

# **AUSTRALIA'S CONSUMER POLICY FRAMEWORK**

**Submission to the**

**PRODUCTIVITY COMMISSION INQUIRY**

**by**

**Robin M G Brown**

## **PREAMBLE**

This submission mainly deals with basic and broad concepts, principles and ideas on consumer policy and consumer policy making many of which will already have come to the attention of or occurred to Commissioners. In large measure my purpose is to set these things out in a way that might aid commissioners making sense of a large and complex field. In all likelihood I have failed, but attempting seems worthwhile.

I am writing this having had the following experience:

- heading the Consumers' Federation of Australia through most of the eighties
- working in the then TPC on executive interchange
- serving as a member of the governing or administering body of regulatory agencies of a number of industries including telecommunications, banking, insurance, travel services, direct marketing, food and pharmaceuticals
- serving a Council member of the ACA, as President of ACTCOSS, as a Director of the Foundation for Effective Markets and Governance (FEMAG)
- working as a consultant in consumer affairs

Some of this submission draws on work done on energy market regulation with other FEMAG colleagues for the Public Interest Advocacy Centre (PIAC) and I acknowledge PIAC's permission to use this material.

Discussions with and suggestions from two FEMAG fellow directors Allan Asher, former Deputy Chair of the ACCC and John Wood, former Director of the Federal Bureau of Consumer Affairs have contributed significantly, however the submission is purely a personal one.

## **THE BASIS OF CONSUMER POLICY – THE CONSUMER RIGHTS**

I think little can be achieved in any discussion of consumer policy without some measure of common recognition of rights citizens have as consumers. A set of such rights were enunciated by President J F Kennedy in 1961. Hitherto there had not been such a clear statement of such rights. They were:

- The Right to Safety
- The Right to Choose
- The Right to Information
- The Right to be Heard

Following is a statement of the eight rights that have since been adopted by the international consumer movement.

1. **Access to essential goods and services**

The right to access to goods and services essential to life, health and wellbeing such as adequate food, clothing, shelter, health care, education and sanitation.

2. **Safety**

The right to be protected against the marketing or the provision of goods and services that are hazardous to life, health and wellbeing.

3. **Information**

The right to be protected against dishonest, misleading, inaccurate or incomplete information in advertising, labelling or any other communication means thus the right to be given all the information needed to make an informed choice.

4. **Choice**

The right access to a variety of goods and services at fair prices and standards either by the operation of competition or by regulation or public provision as necessary.

5. **Representation**

The right to have consumer interests effectively represented in the making and execution of public policy and in relevant processes of adjudication of laws and non-statutory regulations.

6. **Redress**

The right to compensation, through accessible dispute resolution processes as necessary, for goods or services that are substandard or overpriced or otherwise unfairly sold.

7. **Consumer Education**

The right to provision of the knowledge and skills necessary to be an informed consumer.

8. **Healthy Environment**

The right to live and work in an environment which is neither threatening nor dangerous and which permits a life of dignity and well-being

### **The philosophical basis of policy to assure these rights or for regulation in the consumer's interest**

Regulation to protect the interests of consumers occurred in ancient civilisations long before Adam Smith wrote *The Wealth of Nations*, but perhaps he was the first to place the consumer interest paramount:

“Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer.”

This statement provides an underpinning for most of the eight international consumer rights.

Smith surely meant that public policy on or regulation of markets should promote the consumer's interest and never the producer's over the consumer's. It implies that producers should always be expected to act in the consumer's interest. Presumably Adam Smith thought it reasonable that a producer act in his own interest and in the interests of his employees, but only insofar as the interests of the consumer are served.

Things are not quite that straightforward as there is the public interest to be taken into account. It might therefore be more appropriate to suggest that producers must act, while acting in their own interests (shareholders in the case of corporations) and in the interests of their employees:

- (A) in the interests of consumers of their products,
- (B) in the present interests of the public, and
- (C) in the future interests of the public.

Where these interests conflict (C) must take precedence over (B) which in turn must take precedence over (A).

In broad terms the consumer's interest lies, at minimum, in being dealt with fairly. The outcome of fair dealing must be the provision to the consumer of goods and services of fair standards and at fair prices. The recent European directive on fair dealing would seem to be based on this kind of thinking. Fair prices and standards are those common in a well operating market. Such a market might well result in prices being charged that allow for investment in R & D so that the interests of future consumers and perhaps the public at large can be served. However, I think that it would usually be the case that where there are externalities relating to the above noted B and C type interests regulatory intervention will be needed.

Many producers are now incorporated. Incorporation is a privilege society gives through the state and a privilege society protects by means of state institutions. It is arguable that a wider obligation than demanded of ordinary producers should

accompany this privilege.

### **A rights or a markets approach?**

The foregoing implies that consumer policy should first serve the rights of citizens as consumers, but of course it should seek to serve those rights as efficiently as possible. This means that no inefficiency in a market should be tolerated unless that inefficiency is related to assurance of a right.

Efficiency is of course about getting the most out of a resource. Getting the most out of a resource cannot be an end in itself. The concept of rights or equity is different in type from the concept of efficiency. I suggest that the former can be a social objective whereas the latter can only be a means to an objective.

### **Some Matters of Principle**

#### **Risk**

In general, those in a position to manage risks should be expected to do so and to pay for insurance cover for adverse events. This should be applied to consumer markets. For example, there has been argument over whether payments into the Travel Compensation Fund (the “insurance” for travel agent failure) should come from consumers or travel agents. As consumers can have no real capacity to manage the risk in question, agents should be the payers. This way there is the potential of a positive feedback operating such that better risk management should reduce the payments needed. Of course ultimately such payments are usually likely to be reflected in the prices consumers pay, but it is justifiable that all consumers in a market pay to prevent catastrophic consequences for a few.

#### **Essential goods and services – what are they?**

My departure point on this is the assumption that our community sees it as incumbent upon the state to ensure provision of, or equitable access to, a range of goods and services that are essential for its citizens’ survival, health and well-being, self-fulfilment and full and dignified community participation. In Australia security, education, and health care services, sanitation and to some extent emergency shelter, food and clothing are provided by the state relatively non-controversially. I think it can be argued that the range should also include the utilities services of energy, water, communications and public transport.

Clearly we utilise, or partly utilise, markets to deliver some of these goods and services, but not others. When markets or quasi-markets are utilised, because there are special characteristics on either or both the supply and demand sides and often externalities involved, interventions beyond basic market regulation are nearly always required. Ensuring equitable access over time and as social, ecological, technological and economic conditions change requires these regulatory arrangements to be adaptable. This means that care must be taken to provide for

the weakest voices to be heard in the adaptation process.

### **Markets for all or for most**

With general fair-trading regulation some markets can be expected to work well for all citizens except a small minority with psychological/intellectual impairments. Some markets require specific regulatory intervention to work at all. The question is should such intervention be designed to work for most consumers or for all besides the abovementioned minority. In my view we should never use special non-market interventions such as assistance programmes for particular groups, especially where that means continuing reliance on government expenditure, if a general intervention can be used. This is because of the political disempowerment of those required to ask for assistance.

When a non-market intervention is the only practical mechanism, it must be more efficient than the general regulatory option and we must have good confidence that the target group can be reached. We must also have good confidence that this intervention is politically sustainable over time. Ideally, such an intervention would be locked in with legislation.

### **Markets and minors**

Our legal system treats minors as not capable of fully mature rational decision-making. Economic theory and market regulation is based on the notion of consumers being rational maximising agents. There seems to be no justification for allowing promotion/advertising/selling of products to minors except in very limited circumstances where we can be very confident that they will not be able to make choices that are to their detriment. Of course it is argued that parents control purchasing by minors, but parents know this control is very limited. Sweden has prohibited all TV advertising aimed at children under the age of 12 since 1991 and it is now seeking similar regulation throughout the EU.

## **DEFINING CONSUMER POLICY**

Consumer policy is not defined for the inquiry. It could be defined very broadly as any element of public policy that establishes state institutions and/or requires state actions that affect the interests of citizens as consumers of goods and services however supplied.

It could be more narrowly defined as public policy which affects final consumers' access to (availability and price) and standards (including risk level) of any good or service and consumers' capacity to make informed rational choices. If we consider

consumption to include the consumption of goods and services however they are provided then this definition includes those provided at no direct charge by any of the three sectors of production: public, private and community.

A yet narrower definition would restrict consumption to acts in trade or commercial exchange; that is those involving valuable consideration being given directly by the consumer for the good or service. That is the consumer must make a decision to part with a portion of their wealth for the good or service.

For present purposes this narrower definition will be adopted. However, it would seem reasonable to suggest that standards regulated for trade or commercial exchange should be adopted in respect of goods and services supplied otherwise. Consumers of goods and services which are produced as a result of some communal payment system (taxation) should enjoy the same rights.

Using this definition consumer policy can be divided into three main subsets:

- 1. policy to empower consumers to act in their own interests,
- 2. policy to provide for protection of consumers and action on their behalf in circumstances where, for one reason or another they are not able to fully prosecute their interests, and
- 3. policy to ensure, as far as possible, consumers benefit from competition so that efficiency gains make standards as high as possible and prices as low as possible.

The labels for these three subsets might be:

- Consumer empowerment policy
- Consumer protection policy, and
- Competition policy

Consumer empowerment policy relates mainly to the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> consumer rights.

Consumer protection policy relates mainly to the 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup> and to some extent the 8<sup>th</sup> consumer rights. In broad terms it is policy relating to the standards of goods and services and to conditions directly affecting the trade between buyer and seller.

Competition policy relates mainly to the 4<sup>th</sup> consumer right though it affects most other rights.

Although competition policy has been the subject of much review and reform in recent years, in my view there is much left to be addressed particularly in markets such as banking, professional services, real estate services, utilities to name but a few in which there appears to be a continuing producer surplus. It is my view that the Commission should not spend effort on the substance of this subset of consumer policy mainly for reasons of practicality. However, it is necessary for the Commission to consider the interaction between competition research, advocacy and policy making structures and processes and those relating to the other two subsets of consumer policy.

All three consumer policy sub-sets relate to the 1<sup>st</sup> consumer right. Other policy areas, notably social, health, education and environment, are particularly important for assurance of the 1<sup>st</sup> and 8<sup>th</sup> consumer rights.

### **Investors**

There are significant problems at present for small investors. Users of banking services and similar may be considered as consumers, but shareholders are technically part owners of producers rather than consumers. However, small shareholders and the like are frequently in no better a position to make sound choices than are consumers in many markets. Public policy for small investors should be similar to that for consumers in terms of the protections and information provided and programmes of education.

Small investors are very frequently if not invariably purchasers of investment advice. As such they are consumers whether payment is direct or by commission and consumer policy should obtain.

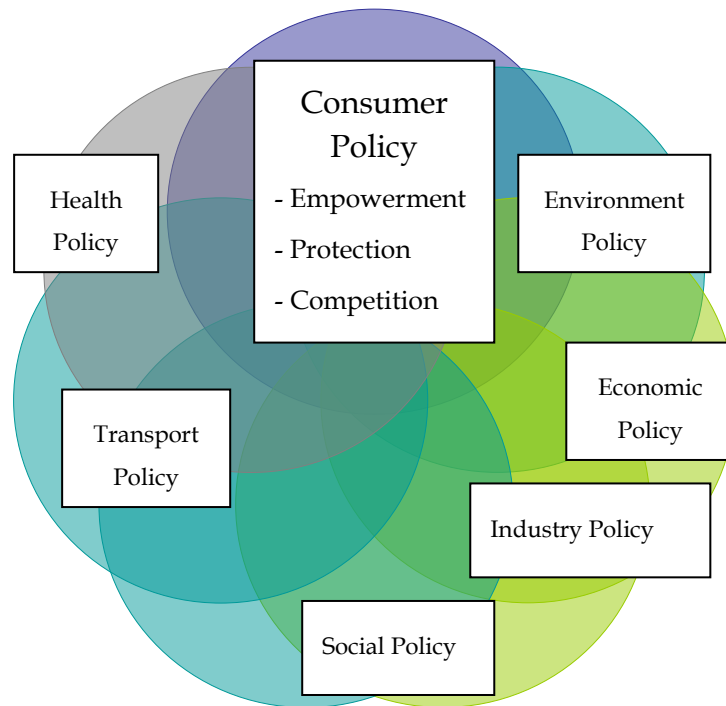
### **Small business**

Owners and operators of small businesses in making purchases for their businesses are usually in no better a bargaining position than consumers and should be defined as consumers for the purposes of consumer policy.

### **The parameters of consumer policy and interaction with other policy areas**

There is always large overlap between areas of public policy, which of course is why interdepartmental committees, cabinet coordination processes and whole of government approaches are frequently needed to make sound public policy. Consumer policy has more overlaps than most policy areas. Perhaps only defence policy is outside its circle. The diagram below illustrates this. Clearly a large part of the consumer policy role in government is informing other policy makers about the

consumer interest, e.g. through consumer advisory bodies or consumer impact statements.





## WHAT POLICY IS REQUIRED

The consumer in the 21<sup>st</sup> century in Australia is confronted with

- more markets in part due to services formerly provided by governments being privatised
- increasing complexity of many products and customisation thus greater information search and other transactions costs thus a trend to dependence on agents and intermediaries
- many services being supplied from outside our national border

Policy development has failed in the past decade or so to cope with these changes. In particular we need progress in the following:

- information to consumers in more manageable forms such as standard form contracts with recognition of limitations of information
- therapeutic goods regulation to keep up with changing technology and needs and attitudes
- food standards especially on labelling and balancing the consumer interest against the producer interest which currently dominates
- regulation to cope with new developments in financial services especially to improve the performance of the finance profession (This still young profession needs much more intervention to bring its standards up to scratch)
- product safety
- Federal uniformity or harmonisation of regulation

It is useful to think in terms of a spectrum of regulatory intervention as depicted in the box below.

## Spectrum of Regulatory Intervention

### SORI

Essential general regulatory requirements:

- basic companies regulation;
- consumer protection regulation; and
- competition regulation.

However, where:

- access to goods or services is essential to survival or to the sound functioning of a just or fair society; or
- consumers could be exposed to risks to health or safety or to financial risks

there is also a need for market specific regulation, namely:

- market substituting mechanisms;
- information standards;
- product standards;
- licensing;
- product bans and recalls.

The more important products are or the greater the risks, the tighter is the regulation that is warranted.

### General or market specific regulation

Reliance on general often means reliance on slow court processes to determine the application of the law to particular market circumstances. Market specific regulation can be more efficient. There is debate on whether regulation should be by means of statute or delegated instruments. In my experience the latter can be more responsive to market realities if it is developed by means of a tripartite government, industry and consumer movement process – see the discussion under the third point in the extract quoted in the next section.

### Licensing

The following extract from the report on energy market regulation I co-authored with other FEMAG colleagues for PIAC refers particularly to energy markets, but the points have application to other markets.

*6.3.12 Theoretically it may be possible to cover all of the special regulatory requirements of energy markets by adding energy market specific provisions to the Trade Practices Act and Fair Trading Acts and by mandating energy market codes under those acts or by making rules under the National Electricity Law or National Gas Law and that licensing need*

*only be used to regulate for technical and environmental standards as proposed in the Gilbert and Tobin/NERA paper. We think that the license process, however, significantly assists achievement of regulatory compliance for the following reasons.*

- *First, the initial licence granting allows a process of assessment of companies prior to market entry. The Gilbert and Tobin/NERA paper suggests this is a barrier to entry. We found no convincing evidence that license systems have been or are barriers to entry nor that other approaches would deliver good compliance outcomes, including for codes for consumer protection, any more efficiently. Our consultations with regulators suggested very strongly that that companies actually find the licensing process valuable. It is seen as more efficient to go through such a process and to get the business plan right, especially including internal compliance systems, than it is to find a mismatch between regulation and the business plan after entry and to go through a retrofitting exercise. The value of codes and guidelines to companies is that that they obviate much work on internal compliance systems*
- *Second, a license is an asset. When this asset is under any kind of threat the bank financing the licensee is interested. The extra compliance pressure this provides may well be quite valuable. This would be of general importance if all companies were privately owned.*
- *Third, a license system can be much more responsive to changing market conditions resulting from economic, social and technological changes. Altering a license condition such as by way of revising a code with which the license requires compliance is much more readily done than getting changes to legislation. One of the reasons the Gilbert and Tobin/NERA paper argues that legislative instruments are preferable to administrative instruments is the legislative process results in greater precision because of a more rigorous drafting process. We are not sure of the basis of this assertion. Our experience is that consultations on draft administrative instruments are usually comprehensive. In fact the consultation processes used also usually allows scrutiny by interested members of the public. Indeed codes are often developed by stakeholder committees. We also note that legislative instruments run the risk of last minute (sometimes late night) unexpected amendments. Even if a legislation instrument has precision when enacted, we reiterate that conditions can change faster than it can be amended.*
- *Fourth, non-statutory ombudsman schemes are given life by license conditions. This was overlooked the Gilbert and Tobin/NERA paper.*
- *Fifth, having licenses that provide for consumer protection gives the licensing agency a role in achieving consumer protection regulatory compliance. This means that three agencies, the licensing agency, the*

*complaint/dispute ombudsman and the fair trading agency (either state/territory or ACCC), with somewhat different roles can work collaboratively to achieve the highest compliance levels. We have been advised of the effectiveness of such a tripartite approach in a number of jurisdictions. It is conceded by regulators that three agencies with an interest in consumer protection are effective in keeping them all at best practice.*

### **Non-statutory regulation**

I think the experience of non-statutory regulation in Australia has been generally positive. Such regulation can take any of the following forms:

- Government based/required - for example by license condition
- Industry based/required – a condition of membership of an industry association
- Community sector based/required – can be effective in markets where there is significant community awareness of issues such as fair trade and sustainable forestry certification schemes

Non-statutory regulation is usually at its best when all three sectors collaborate from the beginning in the design and running of the regulatory scheme. Schemes should meet benchmark standards. The appendix is a set of benchmarks for industry based dispute resolution schemes prepared by John Wood.

### **Paying for regulation**

Statutory regulation can be funded from general revenue or from levies on producers such as license fees. Non-statutory regulation is invariably funded by producers. Funding from producers is normally passed on in prices to consumers so the choice is funding by citizens at large or consumers in a particular market. My view is that it is normally appropriate, unless there are significant public interest externalities, for the cost of regulation of a particular market to be contained to that market as moral hazard effects are reduced.

### **International issues**

Consumer policy is an international activity and Australia should be an active participant in intergovernmental and other appropriate forums in

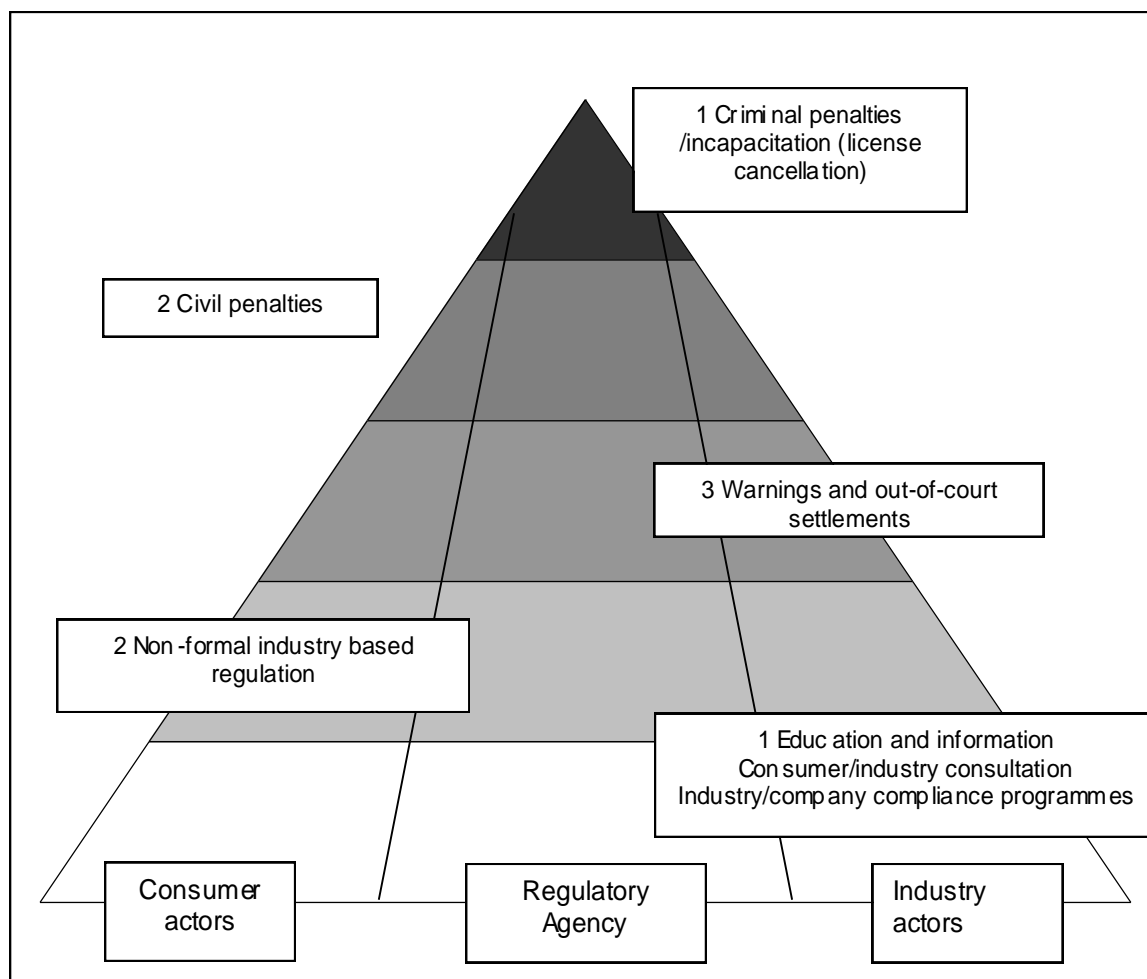
- the development of supra national standards and regulation
- collaborative enforcement, and
- regulatory harmonisation

Australia should also play a large role in assisting the capacity development of developing countries in consumer policy and administration. This should be done anyway, but there is a national interest in having those countries able to participate in

necessary cross border regulatory enforcement. Besides such assistance being given to governments it must also go to civil society so that advocacy can be effective.

## The Compliance Pyramid

Policy development should be informed by the compliance pyramid model (Ayers and Braithwaite 1992). The diagram below depicts a typical pyramid. The number of levels and the activities at each level will vary from regulatory regime to regulatory regime. The idea of course is that the bulk of effort and activity occurs at the base of the pyramid and this diminishes towards the top.



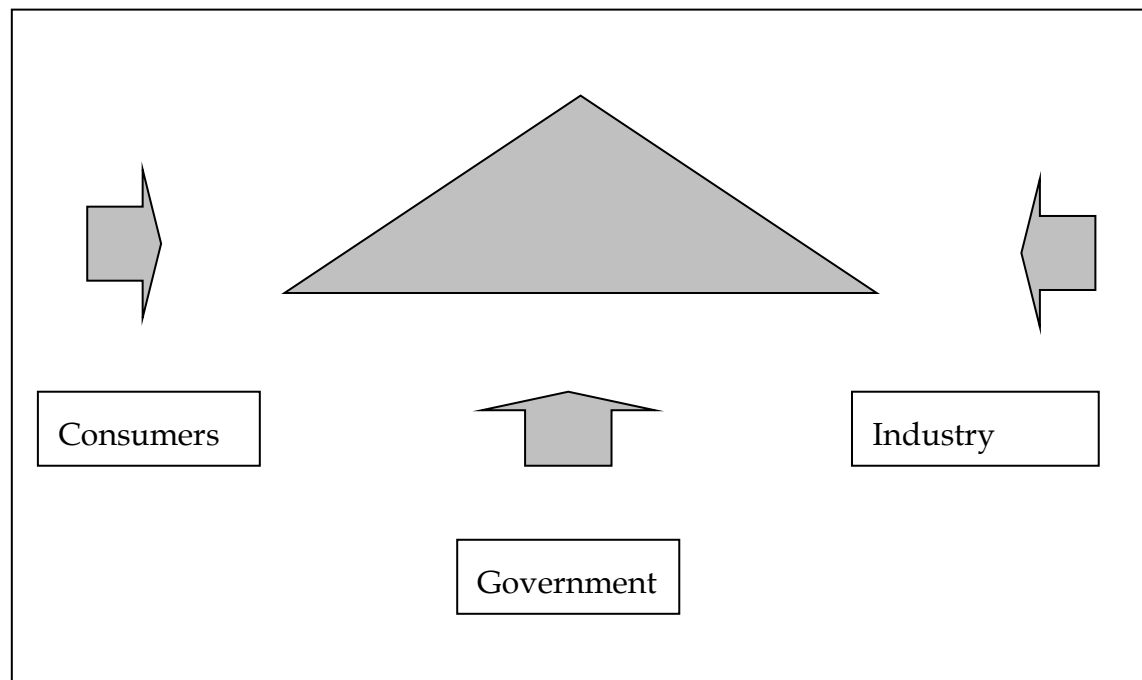
Under all regulatory regimes there is considerable scope for both consumer actors and industry actors to contribute at the base level. Individual consumers can contribute by drawing a company's attention to marketplace problems. Industry associations and companies can do much in the way of compliance programmes and complaint handling. Consumer organisations work with industries and companies and can distribute information to consumers.

In some regulatory regimes there is scope for both consumer and industry actors to contribute right up to the top level. The effect of this contribution from consumer and industry actors is of course to broaden the pyramid, to increase the activity at the lower levels, thus reducing the need for activity at the higher levels and making the regulatory regime more effective and efficient.

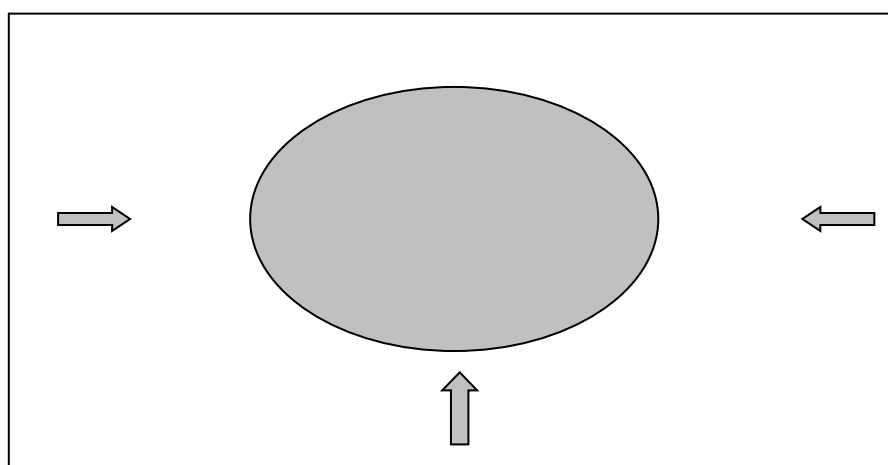
For regulatory regimes to be fully effective the top level has to be and be seen to be

real. This does not mean it has to be utilised, but a real potential for utilisation is necessary. In the end the government of the day must make it clear that it is prepared to back up the regulatory agency involved.

With clear government commitment and support and with clear commitment and support from both industry and consumers (or citizens in respect of public interest issues or workers in respect of worker protection) the regulatory/compliance pyramid can be at its broadest and most effective and efficient as depicted in the diagram below.



Where tripartite commitment is weak or lacking the pyramid structure collapses and the regulatory agency is limited to relatively ineffectual activity in the middle levels as represented in the diagram below.



## **STRUCTURES AND PROCESSES FOR MAKING AND IMPLEMENTING POLICY**

For continuing sound development of consumer policy and its implementation re-development of national institutional measures is required. Thankfully Australia's ACCC, rightly the envy of many other countries, continues to be a strong institution. I do not agree with Telstra that it is too strong. What we need are:

1 A statutory consumer policy council with members appointed by the Federal Minister for Consumer Affairs in consultation with the Ministerial Council on Consumer Affairs and the Federal Environment Minister with the following objects and powers:

### **Objects**

- To contribute and to assist consumers to contribute to public policy in Australia and internationally in order to achieve the supply of goods and services to consumers that is equitable, efficient and sustainable.
- To contribute to the capacity of consumers to make choices that best serve their interests and the public interest.

### **Powers**

- To undertake or commission research/analysis of markets and public sector and community sector supply of goods and services and provide policy advice to all Australian governments and where appropriate contribute to public discussion of policy
- To collaborate with the many organisations with relevant research/analysis resources to contribute to the objects of the Council
- To oversee non-statutory industry regulatory schemes and approve membership of their governing bodies
- To co-ordinate consumer education/information activities across the states/territories and design and/or deliver national education/information programs as appropriate
- To facilitate the participation of consumers in public policy formulation and regulatory processes including by providing grants in aid to consumer organisations
- To provide advice to the Minister on matters referred for consultation or inquiry

2 A minister dedicated to consumer policy and a skilled, semi-autonomous federal agency for consumer policy development, coordination and implementation and administration of consumer support programmes.

3 Effective support, including general (untied) grants-in-aid, for consumer and other relevant civil society organisations to contribute to policy development and participate in regulatory processes.

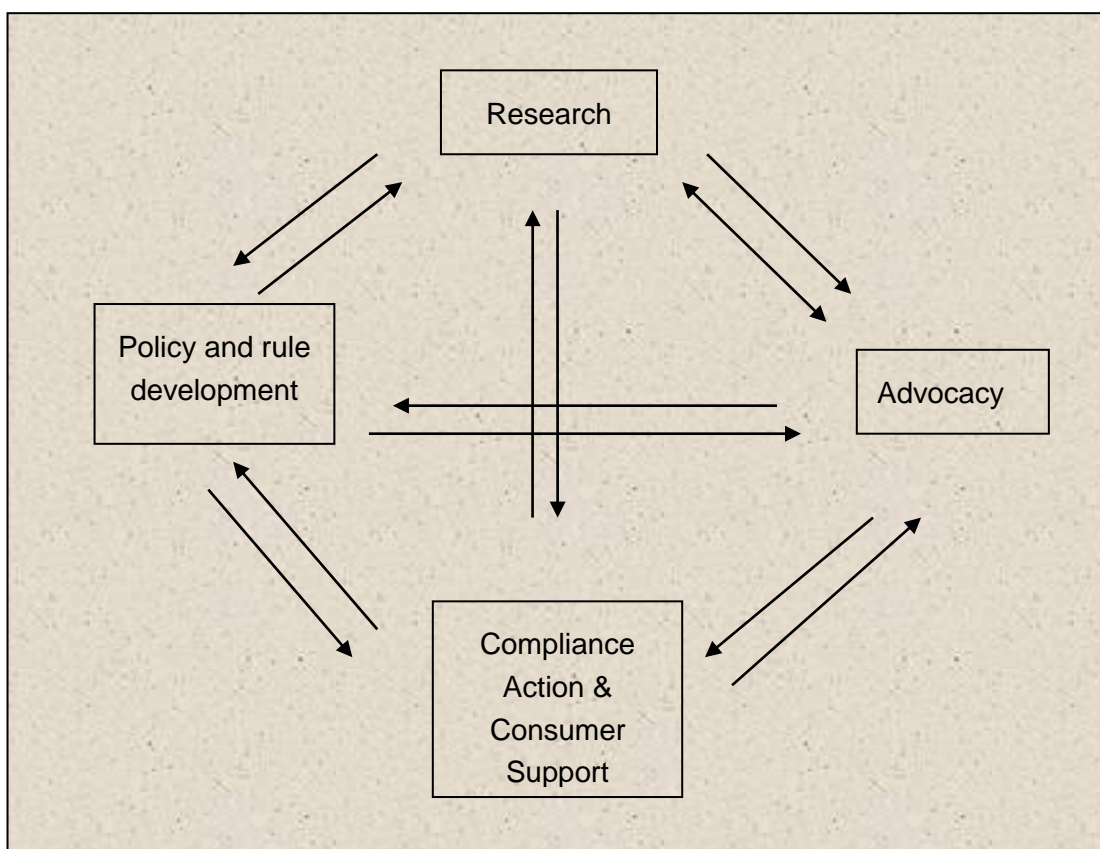
In my experience outcomes that meet the tests of equity and efficiency for consumers and the public interest, that is, the best mix of market forces and



regulatory or other intervention, will not be achieved if any of the four following interdependent activities is lacking:

- Research and education and information
- Advocacy
- Policy and rule making
- Compliance action & consumer support:

There must be two-way inter-action between all four and the process must be continual and continuous as depicted in the diagram below as the process of change in the characteristics of markets rarely pauses.



The main functions that need to be performed in respect of these four areas of activity are as follows:

#### **Research and education and information**

- research and analysis of the market sector – both supply and demand sides;
- collection of data on the performance of the market sector;

### **Advocacy**

- producer advocacy
- consumer advocacy
  - for policy and/or regulatory reform
  - regulatory decisions – tariff approvals etc;
  - for improved administration of regulation;
  - individual cases;
  - for improvements in companies' services
  - public interest advocacy for sustainability
- for ordinary consumers
- in relation to or for disadvantaged consumers

### **Policy and rule making**

- policy development
- rule/regulatory instrument development and review;
- review and reform of regulation of the market sector;

### **Compliance action & consumer support:**

Education, information, compliance programmes, rule enforcement, dispute resolution

- education and dissemination of information to consumers;
- education and dissemination of information to suppliers;
- industry association and company level programmes for compliance with regulation and for continuing consumer service improvement
- administration of general regulation for consumer protection and competition and for worker protection and environment protection;
- administration of market sector regulation;
- collection of complaints/disputes;
- independent mediation/conciliation and arbitration of complaints/disputes; and
- management of particular cases (e.g. hardship cases)

There are many options in terms of allocation of performance of these functions to different agents and many may be undertaken by more than one stakeholder.

All these functions are integral to the effective operation of a market.

### **Research and education and information**

In my view there is an inadequate capacity in this area particularly in terms of our

knowledge of how consumers are coping with 21<sup>st</sup> century markets. For example we do not know for a number of markets whether sufficient consumers are undertaking information searches so that the demand side is making competition work adequately. We are also not taking advantage of the large amount of data that many community based consumer service organisations have to inform policy development.

Research is a major function of the UK's National Consumer Council and it has a particular requirement to research the needs of disadvantaged consumers. Australia needs such a body as a statutory entity. An Australian consumer policy council should cooperate and collaborate with a number of other bodies, but it should have a particularly close working relationship with the National Competition Council. For any market it is necessary to analyse both how well competition is operating, but the most efficient and certainly the most equitable results will not be achieved if there are information asymmetry or other consumer problems. Joint reviews by the two councils would therefore often be valuable. Cross membership would be appropriate. It would be necessary for each council to be in control of its own budget however. A consumer policy council as a counterpart to the National Competition Council with equivalent status would help to ensure we get the balance right in continuing reforms to Australian markets.

Such a council should have funds to also commission research from people and organisations with particular expertise. RegNet at the ANU is one such organisation.

### **Advocacy**

While broad agreement can usually be achieved amongst a range of views on the other three elements, the resources they consume and the manner in which they should be performed, there is often controversy on advocacy.

While the research on a market might be comprehensive, policy and rule makers and regulators are likely to hear more about aspects and perspectives relevant to the interests of those whose livelihoods are involved in the market than about aspects and perspectives relevant to the interests of consumers or to the public interest. It is the costs and benefits of advocacy that determine this. In the extreme, policy and rule makers and regulators can be captured by producer interests.

Getting citizens in general to advocate their interests or pay up to have their interest represented as consumers of a good or service or beneficiaries of a clean environment is much harder. The benefits of participation in advocacy are often seen to fall well below the costs. This is largely due to the "collective action problem" described by in 1965 by Mancur Olson. So, where public policy and regulation should reflect a diffuse public interest, members of the community at large will, not unreasonably, question why they should devote a lot of time and energy with

everyone else “free riding” on their efforts.

Of further concern is the fact that many people in disadvantaged groups in the community are in any case disempowered in advocacy. For a range of reasons they are unable, or find it very difficult, to engage in participation processes available.

Regulatory arrangements need to be adaptable. This means that care must be taken to provide for the weakest voices to be heard in the adaptation process.

The increasing globalisation of public policy formation is problematical. Compromises from national positions often occur at international forums. Such compromises are more likely to be in favour of producer interests because members of national delegations to forums are rather more likely to be exposed to the advocates of producer interests than consumer movement advocates.

Advocacy can be seen as occurring both extra and intra state. Extra state advocacy is provided by:

- The consumer movement and other community sector interests
  - Industry and industry organisations
  - Academics
  - Professional bodies
  - Industry ombudsman and other external dispute resolution administrators.
- Because these agencies have so much information on what is really happening in the market they make important contributions to advocacy. However, it is somewhat constrained, as they must be careful to maintain their status as impartial umpires between producers and consumers.

Intra state advocacy is provided by the agency charged with consumer policy development and other interested agencies. It has been provided by consumer advisory committees in various forms over the years. The effectiveness of these committees has been rather dependent on the personalities of their members and chairs. A statutory consumer policy council would play a much more effective intra state advocacy role.

With a modest grant-in-aid to fund a small secretariat in Canberra the Consumers' Federation of Australia was an effective advocate. It needs to be funded again so that consumer advocacy can be better coordinated nationally and the consumer interest can be injected into the Federal policy making processes.

### **Policy and rule making**

In my view the only two real contenders for the location of this function are Treasury or AG's and I think the advantages of the latter outweigh those of the former. In

Treasury a market efficiency approach will always dominate. In AG's, provided that an overly legalistic approach can be avoided, a good balance between a rights assurance approach and an efficiency approach can be achieved. The operation in the eighties and early nineties of the Federal Bureau of Consumer Affairs (FBCA), a semi-autonomous agency in the AG's portfolio, was particularly successful. The fact that there was usually a minister with dedicated or significant responsibility for consumer policy was also important. Cabinet access through the Attorney-General was effective as the AG is under much less pressure to listen to the special pleadings of producer interests, with the exception of lawyers, and thus able to look to the broad consumer and public interest.

### **Compliance action & consumer support**

Should consumer and competition regulation be fused or split? There is a problem of giving balanced attention to

- big issues involving big powerful players – mergers, takeovers, cartels etc
- issues that are small, but affect many small players
- issues that affect few small players, but severely

This seems to be a very difficult management task perhaps in part because big powerful players can make more noise than small players. Some suggest that the only way it can be achieved is by splitting the agency. My view is that on balance the advantages of a fused agency in terms of synergies and the value of understanding competition, consumer protection and empowerment issues in a particular market outweigh the disadvantages. I suggest that consideration be given to having an ACCC commissioner with statutory responsibilities for the consumer protection/empowerment functions. Giving a commissioner a clear obligation to see that the necessary actions in this are taken and reported on would influence the ACCC's priority setting.

There are problems in other areas of compliance action. There can be prioritising difficulties in mixing regulatory responsibility for product safety and product information. For example food contamination issues can take over from non-urgent less readily assessable issues which could have more significant health affects such as food label breaches. This is where a strong agency such as the former FBCA can play a useful role.

In regard to consumer support again there is a need for an FBCA type body to play a leading role and a consumer policy council would make a significant contribution.

**Reference**

Ayres, Ian and John Braithwaite 1992—“Responsive Regulation: Transcending the deregulation debate”. New York: Oxford University Press