

Legislative and Governance Forum
on Consumer Affairs
with
Consumer Affairs Australia and New Zealand

Strategic Agenda 2015-2017

An integrated and harmonised approach to consumer
protection

June 2015

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AN INTEGRATED AND HARMONISED APPROACH TO CONSUMER PROTECTION

The Australian Consumer Law (ACL) commenced on 1 January 2011, introducing a national policy framework to enhance consumer protection. This reform has significantly changed the legislative framework for consumer law, the way consumer policy is developed and implemented, and how consumer law is communicated and enforced in Australia.

The Legislative and Governance Forum on Consumer Affairs (CAF) is responsible for the administration of the ACL and for other specific issues under the Intergovernmental Agreement for the Australian Consumer Law (IGA) and the Trans-Tasman Mutual Recognition Agreement.

Consumer Affairs Australia New Zealand (CAANZ) is a forum of consumer affairs agencies in Australia and New Zealand, established to support the formal responsibilities of CAF.

To achieve the objectives of the IGA and to promote trans-Tasman harmonisation and coordination as appropriate, CAANZ engages in policy coordination and development, enforcement cooperation and information sharing, and shares compliance and national education initiatives.



STRENGTHENING THE CONSUMER FRAMEWORK

Successful implementation of the Australian Consumer Law has enabled more sophisticated and coordinated approaches to policy development and implementation, both across Australia and trans-Tasman.

The successful introduction of the Australian Consumer Law and the adoption of the “one law, multiple regulators” model has enabled jurisdictions to better coordinate action and speak as ‘one voice’ to industry and has increased the effectiveness and responsiveness of consumer protection interventions.

This Strategy focuses on priorities that will deliver clear benefits to jurisdictions which includes the harmonisation of laws to better deal with national and international consumer issues.

Through the ACL, consumer laws in Australia have been strengthened, modernised and harmonised, to improve compliance and enforcement and to raise consumer and business awareness of their rights and obligations.

Clear and easier to understand rights and obligations can result in better informed consumers and businesses, clearer avenues of redress, reduced regulatory complexity and fewer disputes. A robust and effective consumer policy and regulatory framework can lead to more competitive markets in Australia and New Zealand and allow Australian and New Zealand businesses to serve their customers better, operate more seamlessly across borders and compete more efficiently in world markets. Greater competition can improve economic wellbeing for the benefit of all consumers.

The consumer law reforms in Australia have also promoted greater alignment between Australian and New Zealand laws, and have created opportunities for greater policy coordination and regulatory consistency with New Zealand, as a member of CAF and CAANZ, and as part of the Australia and New Zealand Single Economic Market agenda.

Australia and New Zealand also both contribute to international forums, particularly the OECD Committee on Consumer Policy and APEC. The close trans-Tasman working relationship facilitates a supportive approach by each country at these forums.

Legislative and Governance Forum on Consumer Affairs (CAF)
Consumer Affairs Australia and New Zealand (CAANZ)



Consumer Affairs Australia and New Zealand

The Australian Treasury
Australian Competition & Consumer Commission
Australian Securities & Investments Commission

New Zealand Ministry of Business, Innovation
and Employment
New Zealand Commerce Commission

NSW Fair Trading
Consumer Affairs Victoria
Queensland Fair Trading
WA Department of Commerce
SA Office of Consumer and Business Affairs
Tasmanian Office of Consumer Affairs & Fair Trading
ACT Access Canberra – Fair Trading
NT Consumer Affairs

***Legislative and Governance
Forum on Consumer Affairs***

Australian and New Zealand ministers
responsible for consumer affairs

CONSUMER POLICY IN A CHANGING MARKET: ADAPTING CONSUMER POLICY TO NEW CHALLENGES

Consumers and traders are connecting and engaging in new ways in a dynamic market environment.

An environment scan has identified the following key factors that have been taken into account in formulating the strategic agenda for CAF and CAANZ.

- *New models of business are emerging*

Different consumption patterns and new models of business such as peer-to-peer transactions are evolving. These person-to-person marketplaces are driving innovative and entrepreneurial delivery mechanisms, products and services that bypass traditional institutional structures. Many occasional traders do not think of themselves as a business, and as a result, do not consider regulatory requirements in their day-to-day operations. Understanding how these new business models coexist with existing regulatory regimes is still to be fully understood by traders and regulators.

- *Vulnerable consumers can have limited ability to navigate complex product and service delivery options, especially where information provision and purchasing are online*

The polarisation has never been greater between the highly informed, empowered consumer and the vulnerable consumer who does not have access, or the resources and capacity, to confidently participate in the marketplace. Vulnerable consumers are also less likely to understand and exercise their consumer rights and can be the target of unfair practices.

- *E-commerce is business-as-usual*

E-commerce has become a common way of doing business, reflected in a steady growth in online retail sales in Australia in recent years (to an estimated \$16.8 billion in the year to March 2015, up 8% from the previous year). Consumers are also increasingly using available information and data to make comparisons and purchase local and global products and services online. Data can assist consumers to make more informed choices of product features and offers, and as a result, improving consumer wellbeing and market efficiency.

- *Complex consumer complaints and issues may not be addressed*

Empowered and informed consumers are increasingly seeking remedies themselves for non-complex matters. This has seen more complex matters brought to consumer

agencies. The proportion of consumers who choose and/or have the means to seek redress through the legal system is small due to the cost and complexity of pursuing matters through the courts. As a result, consumers may not pursue their rightful claims for more complex matters, which can diminish the fairness of the system. Also, when Australians purchase products overseas, often through intermediaries, it is more difficult to pursue redress if and when issues arise.

- *Business and consumer data is growing exponentially*

Increasingly sophisticated consumer data generation and collection mechanisms are emerging, including smart technologies, retail loyalty schemes and online purchasing, promotions and competitions, providing businesses with a wealth of data on consumers. This is providing opportunities for businesses to target very specific consumer groups, whether through providing more tailored products and services or for engaging in unfair practices such as scam activity. It also enables consumers to become more informed through accessing their own consumption data for use in purchasing decisions in an efficient format, as recommended by the Harper Competition Policy Review. Increasing data about businesses and consumers can help regulators and policymakers better target their interventions and also opens up potential new ways to support the marketplace.

THE INTEGRATED AND HARMONISED CONSUMER POLICY OBJECTIVE

CAF continues to work towards achieving the national consumer policy objective:

'...to improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.¹

This is supported by six operational objectives as articulated in the IGA:

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

¹ Recital C, *Intergovernmental Agreement for the Australian Consumer Law*.

ASPIRATIONS FOR CONSUMER POLICY: CAF AND CAANZ'S GOALS FOR 2015-2017

CAF and CAANZ's Aspirations for 2015-2017 are centred on informed consumers, responsible traders and improved consumer outcomes for Australians and New Zealanders.

Consumers are making informed decisions and receive redress when things go wrong, wherever they are and however they buy

- Consumers take responsibility for the risks they can control
- Vulnerable consumers are protected
- The consumer protection framework enables consumers to confidently participate in the market

Businesses meet their obligations under the Australian Consumer Law

- The same expectations apply to businesses no matter where or how they operate
- Action is risk-based and proportionate to consumer detriment at an appropriate level of regulatory burden
- Decisive action is taken against where there is the greatest harm

A single, harmonised approach has achieved improved consumer outcomes for Australians and New Zealanders

- Current and emerging consumer issues are effectively addressed through collaboration and rapid responses
- Industry-specific regulation genuinely solves industry-specific consumer problems
- The benefits of robust consumer policy regulation are demonstrable

MAKING CONSUMER POLICY WORK: STRATEGIC PRIORITIES FOR 2015-2017

The priorities determine where the majority of time, effort and resources will be allocated to achieve the Aspirations.

Strategic Priorities

1. Provide more targeted education and greater access to information and tools that support empowered, self-sufficient consumers
2. Collaborate with other bodies to engage and protect vulnerable consumers
3. Identify, understand and respond to emerging market innovations and their impact on regulatory regimes
4. Better leverage the compliance and enforcement outcomes of regulators
5. Create an annual integrated strategy for nominated areas of concern and signal these to the market
6. Extend collaborative relationships with regulatory bodies and other relevant stakeholders
7. Develop mechanisms for more effective data collection and analysis
8. Commence, support and implement the ACL Review

MANAGING CONSUMER POLICY AND REFORM: A DECISION-MAKING FRAMEWORK

To achieve its goals, CAF and CAANZ have a decision-making structure. After a review of the effectiveness of the structure, one amendment has been recommended. It was agreed that product safety issues would be better addressed through FTOG or the relevant committee (PRAC, EIAC or CDRAC) and hence the PSCC would no longer operate as a stand-alone committee.

To further optimise the committee structure and inter-jurisdictional collaboration, the following operational improvements will be implemented.

1. When a new issue arises at CAANZ or with a committee, a high-level project plan will be created to ensure appropriate phasing, alignment and integration of all committee work. During the planning stage, consideration will be given as to whether the issue warrants the establishment of a short term, cross-committee working group.
2. A shared knowledge management system will be established to enable minutes and actions arising from all parts of the decision-making structure to be readily accessed to support cross-committee collaboration and ensure continuity when CAANZ and committee membership changes over time.
3. Explore mechanisms through which the CAF/CAANZ decision-making structure can actively engage with specialist regulatory regimes to address consumer issues of common interest.

