented as victims of discrimination. Many of VALS’ clients have experiences of followed around shops by security guards, or blacklisted from venues. For Research on this issue contact the Indigenous Consumers Unit at Consumer Affairs Victoria.

VALS repeats comments made in the preliminary submission that the terms vulnerable and disadvantaged should be interpreted as: people of low socio-economic status and at risk of not having their consumer rights respected. Also, vulnerability should be interpreted as a *condition*, not a *person*, otherwise there will be stigmatization of an individual).

Recommendation 3.1 should contain an objective relating to meet the needs of vulnerable and disadvantaged consumers rather than ‘meet the needs of those who, as consumers, are most vulnerable or at greatest disadvantage’.

Recommendation 3.1 heightens the confusion over who is classified as a vulnerable or disadvantaged consumer as the reference to vulnerable/disadvantaged consumers within the recommendation differs to the way it is referred to in other parts of the Draft Report. Arguably, the inclusion of the word ‘or’ in recommendation 3.1 (ie: vulnerable or disadvantaged consumers) gives the recommendation a different slant to references in the remainder of the Report that use the word ‘and’ (ie: vulnerable and disadvantaged consumers). VALS prefers the former version of the term as it is broader than the latter.

National generic consumer law (4.1-4.5)

Caution should be heeded in relation to making consumer law generic without recognising the need for scope for discretion in application or more targeted mechanisms that take into account the needs of vulnerable and disadvantaged consumers.

It appears that the Productivity Commission has decided that the needs of vulnerable and disadvantaged consumers are best met through generic approaches. The Issues Paper asked what is more appropriate: a) a generic approach that provide scope for discretion in application, or b) more targeted mechanisms. It is of note that the Draft Report does not mention discretion in application of generic approaches or targeted mechanisms.

VALS argued in its preliminary submission that the needs of vulnerable and disadvantaged consumers are best met through *both* generic approaches (ie: approach that applies to all people) that provide scope for discretion in application and more targeted mechanisms (ie: mechanism that targets a particular group, such as Indigenous Australians). VALS argued that there is a place for *both* formal and substantive equality and these they can co-exist.

There are risks associated with the proposed generic laws and the costs and benefits should be taken into account. The potential risks for vulnerable/disadvantaged consumers are:

- There will be less room for flexibility which will mean that the needs of disadvantaged consumers may be overlooked.
- The proposed generic system will be delivered by the Commonwealth Government and give the Commonwealth more than it currently has, however the Commonwealth has a poor track record in relation to consumer issues (see below).
- The generic system is narrower than what is currently available in Victoria which has proven successful. It appears to be aiming for the lowest common denominator, rather than the highest which means that progressive gains that have been made will be lost (ie: super complaint, strong unfair contract provisions, name and shame provisions etc).
- The States will lose their focus on consumer issues, and consequentially money for advocacy/consumer policy will disappear.

Another question that was asked in the Issues Paper, was what are the examples of policies that are very effective in targeting vulnerable and disadvantaged consumers? VALS provided a list, but it does not appear that any of these have been adopted.

1. Outreach:

A complaint agency visits Indigenous Australian communities, rather than relying on Indigenous Australians approaching it at its office.

2. Education campaign that targets the Indigenous Australian community:

A campaign that delivers messages to the Indigenous Australian community that meets their particular needs. Some aspects of successful education campaigns are in VALS' experience are:

- Involvement of Indigenous Australians;
- Presence of cultural sensitivity;
- Relevance and meaningfulness to Indigenous Australians;
- Indigenous Australian artwork;
- Flexible formats, such as case-scenarios, rather than inflexible formats, such as PowerPoint presentations;
- Use of plain English;
- Visit the Indigenous Australian community on a regular basis.

3. Information is important, but consumers need to be skilled up and empowered:

Consumers need not only information, but skills. Examples of such skills are the ability to ask questions and sift between what information is relevant and not relevant to them.

4. Education of Mainstream services (ie: cultural awareness training) not just consumers:

Education of Mainstream services (ie: cultural awareness training) not just consumers involves a recognition that mainstream services need education about best practice in relation to meeting the needs of their vulnerable/disadvantaged consumers.

5. Indigenous Australian Employment Strategy:

An Indigenous Australian Employment Strategy involves being strategic about employing Indigenous Australians and also supporting Indigenous Australians once they are employed so that do not suffer isolation.

6. Koorie Liaison Officers with investigatory role:

Koorie Liaison Officers are roles preferably filled by Indigenous Australians. VALS argues that Koorie Liaison Officers should investigate the complaints that are sparked as a result of outreach because Indigenous Australians prefer to deal with Indigenous Australians who have a hands-on role for the entirety of their complaint.

7. Consultation:

Consultation involves engaging with Indigenous Australians to discover their needs and their expectations of consumer services/protection agencies. The consultation process should be effective and not too rushed.

8. Partnership:

Partnership involves co-operation between mainstream consumer services/agencies and Indigenous Australian organisations and can be in the form of a formal agreements. Partnerships would enable the former to learn how to effectively serve the Indigenous Australian community and provide support for the latter.

9. Holistic Hardship policies:

Holistic hardship policies involves a “whole of Government” approach so that key stakeholders, such as the Electricity Ombudsman, the Energy Regulator, the Welfare Sector and the Electricity Entities to contribute to the development of policy.¹

Single Regulator (ACCC) and States refer enforcement powers

Caution should be heeded in relation to creating a singular regulator in order to take into account the needs of vulnerable and disadvantaged consumers. There should be conditions attached to ensure that it works/all contingencies are covered.

If the ACCC model is adopt then the ACCC should be funded for its new role. However, measures should go further than funding and there should be a complete culture change of the ACCC (ie: fundamental philosophical change and shift in focus so that consumer policy has a higher profile at the federal level

¹ Tasmanian Electricity Ombudsman ‘ Discussion Paper On Hardship And electricity supply: The Power to Connect’ March 2003 as at <http://www.teo.org.au/publications/Discussion%20Paper%20on%20Hardship%20Policy.pdf>

The risk for vulnerable/disadvantaged consumers associated with a singular regulator are that the regulator will inherit the problems of the current Commonwealth system (ie: ACCC) which is a source for lack of confidence in the proposal. The impression of the ACC is that:

- it does not help in many cases and mostly makes referrals to the States (ie: Victoria is 10 times more likely to deal with complaints than the ACCC as it refers one third of complaints because the focus is enforcement).
- Its potential is limited as there is only one ACCC in each capital city, whereas in Victoria there is outreach, compliance and education in schools at a grass roots level.
- Its focus is on national/big issues, so it will perhaps not consider vulnerable consumers.

Competition

There should be a wider consideration given to behavioural economics rather than just an emphasis on competition.

The Draft Report contains an emphasis on competition and an assumption that competitive markets produce good outcomes. However, the outcome is not necessarily good for all consumers. The emphasis on competition highlights an absence of an effective analysis of behavioural economics (ie: power imbalance a factor rather than the market). The use of behavioural economics could be wider. In the preliminary submission VALS argued that competition policy has never adequately included protection for vulnerable groups. The ‘playing field’ is far from level hence strong effective consumer policy is a necessity.

Price caps (5)

Consideration should be given to the effect on vulnerable and disadvantaged consumers of removing price caps.

VALS is concerned that removing price caps will negatively impact vulnerable/disadvantaged consumers.

Internet

The internet should not be a source that is relied upon too heavily, as disadvantaged Australian can experience hurdles to accessing it (ie: cost, literacy).

It cannot be assumed that everyone has equal access to the internet, hence it should not be overly relied upon as a source of information. The recommend to enhance the ACCC web-based tool ‘Consumers Online’ is positive, provided it is not the only option for information.

CONCLUSION

VALS argues that the recommendation relating to equal access to fee waiver is positive. VALS argues that recommendations relating to the following are positive but could be enhanced: funding of legal aid and financial counselling, ADR, written submissions, empowering consumers' education and advocacy. The enhancements relate to targeting the recommendation to meet the needs of Indigenous Australians.

VALS argued that the following aspects of the Draft Report or recommendations are questionable:

- Interpretation of vulnerable/disadvantaged consumer;
- Emphasis on generic consumer law and competition policy over discretion in a generic consumer law, a targeted approach and behavioral economics;
- Increased role and power to Commonwealth when the track record in terms of consumer policy is questionable;
- Removing price caps;
- Emphasis on internet information provision.

The recommendations or aspects of the Draft Report are questionable in terms of the potential impact they will have on Indigenous Australians and as a result caution must be exercised in relation to whether to implement and how to implement them.

VALS argues that the following suggestions made by VALS in its preliminary submission should be implemented in order to target the specific needs of Indigenous Australians:

1. Outreach;
2. Education campaign that targets the Indigenous Australian community;
3. Information is important, but consumers need to be skilled up and empowered;
4. Education of Mainstream services (ie: cultural awareness training) not just consumers;
5. Indigenous Australian Employment Strategy;
6. Koorie Liaison Officers with investigatory role;
7. Consultation;
8. Partnership;
9. Holistic Hardship policies.