

DEVELOPING A CONSUMER POLICY FOR THE 21st CENTURY

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On 11 December 2006, the former Commonwealth Treasurer, Peter Costello, announced that the Productivity Commission would conduct an inquiry into Australia's consumer policy framework and administration. This inquiry has been the first comprehensive review of consumer policy in Australia since the primary consumer protection instrument, the Commonwealth *Trade Practices Act*, was introduced in 1974. It has provided an opportunity to develop and expand our thinking in consumer policy, and to learn from other jurisdictions that have made consumer policy a high priority in recent years. Ultimately, this inquiry has provided the opportunity to consider what a world class consumer policy might look like in Australia.

While the potential scope of the inquiry was very large, the Productivity Commission has taken a high level approach, focusing on key institutional and procedural aspects of the policy framework, and in a regulatory sense, on the generic provisions in the *Trade Practices Act* and the *Fair Trading Acts* of the states and territories.¹

The inquiry has also examined the rationales and objectives for consumer policy, and the assumptions that underlie decisions in this area. This is a fertile ground for discussion. For example, how should we balance the tensions between free markets, consumer empowerment, buyer beware, and consumer protection? What role do competition, self-regulation, disclosure and consumer education play in our consumer policy framework? These are all large questions, and a consensus response is not easy to find. But they are crucial issues to grapple with in this inquiry.

In this article, I explore three assumptions that have underpinned our consumer protection framework to date: assumptions about the benefits of competition, self-regulation, and information. I discuss the importance of developing an overarching principle or framework to guide policy-makers and others, and discuss the possible content of such a framework in light of the limitations of current approaches discussed in the article. Finally, I briefly discuss the Productivity Commission's draft report, and the extent to which this report has considered these assumptions and the need for an overarching principle, and reflected them in the draft recommendations.

Assumption 1: Competitive markets are the primary bulwark for consumer protection

Many discussions about consumer policy start with an assertion that, most of the time, competitive markets

are the main vehicle for delivering consumer welfare, and (implicitly) consumer policy.² Once markets are competitive, so the argument goes, the competitive process will weed out unfair practices, excessive prices, and poor quality. Moreover, well informed consumers will drive the competitive process. In other words, competition is the goal because it enhances consumer welfare; it is not a goal in and of itself.

The consumer and community benefits of having competitive markets are significant, and initiatives to increase competition, and restrict anti-competitive conduct, are often warranted. However, there are some limitations on the ability of competition to provide consumer benefits.

First, where there are market failures, such as information asymmetries between consumers and traders, competition is less effective for consumers. In many cases, disclosure regulation is introduced to overcome information problems. However, if disclosure documents are not read, the information problem remains. For example, if consumers do not read contracts, what incentive is there for traders to compete on delivering contracts with fair terms? Even if consumers read parts of a contract, their bias to optimism may reduce the extent to which they examine (and make a choice based on) terms about contingencies, such as default. In addition, if information is disclosed, but is not easily comparable, it can also have a marginal effect on competition.

Second, the effectiveness of competition can often be marginal where goods or services are essential, and the consumer is in a poor bargaining position. Markets and traders are not altruistic. This is particularly apparent in the case of essential goods or services. Markets and traders are unlikely to provide essential goods or services, at affordable prices, if it is not in their financial interest to do so, and the concept of a safety net is not a naturally occurring feature of markets.

Third, there can be biases introduced by trader practices, including incentives to offer particular choices over others, or to sell more than might be desirable from the consumer's perspective. In some cases, there is even reverse competition, where — for example — product sellers compete (by offering higher commissions or other benefits) to be included on the referral list of a third party adviser. Those costs are ultimately passed on to the consumer.

Finally, competition models often work best in relation to the sale of goods, where the features and attributes

REFERENCES

1. Productivity Commission, *Review of Australia's Consumer Policy Framework*, Draft Report Vol 2 (2007) 10.
2. For example, Timothy Muris, *The Federal Trade Commission and the Future Development of US Consumer Protection Policy*, George Mason Law & Economics Research Paper No 04-19, <<http://ssrn.com/abstract=545182>> at 12 June 2008.

Consumer law and policy should not be seen as merely a subset of, or a second cousin to, competition law and policy — it should be treated as an equal partner in the regulation of markets.

are on display, and there is a consistency between all units of a particular model. However, consumers increasingly spend their money on services,³ rather than goods. Services can often be more ephemeral in nature, individualised or customised, where the effectiveness of the choice is not immediately apparent.

As a result of these and other limitations, policy-makers need to be wary of relying primarily on competition to drive consumer outcomes, at least in some markets and for some consumers.

Consumer law and policy should not be seen as merely a subset of, or a second cousin to, competition law and policy — it should be treated as an equal partner in the regulation of markets.

Therese Wilson and I have described the relationship in the following way:

Competition law and consumer law are related, and are both equally important to the effective operation of markets in the interests of the community as a whole. The key here is the equal importance of the two aspects of law. Giving effective priority to competition, as appears to be the current approach of the [then] Commonwealth Government, risks ignoring the needs and realities of many consumers, to the ultimate detriment of the community as a whole.

Consumer law and policy should not be a secondary consideration for Governments. It should be a high level priority in its own right. Responding effectively to consumer issues requires us to acknowledge the strengths and limitations of both competition law and consumer law; to articulate the problems and their genesis; and to identify one or more solutions without being blinkered by the mantra that competitive markets are always the answer.⁴

Companies should be given every opportunity to develop effective corporate social responsibility programs and initiatives to address market failures and social objectives. However, it is not appropriate to rely solely on markets and competition to deliver structures and frameworks that ensure fair and safe outcomes for all consumers. This is the proper role of government and regulation.

Assumption 2: If competitive markets don't protect consumers, self-regulation is the next best thing (and relatedly, regulation is a very last resort)

A focus on competition as delivering consumer policy can often be accompanied with declarations of the virtues of self-regulation for consumer policy. Self-regulation is promoted as cheaper and more flexible

than government regulation, and it is argued that industry ownership of self-regulatory initiatives results in a greater commitment.⁵

However, examples of successful self-regulatory initiatives are few and far between, particularly in the rule-setting arena (industry codes of practice). The more effective initiatives have largely been limited to industry segments with most or all of the following characteristics:

- a relatively small number of members;
- maturity;
- openness to government and consumer involvement in development and review of the code;
- effective mechanisms for compliance and redress;
- codes that go beyond the requirements of the law; and
- codes that are backed up by access to internal and external dispute resolution.

In the financial services sector, effective (although not perfect) examples include the Code of Banking Practice, the General Insurance Code of Practice, and the Electronic Funds Transfer Code of Conduct.

A more consistently successful form of self-regulation in Australia has been the development of industry-based external dispute resolutions schemes, particularly in energy and financial services. Again, these schemes are not perfect, but they can be an important mechanism for increasing access to justice for many consumer disputes. Nor are they completely self-regulatory — in some sectors, the schemes have the backing of the regulatory framework,⁶ and it is arguable that this is a key feature of their success.

Self-regulation can work in some, limited, circumstances. However, the characteristics of many consumer markets and submarkets are such that widespread adoption of self-regulation is unlikely to meet consumer policy objectives.

Assumption 3: Give consumers information and financial literacy, and they will be able to look after themselves

Underlying many of the consumer policy decisions in Australia has also been a dominant belief in the value of information. In particular, there has been a focus on disclosure as a regulatory tool, and a related emphasis on consumer and financial literacy. This follows from the assumptions about the welfare benefits of competition. By giving consumers information and

3. Productivity Commission, above n 1, 6.

4. Nicola Howell and Therese Wilson, 'In Competitive Markets, is there still a need for Consumer Protection and Fair Trading Regulation' (Paper presented to the International Association of Consumer Law Conference, Capetown, April 2007) 22.

5. For example, Productivity Commission, above n 1, 77.

6. For example, it is a licence condition for Australian Financial Services Licence holders to belong to an ASIC-approved external dispute resolution scheme: *Corporations Act 2001* (Cth) s 912A(g).

education, they will be able to navigate through offers and options, apply a rational cost-benefit analysis, and their desire for self-maximisation in economic terms will thus drive competition. This is the rational consumer for whom much consumer policy is made.

The findings of behavioural economists, however, display a more sophisticated understanding of consumer behaviour that supports our intuitive sense that more and more disclosure is unlikely to be the answer. For example, behavioural economists show that⁷

- Behaviour and decisions can be influenced by the way in which choices are framed: 'If options are framed in terms of possible losses, risk aversion tends to dominate; if options are framed in terms of possible gains people are more likely to take up those options.'
- Some behaviours depend upon the way in which choices are framed (suggesting that consumer preferences are not stable).
- People find it very difficult to estimate probabilities, and have a general difficulty in assessing the risk of very low probabilities.
- People are reluctant to sell or give up a good that they already own (endowment, or status quo bias).
- In the face of many choices, people can choose not to choose, and opt out of search and comparison activities.
- The order in which options are presented can influence choice (default bias).

We also know that many consumers simply do not have the skills or aptitude to navigate through complex disclosure documents.⁸ These and other findings should warn policy-makers away from an over-reliance on disclosure responses to consumer problems.

In relation to financial literacy initiatives in Australia, there continues to be a focus on providing information (rather than education) through brochures and websites.⁹ However, effective financial literacy initiatives for both adults and young people are often more costly than information campaigns, and are a long-term strategy. Intensive, face to face programs, like those associated with savings programs or low interest loan schemes appear to have successes in improving financial literacy, particularly for those most in need or at risk.¹⁰

In fact, it may be that, for this group in particular, the practical one-on-one services provided by financial counsellors, although not identified as financial literacy, will often have an equivalent or greater impact on financial literacy than government or industry sponsored initiatives because the information and skills are provided at a relevant time. However, financial counsellors are stretched by crisis assistance, and have little scope for engaging in more proactive, early intervention work.¹¹

Disclosure and financial and consumer literacy are important, and should continue to be a key component of the consumer policy framework. There is no need to abandon disclosure as a regulatory tool.¹² It is crucial that policy-makers keep experimenting and adjusting disclosure requirements, and pre-test proposed

changes,¹³ to ensure that they are as effective and useful as possible. However, before using disclosure in any individual instance, policy-makers should first be asking: is this a problem for which disclosure can provide a practical solution?

Similarly, there may be a need to refocus some consumer and financial literacy initiatives so that there is less of a reliance on brochures and specific knowledge (which can fade over time), and a greater focus on skills, confidence and capacity. In addition, disclosure and education/literacy initiatives should not be used as a replacement for the more specific conduct or transaction regulation where this is needed to protect consumers.

Finding a new approach: a rationale for consumer policy in Australia

Facilitating competitive markets, and implementing effective disclosure/financial literacy initiatives should continue to be an important part of consumer policy. However, in light of the discussion above, policy makers should be wary of placing undue weight on the outcomes that can be achieved through these policy instruments or objectives.

There is also a need to clarify the rationale and purpose of consumer policy and consumer protection regulation. To date, there has not been an overarching, clearly articulated rationale for consumer protection in Australia. Louise Sylvan, deputy chair of the Australian Competition and Consumer Commission, has noted that, with the exception of regulation to stop consumers being misled:

Other consumer protection regulation, while plentiful and much of which is crucial, is not woven together into a well-structured pattern.¹⁴

While the goals for competition law are clear, consumer protection instruments across Australia vary in their objectives and scope and in some cases, objectives and rules can be inconsistent, even within the same instrument. For example, a tension often exists between objectives that require pre-contract disclosure to facilitate comparison shopping between products and providers, and objectives that seek to promote flexibility in product/service design. This is because permitting flexibility and variation in product design can often reduce comparability between products.¹⁵

These tensions might be resolved, or at least better managed, if Australia were to adopt an overarching principles document, setting out the rationale, expectations and even limitations of consumer policy. Such a document could be used by governments (Commonwealth, state, and territory), industry and consumers to develop, implement and assess consumer policy instruments and initiatives, and could ensure greater consistency and coherence between various instruments and judicial decision making. Other jurisdictions have such instruments to guide their policy making and administration, including New Zealand¹⁶ and the United Kingdom.¹⁷

What should such a document look like in Australia?

7. Organisation for Economic Co-operation and Development, *Roundtable on Demand-side Economics for Consumer Policy, Summary Report*, Directorate for Science, Technology and Industry, Committee on Consumer Policy, DSTI/CP(2006)3/FINAL (2006) 39–41, see <www.oecd.org/dataoecd/31/46/36581073.pdf> at 12 June 2008.

8. A 2005 survey of financial literacy found a strong correlation between low levels of financial literacy and lower socio-economic status: AC Nielson and ANZ, *ANZ Survey of Financial Literacy in Australia* (2005) 8.

9. For example, the state and territory fair trading agencies develop and distribute a range of hard copy brochures and website material.

10. For example, Roslyn Russell et al, *Saver Plus, improving financial literacy through encouraging savings: Evaluation of Saver Plus phase 1 – final report* (n.d.) 7, see <www.anz.com.au/Documents/AU/Aboutanz/Community/Programs/SaverPWSReportFA.pdf> at 12 June 2008.

11. Centre for Credit and Consumer Law Research, forthcoming.

12. Iain Ramsay, 'Consumer Credit Regulation as 'The Third Way'? (Keynote Address at the Australian Credit at the Crossroads Conference, Melbourne, 9 November 2004) 15, see <www.consumer.vic.gov.au> at 12 June 2008 (Links to Publications – Conference & Seminar Proceedings).

13. As is happening with respect to the proposed changes to Consumer Credit Code disclosure, see <www.creditcode.gov.au/display.asp?file=/content/watsnew.htm> at 12 June 2008.

14. Louise Sylvan, 'Activating competition: The consumer—competition interface' (2004) 12 *Competition and Consumer Law Journal* 191, 193.

15. Anthony Duggan, 'Saying Nothing with Words' (1997) 20 *Journal of Consumer Policy* 69.

16. Ministry of Consumer Affairs (New Zealand) *Creating confident consumers: The role of the Ministry of Consumers Affairs in a dynamic modern economy* (2003), see <www.consumeraffairs.govt.nz/aboutus/review/report/index.html> at 12 June 2008.

Companies should be given every opportunity to develop effective corporate social responsibility programs and initiatives... However, it is not appropriate to rely solely on markets and competition to deliver structures and frameworks that ensure fair and safe outcomes for all consumers.

Firstly, a principles document should reflect a rights-based approach. This is appropriate because, overall, consumers suffer from an inequality in bargaining power when compared to traders, and as discussed above, market mechanisms cannot necessarily be relied upon to ensure that this inequality in bargaining power is not exploited.

Eight consumer rights have been articulated by the international consumer movement:

- The right to satisfaction of basic needs.
- The right to safety.
- The right to information.
- The right to choice.
- The right to representation.
- The right to redress.
- The right to consumer education.
- The right to a healthy environment.¹⁸

Implementing and ensuring practical access to these rights should be the cornerstone of the consumer policy principles document for Australia.

Secondly, developing a principles document will also require engagement with the tension between a liberalist approach, that simply provides information and gives consumers the opportunity to make their own choices, and an approach that seeks to provide protection, particularly to those who are vulnerable or at risk of exploitation, by preventing some choices from being made, or preventing some products or services from being offered in the market.

The former approach is consistent with the emphasis of government initiatives in recent years, as discussed above. The latter approach is often categorised, rather negatively, as more paternalistic. However, this approach can and should be viewed in a more positive sense, as one that prevents unfair practices and exploitative behaviour, prevents harm, and protects individuals (and the community) from decisions that have unforeseen consequences. The fact that consumer decision making is much less 'rational' in the economic sense than has been assumed, and that decisions are very much dependent on framing and context (which can be manipulated), and are made under conditions of bounded rationality, makes a stronger case for a paternalistic approach in appropriate circumstances.¹⁹ It is not always possible to outline these circumstances in the abstract, however, intervention can be appropriate in order to prevent harm (as in the case of product safety), to prevent exploitation, and to ensure fairness

and social justice objectives are met, particularly in the context of essential services.

Third, the principles document should encompass fairness and social justice goals. Fairness (or a lack of unfairness) is increasingly the test used in modern consumer policy instruments. Examples include the Victorian unfair contract terms legislation²⁰ (modelled on a European Directive); industry dispute resolution schemes that include 'fairness in all the circumstances' in their decision making criteria;²¹ and the promises in the Code of Banking Practice to treat customers 'fairly and honestly'.²²

Consumers also value notions of fairness, and this is expressed through concern over the very high prices that some consumers pay for consumer credit; and at what often is seen as unjustifiable profit-taking in the price of petrol. This sense of fairness persists even if there might be a valid economic reason for the high cost (ie in terms of supply and demand, or the costs of provision).²³

Social justice and distributional concerns should also be explicitly acknowledged in a consumer policy framework document for Australia. Social justice, distributive justice and fairness are intrinsically linked. Such an approach is often criticised, on the basis that distributional goals are best achieved through social policy, rather than consumer policy. However, in practice, social welfare programs are decreasing, rather than increasing, and in any case, this criticism fails to acknowledge that the existing structures and arrangements have a distributional impact. As Professor Iain Ramsay notes:

'Unregulated markets' do not exist because all markets have ground rules, whether they be the common law of property and contract or a statutory framework, which specify the extent to which individuals are able to take advantage of others in the market.²⁴

A consumer policy principles document for Australia should therefore explicitly acknowledge and reflect the importance of consumer rights, fairness, and social and distributive justice, and should pay particular attention to the needs of consumers who are particularly vulnerable or disadvantaged in consumer markets. The document should incorporate the following elements:

- Facilitating and supporting universal access to essential services on a fair and reasonable basis, including through pricing mechanisms, but also through specific consumer protection measures such as fair practices in the event of default or non-payment.

17. Department of Trade and Industry (UK), *A Fair Deal for All: Extending Competitive Markets: Empowered Consumers, Successful Business*, 3, see <www.berr.gov.uk/files/file23787.pdf>.

18. See Consumers International <www.consumersinternational.org/Tmeplates/Internal.asp?NodeID=89647> at 12 June 2008

19. For example, Cass R Sunstein 'Boundedly Rational Borrowing' (2006) 73 *The University of Chicago Law Review* 249; Colin Camerer et al 'Regulation for Conservatives: Behavioral Economics and the Case for 'Asymmetric Paternalism'' (2002–2003) 151 *University of Pennsylvania Law Review* 1211.

20. See *Fair Trading Act 1999* (Vic), Part 2B.

21. Banking and Financial Services Ombudsman Terms of Reference 1.3, see <[www.bfso.org.au/abioweb/ABIOWebSite.nsf/Level2Docs/385C2D0F3E87335CA256C0E0045047A/\\$File/BF50+Terms+OF+Reference+1-1-07.pdf?OpenElement](http://www.bfso.org.au/abioweb/ABIOWebSite.nsf/Level2Docs/385C2D0F3E87335CA256C0E0045047A/$File/BF50+Terms+OF+Reference+1-1-07.pdf?OpenElement)> at 12 June 2008.

22. Code of Banking Practice 2003, clause 2.2.

23. For example, Iain Ramsay 'The Alternative Consumer Credit Market and the Financial Sector: Regulatory Issues and Approaches' (2001) 35(3) *Canadian Business Law Journal* 325, 374.

24. *Ibid* 367.

- Protecting consumers from exploitation, unfair practices and unsafe goods and services.
- Facilitating the development of skills, confidence and capacity to make effective choices, and to identify and avoid unfair practices.
- Providing clear, concise, comparable and timely information on products and services.
- Ensuring access to redress and effective independent complaints and dispute resolution processes.

In implementing particular policy responses consistent with these principles, costs and benefits will need to be assessed and given appropriate weight. However, this should be accompanied by a broader understanding of the non-economic costs and benefits (of acting and of not acting) than has previously been the case. Regulatory approaches that implement these broader goals for consumer policy should not be dismissed solely on the grounds they interfere with 'natural' or 'neutral' market operations.

The Productivity Commission's draft report

The Productivity Commission's draft report was released in November 2007. The report is long — over 400 pages — and covers a wide ground, as you would expect given the scope of the inquiry. Draft recommendations cover the generic consumer protection law, the administrative framework, decision-making on consumer policy, and enforcement and remedies; as well as covering some industry specific issues.

Importantly, on the big picture issues, the Productivity Commission acknowledges the lack of clear objectives for the consumer policy framework to date, and that this has impaired the effectiveness of the consumer policy framework.²⁵ The draft report explicitly recognises social justice rationales and the relevance of fairness for a consumer policy.²⁶ It also acknowledges the relevance of a rights-based approach (although it suggests that the latter is simply an alternative 'point of entry' to the discussion).²⁷

The draft report does acknowledge some of the limitations flowing from competition, self-regulation, and information approaches. For example, in relation to competition, the draft report contains a detailed discussion of behavioural economics and the implications of these findings for a consumer policy based on a competition approach. However, the draft report also argues that competition benefits most consumers,²⁸ and that effective market competition is 'the most important safeguard for consumers'²⁹ (emphasis added). This approach potentially leads to an outcome that competition is seen as the end game in itself.³⁰

In relation to self-regulation, the draft report notes the various advantages and disadvantages of self-regulation, and suggests that self-regulation 'may provide a less prescriptive approach to augmenting general consumer protection regulation than 'black-letter' specific regulation.³¹ However, it fails to identify the circumstances in which self-regulation may be appropriate or beneficial for consumers. It also suggests

that self-regulation could be used even if recalcitrant players cannot be dealt with.³²

On disclosure regulation, the draft report notes that 'more information is not always better',³³ and that while disclosure regulation should continue to play a role in consumer policy, it must be carefully designed to ensure that it is helpful to consumers.³⁴ The draft report specifically recommends greater use of consumer testing of proposed disclosure requirements, and introducing a layered approach to the delivery of complex information.³⁵ This approach is welcomed. However, what is also needed in the regulatory sense is an examination at the outset as to whether disclosure, however well-designed and layered, is the right answer to a particular problem.

In discussing consumer education and financial literacy, the draft report suggests that there has been insufficient evaluation of existing programs to assess the best approach,³⁶ and recommends a cross-jurisdictional evaluation of the effectiveness of consumer education measures. Such an evaluation is important, given the increasing importance (and level of funding) given to this issue by governments, regulators and industry.

The draft report also explicitly recommends that a common overarching objective for consumer policy be developed to guide and shape Australia's consumer policy framework. The proposed objective and six supporting principles are set out below:

Overarching objective

'[T]o promote the confident and informed participation of consumers in competitive markets in which both consumers and suppliers trade fairly and in good faith'.

Operational principles

The consumer policy framework should efficiently and effectively aim to:

- ensure that consumers are sufficiently well-informed to benefit from, and stimulate effective competition;
- ensure that goods and services are safe and fit for the purposes for which they were sold;
- prevent practices that are unfair or contrary to good faith;
- meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage;
- provide accessible and timely redress where consumer detriment has occurred; and
- promote proportionate, risk-based enforcement.³⁷

While the content of the proposed objective and principles are, in the main, 'uncontroversial',³⁸ it is here that the Commission could have made greater strides to overcoming the limitations of the competition, self-regulation, and disclosure paradigm of recent years. For example, the proposed overarching and operational objectives could be improved by:

- putting consumer welfare as the objective (rather than the mechanisms for achieving consumer welfare);³⁹
- explicitly recognising consumer rights;
- ensuring that references to competition are to effective competition;

25. Productivity Commission, above n 1, 24.

26. Ibid 34.

27. Ibid 37.

28. Ibid 39.

29. Ibid 2.

30. Howell and Wilson, above n 4, 21. In this paper, Therese Wilson and I argued that the practice of the previous Commonwealth government was in fact focused more on competition as the end goal.

31. Productivity Commission, above n 1, 78.

32. Ibid 76.

33. Ibid 204.

34. Ibid 208.

35. Ibid Recommendation 11.1.

36. Ibid 213 – 216.

37. Ibid 42 (Draft recommendation 3.1).

38. Ibid 42.

39. Joint consumer submission to the Productivity Commission ibid 4.

It is crucial that policy-makers keep experimenting and adjusting disclosure requirements, and pre-test proposed changes, to ensure that they are as effective and useful as possible.

- introducing objectives in relation to the development of the skills and confidence of consumers to benefit from effective competition, and also, by their choices in the market, to encourage competition;
- including a reference to the importance of understanding how consumers actually behave, and developing policies that acknowledge this behaviour.

The specific inclusion of a reference to the needs of vulnerable and disadvantaged consumers in the proposed operational objectives is important, however, the final report of the inquiry could usefully explore the mechanisms by which this can be achieved, and how the tension between empowerment and protection approaches can be resolved. In particular, consideration is needed of what is the best policy response where meeting the needs of one group of consumers treads on the needs of another. Neither the objectives nor the proposed policy-making decision tree⁴⁰ explicitly address this issue in the draft report.

Finally, the Inquiry could usefully recommend the development and adoption of a more detailed strategy, which details the initiatives through which the objectives will be achieved.

Since this paper was accepted for publication, the Productivity Commission's final report has been released. To see a copy of this report, please visit <www.pc.gov.au/inquiry/consumer/docs/finalreport>

Conclusion

The current inquiry into consumer policy is long overdue, and the draft report released by the Productivity Commission does an admirable job of exploring the issues and developing proposals for a modern, effective framework that puts consumer interests at its heart. However, the report continues to reflect an underlying assumption that competition and information are the primary goals of consumer policy. It is hoped that in the final report, the Commission will do more to examine the disparate impact of markets and competition on consumers, particularly where risk is increasingly moved to consumers⁴¹ and the practical implications of the findings of behavioural economists. The results of this examination should be reflected in the overarching objectives and strategies. Then we could have the makings of a world class consumer policy.

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40. Productivity Commission, *ibid.*, 45.

41. See for example, Gail Pearson, 'Risk and the consumer in Australian financial services reform' (2006) 28(1) *Sydney Law Review* 99, 100.



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