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Searching for a National *Consumer* Policy Reform Program?

Nicola Howell*

In October 2004, the Productivity Commission released a Discussion Draft of its review of the National Competition Policy Reforms. While this discussion draft is largely focused on competition and economic outcomes, it also includes a draft proposal for a national review of consumer protection policy and administration in Australia. The writer argues that such a review is long overdue. The consumer protection provisions of the TPA have not been subject to a comprehensive review in 30 years, and there is a risk that they are failing to keep up with changes in consumer markets, developments in other countries and in the States and Territories, and a more sophisticated understanding of consumer behaviour. However, the Productivity Commission's proposal appears to be pre-occupied with consumer policy as a subset of competition policy. Instead, the writer suggests that if consumers are to obtain the full benefits of a review, that review must treat consumer policy as a high level policy goal in its own right, recognise the limitations of competition theory and practice in protecting consumers, especially those who are vulnerable or disadvantaged, and be supported by leadership from the Commonwealth Government.

Introduction

National Competition Policy (NCP) has been a key driver of reforms to Commonwealth competition law and to State and Territory regulatory regimes over the last decade. While consumers are intended to be the ultimate beneficiaries of the NCP, the reform program has not yet engaged directly with the overriding goals, objectives and administration of consumer protection policy in Australia.

However, this may be about to change. In October 2004, the Productivity Commission released a discussion draft of its review of the National Competition Policy Reforms.¹ The discussion draft included the following draft proposal:

The Australian Government in consultation with States and Territories should establish a national review into consumer protection policy and administration in Australia. The review should focus particularly on:

- The effectiveness of existing measures in protecting consumers in the more competitive market environment;

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¹ Productivity Commission, *Review of National Competition Policy Reforms Discussion Draft*, 2004, available at <www.pc.gov.au>.

- Mechanisms for coordinating policy development and application across jurisdictions and for avoiding regulatory duplication;
- The scope for self-regulatory and co-regulatory approaches; and
- Ways to resolve any tensions between the administrative and advocacy roles of consumer affairs bodies.²

This comment explores some of the reasons for a review, and suggests that any review needs to be seen in a broader context, and not simply through the lens of a competition policy alone.

Why do we need to review consumer protection policy and administration?

A sceptic might ask why the need for a review of consumer protection policy and administration? After all, the primary consumer protection legislation at Commonwealth level — the Trade Practices Act 1974 (Cth) (TPA) — has operated successfully for over 30 years.

The main consumer protection provisions of the TPA (Pts IVA and V) form the framework of consumer protection legislation in Australia.³ They are broad general provisions, designed to apply to all sectors of the economy. They are mirrored in the Australian Securities and Investments Commission Act 1989 (Cth) (for financial services), and in the fair trading legislation of each State and Territory.

However, despite their importance, the consumer protection provisions of the TPA have not been comprehensively reviewed since shortly after their enactment.⁴ It is true that there have been tweaks and amendments over the years, including the introduction of new rules for country of origin claims,⁵ and of specific unconscionability provisions to assist small businesses.⁶ But a comprehensive review has not occurred.⁷ This situation contrasts with the competition provisions of the TPA, which have been subject to significant analysis and review as a whole or in relation to specific industry sectors since their enactment.⁸

² Ibid, p 218.

³ This note is not concerned with Pt VA — product safety — this is the subject of a current review overseen by the Ministerial Council on Consumer Affairs, see Ministerial Council on Consumer Affairs, *Review of the Australian Consumer Product Safety System: Discussion Paper*, 2004, available at <www.consumer.gov.au>.

⁴ The 1976 Swanson Committee report reviewed both the competition and consumer protection provisions of the TPA: Trade Practices Act Review Committee, *Report to the Minister for Business and Consumer Affairs*, 1976.

⁵ Trade Practices Amendment (Country of Origin Representations) Act 1998 (Cth).

⁶ Trade Practices Amendment (Fair Trading) Act 1998 (Cth). These amendments followed recommendations in *Finding the Balance — towards fair trading in Australia*, a 1997 report by the House of Representatives Standing Committee on Industry Science and Technology.

⁷ In 1996, the former Federal Bureau of Consumer Affairs initiated an ‘audit’ of Australia’s consumer protection laws, designed to identify inconsistencies, gaps and unnecessary duplication in the Commonwealth, State and Territory consumer protection laws. Two reports were issued for comment (*Audit of Consumer Protection Laws — First Report*, February 1997 and *Audit of Consumer Protection Laws — Second Report*, August 1997), but the review does not appear to have been concluded. Both reports are available at <<http://www.consumersonline.gov.au/content/publications/Consumer/>>.

⁸ These include (among others) the Productivity Commission’s 2004 *Review of Pt X of the*

Given the lack of any comprehensive analysis of the consumer protection provisions as a whole, there is a risk that the TPA provisions are falling behind developments in other developed countries.

For example, in recent years, the European Union (EU) has embarked on an ambitious program of reviewing, harmonising, and updating consumer protection laws in its member states. The current strategy, for 2002–2006, focuses on three key issues:

- A high common level of consumer protection;
- Effective enforcement of consumer protection rules;
- Proper involvement of consumer organisations in EU policies.⁹

In terms of regulatory reform, the EU has implemented directives in relation to the prohibition of unfair contract terms,¹⁰ requirements for unit pricing,¹¹ and sophisticated distance selling obligations in light of increasing cross-border trade.¹² The EU has also created the opportunity for consumer organisations to play a formal role in enforcement,¹³ and is examining options for imposing a general prohibition against unfair commercial practices.¹⁴ Consumers in Australia do not have the benefit of similar developments.

There is also a considerable risk that the TPA provisions are falling behind developments in the States and Territories. In 2003, the Fair Trading Act 1989 (Vic) was amended to prohibit unfair terms in consumer contracts, and the

Trade Practices Act 1974: International Liner Cargo Shipping — this review has been completed but the report not yet released, at <<http://www.pc.gov.au/inquiry/partx/index.html>> (accessed 4 March 2005); Senate Economics References Committee, *The Effectiveness of the Trade Practices Act 1974 in Protecting Small Business*, March 2004; D Dawson (Chairman), *Review of the Competition Provisions of the Trade Practices Act*, January 2003; Commonwealth Department of Health and Ageing, *Review of the Impact of Part IV of the Trade Practices Act 1974 on the Recruitment and Retention of Medical Practitioners in Rural and Regional Australia*, 2002 (W Wilkinson, Chairman); Productivity Commission, *Telecommunications Competition Regulation*, Report No 16, 2001; Intellectual Property and Competition Review Committee, *Review of Intellectual Property Legislation under the Competition Principles Agreement*, Canberra, September 2000; Independent Committee of Inquiry into Competition Policy in Australia, *National Competition Policy: Report by the Independent Committee of Inquiry into Competition Policy in Australia*, (Prof F Hilmer, Chairman), Canberra, September 1993; Senate Standing Committee on Legal and Constitutional Affairs, *Mergers, Monopolies and Acquisitions: Adequacy of existing legislative controls*, 1991 (the Cooney Committee report); House of Representatives Standing Committee on Legal and Constitutional Affairs, *Mergers, Takeovers and Monopolies: Profiting from competition?*, 1989; Trade Practices Consultative Committee, *Small Business and the Trade Practices Act*, 1979 (the Blunt Committee report).

⁹ See <http://europa.eu.int/comm/consumers/topics/cons_pol_en.htm> (accessed 24 January 2005).

¹⁰ Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts.

¹¹ Directive 98/6/EC of the European Parliament and the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.

¹² Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts.

¹³ Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests.

¹⁴ See <http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/index_en.htm> (accessed 1 February 2005).

other States and Territories are also considering the need for such legislation.¹⁵ It will be an interesting turn of events if the framework TPA legislation provides consumers with fewer rights than they have under the State and Territory fair trading legislation.

Since the TPA was first enacted, there have also been significant changes in consumer markets in Australia.

Markets, products and transactions have become increasingly complex and diverse. New forms of transacting have been introduced and widely adopted, and interstate and international transactions have become increasingly common, especially for some products and services. These pose particularly difficult policy challenges for policy makers and regulators both in Australia and other countries.¹⁶ Interstate and international cooperation in enforcement will be a key to resolving some of these challenges.

Consumers have become more savvy and demanding; and are increasingly interested in issues beyond price and quality. For example, many consumers are interested in how, where and under what conditions products and services are produced or developed.¹⁷ In light of this demand, should consumer policy in Australia deal with issues of sustainable consumption and/or fair trade, beyond rules that ensure that labelling is not misleading or deceptive?

International trade agreements, including the General Agreement on Trade in Services, may also soon have a significant impact on consumer policy in Australia. Measures need to be taken to ensure that compliance with international trade obligations does not come at expense of a weakening of consumer protection measures in Australia.

Also over the last few years, policy makers, researchers and others have developed a more sophisticated understanding of consumer behaviour, market operations, and regulatory approaches. A comprehensive review of the TPA provisions, and consumer protection law and policy and administration more broadly, is therefore needed to reflect these and other changes, with a view to developing a modern framework for consumer protection in Australia.

Consumer protection policy as a priority in its own right

A review of consumer protection policy, however, needs to consider consumer policy as a priority goal in its own right, not simply as a subset of competition policy.

There is no doubt that there are complementarities between consumer policy and competition policy. This is explicitly noted in the discussion draft,

15 Standing Committee of Officials on Consumer Affairs, *Unfair Contract Terms — A Discussion Paper*, 2004 available at <<http://www.fairtrading.qld.gov.au/oft/oftweb.nsf>>.

16 See, for example, Standing Committee of Officials of Consumer Affairs, *Online shopping and consumer protection: Discussion Paper*, 2004 available at <<http://www.consumer.vic.gov.au>>.

17 In a paper prepared for the National Consumer Council (UK), Bush found greater evidence of consumer empowerment and consumer demand driving developments in relation to the organic food (p 16) and ethical consumption (p 17) markets. The level of consumer empowerment in these markets compared favourably with that in the utilities (p 11) and financial services (p 18) markets: J Bush, *Consumer empowerment and competitiveness: a report prepared for the National Consumer Council*, 2004 available at <www.ncc.org.uk>.

and has been the subject of recent discussion in these pages¹⁸ and other forums.¹⁹

As a general rule, competitive markets benefit consumers and consumer protection laws, particularly laws prohibiting misleading or deceptive conduct, both protect consumers from unfair practices and promote more competitive markets. Consumers can activate competition, for example, by switching to better offerings in the marketplace.²⁰

Similarly, it is widely agreed that competition should not be regarded as an end in itself.²¹ However, the discussion draft, and indeed the terms of the draft proposal, seem to imply that consumer protection policy is a subset of competition policy, in the sense that the costs and benefits of consumer protection regulation must be weighed against the assumption that increased competition will always be in the interests of all consumers and is the primary goal.

However, competition creates winners and losers, and the benefits of competition are not shared equally.²² Markets that are extremely competitive, in the sense of having no or limited barriers to entry and exit, can also be attractive to those seeking to engage in fraudulent practices against consumers. Consumer protection and consumer policy can aim to ameliorate the risks and ensure that the most disadvantaged and vulnerable consumers do not always lose. Competitive markets alone cannot achieve results for these consumers.

Other jurisdictions do not rely primarily on competition to protect consumers. For example, the Chairman of the US Federal Trade Commission has suggested that protecting consumers requires competitive markets, private law systems (contract and property rights), and public agencies protecting consumer welfare. Together, each of these elements can be seen as a three-legged stool, with each limb being equally important: 'A two-legged stool will not be very stable.'²³

The focus of consumer protection laws and policy should be on minimising or eliminating consumer detriment, where markets are not working well for consumers. Often this can be achieved by a focus on increasing competition and/or increasing ability to take advantage of competition. However, a competition focus will not always meet the goals of minimising or eliminating consumer detriment, and consumer protection and consumer policy must therefore be treated as a priority goal in its own right.

18 L Sylvan, 'Activating competition: The consumer — competition interface' (2004) 12 *CCLJ* 191.

19 For example, T Muris, *The Federal Trade Commission and the Future Development of US Consumer Protection Policy*, George Mason Law & Economics Research Paper No 04-19, 2004, available at <<http://ssrn.com/abstract=545182>>.

20 L Sylvan, *A Global View of Consumer Issues: Then and Now*, Esther Peterson Lecture, ACCI 50th Anniversary Conference, April 2004, p 7, available at <http://www.consumerinterests.org/files/public/2004_April_1_Esther_Peterson_Lecture_Washington.pdf>.

21 *Ibid*, p 4.

22 For example, the discussion draft notes that, following the implementation of NCP reforms in electricity and gas, metropolitan households experienced modest price increases, while businesses benefited from price reductions: Productivity Commission, above n 1, p 57.

23 Muris, above n 19, p 5.

The limitations of market failure theory and competition theory

Traditional economic approaches suggest that regulation of markets, including consumer protection regulation, is only needed to overcome market failures. However, the traditional notion of a market failure does not include many scenarios that lead to consumer detriment, including practices that take advantage of vulnerable or disadvantaged consumers simply because those consumers have, or believe they have, no other option for supply.

In the consumer credit market, for example, the emergence of fringe and payday lenders, with very high — and arguably inappropriate or exploitative — interest rates, fees and charges, and unfair or onerous terms and conditions, has occurred despite vigorous competition between credit providers. There is some evidence that many of the customers of these fringe providers are aware, on at least some level, that these products are not necessarily good value or safe. Nevertheless, they believe that the transaction is their only option.²⁴

Market failure and competition theory also tend to rely heavily on informed consumers to improve market efficiencies and consumer outcomes. Information disclosure then becomes the key consumer protection mechanism.

However, information disclosure in consumer markets does not always work as effectively as might be hoped. There are a number of reasons for this.

Often information is provided too late in the decision making process, when the consumer has already mentally committed to the transaction. Or information is provided in an environment in which a range of distracting sales techniques are visited upon the consumer or where there is simply no time or space provided to review the information in any meaningful way.

If information is provided in a timely manner, it can often be incomprehensible, particularly given the relatively low levels of literacy in some parts of the community. Transactions and product offerings are also becoming increasingly complex, making it difficult for even the very literate to compare different offerings and work out which is the best deal.

And even well informed and sophisticated consumers can fall victim to scams and unscrupulous operators.²⁵

The continued prevalence of unfair contract terms illustrates the difficulties

24 For example, borrowers interviewed for a report on payday lending were generally aware that they paid dearly for access to credit, and some accepted that high charges were inevitable as they had few credit alternatives: D Wilson, *Payday lending: a research report*, Consumer Law Centre Victoria, 2002, pp 78–9. Consumer organisations have made similar observations, noting in response to a government discussion paper that: ‘In our experience, a large proportion of fringe credit borrowers are aware, or reasonably aware, of the high costs associated with fringe credit. Their choice is between participation or non-participation, but in most cases this is not a real choice’: Care Inc Financial Counselling Service et al, *Joint consumer submission in relation to the MCCA’s Discussion Paper on Long Term Regulation of Fringe Credit Providers*, 2003, pp 8–9.

25 As is shown in Australian Securities and Investments Commission, *Hook, line and sinker: who takes the bait in cold calling scams?*, 2002 available at <<http://www.asic.gov.au>>. See also Financial Services Authority Media Release, *Experienced investors are most common boiler room victims*, 11 October 2004, available at <www.fsa.gov.uk>. The release noted that ‘The typical victim of an investment scam is a middle-aged professional male with considerable investment experience . . .’.

in relying on information disclosure to protect consumers. In theory, transparency of contract terms should encourage consumers to 'shop around' for traders with fairer terms. In practice, however, there appears to be limited, if any, competition between traders to provide fair terms. In fact, many of the terms that consumer advocates consider to be unfair are common across most or all suppliers in an industry.

The reality is that consumers do not generally shop around for contract terms.²⁶ In many cases suppliers therefore can, almost without restriction, include terms in the fine print of contracts that substantially disadvantage the consumer. Contracting through standard-form, massed produced documents also mean that there is little scope for any bargaining on the terms.²⁷

A more sophisticated approach is needed to deal with the role of information disclosure in a broad and effective consumer policy framework. This approach needs to encompass a more realistic understanding of consumer behaviour and decision-making in the real world.

There are further difficulties in viewing consumer protection regulation only through a competition lens. In a presentation to the American Council on Consumer Interests Conference in 2004, Louise Sylvan suggested that there are three types of consumer protection rules: 'equitable rules', 'sensible society rules', and 'market conduct and information rules', and that only the last of these can be clearly seen as directly competition-enhancing rules.²⁸

Equitable and sensible society rules include prohibitions on unconscionable conduct, undue harassment, and sending unsolicited credit cards. These and other prohibitions do not necessarily lead to more competitive markets, but instead reflect community expectations of appropriate business standards.

'Cost control rules' might be seen as another category of consumer protection rules that are not necessarily competition-enhancing. For example, provisions that limit the amount of interest that can be charged on a consumer loan may in fact reduce competition in a market by limiting the price/quality trade-offs that suppliers and consumers are able to make. However, these rules might bring other benefits for consumers and the community more broadly.

Competition policy and competitive markets alone do not provide an adequate framework for viewing all strands of consumer protection rules, particularly those rules that are designed to protect consumers who might be vulnerable to unfair practices. Nor do competition policy and competitive markets necessarily promote safety, accessibility, affordability, or security for all consumers.

In fact, there are some suggestions that consumer empowerment and competition provides benefits primarily for the young, the well-educated and those on higher incomes.²⁹ This can lead to differential marketing, and greater price discrimination and poorer treatment for consumers on lower incomes, or consumers who are seen as unattractive customers for other reasons.³⁰

It is also important to remember competition between suppliers does not

26 Standing Committee of Officials on Consumer Affairs, above n 15, p 17.

27 Ibid, pp 16-17.

28 Sylvan, above n 20, p 6.

29 Bush, above n 17, p 21.

30 Ibid, p 23.

necessarily operate for the benefit of consumers. For example, so-called 'reverse competition' between professional advisers, where suppliers compete to encourage brokers or advisers to recommend their products over their competitors, can result in higher prices for consumers and/or the supply of inappropriate products and services.³¹

A broad review of consumer policy and administration would therefore be conducted within a framework that has consumer policy as a priority goal and does not simply view consumer policy through a competition policy lens.

Self-regulation and co-regulation

The discussion draft suggests that a review of consumer protection should focus on the scope for self-regulatory and co-regulatory approaches in achieving outcomes for consumers.³² However, there is another view that the merits and role of self-regulation and co-regulation has already been thoroughly examined³³ and, in any case, it is clear that at the level of the Commonwealth Government, self-regulation is currently considered the *preferred* method of intervention in consumer markets.³⁴

It is therefore difficult to agree with the statement in the Productivity Commission's discussion draft that there has been 'insufficient attention given to the scope for self-regulatory and co-regulatory approaches'.³⁵

From a consumer perspective, self- and co-regulatory initiatives have had very mixed success. The most effective examples have demonstrated that a number of specific industry attributes are needed — including a small group of industry members, holding common interests and reputation concerns. These attributes are only present in a small number of markets.

Experience has shown that in some markets greater weight often needs to be given to more interventionist mechanisms to achieve consumer policy objectives. In some cases, industry players also acknowledge the limitations of a self-regulatory approach.³⁶

It would therefore be disappointing if the suggested review of consumer policy reiterated the unrealistic and somewhat naïve reliance on self-regulation as a potential panacea for most problems in consumer markets.

31 See, for example, *Call for new laws to protect against unhealthy competition*, Radio National AM transcript, 29 March 2004, available at <www.abc.net.au/am/content/2004/s1076015.htm>.

32 Productivity Commission, above n 1, p 218.

33 Taskforce on Industry Self-Regulation, *Industry Self-Regulation in Consumer Markets*, 2000, available at <http://www.consumersonline.gov.au/content/SelfRegulation/finalreport_taskforce/default.asp>.

34 Department of Industry Science and Tourism, *Codes of Conduct Policy Framework*, 1999, p 3 available at <<http://www.consumersonline.gov.au/content/SelfRegulation/codes.asp>>.

35 Productivity Commission, above n 1, p 218.

36 For example, the Chief Executive of Mortgage Choice has been quoted as saying: 'We believe that any self-regulation of the industry will be perceived by consumers and observers to be for the benefit of the industry participants rather than the consumers of the industry's services.' Consumer Credit Legal Centre (NSW) Inc, *A report to ASIC on the finance and mortgage broker industry*, 2003, p 77.

The roles and relationships of Commonwealth, State and Territory consumer agencies

Clearly, in a context when many suppliers of consumer goods and services are national companies, or operate in more than one Australian jurisdiction, the differing and complementary roles of Commonwealth, State and Territory governments and consumer protection agencies will need to be examined in any review of consumer protection and policy.

In changing, and increasingly globalised consumer markets, many are looking to the Commonwealth Government to take a leadership role in relation to consumer policy.

However, in recent years, it seems that the State and Territory governments have been the key drivers in relation to many important areas of consumer protection policy that have national implications. This includes regulation of unfair contract terms;³⁷ property investment advisers;³⁸ and finance and mortgage brokers.³⁹

To many, it seems that the Commonwealth Government has not placed a high priority on consumer protection. Consumer policy is located within the Treasury Department and has a very low profile. Since 1996 there has not been a Minister for Consumer Affairs. Instead responsibility for consumer policy issues rests with the Parliamentary Secretary to the Treasurer, who is also responsible for policies in relation to financial markets, corporate governance, foreign investment, and competition and structural reform.⁴⁰

And the Commonwealth Government does not appear to have a coherent and broad consumer policy strategy. Instead it is devoting much of its consumer protection attention to financial literacy⁴¹ which, while important, can only ever be one component of an effective consumer policy strategy.⁴²

To some extent the role of the Commonwealth Government in relation to consumer protection is constrained by constitutional limitations. The Commonwealth Government does not have a direct power to make laws with respect to consumer protection matters. Instead the TPA and other federal consumer protection legislation rely on the corporations power and other similar heads of power.

However, this limitation does not prevent effective leadership from the Commonwealth Government, particularly given the fact that the TPA is

37 Standing Committee of Officials on Consumer Affairs, above n 15.

38 See Ministerial Council on Consumer Affairs, *Regulation of Property Investment Advice: Discussion Paper*, 2004 available at <<http://www.fairtrading.qld.gov.au/oft/oftweb.nsf>>.

39 See Ministerial Council on Consumer Affairs, *National Finance Broking Regulation: Regulatory Impact Statement Discussion Paper*, 2004 available at <<http://www.fairtrading.qld.gov.au/oft/oftweb.nsf>>.

40 See <<http://parlsec.treasurer.gov.au/cjp/content/portfolio.asp>> (accessed 24 January 2005).

41 In late 2004, the Federal Government announced a \$21 million *Understanding money* strategy, which included \$5 million to fund a Consumer and Financial Literacy Foundation and \$16 million for a national information and education program: M Brough, Minister for Revenue and Assistant Treasurer, *Building a financially secure and financially literate Australia*, Media release, 7 October 2004.

42 See the criticisms of a financial literacy focus by the Consumers Federation of Australia, at <http://www.consumersfederation.com/documents/CFAresponse-CFLTTaskforceDiscussionPaperfinal_000.pdf> (accessed 1 February 2005).

regarded as framework legislation to be broadly mirrored in the State and Territory legislation.

In addition, there is certainly scope for the Commonwealth to be given greater formal responsibility through the referral of powers from State and Territory governments.

Serious consideration needs to be given to developing a new framework for consumer protection policy and enforcement. An alternative framework should minimise duplication and inconsistencies and might involve the development of uniform rules, incorporated into a single regulatory instrument, with each jurisdiction having responsibilities for enforcement (similar to the Uniform Consumer Credit Code, but with Commonwealth involvement as well). However, the experience with the Consumer Credit Code shows that there are some risks with this approach; particularly in relation to the inevitable delay when it comes to amending the rules.

A comprehensive review provides an ideal opportunity to explore this option and others.

Funding consumer research and policy

Finally, any review of consumer protection policy and administration should also examine current funding arrangements for consumer policy and research, including the need for an independent National Consumer Council in Australia.

Effective consumer policy can only be developed when all stakeholders have a real opportunity to have input, and with the assistance of high quality research about the actual experiences of consumers in Australia.

Currently, the consumer voice in policy debates can be drowned out by the voices of business and industry. Most consumer organisations in Australia are either purely voluntary or are primarily casework agencies. Both types of organisations have limited capacity to undertake detailed research and policy work. Policy decisions can therefore be made without full information of the impact on consumers.

In contrast, the United Kingdom has an independent and adequately funded National Consumer Council (NCC), with a remit to:

safeguard the interests of consumers and to ensure that these interests are represented to, and are taken account of, by decision-makers.⁴³

The NCC carries out research to find the consumer issues of the future and, where change is needed, develops policy solutions and campaigns and works with providers of goods and services to ensure that these policy solutions work. The benefits to the community of the NCC's work are recognised by government and other stakeholders.

An independent Australian National Consumer Council, modelled on the UK's NCC, and funded in part by government, would be a much needed addition to the consumer protection landscape in Australia and would reassure observers that the government has a strong commitment to consumer protection.

43 See <<http://www.ncc.org.uk/about/index.htm>> (accessed 30 January 2005).

Conclusion

A review of the broad framework for consumer policy in Australia is well overdue. The review should be used to articulate a vision for real and effective consumer policy for the twentyfirst century and to develop a modern consumer protection framework. To do this, and ensure consumers gain real benefits from any review, the review must:

- be supported by leadership from the Commonwealth Government;
- treat consumer policy both as a policy goal in its own right and a high level policy goal;
- recognise the limitations of competition theory and practice in protecting consumers, particularly vulnerable and disadvantaged consumers;
- acknowledge the limitations of self-regulatory and co-regulatory approaches as a solution for many consumer policy issues; and
- examine the scope for greater support of consumer policy, research and advocacy, through the establishment of an independent and adequately funded National Consumer Council or other mechanisms.