



**Ensuring effective consumer voices:
proposed consultation and research framework**

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 PIAC's work on consumer affairs

PIAC has specific expertise regarding consumer issues. It operates the Energy and Water Consumers' Advocacy Program (EWCAP), which is the peak body for energy and water consumers in NSW. PIAC's Chief Executive Officer, Robin Banks, is a member of the Australian Competition and Consumer Commission's (ACCC) Consumer Consultative Committee, and PIAC also has a dedicated position advocating for consumers' health issues.

PIAC welcomes the opportunity to comment on the framework that would facilitate the ongoing input by consumers into consumer law reform. PIAC recently made a submission to the inquiry on the national harmonisation of Australian consumer laws (April 2009).¹ In 2007, PIAC made a joint submission to the Productivity Commission's *Draft Report on Australia's Consumer Policy Framework*.² This submission is based on the relevant recommendations made in that submission and PIAC's broader work on policy and law reform and access to justice.

¹ Hugh O'Neill and Robin Banks, *Protecting consumer protections, A submission regarding the national harmonisation of Australian consumer laws* (2009) at http://www.piac.asn.au/publications/pubs/sub2009040_20090406.html.

² Consumers Federation of Australia et al, *Institutional arrangements for Consumer Advocacy, Research and Policy Development* (2007) at http://www.piac.asn.au/publications/pubs/sub2007092_20070925.html.

In responding to the Issues Paper released on 8 May 2009 by the Hon Chris Bowen, (then) Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, PIAC supports a consumer advocacy model that can provide structured evidence-based input into legislative and policy reforms. This paper proposes a framework that can meet this objective by building on existing structures and expertise within the consumer advocacy network.

2. Consumer Policy Framework

PIAC supports the Productivity Commission's recommendation 11.3 that the Australian Government take the lead role in funding a national peak consumer body, assisting network and policy functions of consumer advocacy groups and supporting consumer-related research.³ In this submission PIAC proposes a framework in which that recommendation can be implemented at the same time as building on the current strengths and expertise of the consumer advocacy sector. This approach eliminates the need to reinvent or duplicate what currently exists.

A proposed framework is illustrated in Figure 1 on page 3. It proposes new institutional frameworks and funding arrangements based on the principles that:

- the interests of consumers should direct all decisions about research, policy and law reform within the framework;
- consumer input is incorporated at all stages of policy development, legislative reform and implementation; and
- membership or lack of membership of the peak consumer body should not prevent access to public consultation processes undertaken by the statutory authority and its committees.

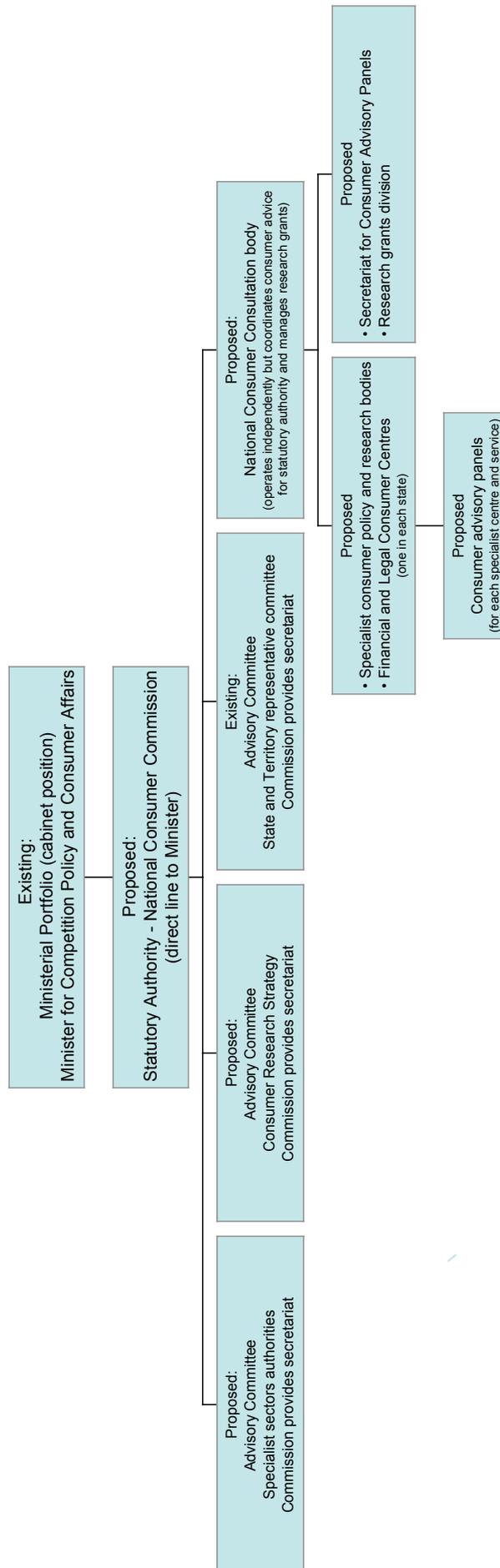
2.1 Framework Concept

The framework is headed by a Ministerial position, to which a statutory authority answers directly. The combining of consumer affairs and competition policy within the one Ministerial portfolio is an important element in a framework that brings together relevant issues from across the whole of government. The access direct to the Minister is important, as it ensures that policy can be developed independently from the Departmental hierarchy. It gives the statutory authority the recognised role and authority to influence consumer policy undertaken by other government departments and agencies.

The statutory authority incorporates the National Consumer Policy Research Centre, as described in the Issues Paper. The statutory authority's role should include co-ordinating input from consumer organisations as well as supporting appropriate harmonisation reforms of state and territory governments.

³ Productivity Commission, *Review of Australia's Consumer Policy Framework* (2008) Rec 11.3.

Figure 1



The statutory authority should be funded by government and be based on a legislative model that allows it to establish several advisory groups. Separate advisory groups should represent:

1. government and non-government bodies which have an interest in consumer issues (telecommunications, food authorities, energy, financial services, etc);
2. researchers and their organisations that fund or undertake relevant consumer research;
3. existing state and territory government committees;
4. national consumer consultation body (peak agency for consumer advocacy groups).

Including state and territory government committees in the framework recognises the legislative responsibility of the jurisdictions and aims to encourage more support and responsiveness to appropriate harmonisation. In the submission to the Productivity Commission in 2007⁴, the authors described an extremely slow response from jurisdictions in coming to agreed positions on reform. This was due to the lack of dedicated resources to the Ministerial Council on Consumer Affairs. The delays have led jurisdictions to go it alone, leading to greater inconsistency in regulation.⁵

This framework allows for some support from a national authority, but still requires a commitment from jurisdictions to support the work of their committee members through dedicated resources. The framework has many benefits, but would be seriously undermined if this support is not forthcoming.

The proposed national consumer consultation body would act as an advisory group on behalf of consumers but remain independent. It would be funded to undertake the development and co-ordination of input from consumer advocacy networks.

Community-based advice centres for consumers in each jurisdiction are the foundation of the framework. They are essential for the development of informed consumer input into the consultation process. These centres would provide practical help to consumers as well as assist consumer organisations, services and business organisations establish processes that encourage consumer input. They would form local centres of expertise about consumer advocacy and provide a national network that will be a natural contact point for researchers undertaking national studies into consumer issues. They would also work with the national body to ensure emerging issues were identified and contribute to systemic advocacy, policy and research projects.

The benefits of the framework include the following:

- It builds on existing consumer advocacy frameworks that have proven to be effective over time and acknowledges the importance of existing funding structures. Incorporating consumer bodies that are self-funded or funded by agencies with specific interests, maintains the resources already in the consumer advocacy sector.
- It fills the current gaps by co-ordinating and providing resources to improve research efforts, links consumer issues with competition policy and provides a structure for the existing state and territory consumer committees to operate and contribute.

⁴ Consumers Federation of Australia *et al*, above n 2.

⁵ PIAC supports harmonisation within the scope of raising state and territory practices to evidence-based international best practice, not harmonisation based on minimum standards practiced within Australian jurisdictions. The PIAC position is describe in O'Neill and Banks, *Protecting consumer protections*, above n 1.

- The statutory authority would obtain the advice it needs to develop proposals to the Minister from the various advisory committees. Objective analysis would be supported through the research program.
- The direct link to the Minister would enhance the priority given to the issues and facilitate timely responses.
- Emerging issues at the community level would be identified early and built into research and policy actions.

2.2 Funding

The Issues Paper states that funding will be available to establish and support the operation of a dedicated National Consumer Policy Research Centre (NCPRC). It also asks how a consumer body can be sustainable and not put at risk by the threat of government funding being withdrawn. In response to this issue, PIAC proposes that the newly formed statutory authority examine funding models that draw funds from government, industry, the private sector and successful enforcement regulator actions on consumer protection matters.

Funding sources should also be considered from levies or license fees, for example, telecommunication industries, credit providers, television and radio broadcasters could pay a fee into a trust fund, which could then be used to support the national consumer consultation body and specialist consumer services. This model is similar to the funding model for some community legal centres in NSW and protects the independence of the community organisations.⁶

The new funding arrangements, guidelines and governance requirements should be developed by the new statutory authority in consultation with the peak consumer body.

3. Consumer Advocacy

The framework responds to the matters raised in the Issues Paper about the process for gathering and assessing input from consumers, and determining priorities. An important role for the peak consumer body is to manage the distribution of funds to consumer projects and financial and legal advice centres. This allows funding for consumers with similar issues to resource their activities.

A strength of this model is that it includes input from consumers from a community base to the national level: incorporating consumers into each advisory committee and service delivery section of the model. This allows for consumer input from specialist areas, such as telecommunications or energy markets. Other benefits for consumer input include:

- providing a structured way in which the statutory authority can address the concerns identified on a national basis, and for specific consumer markets;
- providing an avenue for vulnerable consumers and those less likely to have their views expressed through formal channels;
- co-ordinating interests in consumer issues across governments agencies, and between levels of government;
- providing a direct way for government to support and improve consumer advocacy while ensuring consumers an independent voice.

⁶ An alternative funding model is described by Professor Jenny Onyx *et al*, in: 'Advocacy and Funding' (2007) 26 *PIAC Bulletin*, *Journal of the Public Interest Centre* 1, available at <http://www.piac.asn.au/publications/pubs/PIAC%20Bulletin%20No%2026.pdf>.

3.1 Principles

How consumer advocacy is undertaken will determine whether consumers have confidence in the process and will be willing to commit their time and effort. Advocacy initiatives are more likely to be supported by consumers if they are genuine in their concern to hear from consumers and provide support for them to learn and contribute. In addition to financial support and developing channels for their voices to be heard, other fundamental principles need to be reflected in the model. These relate to the respect for consumers and their role in the process. The health sector is the most advanced in developing and applying such principles and guidelines can be found as part of consumer health frameworks.⁷

The following set of principles is provided as an example of a minimum requirement to any consumer framework. PIAC recommends that the new statutory body adopt a minimum standard for consumer consultation processes to be developed by the consumer peak advisory body.

Principles: working with consumers

- Information must be provided to consumers in appropriate formats and in a timeframe that allows for discussion, analysis and response.
- Processes and practical support should ensure that the workload associated with representing consumer interests is manageable. For example, one consumer is not expected to represent all interests.
- Staff members involved in consumer consultation need to meet relevant competencies in working with consumers to facilitate their input, present or incorporate their views and provide feedback on outcomes.
- Avoid conflict of interest. Consumers or consumer bodies should not be represented by members of the particular service industry. For example, a nurse should not be on a consumer health committee representing consumers.
- Consumers should receive the training, support and funding they need to participate in consultation processes at all levels of the framework.
- Organisations that have a position on an advisory committee should have freedom to choose their representatives. The individual is representing the organisation and not participating in a personal capacity.
- Consumer representatives are kept informed of the process and provided with information about the outcomes of their involvement.
- Consumer representatives have access to information needed to participate in consultation processes.
- A culture exists where consumers are safe to contribute, free from retribution.

4. Research

PIAC supports recommendation 11.3 made by the Productivity Commission to establish a government-funded research body. The framework separates the development of the research strategy from the grant-making function, thus ensuring that the funding is targeted at the same time as ensuring the research is consumer focused.

PIAC recommends that the statutory authority have responsibility for developing a national research plan on which to base decisions about research funding. There are many examples

⁷ Examples include principles found in the publication from the Australian National University Centre for Mental Health Research: Kathleen M Griffiths, Helen Christensen, Lisa Barney, *et al*, *Promoting consumer participation in mental health research: a National Workshop* (2004) [105-6] at <http://www.ehub.anu.edu.au/pdf/consumerworkshopreport.pdf>.

across government of co-ordinated plans, which review and take into account relevant research undertaken internationally, by Australian universities, the private sector, research grant-making bodies and research centres.⁸ Such a plan ensures that research can be targeted to complement other research and avoid duplication. It also has the added benefit of creating a learning community, where those with similar interests can benefit. This would require establishing a permanent research committee of experts and consumer representatives that can review research projects funded by other research bodies in Australia, as well as overseas developments.

However, to ensure that research grants focus on consumer-centered issues, rather than industry perceptions of need, the grant-making process should be located with the national consumer consultation body.

The benefits of including a research function within the statutory authority include:

- the provision of expert advice to the Minister using the input from the advisory committees;
- objective analysis supported through the research program, which provides the knowledge base on which risk assessments can be undertaken and priorities determined;
- provision of a mechanism for experts across fields to develop a national research plan, which would define research priorities for a three- to five-year period;
- encouraging co-operation between researchers and avoiding duplication;
- creating flexibility in grant allocation and best value for money, for example, it could be used for sponsoring PhD candidates or short one-off research pilots, including questions in ABS household surveys.

5. Conclusion

PIAC has proposed an integrated framework, which acknowledges consumer advice and advocacy networks built by the community sector over many decades; state and territory responsibilities; and the interest of the Australian Government in improving competition and strengthening consumer protection.

This framework could form the basis on which the Australian Government leads consumer policy, research and advocacy. Establishing a national institution could result in improving consumer welfare, which means: fairer and more efficient markets, better-informed and confident consumers, and quicker response to market failures where vulnerable groups have been disadvantaged.

It is important that institutional arrangements put in place now will be viable and relevant for the future. The inbuilt flexibility of this framework allows for ongoing input into research and advocacy priorities, creating a pathway for emerging issues to receive attention quickly, and on a national basis.

⁸ See, for example, Ministerial Council on Consumer Affairs, *Joint Communiqué, Ministerial Council on Consumer Affairs Meeting Friday 2 September 2005* (2005) [5] <http://www.consumer.gov.au/html/download/MCCA_Meetings/Meeting_15_2_Sept_05.pdf> at 16 July 2009; and *Research Program and Strategic Vision* (2009) Australian National University Centre for Aboriginal Economic Policy Research <http://www.anu.edu.au/caepr/research_program.php> at 16 July 2009.

To improve consumer welfare, adequate funding is important but not the only requirement. A commitment from state and territory governments, which are responsible for most consumer legislation, is also required to make this or any other framework effective.

6. Recommendations

Consumer Advocacy Framework

That the Productivity Commission recommendations be adopted within a national framework that incorporates existing consumer advocacy networks as described at Figure 1 in this submission.

Role of a consumer statutory body

That a statutory authority be established that answers to directly to the Minister for Competition Policy and Consumer Affairs.

National Consumer Policy Research Centre

That the new statutory authority incorporate the National Consumer Policy Research Centre.

Research plan

That the new statutory authority develop a national research plan on which to base decisions about the research grant funding process.

Role of peak consumer body – National Consumer Federation

That a national peak consumer body be funded to develop and co-ordinate network and policy functions of consumer advocacy groups and administer a consumer research grant program.

Role of Ministerial Council on Consumer Affairs

That state and territory governments commit to support the work of their members on the Ministerial Committee for Consumer Affairs through dedicated resources.

Financial and legal consumer advice centres

That a consumer advice centre be funded in each jurisdiction to provide consumers with financial and legal advice and input into national research, policy development and advocacy activities.

Funding models

That the new statutory authority examine funding models for consumer advocacy that draw funds from government, industry, the private sector and successful enforcement regulator actions on consumer protection matters.

Funding arrangements, guidelines and governance requirements

That the new statutory authority, in consultation with the peak consumer body, develop funding guidelines to be used by the peak body in administering the grant program.

Consumer consultation principles

That the new statutory authority adopt a minimum standard for consumer consultation processes developed by the consumer peak advisory body.