

The [Productivity Commission's latest report](#) on how consumer law is being enforced assumes the law is working well when, in a number of areas, it's failing abysmally. It's time to recognise that better coordination and enforcement are needed.

The report from the Commission joins a few more, such as [the review of Australian Consumer Law](#) and the [Financial Services External Dispute Resolution Review](#), which have pointed to needed reform. [Consumer law](#), as it works today, has 10 different agencies responsible for enforcing it.

The Productivity Commission has had ideas about reforming consumer law before like reviewing the adequacy of penalties, consumer complaints handling and redress systems and better forms of co-operation between regulators and the court and tribunal system. Sadly, not much has happened on many of those recommendations and this review doesn't come to grips with them either.

Learning from international experience

The overall objectives of Australian consumer law are to:

- improve consumer well being through consumer empowerment and protection;
- foster effective competition;
- enable the confident participation of consumers in markets in which [both consumers and suppliers trade fairly](#).

The United Kingdom and other European Union member states are radically improving [complaint processes for consumers](#) through the creation of economy-wide ombudsmen in sectors that don't have industry specific regulators. It's bringing remedies to millions of consumers. With virtually no analysis from the Productivity Commission on consumer complaints processes, it's unlikely any change will occur here.

In relation to penalties there is more welcome news. The commission is endorsing the need to increase penalties under consumer law from A\$1 million to A\$10 million, to be consistent with competition law.

Equally important is the need for a much wider range of behavioural remedies, including compliance and restitution orders, which already exist in many other countries. The Productivity Commission does not appear to have looked across the rapidly fading borders to update its thinking on best practice consumer protection.

The Productivity Commission laments the absence of sufficient hard data to make a clear assessment of how the law is being administered. This is not the first time this issue has been raised by the Commission. In 2008 it recommended the establishment and public funding of a serious consumer research agency, but this is yet to happen.

Areas that are in need of consumer protection

Each year there are thousands of claims made by marketers of over-the-counter, or herbal or complementary medicines, with scant evidence of their efficacy and a [huge regulatory gap](#) when it comes to taking effective action against them. Campaigners like Dr Ken Harvey, an Associate Professor in the Department of Epidemiology and Preventive Medicine at Monash University, and a long time critic of poor regulation, have made this point many times. It's disappointing the latest Productivity Commission report has not come to grips with the hard evidence presented by researchers in this area.

It is widely accepted that the Australian Competition & Consumer Commission [ACCC](#) has the necessary tools, experience and culture for taking on serious breaches of the Australian consumer law in this area, and yet the government is preparing to establish a new enforcement body. This goes against the very policy goal of regulation reduction espoused elsewhere.

Protecting consumers of financial services is another blind spot in this latest review. Although the commission notes the exclusion of financial services from Australian consumer law jurisdiction, as they are regulated by the Australian Investment and Securities Commission ([AS](#) [IC](#)), there is inadequate recognition of the gaps between these two standards of regulation. This occurs where Australian consumer law provisions are not carried over to apply to financial products and services.

These include the absence of consumer guarantees, prohibitions against unsolicited consumer agreements and single pricing, in which consumers must be given a total price for goods or services. Finally, the Australian consumer law protection in relation to proof of transaction, doesn't apply to financial services.

Throughout this report the Productivity Commission acknowledges that multiple regulators can work well together enforcing the same law, but not when it comes to the financial services sector.

Genuine consumer empowerment should provide avenues for some of these problems to be heard by regulators. In 2008 the commission accepted [that UK style complaints procedures](#) , through which market failures can be brought to the attention of regulators, might be useful for Australia. Sadly, the Commission review concludes without evidence that regulators are in the best position to determine where markets aren't working.

There is still a chance for the Productivity Commission to revise its thinking. In the interests of consumers, I hope it does.

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