

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

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10 – 11 February 2010

Question: aet 104

Topic: Productivity Commission Inquiries

Hansard Page: Written

Senator RONALDSON asked:

The Productivity Commission was due to report on a consumer policy framework, including mortgage credit and advice and some aspect of product safety on 30 April 2008. On the 8 May 2008, the report was released.

Regarding Australia's consumer policy framework, the report found the;

'current division of responsibility for the framework between the Australian and State and Territory Government leads to variable outcomes for consumers, added costs for businesses and a lack of responsiveness in policy making.

There are gaps and inconsistencies in the policy and enforcement tool kit and weaknesses in redress mechanisms for consumers.

These problems will make it increasingly difficult to respond to rapidly changing consumer markets, meaning that the associated costs for consumers and the community will continue to grow.'

1. What action has been taken (to date) in addressing each of these areas (above) of concern as identified by the PC's report?
2. Detail what metrics that were used to measure how by *'furthering the development of nationally competitive markets, reform will enhance productivity and innovation.'* – source quote taken from the PC's Review of Australia's Consumer Policy Framework
3. What clear objectives and supporting principles have been implemented (as recommended by the PC's report) to anchor the future development of consumer policy?
4. The PC's paper stated COAG together with the Ministerial Council on Consumer Affairs should oversight a general reform program for industry specific consumer regulation to:
 - Identify and repeal unnecessary industry-specific consumer regulation, with an initial focus on removing regulations that apply in only one or two jurisdictions,
 - Identify other areas of specific consumer regulation where divergent requirements and/or lack of policy responsiveness are particularly costly, and
 - Determine how these costs should be reduced, including explicit consideration of the case for transferring policy and, where appropriate, enforcement responsibilities to the Australian Government.

In addition

- Some particular regulatory requirements for consumer credit, utility services and home building should be modified,

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- Consumers' access to remedies where they suffer detriment from breaches of consumer law, should be enhanced by consolidating some ombudsman arrangements; streamlining small claims courts' procedures, making it easier for regulators to bring representative actions, and increasing legal aid and financial counselling services.
- Mandatory disclosure requirements should be improved by more 'layering' of the information provided to consumers and greater testing of its comprehensibility and relevance to them.
- Subject to appropriate governance arrangements, there should be additional public funding for consumer advocacy and for policy related research, including to enable the establishment of a National Consumer Policy Research Centre.

Outline the current status of these issues.

5. The BRCWG recommended that the PC undertake a review on the regulation of crude oil and natural gas projects that involve more than one jurisdiction to report in April 2009.
6. What is the status of this recommendation? Has a review been undertaken? What were the recommendations that came out of this review?

Answer:

1. On 2 October 2009, the Council of Australian Governments (COAG) agreed to create a single, national consumer law. The Australian Consumer Law (ACL) will implement the Productivity Commission's (PC) key reform recommendations.

The ACL will cover all sectors of the economy, backed by uniform enforcement and redress provisions and will be applied by all Australian governments. Under the *National Partnership Agreement to Deliver a Seamless National Economy* the ACL will commence on 1 January 2011.

On 14 April 2010, the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010* received Royal Assent. It creates the ACL, introduces new investigation, enforcement and redress powers for the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission and implements a national unfair contract terms law.

The Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 was introduced to Parliament on 17 March 2010. The Senate Economics Committee is to report on the Bill on 21 May 2010. It completes the ACL, which is based on the consumer provisions of the *Trade Practices Act 1974*, amended to reflect best practice in existing State and Territory laws, and implements a new product safety system, a consumer guarantees law and rules on unsolicited sales and lay-by contracts.

Changes to the ACL will be made by a process set out in the *Inter-Governmental Agreement for the Australian Consumer Law* (the IGA, signed on 2 July 2009). This will streamline policy development and decision processes. A change to the ACL requires the agreement of the Australian Government plus four other jurisdictions (three of which must be States). Under the IGA, jurisdictions must remove laws which are inconsistent with or change the effect of the ACL.

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The ACL will be enforced by the ACCC and state and territory agencies and will be enforceable in federal, state and territory courts. Under the IGA and a Memorandum of Understanding, consumer agencies will cooperate and coordinate their activities.

2. The PC estimated that the package of reforms could deliver between \$1.5 billion and \$4.5 billion a year of benefits to the community.

In arriving at this estimation, the PC considered the net avoided direct detriment for consumers, the reduction in risk-based transaction efficiencies, gains from increased innovation, net gains from reduced business compliance costs and any legal and administrative costs. Productivity and efficiency gains were suggested to be due to more empowered consumers putting competitive pressure on businesses and also that confident consumers would be less likely to rely on only established firms (as might be the case if there was a higher risk of detriment) leading to product innovation by smaller market participants. The simulation model used to quantify the estimated benefits, CMOD, is available on the PC website (www.pc.gov.au). Further information on the methodology the PC used can be found in Volume 2, Chapter 14 of the final PC Report which was released on 8 May 2009.

3. The Ministerial Council on Consumer Affairs (MCCA) has adopted a national consumer policy objective, supporting operational objectives and current strategic priorities. These are set out in the MCCA Strategy for 2010-12: *A new approach to consumer policy Strategy 2010-2012* which is available at www.consumer.gov.au.

On 15 August 2008, MCCA agreed to the national consumer policy objective:

‘To improve consumer well being through consumer empowerment and protection fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly.’

MCCA also has strategic priorities to further consumer policy in Australia to 2012:

1. Complete the Council of Australian Governments’ (COAG) consumer law reforms, with a particular focus on the Australian Consumer Law.
2. Rationalise and harmonise other consumer laws.
3. Articulate the benefits of rational, robust and effective consumer policy.
4. Promote the achievement of consumer outcomes under the Australian and New Zealand Single Economic Market Framework Agenda.
5. Develop a consistent approach to gathering and analysing intelligence on issues in consumer product and service markets.
6. Implement a national communication strategy to educate businesses and consumers on Australia’s new consumer laws.
7. Develop and implement a policy and research program to inform MCCA’s consumer policy agenda.
8. Develop the national capacity of Australia’s consumer agencies.
4. Clause 3.2 of the IGA provides that all Australian governments will use best endeavours to repeal, amend or modify any legislation that is inconsistent with or alters the effect of the ACL.

MCCA will now turn its focus to this work, in tandem with other deregulation projects being undertaken by the Business Regulation and Competition Working Group of COAG, with a

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view to repealing unnecessary, duplicative and burdensome regulations. This process is to commence during 2010.

The Senator's question references a number of other discrete issues that were touched upon in the PC review. Many of the recommendations in the PC review are either being, or already have been, addressed or implemented by the Government. In response to the specific areas the Senator listed in his question:

- The Australian Government has assumed responsibility for the regulation of credit, an area where responsibility previously rested with the States and Territories. The National Credit Code will commence on 1 July 2010.
- The Ministerial Council on Energy will implement a single national framework for the regulation of the retail supply of electricity and gas to customers — a National Energy Customer Framework to be introduced in applicable jurisdictions progressively between July 2011 and July 2013.
- On 8 May 2009, MCCA agreed to review consumer protection measures in the building industry as part of its current review of the harmonisation of conduct provisions for the national licensing system. The findings of the review are scheduled to be presented to MCCA in the second half of 2010.
- Various processes are underway to enhance the effectiveness of ombudsman schemes, including the creation of the Financial Ombudsman Service on 1 July 2008, which merged the Banking and Financial Services Ombudsman, the Insurance Ombudsman Service, the Finance Industry Complaints Service Limited (FICS), the Credit Union Dispute Resolution Centre and the Insurance Brokers Disputes Limited.
- On 15 August 2009, MCCA noted that the Commonwealth Attorney-General is considering initiatives to improve access to justice for all claimants in Commonwealth courts, including consumers, and agreed that the Commonwealth will work with the States and the Territories to consider enhancements to the procedures of small claims courts and tribunals so as to create greater national consistency for consumer law actions. On 4 December 2009, MCCA further agreed to review existing dispute resolution processes for consumer laws in each jurisdiction, together with New Zealand, and consider ways in which consistent and uniform approaches could be developed.
- Amendments to the TPA have been made to allow the ACCC to use its information gathering powers in section 155, such as requiring a person to furnish information or produce documents, after seeking an interim injunction and up until the commencement of the substantive court proceedings for a breach of the TPA. These amendments were made as part of the *Trade Practices Legislation Amendment Act 2008*, which commenced on 22 November 2008. The ACL will also include a mechanism for regulators to seek redress for consumers not party to the court action.
- In its 2008-09 Budget, the Australian Government has committed \$20 million over four years for increased financial counselling and support for people under financial stress. This is an increase of \$10 million over four years, doubling the size of the program and will increase the capacity of existing counsellors and establishing new services in high need areas, helping more families facing financial stress.
- The Government is considering ways to improve information disclosure in a range of areas, including financial services.

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- The Government released a discussion paper in May 2009 on consumer advocacy and research (*Consumer Voices, Sustaining advocacy and research in Australia's new consumer policy framework*). MCCA established a Policy and Research Advisory Committee of officials, which will, among other things, consult with consumer groups, industry participants and other stakeholders on consumer policy issues and consider specific issues relating to consumer advocacy and research.
5. & 6. The PC report *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* was released on 30 April 2009 and is available at www.pc.gov.au.