

**Productivity Commission**  
**SUBMISSION COVER SHEET**  
(not for publication)

**Review of Australia's Consumer Policy Framework**

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**Submission on Productivity Commission's  
Draft Report - Review of Australia's  
Consumer Policy Framework**

**by**

**energywatch UK**

**15 February 2008**

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This submission has been prepared by energywatch the UK's independent gas and electricity consumer watchdog, established by Parliament in November 2000. We provide free and impartial information and advice. We take up complaints on behalf of consumers who have been unable to resolve problems directly with their energy company.

Under the Utilities Act 2000, energywatch has a duty to protect and promote the interests of energy consumers in England, Scotland and Wales. We also have a specific duty to 'have regard' to the interests of those consumers who are of pensionable age, living with disabilities, chronically sick, on low incomes or residing in rural areas.

This submission covers:

1. Comments on Draft Report Recommendations;
2. Additional comments

## **I. Comments on Recommendations**

Overall we think that the Commission's recommendations will strengthen consumer policy and protection in Australia. Our comments are made from a UK and European perspective and from experience of consumer policy in a de-regulated energy market. This market has highlighted a large number of consumer/supplier conflicts specific to energy but it has also raised issues about consumer policy and regulation that are worth consideration in the wider arena of government policy making.

### **Draft recommendation 4.4 – Australian Governments to consider the introduction of a single national regulator**

We wholeheartedly agree that a set of clear objectives and supporting principles is required to anchor the future development of consumer policy. Much effort and expense can be wasted by the creation of a plethora of regulators and regulations to deal with specific problems. Good consumer policy, we believe, seeks to *prevent* consumer detriment from occurring and provide speedy remedy when it does. Policymakers, regulators, suppliers and consumers should have a common understanding of what is meant by fair trading in competitive markets and what would constitute a proportionate response when that is not achieved.

We note the Commission's view that 'the overarching objective should be to promote the confident and informed participation of consumers in competitive markets.' We agree that this should be an objective of consumer policy but in itself it does not address the reality of consumers who cannot or will not participate in markets in a way which protects their own interests and economic welfare. We believe, therefore, that this objective should always be closely matched by an objective to protect consumers who are vulnerable or who have little chance of influencing a market's competitiveness or suppliers' willingness to trade fairly. An alternative formulation of the objective is:

"To equip confident and able consumers, acting in fair and informed markets, to look after their own interests and to act on behalf of those who can not protect their own interests"

A key rationale for market intervention is to lessen the risk of bad bargains arising from gross inequality of bargaining power or capacity between consumers and traders. While the generality of consumers and the majority of transactions are problem free, consumer policy makers must ensure those least able to protect themselves are not also victims of policy assumptions.

Opening of UK energy market is a good example of where consumers engage in an unequal struggle with suppliers for reasonable customer care and the promised benefits of a competitive market. Regulators, in our experience, are not inclined to put individual consumer welfare above macroeconomic considerations and business strength.

We agree with the Commission's view that consumer policy would be strengthened by a national policy framework but suggest that this does not necessarily have to be the responsibility of one national body. The important element here is, we believe, a single vision rather than a single delivery mechanism. The strength of a national policy framework will be in bringing together a diversity of experience to reach a consensus on the way forward and the most appropriate agencies to deliver enforcement, compliance, consumer education etc. We think that a single organisation has an increased risk of focusing on a limited set of interests and a restricted view of what is actually happening to consumers at the individual and local level.

### **Draft recommendation 6.1 – portfolio linkages between consumer and competition policy**

Subject to our comments above we agree that a national regulator should have competition and consumer protection responsibilities so long as the regulator has a primary duty to 'enhance the welfare of all Australian's' and protect vulnerable consumers.

## **2. Additional comments**

The following are our suggested enhancements to the Commission's recommendations and considerations.

### **2.1. Consumer advice**

Free and easily accessible consumer advice is critical, we believe, in achieving consumer confidence and participation in markets but it also has a role to play in the prevention and identification of problems. This kind of assistance tends to grow organically out of voluntary or consumer-focused activities undertaken by a diverse range of bodies with the result that while some assistance is better than none the range of help can be confusing and may not cover all areas of need.

The UK government launched Consumer Direct, a telephone and online consumer advice service, in 2004 to work alongside other advice and support services to provide a complete service for consumers. Local level Trading Standards Services, regulatory organisations, ombudsmen and Government departments are all key partners in a service which has national coverage. Consumer Direct provides '1<sup>st</sup> tier' advice which enables consumers to act for themselves or access further '2<sup>nd</sup> tier' help from another body such as an ombudsman. The UK is currently reviewing the means for providing generic financial advice to consumers.

Consumer Direct is now managed by the Office of Fair Trading and has a specific target set by the Treasury to deliver a reduction in consumer detriment of £3.50 to every £1 spent on operating the advice service.

Other gains include:

- A direct means of educating individual consumers and building consumer confidence because information provided at point of need is likely to be more effective and the knowledge gained from contact with CD may be used more than once. The Consumer Direct database provides information for use in media campaigns and for alerting consumers to problems.
- Information gathered by Consumer Direct feeds into intelligence which helps regulators to set their priorities and collect evidence for enforcement actions.
- A database of this type can be used to evaluate the impact of enforcement action or intervention in a market.

The Commission may want to consider the value of such a nationwide service for providing consistent advice in line with its desire for generic consumer law and more coherent regulation.

## 2.2 Dispute Resolution

Our experience indicates that it is unrealistic to expect individual consumers to achieve redress if a supplier is unwilling, or not incentivised, to resolve problems or provides redress but then refuses to supply further goods and services to the complainant. Simplifying access to small claims courts may assist some consumers but is unlikely to be the answer for all and in all circumstances.

Ombudsman schemes have a valuable role to play in empowering consumers but only if they are effective. Consolidation will not necessarily make them more influential. More important than simplification here is the quality of service and adherence to best practice. We suggest that part of the Commission's recommendation should be that ombudsman schemes should be required to meet a relevant international standard such as ISO 10003 *Quality Management – Customer satisfaction – Guidelines for dispute resolution external to organizations* and that mandatory ombudsman schemes should be considered for industries where there is an ongoing need for quick and flexible redress.

Special consideration is needed for the resolution of problems encountered by people made vulnerable by circumstances or disablement. This has to go beyond providing help to resolve disputes; vulnerable consumers are often 'invisible' in markets unless they can make someone aware of how supplier behavior is impacting upon them. A special set of policies is needed to make sure that vulnerability is not exploited. We think another fundamental principle of consumer policy and regulation should be the identification of vulnerability and measures that require suppliers to provide additional customer care; this is especially needed in utility markets.

## 2.3 Consumer Representation

Given the vast resources available to business when making representations to governments and regulators we think it essential that strenuous efforts are made to ensure that consumers, and their advocates, are given support and access to policy and decision making mechanisms. Equalising the influence and power of the supply-side and consumers should be a fundamental principle of

consumer policy. A serious intention for protecting and enhancing consumer welfare would, we think, provide opportunities for individuals and consumer bodies to influence the priorities and work plans of government bodies such as the ACCC, and report on the failures and impacts of policies and where markets are not working well for consumers.

One of the ways this can be done is through a formal referral of issues to regulators and government departments who are then required by law to respond. Bodies making these formal referrals or complaints should be required to set out a reasonably researched case for investigation based on a standardised set of questions. This approach encourages a responsible attitude to use of a publicly-funded resource. A similar scheme has operated in the UK for the past five years and has resulted in some significant outcomes for consumers in the supply of residential care, banking and insurance.

Full inclusion of consumer representation into the decision making process is, we believe, the way forward for consumer policy and market regulation. We note that the Commission is not convinced by the argument for behavioral economics but believe that it does give some valuable insights into consumer behavior and, critically, some of the barriers to better decision making. We suggest that a better understanding of the consumer experience and the way choices are made would be of value to regulators tasked with preventing consumer detriment, promoting choice and educating consumers to act for themselves in markets. This understanding should extend to using behavioral economics to remedy the imbalance of information between consumers and suppliers: simply require more disclosure or more information will not transform consumers into better decision makers and it should not be used as 'catch all' remedy for market failures or unfair trading. Information has to enable good decision making, if it does not then it raises the risk of adding to the confusion of choice and to the cost of goods and services.

## **2.4 Alternative regulation**

In any market-led system of consumer protection it will be desirable to allow maximum scope for industry initiatives for self regulation to reduce costs to the taxpayer and business. Suppliers tend to see the advantages of self-regulation when state regulation becomes a possibility. We think they should be encouraged to see self-regulation, in the form of codes and standards, as a tough but desirable option to more expensive statutory regulation. To this end we suggest that the Commission might consider the case for promoting – and guiding – industry-wide standards and codes which conform to best practice. A code of practice for developing codes would be a worthwhile addition to the single policy framework.

***energywatch***

***London, UK***

***15<sup>th</sup> February 2008***