

 <p>QUEENSLAND CONSUMERS ASSOCIATION</p>	<p>A non-profit, volunteer organisation, advocating to advance the interests of consumers in Queensland</p> <p><i>Secretary: Max Howard PO Box 261 Corinda Q 4075</i></p>
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21 January 2017

SUBMISSION ON PRODUCTIVITY COMMISSION DRAFT REPORT ON CONSUMER LAW ENFORCEMENT AND ADMINISTRATION

BACKGROUND

The Queensland Consumers' Association (the Association) is a non-profit organisation which exists to advance the interests of Queensland consumers.

The Association's members work in a voluntary capacity and specialise in particular policy areas.

The Association is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups.

Members represent the Association or other consumer organisations on the advisory/liason committees etc. of several federal and state bodies which deal with consumer issues/complaints for a wide range of industries including: food, building/construction, finance, energy, and health.

The Association made a submission on Issues Paper and welcomes the opportunity to make this brief submission on the Draft Report.

The contact person for this submission is: Ian Jarratt.

GENERAL COMMENTS

Recommendations and findings

In general, the Association is supportive of the PC's findings and recommendations.

Study's scope

The draft report correctly notes that Australia's consumer protection framework is complex and that there are numerous "specialist consumer protection regimes" in addition to the ACL and the ACL regulators.

However, the terms of reference require the PC to examine only the roles of "specialist **safety** regulatory regimes" in relation to consumer protection, how they interact with ACL regulators, and clarity of regulatory responsibilities.

As a result, the draft report focuses on "specialist safety regimes" and only their safety responsibilities.

The non-safety responsibilities of these regimes and their relationships with the ACL regulators on these topics have not been considered.

This is undesirable because many “specialist safety regimes” have non safety responsibilities and functions relevant to the ACL and ACL regulators. And, often a consumer’s contact with a “specialist safety regime” about a concern is actually, or may be associated with, other consumer issues covered by the ACL. Such issues include fitness for purpose, acceptable quality, misleading and deceptive conduct, warranties, consumer guarantees, unfair terms and conditions, etc.

Accordingly, the Association **recommends** that the final report include discussion and findings/recommendations on the need and scope to improve the enforcement and administration of non-safety provisions by all types of "specialist consumer protection regimes/regulators" (including specialist safety regimes), especially the need for effective liaison, cooperation and information sharing between them and ACL regulators.

SPECIFIC COMMENTS

Risk based compliance and enforcement

The Association emphasises the need for regulators to not rely only on the number and nature of consumer complaints when assessing risk and detriment.

This is because it is well recognised that even though there may be significant overall consumer detriment, many consumers will not, for a variety of reasons, make a complaint to the relevant regulator or other agency.

For example, for many years the aggressive unsolicited, non-compliant direct marketing of energy contracts in south east Queensland, NSW, Victoria and South Australia, especially by door to door marketers, resulted in major consumer detriment. However, state energy regulators (and ombudsman schemes) received relatively few complaints. And, despite advocacy by consumer organisations, untaken in response to consumer and community concerns, state regulators did not take effective action to enforce retailer compliance with the provisions of state laws. This major problem was only addressed, and the detriment much reduced, when the ACCC eventually decided to make this a high national priority. The courts subsequently imposed large fines on some energy retailers and their marketing agents which resulted in several retailers ceasing to use door to door marketing.

Therefore, the Association **recommends** that the final report refer to the problems caused by over reliance on formal consumer complaints to regulators, ERD schemes, etc. as indicators of risk and consumer detriment, and emphasize that regulators should also obtain information from other sources, including sample shopping, field visits and inspections, monitoring of social media, consumer and community organisations, IDR and EDR schemes, etc.

Commonwealth Consumer Affairs Advisory Council

The draft report notes that the membership of this Council is currently vacant and that it has not been active for several years.

The Association considers that this is a very undesirable and unsatisfactory situation and **recommends** that the final report comment on the whether the Council’s roles and functions are beneficial, and if so whether it should be reactivated or replaced.

Communication, coordination, collaboration, liaison, etc

The Association notes and supports the emphasis in the draft report on the need for effective communication, etc. between ACL and other relevant regulators.

However, the need for consultation, etc. with consumer representatives does not seem to be mentioned.

As indicated in its submission on the Issues Paper, the Association considers it important for regulators to regularly communicate, liaise etc. with other stakeholders and suggested that other regulators consider adopting the Consumer Regulator Forum model operated very successfully by ASIC, ACCC, QOFT, and Queensland Police for several years. These regulators jointly meet twice a year with a range of consumer/community organisations, law centres, etc. to exchange information including the identification of relevant current and potential consumer problems.

Therefore, the Association **recommends** that the final report also include the need for regulators to regularly consult and exchange information with consumer representatives, and where appropriate for this to involve more than one regulator.

Research and advocacy as inputs into policy

The Association strongly welcomes the inclusion of this matter in the draft report, the revisiting of the Commission's 2008 recommendations, and the request for information on policy research funding and comment on draft finding 6.3 on consumer advocacy to provide input into policy processes.

Regarding funding for **consumer policy research**, the Association considers that there is a great need for additional public funding and that such funding should be available also for research not necessarily linked to a specific policy consultation. For, example research on the important issue of how consumers make decisions is relevant to many policy issues and products/services.

The Association also considers the need for research is particularly great for policy issues associated with the ACL and ASIC's legislation and that funding is urgently needed be allow to consumer advocacy organisation to undertake research designed to facilitate and enhance participation in policy development and consultation processes.

Regarding funding for **consumer advocacy for input into policy development**, the Association considers that there is a great need for additional public funding, especially for a national consumer organisation, such as the Consumers Federation of Australia (CFA).

CFA is the only national organisation with a membership consisting of consumer organisations interested/involved in a wide range of issues, products, services and industries. It is particularly well placed to make submissions on the collective views of its members in policy consultation processes, especially on general topics such as the ACL. This role is particularly valuable because it greatly increases the range of consumer views provided during policy development processes and because many of CFA's members would be unable to make individual submissions on many such policy issues. It also increases consumer participation in consultations on policy issues for which there are few or no speciality consumer organisations, for example superannuation, competition, and trade measurement.

However, entirely due to lack of resources, currently CFA's ability to do play these roles is severely limited and CFA is unable to respond positively to most requests by governments and industry for input into policy development process.

Consequently, CFA has to greatly restrict its work on policy issues. Generally it is only able to be involved if members of its volunteer executive committee can do the work.

For example CFA was able to put in a written submission on the CAANZ Issues Paper for the ACL Review but unable to do so on the Interim Report.

A recent example of CFA playing a very important role in national policy development is the recent Harper Review of Competition Policy. As a result of great efforts by its unpaid executive committee, CFA made two written submissions to that review each of which emphasised the importance of the demand side of markets and consumer engagement if markets are to be effectively competitive. CFA's submissions undoubtedly influenced the inclusion of a section, and recommendations, on Informed Consumer Choice in the final report.

Therefore the Association **recommends** that the final report include recommendations for increased, sustainable and reliable public funding for consumer policy research and consumer advocacy to provide input into public policy development.