



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

PO Box 16193
Collins Street West
VIC 8007

By email: consumer.law@pc.gov.au

Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioner Abramsom

Consumer Law Enforcement and Administration – Draft Report

The Consumers' Federation of Australia (**CFA**) strongly supports the Productivity Commission's Draft Finding 6.3 that there are material gaps in consumer input in policy processes, and that the Commonwealth Government should provide additional public funding to support consumer advocacy.

The 2009 consultation undertaken by Treasury on an issues paper, *Consumer Voices – Sustaining Advocacy and Research in Australia's Consumer Policy Framework*, resulted in 31 submissions. The vast majority of these submissions provided detailed evidence of the call on consumer voices to participate in policy processes. Despite this, the Commonwealth Government did not respond.

Today, CFA is often called upon to provide comment or submissions to policy and regulatory processes. For example, in 2016, CFA declined to respond to at least 15 requests for input due to insufficient resourcing to do so. This included the Review of the Australian Consumer Law Interim Report, published by Consumer Affairs Australia New Zealand in October 2016.

CFA, having advocated over a long period of time for the implementation of the Productivity Commission's 2008 recommendation, is very aware of the challenges facing the Commonwealth Government in allocating additional resources to new budget items. Even if it can be shown that resourcing consumer advocacy will result in economy-wide savings over the longer-term, governments are often mindful of the short-term costs involved.

Although the CFA strongly supports consumer advocacy and research being funded directly by the Commonwealth, the CFA encourages the Productivity Commission to consider mechanisms that might fund the consumer advocacy and input that is required, other than a call on the Federal Budget.

One way this could be done would be through amendments to the remedy framework for the Australian Consumer Law (**ACL**). For example, in Victoria, the ACL application legislation provides for a Victorian Consumer Law Fund. Pecuniary penalties and various other amounts are to be paid into this Fund. There is also a framework for non-party consumer redress to be

paid into the Fund which allows affected consumers to claim upon the Fund. Grants can also be paid out of the fund for the purposes of improving consumer wellbeing, consumer protection or fair trading.

Similarly, the Queensland Government maintains a Consumer Credit Fund (established under the *Consumer Credit (Queensland) Act 1994* [repealed] and continued under the *Credit (Commonwealth Powers 2010)*). The fund can make payments in respect of consumer policy research, consumer education, consumer surveys and other consumer-related initiatives.

CFA submits that the ACL and the *Australian Securities & Investments Act* could be amended to insert similar provisions in relation to enforcement matters taken by the Australian Competition and Consumer Commission and the Australian Securities & Investments Commission (**ASIC**) under the Commonwealth Law. Diverting penalties obtained for breaches of the ACL to consumer research and advocacy would enhance consumer protection broadly, including through enabling a broad range of consumer policy research and advocacy through the fund.

Rather than Government establishing a fund, another alternative could be for funds obtained through enforcement to be directed to the recently established independent Consumer Advocacy Trust, an initiative of CFA member Financial Rights Legal Centre. The Consumer Advocacy Trust is intended to fund applications from not-for-profit organisations 'seeking to undertake independent consumer research, policy analysis, casework and/or systemic advocacy (and related consumer education, where appropriate)', among other things consistent with the objectives of the Trust.

While regulators (particularly ASIC) do sometimes direct funds obtained from compliance and enforcement action to a fund that advances financial literacy in the community, this is not the same as research, policy and advocacy on consumer issues. Similarly, other philanthropic trusts exist, but none in Australia that specifically benefit consumer interest or which might fund general consumer advocacy.

An opportunity exists for ACL regulators to be required by law to direct undistributed or surplus funds arising out of ACL breaches to the Consumer Advocacy Trust. These funds could then be used to support general consumer advocacy in Australia.

Should you have any questions about this submission, please contact me

Yours sincerely

Gerard Brody, Chair
Consumers' Federation of Australia