



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

PO Box 16193
Collins Street West
VIC 8007
10 June 2008

By email: aclreview@treasury.gov.au

ACL Review Secretariat
Consumer Affairs Australia New Zealand
c/- The Treasury
Langton Crescent
Parkes ACT 2600

Dear Secretariat

Re: Issues Paper for the Australian Consumer Law review

Thank you for the opportunity to provide comments on the Issues Paper for the review of the Australian Consumer Law (ACL).

The introduction of the ACL represented one of the most significant reforms to Australia's consumer protection framework since 1974. The ACL removed the need for multiple state and territory laws, creating a nationally uniform consumer protection regime. The law was intended to improve consumer welfare and confidence in markets, and CFA is pleased to see that the ACL is achieving its goals in many ways. However, during this review we should take advantage of opportunities to improve the consumer experience in Australia, through strengthening the law and the ability of the regulators to enforce it.

About the Consumers' Federation of Australia

The Consumers' Federation of Australia (CFA) is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership based organisations, organisations that provide information, advice, counselling or assistance to consumers, and organisations that identify regulations or market features that harm consumer interests and propose solutions. A list of CFA's organisational members is available at

[http://consumersfederation.org.au/members/cfa\[organisational\]members/](http://consumersfederation.org.au/members/cfa[organisational]members/)

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services. CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

The objectives of the Consumers Federation of Australia are to promote the interests of consumers, in particular low income and disadvantaged consumers, through:

- Identifying areas in which the interests of consumers are being adversely affected;
- Advocating policy and law reform changes to benefit consumers;
- Conducting consumer awareness and information programs;
- Liaising with other consumer and community groups to advance the interest of consumers;
- Facilitating consumer responses to government, industry and regulators where specific funding or resources are available; and
- Doing other things to further the interests of consumers.

About this submission

A number of CFA's members have made individual submissions to the Review. This CFA submission does not seek to duplicate the individual submissions of members, but to highlight some high level themes that have been raised by the individual submissions made by CFA members.

This submission addresses some of the specific questions asked in the Issues Paper, but also provides some overview comments relevant to consumer law and policy in Australia more broadly.

Engaging with stakeholders

Consumer voices must be heard as part of major inquiries or policy development processes that impact on consumers. In 2008, the Productivity Commission recommended that the Federal Government should provide public funding to help support the basic operating costs of a representative national consumer peak body; assist the networking and policy functions of general consumer groups; and enable an expansion in policy-related consumer research.¹³ Despite this recommendation being again made in subsequent inquiries, it has not been acted upon by successive Federal Governments.

A funded peak body with capacity to both coordinate diverse consumer organisations as well as undertake or commission consumer research will facilitate better consumer policy outcomes, because the consumer interest will be strongly articulated in policy debates. Other consumer organisations should not be restricted from engaging in policy processes where they are funded by government.

CFA was founded in 1974, with funding from the Federal Government. This funding was maintained continuously for nearly 25 years, under governments of different persuasions. In 1996, however, funding was abolished completely. The Issues Paper for the Australian Consumer Law review emphasises the importance of engaging with stakeholders on ACL issues. CFA agrees that in developing and strengthening an effective consumer policy framework that bolsters consumer

¹ Productivity Commission, *Inquiry Report No 45: Review of Australia's Consumer Policy Framework*, 2008, recommendation 11.3.

confidence in the market, key stakeholders must be involved. While CFA endeavours to take an active role in review processes relevant to the operation of consumer protection laws in Australia, a lack of adequate resourcing makes this more difficult than it should be.

In addition to funding the sector adequately, appropriate channels for elevating widespread consumer problems must be available for advocacy bodies. Consumer advocacy groups play a crucial role in bringing the concerns of Australians to the attention of regulators and helping shine a light on harmful products and practices. In a recent review of the Australian Competition and Consumer Commission (ACCC), the Australian National Audit Office recommended that the ACCC improve its focus on trends and patterns in market intelligence, identifying high levels of widespread consumer detriment.²

To improve the responsiveness of regulators to consumer concerns, CFA joins a number of its member organisations in calling for consumer advocacy organisations to be given the power to make 'super complaints' to the ACCC, the Australian Securities and Investment Commission (ASIC) and the Australian Communication and Media Authority (ACMA).

Such a power could be based on the process available in the United Kingdom, where consumer groups have been given the ability to highlight issues of concern, and receive responses within a specified period of time. This has provided UK regulators with valuable insights into emerging and systemic issues.

Equipping regulators for action

Industry regulators have a very important job: to ensure consumers benefit in markets that they regulate.

Regulators include the ACCC, ASIC, ACMA, the Australian Energy Regulatory, the Australian Skills Quality Authority, the Therapeutic Goods Administration, Food Standards Australia New Zealand and others.

Where regulators do not have the appropriate resources, power and culture, they can be limited in their effectiveness. Regulators need to be able to prevent consumer harm, not just deal with misconduct after it occurs. Scandals in the finance sector and in vocational education may have been prevented by better resourced and empowered regulators.

CFA members have undertaken some analysis about the appropriate powers and enforcement activity for consumer regulators,³ however the current regulator performance framework with its focus on cutting 'red tape' risks weakening the performance of our regulators. This framework needs to instead ensure that all regulators with a mandate to promote consumer outcomes have the resources, power and culture to effectively protect consumers, and that the regulators report publicly on their impact for consumers.

² Australian National Audit Office (2016), *Managing Compliance with Fair Trading Obligations*, <http://www.anao.gov.au/Publications/Audit-Reports/2015-2016/Managing-Compliance-with-Fair-Trading-Obligations>

³ Consumer Action Law Centre, Regulator Watch: the enforcement performance of Australia's consumer protection regulators, 2013, <http://consumeraction.org.au/new-report-regulator-watch/>; CHOICE, Good Practice in Consumer Protection Enforcement: A Review of 12 Consumer Protection Regulators, 2008.

The regulators also need appropriate enforcement tools available to them, in order to punish individual traders who have breached the law, and deter others from engaging in the same conduct. The current penalties available are not nearly high enough to deter businesses from bad behaviour. The recent Reckitt Benckiser case provides an example. In April 2016, the Federal Court handed Reckitt Benckiser a penalty of \$1.7 million for misleading consumers by advertising Nurofen targeted pain relief products that were not able to 'target' pain any more effectively than general pain relief products.

This fine pales in comparison with the profits that Reckitt Benckiser made by tricking customers into paying the premium. The ACCC estimates that the company sold 5.9 million units containing the misleading representation. At \$12.42 for Nurofen Period Pain Caplets in comparison with \$1.65 for generic Ibuprofen, the company made an estimated \$63 million more than a company selling correctly marketed generic pain relief.

Fines need to be proportionate and effectively deter bad conduct, and \$1.1m per breach is manifestly insufficient. Fines of \$10m per breach would be more effective, and in line with penalty provisions in other sections of the *Competition and Consumer Act 2010*.

Further consultation

CFA would be pleased to be involved in further consultation as part of this review. Given our membership reach, CFA could assist the secretariat consult with its members through meetings, workshops, forums or other events.

Should you have any questions, please contact me at chair@consumersfederation.org.au

Yours sincerely



Gerard Brody
Chair
Consumers' Federation of Australia