

'WHEN SPIDERS UNITE THEY CAN TIE DOWN A LION'

(Ethiopian proverb)

A view of the Australian Consumer Movement into the 1990s from the middle of the web

Robin Brown with Jane Panetta¹

Introduction

The turn of the century finds most people in the consumer movement and business community speaking the same language. More than that, it is now commonplace for consumer activists and business people to work cooperatively, often with little or no government involvement, to solve problems of market failure and to get the best results for consumers.

This can be seen as the latest of four distinct phases in the style and methods used by the Australian consumer movement to affect positive outcomes for consumers. These phases are not mutually exclusive, but rather overlap through time, building on each other and, in varying degrees, remaining in co-existence. They represent an expanding repertoire of approaches and methods.

The first phase was characterised by concerns about the provision of information about products. Through independent product testing, the movement gave consumers reliable information which allowed them to exercise their power of choice more effectively. This endeavour was clearly limited in effect. Only a proportion of products could be dealt with and only a small proportion of consumers had access to the reports. At first, products, rather than services were the main focus of attention, but, over time, this changed as services represented an increasing proportion of average household expenditure.

In the second phase, the movement became much more active in public affairs. It sought to change the behaviour of business by engaging with it in public debate via the mass media. It also used litigation processes to expose and change business conduct. The thinking was very much based in notions of consumer rights and justice and the broad aim was to pressure governments to impose higher levels of business regulation to protect consumers. This phase was characterised by a generally adversarial relationship between business and consumer groups.

¹ This is partly based on a research essay by Jane Panetta completed in 1996. Various people have assisted with information and views and their assistance is much appreciated. Otherwise the work relies on the personal records, recollections and interpretations of Robin Brown as Chair and then Director of AFCO for most of the 1980s. This and length limitations mean that important earlier and later parts of the story, many events outside the federal arena and many important people are likely to have been under-emphasised or omitted.

In a third phase, the movement organised itself more effectively nationally and internationally and strengthened its relations with other social movements, unions, business and professional organisations, academia, and governments and their bureaucracies. It embedded itself in processes of governance and got formal representation in policy forums, often on pretty much an equal footing with business. It was in step with business (indeed, ahead of some industry sectors) in the development of “grey” or non-formal co-regulation.

While relations were less adversarial in the third phase there was still a sense of business and consumer advocates competing to influence government policy and regulation. Now, in this fourth phase, consumer movement philosophy has moved from notions of ‘value for money’ to ‘value for people’. Mainstream economic policy now also reflects the understanding that markets need to be made to work for people. In boardrooms world-wide it is de rigueur to talk of consumer sovereignty.

However, while these phases represent the progress and success achieved by the consumer movement, it should also be noted that as new controversial issues arise, negotiation often begins back at the information and adversarial phases and then, hopefully, proceeds towards co-operative resolution.

Before embarking on an exploration through these phases, however, it is important to recognise that the modern consumer movement also has a pre-history. In the early part of the 20th century, several organisations predating the emergence of distinctive ‘consumer groups’ were active in what later became known as ‘consumer issues’. This is important as, later in the century, many of these groups joined in the organised consumer movement.

SPINNING THE WEB: The origins?

The Australian Consumers' Association (ACA), formed in 1959, was the first organisation in the country with ‘consumer’ in its name, so it could be said that the Australian consumer movement was born in that year. However, consumer activism is at least half a century older. Women's organisations were the driving force of a fledgling consumer movement which emerged around the turn of the century, within the broader social reform and women's movements, and intensified in response to the economic hardships of World War I and the Great Depression (Foley 1984, Hyslop 1982 and Smart). Many of these organisations are still active today and provide direct links between the modern movement and early consumer activism.

The National Council of Women of Australia (NCWA) was founded in 1931, although State-based councils were operating as early as the 1890s. The concerns of the National Council often lay with what are now regarded as consumer issues, e.g. health and nutrition, food safety, pricing, shopping hours and inflation. (Norris) During World War I, food shortages, war profiteering and escalating costs of living caused great hardship. Women participated in protest marches, established housewives' associations and

set up consumer co-operatives. Housewives' associations staged boycotts, campaigned against rising prices, arranged discount-for-cash schemes and organised bulk-buying and distribution networks.(Smart 1986)

In the inter-war years, membership of housewives' associations swelled. The Federated Association of Australian Housewives (FAAH), formed in 1931, became a powerful consumer lobby group. With 130,000 members it was, for a time, Australia's largest women's organisation.(Smart 1994) Earlier splits in housewives' associations influenced the 1950 formation of the Union of Australian Women (UAW), which became a force in the women's, the peace and the consumer movements (see Ellis, 1981).)

Like NCWA and FAAH, the Country Women's Association of Australia (CWA) was concerned primarily with welfare issues. In the early Depression years, branches were forming around the country, largely to alleviate the material and emotional hardships experienced by women in rural areas. CWA encouraged thrift, home production and local marketing of produce, and lobbied for provision of services to rural areas.(Roberts, 1984) It grew to become a large and influential organisation, whose concern for community welfare fostered a continuing interest in consumer issues. In later years, CWA's participation in the organised consumer movement (through its membership of Australian Federation of Consumer Organizations, AFCO) enabled the consumer movement to reach into rural and remote communities

Another important body of people were home economics teachers. The subject was (and still is), in significant measure, about developing good consumer skills. As such, home economics teachers, and their professional associations, were important participants in early consumer activism and later played an active role in the foundation of consumer organisations throughout the country. Also, it was the discipline of home economics that produced some of the early research on consumer problems.

All these organisations are significant, not only for their historical role, but for their influence on the modern movement. NCWA's adoption of the golden rule, 'do unto others as ye would that they should do unto you', and FAAH's motto 'for the good that we can do' reflect basic notions of fair play, helping others and working for the common good. These philosophies have remained a foundation of the consumer movement, and over time, they have been variously expressed in terms such as social justice, public interest, access, equity and most recently, fair and informed markets.

SOLID FOUNDATIONS: ACA and the modern movement is spawned

The heyday of product testing

So what motivated a small group of people to join together in 1959 to form the Australian Consumers' Association? In earlier times, prior to the development of mass production techniques, 'consumer' problems were

more likely to be one-off in nature and could be addressed through direct communication between the buyer and seller. However, as mass production increased, throughout the 20th century, producers and the consumers of their products became increasingly distant from each other and problems became mass problems.

While in the early half of the century scarcity, price, hygiene and welfare were the main issues of concern, post-World War II prosperity brought a new set of problems. While economic prosperity and high employment enhanced consumer spending power, the growth in national manufacturing and international trade ensured the availability of a widening range of consumer goods, including many new white-goods and small appliances. Alongside this prosperity and abundance, however, consumers became increasingly dissatisfied with the quality of products and the lack of unbiased information available to assist consumer decision-making. In Australia, concerned individuals became familiar with the concepts of the consumer movement, through subscriptions to overseas journals, such as *Consumer Reports* from the USA and its British equivalent *Which*.

One of the key players in the founding of the Australian Consumers' Association was Western Australian parliamentarian, Ruby Hutchison. Sydney was chosen as the place to launch the organisation, and 50 people, mainly academics, attended the first public meeting in August 1959.(Halpin 1984) In the following year, ACA started product testing and published the first issue of *Choice*, the magazine for which the organisation has become renowned.ⁱ *Choice* rapidly attracted a large subscription, providing the finances which enabled ACA to flourish throughout the following decades.

Local groups emerge

In the early 1960s, ACA attempted to expand its operations by opening State branches. These were not successful, perhaps because they did not provide much opportunity for participation in the Association's activities and decision-making. However, when ACA gave up on the idea of state branches, some of the people involved transformed their branches into independent state or territory-based organisations. Canberra Consumers (established in 1963) was the first of these. By the late 1970s, most states had a broad-based consumer organisation, with ACA continuing to occupy that role in New South Wales.

At this time, Australian consumers did not have the benefits of government enforceable consumer protection law. Through the 1960s the consumer movement (particularly ACA and the early State organisations) made a significant contribution to changing this situation. By 1973 nearly all states and territories had enforceable consumer protection legislation and had established consumer affairs councils (ministerial advisory councils) and consumer protection bureaux. Queensland established the first Small Claims Tribunal in 1973, followed by New South Wales, Victoria, Western Australia, the Australian Capital Territory and the Northern Territory in 1974.

Coming to grips with the market and social justice

In Australia, as elsewhere, the late 60s and early 70s were characterised by public protest and social activism. Although the consumer movement was sometimes perceived as having a middle-class orientation, this was not true of many of those involved. The consumer movement contributed significantly to the mounting pressure for social reform. Increasing numbers of people were finding consumer organisations effective vehicles for challenging public policy seen to be in the interest of powerful players in markets rather than the public at large.

Members of the consumer movement, who were also involved with the ALP, contributed to the development of consumer policy in the platform which that Party took to the 1972 election. After the ALP's election success, the Whitlam government remained committed to consumer reform and in October 1973, set up the Interim Commission on Consumer Standards, which consulted with consumer organisations to overhaul the setting of consumer standards. Around the same time, important initiatives were underway at the federal level. In 1974 the Federal Parliament passed the Trade Practices Act, and established the Trade Practices Commission (TPC). Consumer protection and enforcement measures were thus enshrined in federal law. In comparison with existing state legislation, the Act provided substantial penalties for breaches. Its consumer protection measures were eventually mirrored in the Fair Trading Acts passed in each State and the Northern Territory between 1987 and 1990.

WEAVING THE THREADS TOGETHER: A National Federation of Consumer Organisations

The Government also acted on the Commission's suggestion that an Australian federation of consumer organisations 'to provide a national voice for the consumer movement and facilitate communication with government agencies' be formed. (Ref - Interim Commission on Consumer Standards 1974) It may well be that without government urging and funding the rather disunited consumer movement would not have organised itself nationally for some time to come.

After an initial meeting involving 27 organisations, a constitution was drafted and, in 1974, the Australian Federation of Consumer Organisations (AFCO), now the Consumers' Federation of Australia (CFA), was founded. This marked the beginning of a new era for the consumer movement, giving it a cohesive identity and a national voice.

AFCO's foundation membership included NCWA, CWA, housewives' associations, UAW, home economics associations, ACA, most state and territory-based groups, consumer education groups and several organisations, such as the Consumer Action Movement; Women Against Inflation and the Campaign Against Rising Prices, who were concerned with the issue of inflation.

Becoming a force in public policy development

In the 1970s, AFCO remained focussed largely on traditional issues like inflation, advertising, trading hours, food purity, packaging and labelling, product safety and standards, and pricing. It lobbied for legislative reform in areas like credit and tenancy, and for uniform consumer protection legislation throughout Australia. AFCO was involved in debates on amendments to the *Trade Practices Act 1974*, the most important piece of federal consumer protection legislation.

In the area of industry development policy, which had been dominated by protectionism, the funding of AFCO proved its worth by getting a previously absent consumer input into policy-making processes. Towards the end of the 70s and into the early 80s AFCO became very involved in the processes of the then-Industry Assistance Commission (IAC). There were many IAC inquiries in which one of the few advocates of the consumer interest (if not the sole one) against both employer and employee industry interests was AFCO. This of course put AFCO on a collision course with the union movement. For example, the Vehicle Builders Union and AFCO had very different views on tariff protection of the car industry.

AFCOs input in the IAC, also strained relationships with its most powerful member, the ACA. The ACA, through council members and other activists, had established connections with the union movement, which had influenced its policy direction. By the end of the 70s the ACA was increasingly broadening its focus from product testing to the need it saw for improved market regulation to deliver social justice. Allan Asher, who had joined the staff of ACA in 1974, was instrumental in this. While the ACA recognized that industry protection resulted in higher prices of many goods and was not opposed to reducing tariffs over time, it considered there were greater priorities for the movement *such as product safety, food marketing and nutrition and consumer protection in financial services*.

At the same time changes towards a social justice policy position were becoming more evident in the international movement, in which the Australian consumer movement was becoming increasingly active. It was a strong supporter of efforts to build the consumer movement in developing countries and many Australian consumer movement people lent their skills and time to this.ⁱⁱ

The reform period of the Whitlam government ended in 1975 with the election of a coalition government headed by Malcolm Fraser. In spite of the movement's connections with the ALP, the coalition government was not entirely antagonistic towards consumer organisations and continued to fund AFCO. In 1977, the National Consumer Affairs Advisory Council was established under John Howard, then Minister for Business and Consumer Affairs, to provide ministerial advice on consumer affairs. Its membership

included nominees of the consumer movement. David Harland, eminent academic lawyer, and, coincidentally, one of John Howard's university lecturers, was its first chair. He served in that capacity for many years, well into the Hawke government.

The consumer movement, however, was critical of the coupling of business and consumer interests within the same ministry. Its concern, that, in such an amalgamation, consumer interests would lose out, proved to be the case when Howard amended the Trade Practices Act to remove the Trade Practice Commission's right to institute consumer protection proceedings without first gaining the consent of the minister. This, effectively, stripped the Commission's autonomy. This measure remained in place until 1984 when, Gareth Evans, then ALP Attorney General had it removed.

During the Fraser years work continued to improve the consumer policy of the ALP. A significant contribution was made by a small group of consumer movement people (including Ross Cranston, Jack Goldring, Neil Francey) who belonged to the ALP in Canberra. As a result, Ros Kelly succeeded in getting the ALP's 1979 National Conference to adopt a sound and comprehensive policy which would prove very useful to the movement in ensuing years.

A VIEW FROM THE MIDDLE OF THE WEB

Changing the Guard at AFCO

The election of the Hawke government in 1983 gave the movement a real chance to move consumer policy up the federal agenda. To make good this chance, the tensions between AFCO and ACA had to be resolved.

Until now many in ACA had seen AFCO as something rather to be tolerated than as having any great political value. By this time, Allan Asher had understood its real potential and succeeded, along with some like-minded others, in being elected to the AFCO Executive Committee. This change in the committee membership led in turn to a change in the leadershipⁱⁱⁱ and to a re-orienting of the role of the Director of AFCO, reflecting the Committee's wish that the head of AFCO's secretariat should clearly be more than an executor of the Committee's decisions, but rather should have an overt leadership role and be accountable for it. These power struggles caused some fracturing in the organisations and the withdrawal of certain individuals, some of whom had a long-term involvement with the consumer movement.^{iv}

During the 1980s some of the activities of the consumer movement attracted criticism from more conservative quarters such as opposition senators and prominent right-wing journalist, Bob Browning. (ref Browning and Rees 1983) The movement was calling for reform in the professions (particularly the health and legal professions), and becoming increasingly critical of the behaviour of transnational corporations. The anti-smoking lobby was also becoming increasingly pro-active.^v Two new groups, the Movement Opposed to the Promotion of Unhealthy Products

(MOP UP) and Billboard Utilizing Graffitiists Against Unhealthy Promotions (BUGA UP) appeared. These groups brought a militant edge to the consumer movement, attracting media attention by staging public protests against tobacco advertising and running campaigns to deface billboard advertising of unhealthy products.^{vi}

Influencing the place of consumer affairs in government

Soon after he came to office Hawke carried out his great experiment in the politics of consensus with the National Economic Summit. It was not straightforward for AFCO to get a seat at this meeting. A continuing consensus mechanism promised in the ALP's platform, the Economic Planning Advisory Council (EPAC), was intended to be established following the Summit. While AFCO was named as a member of EPAC, participation in the Summit and securing the EPAC seat took much skilled lobbying on the part of AFCO's Director, John Braithwaite. The Economic Summit did provide an historical opportunity for representatives of the social welfare movement, the churches, pensioners and the consumer movement to get together with politicians, bureaucrats, unions and business.

The work of EPAC was rather remote from much of the agenda of the consumer movement, but the strategic value of membership of a body involving the Prime Minister and Treasurer was enormous. It was now possible for AFCO to argue its way to a seat at the table of nearly every policy advisory or regulatory body in which it had an interest.

The case put was that wherever there was industry or producer representation in public policy and administrative processes, there ought also to be consumer representation. The new influence of the consumer movement was exercised in many areas, importantly, in the 1986 amendments to the Trade Practices Act, which, as well as strengthening existing provisions, allowed for mandatory recall of unsafe products.

Between the mid-1970s and mid-1980s, consumer affairs moved between various ministries, including Business and Consumer Affairs, Home Affairs and Environment and Attorney-General's. The movement saw the need for a minister who could uncompromisingly advocate consumer interests in the ministry and elsewhere in government processes. Prior to the first election test of the Hawke government, the movement worked hard to have a minister appointed in the next government who would be solely responsible for consumer affairs and for a dedicated federal agency.

In 1987 John Wood was head of the consumer affairs division of the Attorney General's Department. To lift the profile of consumer policy nationally, amongst other things, he and I had been kicking around the idea of an annual World Consumer Rights Day address for a few months. We also wanted to have a more prominent federal agency responsible for consumer policy and programs. We thought that if we could possibly get the PM to be the first orator we just might work into the process the proposal for a federal agency. The question of what to call the address exercised our minds. Syd Einfeld was, in our view, the most successful

consumer affairs minister and Lionel Murphy was responsible for major developments in consumer protection law, so naming it after one of them seemed appropriate especially since using either name would ensure political prominence. Syd was still alive and Lionel had died so perhaps a memorial address for the latter was more fitting.

However, Ruby Hutchison, as one of the key founders of the Australian Consumers' Association, was a clear option and as women had really been the early consumer advocates through housewives' associations, the CWA and the like, naming the address after a woman seemed very suitable.

The clincher came though when John discovered that Ruby had been a protégé of Bob Hawke's uncle, Bert Hawke, who, as Premier of WA, appointed her to the Trade and Industries Protection Council. We were sure Bob would be attracted. So, I sent off the invitation and John worked within the bureaucracy and it came to pass that the PM delivered the first address on 13 March 1987 and, as a PM's speech ideally has to have one or more announcements, he announced the establishment of the Federal Bureau of Consumer Affairs (FBCA) and the appointment of Barry Jones as Minister Assisting the Attorney General on Consumer Affairs.

(http://femag.org.au/Ruby_hutchison_oration.html)

I had the privilege of introducing the PM and thanking him with the gift of a tennis shirt AFCO had had emblazoned with the words 'Australia's Number One Consumer'.

Later in 1987 Peter Staples was appointed as Minister for Consumer Affairs and the FBCA reported directly to him. Apart from broad consumer policy including, consumer product safety, product recall and packaging and labelling, the FBCA had an information and education role, responsibility for administering the product information and safety functions of the Trade Practices Act, and responsibility for Commonwealth policy on food and beverage standards.

The Tax Summit and collaboration with other social movements

Prime Minister Hawke's second high-profile exercise in consensus politics was the Tax Summit. AFCO took a position opposing 'Option C'—the broad-based consumption tax—on the grounds of equity. This meant that AFCO was more or less *ad idem* with the Australian Council of Social Services, the churches, pensioners, the Women's Electoral Lobby and the Australian Council of Trade Unions. It was largely the collaboration of these groups, whose informal convenor was (then) Bishop Peter Hollingworth, plus one of the business groups, the Australian Retailers' Association (ARA), which killed Option C. It was, in fact, AFCO which had brought the ARA into the collaboration, and this really represented the beginnings of dialogue and co-operation, between the consumer movement and business, where interests were common.

TIME TO WEAVE A MORE COMPLEX WEB: Expansion and specialisation

Its own lack of finance was a major limitation on the growth of power of AFCO as the national peak organisation of the movement. The structure of the Australian consumer movement mirrored that of most other developed countries—a single large product-testing organisation and a large number of relatively small or poorly resourced groups which were either geographically or issues-based. In all countries where they operated product testing organisations expanded their subscription base and ACA doubled its subscribers between the mid 70s and mid 80s. But expanding the individual membership of other organisations and resources (both financial and human) does not seem to have been successful in any national consumer movement. It has always been difficult to get large numbers of individuals involved. For most consumers any one problem they encounter will not be of great financial significance. Their motivation to join a group to fix problems will therefore be low, especially if they can see that others are doing the work anyway—the 'free rider' phenomenon. On the other hand, the cost benefit for producers in taking part in industry or professional organisations is generally very positive

A funding source used by activist Ralph Nader, for example, in the USA, - philanthropic trusts - was not feasible in Australia. First, this is because of the small size and number of such trusts. Secondly, it is because of their relative conservatism. And, thirdly, it is because the tax law in Australia does not allow organisations, which are involved in seeking public policy reform, even if entirely motivated by the public interest, to get classified as charities so that donations are tax deductible

AFCO was therefore largely dependant on the grant-in-aid it received from the government. Although this had more than doubled during the 1980s, it was still insufficient funding for the burgeoning interests and activities of the consumer movement. Other larger sources of public funding had to be tapped. The big budget Social Security portfolio was already funding ACOSS, but the Health portfolio, with its large expenditure, provided a possibility. In 1985, the ACA, under CEO Philippa Smith, did a significant and well-publicised analysis of federal health policy-making in terms of consumer, as opposed to producer, interests. It was found to be wanting in this area with quite inadequate opportunities for consumer input. A meeting with representatives of ACA (Philippa Smith), AFCO (myself) and ACOSS (John Wood) and the then-minister, Neal Blewett, resulted in the formation of a working party consisting of those representatives and senior health officials. The main outcome was an agreement to fund a new consumer body. The new body, the Consumers' Health Forum, was formed in 1986.

Another opportunity to expand the network and resources of the movement came in 1989. The movement had long argued for consumer input into the decision making of major public utilities, especially Telecom and Australia Post. One Telecom official, Ted Benjamin, understood that improved relations with consumer and community groups were needed and after the organisation's difficulties with the timed local calls issue he

was able to persuade others at Telecom. He called on me at AFCA and after a period of negotiation a deal was struck. The Telecom Australia Consumer Council, co-chaired by consumer movement (myself) and Telecom (Terry Cutler) representatives, with about 50/50 Telecom and consumer/community group membership was formed in 1989. In addition to this, Telecom funding for a specialist telecommunications consumer group, to be called the Consumers' Telecommunications Network, and the setting up of state consultative committees added significantly to the resources and reach of the movement.

The emergence of new specialist member organisations marked the beginning of a trend which was to shape the future character of the consumer movement. Specialist organisations were not an entirely new phenomenon. In the 1970s, groups formed around issues such as smoking (Non-Smokers Movement of Australia), housing (Tenants Union of Victoria) and public transport (Action for Public Transport). However, in the 1980s and 1990s, the specialisation intensified and corresponded with the broadening of consumer movement interests, from product-centred issues, to issues relating to professional services, including health, communications, finance and the law. In taking up such issues, the consumer movement attracted the input of new people with a range of professional expertise. This enabled the movement to respond effectively to the challenges of new and complex issues, and to become more effective in a demanding political environment.

In the early 80s, for example, following financial deregulation, the combined effects of over-lending and high interest rates had led to financial crisis for many people. Consumer organisations, concerned with rising levels of consumer indebtedness, financial over-commitment and social hardship, took the issue on board.^{vii} Several financial and debt-counselling organisations formed and/or joined the organised consumer movement and consumer credit legal centres were established in Victoria (1982), New South Wales (1987) and Western Australia (1991).^{viii} The legal centres had a significant impact as they brought into the movement a new wave of influence in the form of activist lawyers whose own reformist agenda re-invigorated campaigns on financial and legal issues. In addition to this, the legal centres had the resources and the expertise to use the law to enforce consumer rights.

This occurred, for example, in the early 1990s, when the legal centres in New South Wales, Victoria and Western Australia, the Redfern Legal Centre and the Queensland Financial Counselling Service all represented large groups of borrowers in a series of cases involving breaches of the Credit Act by major credit providers, including Westpac, the State Bank of New South Wales and AGC. While the central issue, in most of these cases, involved the non-disclosure of commission on personal loan insurance, instances of overcharging, interest miscalculation and insurance forcing were also uncovered. Exposure of the breaches led to the imposition of huge fines (the State Bank and AGC were fined 5 and 3 million dollars respectively). Moneys from the fines were placed in consumer trust funds and made available for financial counselling, consumer education and consumer research projects.^{ix}

The Consumer Credit Legal Service of Victoria's involvement in multi-client litigation against Household Financial Services also led to a novel outcome for the consumer movement. The \$2.25 million compensation which the company was instructed to pay was used in 1992 to establish and provide ongoing funding for the Consumer Law Centre of Victoria.^x As well as providing an innovative alternative to government funding for consumer groups, the success of the above cases illustrates how, with access to adequate legal representation, consumers can hold large corporations accountable for improper practices.

"OH WHAT A TANGLED WEB WE WEAVE....."- David and Goliath - Taking on Big Tobacco

Amongst the most stunning examples of the Australian consumer movement's use of litigation are two cases involving AFCO and the tobacco industry. A history of the Australian movement would be incomplete, without mention of these, as they represent significant milestones in the history of public interest litigation.

On 1 July 1986, the Tobacco Institute of Australia (TIA) ran an advertisement in 14 major newspapers, headed '*A message from those who do...to those who don't*'. The ad claimed that there was 'little evidence and nothing which proves scientifically that cigarette smoke causes disease in non-smokers', and cited various medical and scientific authorities in support of the claim.^{xi}

AFCO complained to the Trade Practices Commission that the advertisement was misleading and in contravention of Section 52 of the Trade Practices Act. The TPC threatened to institute proceedings against the TIA; however, after prolonged negotiations, it agreed not to sue, on the provision that the TIA place a 'corrective advertisement'. In AFCO's view this advertisement was entirely unsatisfactory and to some extent actually backed up the original. I talked to Neil Francey of the Sydney Bar and Peter Cashman (Cashman and Partners) about legal options. They agreed to take on the case on a contingency basis. In June 1987, after failing to obtain an undertaking from the TIA regarding the content of future advertisements, AFCO instituted proceedings in the Federal Court of Australia.^{xii}

In order to prove that TIA had engaged in misleading or deceptive conduct, AFCO had to convince the court that passive smoking was indeed injurious to health. With the help of Action on Smoking and Health, AFCO was able to call an impressive selection of expert witnesses, several of whom are considered world authorities on the subject.^{xiii} The TIA also called on its own expert witnesses, however despite huge effort and expense, it failed to convince Justice Morling, who found that the TIA's advertisement was indeed deceptive.^{xiv} His 221-page judgement was handed down in February 1991, nearly five years after the appearance of the offending advertisement. What had begun as an 'arid dissection of whether an advertisement was false or misleading concluded as a

marathon public interest test case concerning the adverse health effects of passive smoking'.^{xv} The outcome was an 'historic victory' for AFCO, the consumer movement and the anti-smoking lobby ^{xvi} and the result set key precedents for subsequent tobacco litigation. AFCO had, however, risked a great deal, for, had the case been lost, the costs involved would have meant bankruptcy for the organisation and ended its existence. This possibility, alongside the enormous demands which the case made on AFCO's internal resources, caused much stress and conflict within the organisation

In a second tobacco matter AFCO involved itself in action to prevent a new epidemic threatened by the United States Tobacco Company's plans to market smokeless tobacco products (i.e. snuff and chewing tobacco) in Australia. AFCO urged the Minister for Consumer Affairs to use his power under Section 65C of the Trade Practices Act to declare the goods 'unsafe' and effectively ban their sale. In January 1988, the Minister announced his proposal to issue a ban. US Tobacco requested a conference with the Trade Practices Commission. The Commission permitted AFCO to participate in the conference.

Meanwhile, US Tobacco had instituted proceedings in the Federal Court challenging the validity of the proposed ban. AFCO sought to be joined as a party to the proceedings, and after an initial refusal, an appeal and a cross-appeal, AFCO, in what is considered a landmark decision, was granted full standing.^{xvii} In October 1989, the Minister imposed an 18-month ban on the products and, in June 1991, a permanent ban was issued.^{xviii}

Why did AFCO get itself into legal proceedings which were somewhat risky and hugely resource hungry? Legal action was not its style and much less used by the Australian consumer movement generally than by the movement in the USA for example. But this was tobacco, a product unlike nearly all others in that it cannot be used safely - then and still the product which causes the greatest suffering and death. Why was it AFCO that took this action? Personal commitment by particular individuals including myself was part of it. However, one might still ask why it was not the Anti-Tobacco groups. The answer is that it just happened that the tobacco industry rather foolishly exposed itself to the power of the Trade Practices Act and there happened to be AFCO people and associated individuals who saw the opportunity and had the will to give it a go.

WHICH IS THE SPIDER AND WHICH IS THE FLY?

Relations with business and unions and the de-regulation battle

By the mid-1980s deregulation had become the catchword of public policy. In the federal bureaucracy it was the Treasury, the Industry Commission (previously IAC, now the Productivity Commission) and the Business Regulation Review Unit (BRRU) which led the charge. The BRRU was a special sort of tactical unit. Its 'commander', Alan Moran, was an enthusiast in the cause and he singled out the consumer movement,

especially the government-funded AFCO, as particular opponents in the battle.

AFCO took the bull by the horns and convened a symposium in March 1988 entitled 'Business regulation—when does the consumer profit'. The foreword to the published proceedings sums up the significance of the event:

'This symposium, AFCO's first, was also a first in that it was an unprecedented gathering of people from the consumer movement, business, lawyers and government...AFCO holds firmly to the view that good consumer protection regulation is good for good business. Producers competing fairly to provide consumers with reasonably priced, safe, healthy and effective goods and services have nothing to lose and everything to gain from regulation which maintains and promotes competition, standards and informed consumers.

On the other hand, AFCO is working and will continue to work with business to get government to dispose of superfluous, ineffectual and/or anti-competitive regulation...[An] approach which is now being tested in a number of industries around Australia is the development of codes co-operatively by the industry in question, the relevant government agency, and consumers. With adequate consumer involvement and the capacity to apply effective sanctions, perhaps with some form of legal backing, this approach holds great promise.' (AFCO 1988)

The greying of regulation and getting in to bed with business

The scene was set for a new non-governmental approach to consumer protection regulation. The first really big cab off the rank was the banking industry. With a great deal of hard work and tough negotiations, a scheme for a banking industry ombudsman, which measured up to the movement's expectations, was established.

The insurance industry was the next to line up. However, the insurers, especially the life insurers, proved more difficult to deal with than the banks. Unlike the banks the industry has two somewhat separated parts: the insurance companies and the insurance agents. The latter would not allow a scheme that provided quite as much independence and involvement of the consumer movement as the banking industry scheme did. The movement therefore refused to endorse the insurance schemes and to nominate people for appointment to the 'tribunals' and governing body.

This 'greying' of regulation can be seen as a privatisation of government functions. It is one of the ways in which the state has limited its scope of intervention in markets; part of the general phenomenon of the retreat of government (OR part of the general move towards smaller government). But it can also be viewed, quite positively, as a means of containing the

costs of consumer complaints and disputes within industry and relieving the general taxpayer of the costs of using state institutions.

WINDING UP THE THREAD: The end of the 80s—AFCO changes its modus operandi—less power in the middle

The main ideas driving Australian consumer movement leaders, especially the AFCO leadership, in the 80s were:

- That *economic rationalism, deregulation, privatisation, and smaller government, or what was to become known as the "Washington Consensus"*, was ascendant in public policy throughout the 'western world', whether governments were right- or left-leaning.
- That the consumer movement had to accept that while reforms to make legislation and its administration more effective could be expected, governments in Australia were not going to generally expand consumer protection regulation.
- That the movement had to work its way more securely into public policy processes and to stop seeing business as some kind of opposition, but rather to engage in genuine dialogue with it and even work with it to develop effective non-formal regulation.
- That the movement had to widen its scope and had to embrace or collaborate with other social movements.
- That more people with specialist expertise and more resources were needed (seen, for example, in the establishment the Consumers Health Forum) and that this meant some relinquishing of authority by both the leadership of AFCO and ACA and some loss of close involvement in many issues by the grass-roots membership.

Unhappily, the communication by the leadership to the movement of these ideas and the strategy that grew from them was inadequate. By the end of the 1980s there were some in the movement who were feeling that the leadership, especially the Canberra secretariat of AFCO, was too chummy with ministers, senior public servants and captains of industry and quite out of touch with ordinary consumer movement members. In addition, the credit lawyer and financial counsellor groups in the movement felt that their involvement in leadership and decision making was too limited. Despite AFCO's considerable successes in the 80s, it was clearly time for change. I and others in leadership at the time bowed out.

At the same time, the Federal Bureau of Consumer Affairs instigated a review of AFCO. This review reported the kind of concerns noted above and the need for more inclusive decision-making. Not surprisingly, it noted the fundamental problem of rivalry between AFCO and ACA and AFCO's need for increased resources. It reported that AFCO needed a higher public profile, despite the fact that AFCO had gone from public obscurity at the beginning of the 1980s to a body which, in some areas, got more media attention than ACA – a likely factor in the rivalry.

With new leaders AFCO began a 'strategic planning process' which was intended to facilitate grass-roots involvement by allowing member organisations to set AFCO's directions and priorities. It was also intended to clarify the areas in which the AFCO secretariat was expected to direct

its energies and to allow for a balancing of the competing demands of member groups. Activist lawyers, Denis Nelthorpe and Liza Carver had recognised the importance of AFCOs' role in national public policy making and lobbied support to be elected to its Council. These two were instrumental in having changes made to AFCO's priorities. Sophisticated papers on banking, superannuation, competition policy and justice reform were produced and used to good effect. While there were efforts to involve the grass-roots of the movement (some with considerable effect such as national 'phone-ins' on insurance), it is arguable that the priorities of the leadership of AFCO in the 1990s were no more closely aligned to the concerns of ordinary members than those of the 1980s. It may have been that keeping a broad based membership up with the complexities of the modern public policy process and dealing adequately with a wide range of issues was beyond the scope of the organisation's available resources.

The greening of the Australian Movement

It is important to mention that, from the 1980s onwards, there developed a trend which could be described as the 'greening' of the Australian consumer movement. In earlier years, the movement's environmental concerns related mainly to chemical pollution, and to health and safety risks associated with veterinary and agricultural chemicals. From the mid-1980s, however, new issues such as 'green labelling', 'environmentally sound packaging' and food irradiation brought a convergence of green and consumer perspectives.

In the 1990s, notions of 'sustainable consumption' or 'green consuming' underpinned consumer movement policy, and also influenced the traditional area of product-testing, where factors like 'energy efficiency' and 'environmental friendliness' have become important criteria in assessing the merits of certain products.

The consumer movement also used its political expertise in the interests of environmental issues. For example, at its urging the Democrats successfully amended the legislation for the Industry Commission (now Productivity Commission), to require that amongst the commissioners there must be one with expertise in environmental matters.

STRENGTHENING THE WEB: putting consumers into competition

In 1995, the Trade Practices Commission and Prices Surveillance Authority were amalgamated to form the Australian Competition and Consumer Commission (ACCC), which among other things oversees the introduction of competition into monopolistic sectors of the economy, e.g. electricity, water and gas supply. The Commission was originally to be called the Australian Competition Commission, however, AFCO lobbied successfully for inclusion of the term 'consumer' in the Commission's title. It also achieved provisions requiring consideration of the consumer and environmental impacts of competition reform, and requiring the

appointment of at least one Commissioner with expertise in consumer affairs.

UNRAVELLING THE WEB: Changing relations between ACA and AFCO

In 1993, ACA decided to review its affiliation with AFCO. Ostensibly this was because it had come to the view that it should not be a member of any other organisation, except, for obvious reasons, Consumers' International. This was because it felt its freedom of action and thus its effectiveness were compromised by formal affiliations. Some in ACA were also concerned that, while the support from industry for CFA was not for core activities, this was still not consistent with Consumers' International guidelines, in respect of financial support. They felt that ACA should not, as a matter of principle, be a member of an organisation which was not "CI legal". ACA did decide, however, that it could maintain a connection with the Federation as an "organisation in consultative status".

A HOLE APPEARS: AFCO's FUNDING GOES

With the election of the Howard Government in 1996, AFCO (renamed the Consumers' Federation of Australia, CFA) experienced problems. A group of Liberal Party MPs and senators had long been set against the consumer movement, seeing it as left wing movement and an opponent of the Liberal Party.

With the prospect of defeat of the ALP Government in 1993, ahead of its actual demise in 1996, it was necessary for the consumer movement to convince the coalition of the importance of government support for a national consumer umbrella body. Such efforts were clearly unsuccessful and with the election of the Howard government AFCO (now renamed Consumers Federation of Australia, CFA) lost its funding. CFA looked to the relationships it had made in recent times with the Society of Consumer Affairs Professionals in Business (SOCAP). SOCAP people worked hard and managed to generate some funds for particular projects from a number of corporations, which meant the Federation was able to operate for another year, but the support was not sustained.

Notwithstanding CFA's difficulties with the Howard Government, its shared child, the Consumers Health Forum, was able to maintain its funding. The relatively small "I" liberal philosophy of the health minister, Michael Wooldridge, might have had something to do with this. It is also possible that he felt that the Forum might be useful in conflicts he could well have been expecting to have with various health care interests and others such as pharmaceutical companies.

A NEW WAY TO TIE DOWN THE LION: The consumer movement and the idea of 'civil society'

The growth of dialogue between people in the consumer movement and both government and business and the adoption of co-regulatory regimes in the 1980s was not only an Australian phenomenon. Elsewhere, especially in the USA, business people became more prepared to communicate and collaborate in projects with movement organisations. For some elements of the movement this is considered problematic. There are concerns about co-option and about the movement compromising its ability to maintain a purely impartial position.

The last decade of the 20th century has seen the emergence internationally of political leaders propounding a 'Third Way' in politics. Also labelled 'mutualism', it is not simply a compromise between socialist or command economies and capitalist or free-market economies. It is rather a recognition of the social, political and economic importance of a 'civil society'. The Asian Economic crisis and the difficulties faced by Russia and other post-socialist societies have starkly demonstrated the importance of a strong civil society to the overall health of nations. The embracing of co-regulation by the Australian consumer movement in the 1980s could well have been a heralding (even if unconscious) of the Third Way.

What the last decade has seen is a real blurring of the boundaries between consumer advocates and business men and women. Indeed there seems to be an increasing flow of people from the movement into business, particularly into customer relations areas. While there has not been a big return flow, a growing number of men and women in business seem to be becoming members, in a broad sense, of the consumer movement. The consumer movement is no longer a thing outside, or other than business; it is an association of people in many walks of life subscribing to the idea that markets can be made to work better for people.

Though much progress has been made in many fields, the rapidly changing world continues to present new and unforeseen challenges. New technologies confront consumers with a new set of choices. In the recent controversy over the labelling of genetically modified foods, for example, it was the vigilance of the consumer movement which ensured that consumer's rights to make informed decisions was preserved.

THE GLOBAL WEB - The imperative of international activism

The role of the state in consumer protection and market regulation is not only diminishing because of privatization and delegation of its regulatory functions to the new 'grey' co-regulatory institutions discussed earlier. The state is increasingly allowing international bodies to determine things in many areas of public policy, including market rules. With several transnational enterprises now, in economic terms, larger than many middle-sized nations, and a substantial proportion of international trade

occurring from one part of such an enterprise to another, the real power of many individual governments to regulate markets is declining.

The future for the consumer movement must be one of increasing activity in the international arena. It must push harder for effective co-operative arrangements in consumer protection and competition regulation between governments and for the establishment of international agencies with effective regulatory capabilities. In the last couple of decades there has been a growth in international 'grey' regulatory arrangements. Often these have out-paced inter-governmental developments. International business has found it somewhat easier to agree on rules for itself than governments have. The consumer movement must be a participant in international civil society and engage with international business in this arena.

The developing world is where most needs to be achieved. On the one hand, consumers in these countries have a long way to go before their rights are protected as are the rights of Australians. A large part of the story of the Australian consumer movement, not told in this chapter for lack of space, concerns its pre-eminent role in the international consumer movement in helping the growth of the movement and consumer protection in developing countries. This work continues and aid programs are increasingly supporting it.

On the other hand, with awareness of the exploitation, both through official corruption and a failure of corporate ethics, of third world consumers, workers and their environment, Australians and citizens of other developed countries can help by making informed choices based on the human rights, social justice and environmental issues involved in the production of goods and services.

Margaret Mead's words make the challenges less daunting:

'Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.'

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ⁱ Halpin, 1984:7-10; Thorpe, 1984:11-18; Sawyer & Simms, 1993:132-133.

ⁱⁱ David Harland, for example, did much to assist in the development of consumer protection legislation in countries in Australia's region of the world.

ⁱⁱⁱ After a very few meetings of the Committee, things came to a head. A majority wanted AFCCO to shift its focus from industry policy to lobbying for improvements in the Trade Practices Act, reforms to food and drug regulation, and an upgrading of consumer policy generally at the federal level. A minority was resistant. The upshot was that Robin Brown replaced Brendan Pentony as Chair and John Braithwaite was recruited to the job of Director, as it was renamed.

^{iv} Owen Sperling, for example, who had been a founding member of ACA and a former AFCCO chair **!!!!(Asher, 1995) no need for reference here as it is in RB's personal knowledge.**

^v See Chapman, 1986.

^{vi} With the help of ACA, they succeeded in having the Paul Hogan *Winfield* television advertisements withdrawn, on the grounds that Hogan had a 'major appeal to children' (Halpin, 1984:41). BUGA UP engaged in a daring (and illegal) campaign of billboard defacement and although AFCCO and ACA took an arm's length approach to BUGA UP (see Halpin, 1984:41; Browning and Rees, 1983:25; Asher, 1983:31), the group brought to the consumer movement a previously unknown militant edge.

^{vii} See AFCCO, 1987:7 and 1988:5.

^{viii} AFCCO, 1995[a].

^{ix} AFCCO, 1993[b] Sept/Oct:8 and 1995[b] June/July:5.

^x AFCCO, 1995[a]:39.

^{xi} These organisations, which included the World Health Organisation and the Institute of Cancer Research (London), subsequently denounced the TIA publicly for its misrepresentations and unauthorised use of their names (see Weiss & Peto 1986; Masironi, 1986; also in Appendix 4).

^{xii} AFCO sought an injunction to restrain the Institute from further breaches of the Act. In November 1988, after unsuccessful attempts by the TIA to challenge AFCO's right to bring the proceedings, the court began to call witnesses. See *Australian Federation of Consumer Organisations Inc. v Tobacco Institute of Australia Ltd.* [1988], 81 ALR 701 and *Tobacco Institute of Australia Ltd. v Australian Federation of Consumer Organisations* [1988], 84 ALR 337; Francey, 1990; Harland, 1991; Chapman & Woodward, 1991; Solomon, 1988.

^{xiii} See Francey, 1990:5.

^{xiv} Morling J concluded that 'there is compelling scientific evidence that cigarette smoke causes lung cancer in non-smokers'; 'that passive smoking causes some people to experience attacks of asthma'; and that 'the evidence establishing a causal link between passive smoking and respiratory disease in children is overwhelming'. See Chapman and Woodward, 1991:12.

^{xv} Everingham & Woodward, 1991:ix; see Harland, 1991.

^{xvi} AFCO, 1991[b] Feb: 1.

^{xvii} This was largely on the grounds that AFCO was an 'authorised participant' in the TPC conference and therefore had 'sufficient interest'. In response to US Tobacco's submission that 'AFCO ought not be admitted to the proceedings as it did not represent the interests of consumers (particularly) consumers of smokeless tobacco', the court stated that 'the submission understates the function of consumer organisations...one of (AFCO's) roles is to expose the harm which it alleges the consumption of smokeless tobacco may cause to consumers...' (*US Tobacco Co v Minister*, [1988], 83 ALR 79 at 90-91. See also Solomon, 1988; AFCO, 1988[a]:14; and Harland, 1991.)

^{xviii} Harland, 1991:7; *Commonwealth of Australia Gazette*, 1991.