

SUBMISSION

To the 2016 ACR Review

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I have downloaded the Commonwealth Government's two Fact Sheets, providing information about the ACR Review and will attempt to follow the parameters set in them. But please also read, as part of this submission, its covering letter and my earlier correspondence of 19/2/16 to Minister Garrett.

(A) By way of background, I repeat the two "events" which occurred in the last 12 months and to which I will refer - by way of example:

- (1) Late last year (2015), we purchased two medium sized clay Tuscan pots, from Bunnings, and shortly after the pots started crumbling.
- (2) The claim process was rplete with misunderstandings but, within a reasonable time frame (as distinct from my communications with the Minister and CAV) sorted out by reference to Bunnings' Corporate Secretary, in a mutually agreed settlement.
- (3) We understand the Vietnamese imported clay pots had been taken out of their kiln too soon.

(B) "single law, multiple regulator model."

I personally reject this model in favour of a single Commonwealth Law and regulator model (not with a new regulator to replace the ACCC).

(1) My considerable experience, gleaned over the last 15 years, in dealings with 3 separate Consumer Protection Authorities, has been particularly frustrating and effectively has achieved nothing:

- (a) ACCC - Commonwealth Government,
- (b) OFT - Queensland State Government, and
- (c) CAT - Victorian State Government.

(2) The Australian Consumer Protection system relies on co-operation between disparate authorities (State and Commonwealth based), with each pursuing their own perceived interests.

(a) But, in my experience, none of them fulfill the promoted role of consumer protection.

(b) Instead, a common theme, or objective, (if there is one) appears to be to frustrate, and deny any semblance of legitimacy, to individual consumer complaints.

(c) Worse than giving the appearance of biased / skewed support of "defendants" (predominantly businesses), is the standard format, government supported, strategy of denial - as if it were a key aspect of bureaucratic training. Consumer legislation does not appear to be capable of being breached against individual consumers by business.

(d) I would go further, the pretence of government providing genuine consumer protection is farcical. Its integrity can be

- (4) Concurrently to making a claim against Bunnings, we complained to CAV who, in contra-indication, advised:
- (a) "products may have been 'not of acceptable quality or not fit for the purpose', but
 - (b) "unable to identify clear breaches of the legislation"!

- (5) On 14/5/16 we purchased a daphne plant from Bunnings (copy of receipt + attached)
- (6) It was pot bound to an incredible extent (see attached copy of photograph)
- (7) The plant cost only \$12.98. Therefore
- (a) we haven't bothered complaining to Bunnings, and
 - (b) we cut off the bound root system and put the plant in our garden - hope it survives.

Both incidents, so close in temporal terms, reinforce our experience, over the years, of a lack of effective quality control over product sold by Bunnings - "not of acceptable quality and fit for purpose." We reasonably expect that many others have shared our experiences, even though Bunnings is one of the better reputed retail market operators.

Our "beef" is the way in which Australian Consumer Protection Authorities do not perform their promoted role but, instead, as "victims" such as ourselves, appear to act as multiple conciliation services (both Commonwealth and state), albeit with a perceived bias towards the retail merchant and against complainants.

questioned, to the extent that we may all be better off, if Government did not attempt to provide any facade of consumer protection. - at least consumers would more clearly know where they stood and would no longer feel that Government financial resources, supported by their taxes, were being squandered. This may seem too pessimistic but I suspect such a view would engender a surprising level of community support.

(3) I am currently experiencing, in the ACC, the very worst possible bureaucratic impasse, of unbelievable proportions. My complaint, against toll operators, Transurban and its associate / subsidiary, Go Via, concerns a 25% increase in toll fees / charges, effective 1/1/15 but without any notification to customers. (Additionally in my own case, and as an aside, due to a separate change of address blunder, my privacy has been breached with personal account statement details being sent to an incorrect address - the subject of a separate complaint to the office of the Australian Information Commission).

(a) The ACC's narily "recommended" I
 approach the Tolling Customer Ombudsman (TCO) who is reportedly funded by just one Toll Company (and its subsidiaries) - Transurban. Subsequent requests to , for an explanation for the "recommendation" have been ignored.

(b) But most worrying, and supporting the concerns I have expressed above, I have, since 9/2/16, sent to , four letters without receiving any response, not even an acknowledgement of receipt of my correspondence, concerning the unnotified 25% increase in toll charges by Go Via. The only hypothesis, supported by such blatant inaction, is participation in a bureaucratic

non response strategy, undoubtedly not sourced in alone. Perhaps the ACR Review could intervene and help me resolve this communication impasse.

(4) Such experiences should help to explain my reluctance to support a single law (always a compromise?) multiple operator model. Repetition of experiences, mirroring those previously outlined, destroys consumer "victim's" confidence in the existing confusing multi-jurisdictional structure. It is out of control, as is the Commonwealth's regulatory authority, the ACC.

But, by dispensing with the unnecessary extra layer of state based complexity, then through ceding the States' Crown Consumer Protection authority, to the Commonwealth (as happened at Federation with taxation powers), the opportunity presents itself to review, and simplify, the whole process into one, on a meaningful Consumer Protection premise. But I must emphasise this would, of necessity, involve abandoning the present bureaucratically controlled (not independent) Commonwealth Government's ACC and replace it with a structure and process that actually looks after the interests of Australian consumers. Thus the current laws, and their administration are totally ineffective, through bureaucratic mismanagement by Government authorities. There is no doubt that the existing law is not sufficiently flexible to address new and emerging issues - its only answer is "No", without explanation, a well established bureaucratic negative strategy.

C. Failure of the National System / frameworks to address new and emerging issues.

Structure and process of the recommended single law and regulator model - replacement, not improvement or revision of that multiple regulator model.

(1) The law may well be operating as intended, by both State and Federal levels of Government, through a well trained bureaucracy, albeit negatively so, and which ensures the intended role of consumer protection is constantly thwarted. But it can be repeatedly demonstrated, even if anecdotally, that the consumer law is not operating as intended by its drafters, ostensibly to protect the interests of individual Australian consumers. It should also be obvious to "victims" of the present system / structure, that it is premised, and relies for its continued existence, on imposing "unnecessary" red tape" ostensibly designed as a deliberate official strategy to negatively impact on the risk of consumer detriment, even perhaps deliberately enhancing such detriment.

(2) I can only hope, and trust, that the ACR Review will not be effectively controlled by those same bureaucrats responsible for its comprehensive shortcomings - the review's independence must be assured, especially as the multi regulator model is not administering or enforcing the law, in the way intended, or at least promoted, in the interests of protecting consumer "victims".

I cannot overemphasise my concern that the "multiple regulator" model is not, and CANNOT, be effective and efficient in supporting a single national consumer policy

frameworks. Common sense dictates that a well designed, and supported / sourced, single regulator model can be effective and efficient in supporting a single national consumer policy framework - provided it is properly designed and administered in the interests of consumer protection.

(3) The promoted objectives of the current national consumer policy framework are "motherhood" and vague statements, not supported by anecdotal evidence - an hypothesis which should be independently and rigorously investigated by the ACR Review. In terms of extant practical applications, including outcomes that don't support consumer interests, the aims of the "framework" are nothing short of nonsense - any pretence of adherence should be universally condemned. To repeat these "aims", in the context of the present analysis presents a stark contrast to the published words i.e.

"improve consumer well being (?!) through consumer empowerment (?!) and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and supplier trade fairly" (a dream? - otherwise why the need for regulation?).

(4) This national consumer framework (policy), in addition to its omnibus "aims" also reportedly boasts as being supported by six operational "objectives". As I have indicated, in my view, and my experience, the interests of consumer "victims" are thwarted, if not ignored, thus clearly negating any question of compliance with all six "objectives". But I wish to comment upon the last two

"objectives", not only in relation to present, and past, failures to achieve such "objectives" but also their relevance to any future ACh system / model.

(a) "5. To provide accessible and timely redress where consumer detriment has occurred."

If Consumer Authority policy (State or Federal) is to sidestep individual complaints, as previously outlined, then any question as to whether consumer detriment has occurred is irrelevant. It therefore, follows, by definition, if no consumer detriment has occurred, there is no need to provide accessible and timely redress, for something that is not acknowledged as having ever happened. However, that such an objective is a desirable outcome is not in question and should therefore be incorporated in any revised consumer protection structure and process to emerge from the Review.

(5) "6. to promote proportionate, risk based (?) enforcement."

Such an "objective" connotes fairness and equity, though "risk based" assessment, let alone enforcement, is a loose and imprecise phrase capable of more than one interpretation. Of course, any concept of "enforcement" under the ACh, is an extant "hollow" / "empty". How can a system that is extremely biased towards "defendants" be able to 'promote' enforcement. Ultimately, if forced to the wall, I understand the Consumer Protection Authorities share more like a "failed" Conciliation Service whose primary duty would be to promote dispute resolution through eg. mediation, failure of which would result in the issuing of a "no resolution" certificate. But, I have

never experienced a Consumer Protection Authority making a decision / determination and imposing a penalty. Thus there is an avoidance of any question of enforcement.

D. Quo Vadis?

I must be mindful not to promote ideas and changes over matters on which I have no expertise. But the Review should be very concerned about the widespread, and well known, failures and shortcomings of the present Act system and its need for not only review but, I suggest, complete overhaul.

(a) "The national consumer policy framework aims 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."

In my view this is such an obtuse, motherhood, omnibus declaration as to be effectively worthless / meaningless. The existing extant consumer protection system has been corrupted to such an extent observably "fail" on all counts canvassed in this "aim". As well as being too vaguely expressed, perhaps the "aim" is projected at a level that is unattainable by Government and its bureaucrats responsible for maintaining the system. As a priority, a 'first up' review of such an "aim" would appear to be paramount.

(b) The six subsidiary supporting "objectives", as distinct from the "aims" they support (does "aim" = "objective" or is there a shade of difference between 2 separate and distinguishable concepts?)

I repeat, if achievable, are good strategic pursuits to attain. But, again, under the present AEC "co-operative" system, these objectives appear to be unattainable, within the existing bureaucratic parameters, imposed and managed by governments (State and Federal), in part, because:

- (i) "the national consumer policy framework is not sufficiently flexible to address new and emerging issues", and
- (ii) " --- the law is not operating as intended and does not address the risk of consumer detriment let alone doing so without imposing unnecessary red tape."

(c) From my experience, as the existing AEC system is obviously "not working," a complete rethink is necessary. The "aim," and subsidiary "objectives" need to be revisited and, as a minimum, are in sad need of "fine tuning". But, and more importantly the whole system needs to be dismantled and rebuilt, from the bottom up, incorporating, inter alia:

(i) The States cede their consumer protection powers, from the Crown, to the Commonwealth Government, thus simplifying communication channels. At present there appear to be at an impasse eg. my complaint against Go Via (a subsidiary of Transurban, for increasing toll charges by 25%, effective 1/1/15, without notification or explanation:

* I joined Go Via when living in Queensland and in July 2014 it was taken over, without my knowledge, by Transurban (reportedly a Victorian organization set up by the Kennet government.).

- * After moving permanently to Victoria I still:
 - receive account statements from Go Via, a Queensland Co.
 - which was owned by Queensland Motorways Management P/L

- who have automatic deductions, for topping up my account, from my credit card.

* I therefore complained to the Commonwealth Government's ACCC who have refused to respond to my correspondence.

(ii) But the Commonwealth's ACCC, for individual consumer "victims", mirrors the biased, "do nothing, behaviour of its state counterparts. Remember, the ACCC's has not responded to my correspondence for nearly half a year! The ACCC, in my view, needs to be disbanded and its replacement built from the ground up (not from the bureaucratic top down) - no more "passing the buck".

If there is not such a substantial reorganization then the consuming public is arguably let off without any consumer protection authority, as "victims" would not be misled into complaining to an ineffective regulatory authority, but rather could immediately consider other options, including legal redress (not much better, if at all so?).

(iii) But the paradigm change for the new Commonwealth consumer protection organization / authority must also avoid repeating the "Conciliation Service (dispute resolution) reputation of the ACCC, and other Government regulatory authorities. For individual cases / complaints, if such a new Commonwealth body is to be called an Authority or Commission, it must surely have powers to make, and enforce, decisions / determinations, premised on "information" available (after investigation, not personal of that "information") together with associated financial penalties for confirmed legislative breaches - both fines and personal compensation and damages.

(iv) Appeal provisions would have to be considered and perhaps this brings into play the concept of an Appeal Tribunal incorporating self representation and no awarding of costs. But overall, the new regulatory authority would, in high profile / 'large' cases, involving multiple complaints and perhaps defendants, have to retain the right to pursue action, still under the new legislative umbrella, within the judicial system and incorporating a formal appeal process through an appropriate jurisdiction. But the example of my personal Bennings experience perhaps suggests the collating of a number of small individual cases involving statutory breaches by the same business, and then perhaps escalating the issue of penalties / punishment. A thought - such potential dilemmas could perhaps be resolved by a "single law, dual regulator" Commonwealth model.

E. Concluding case studies - Anecdotal "information"

To reinforce many of the concerns that I have canvassed, it is perhaps appropriate, and instructive, to briefly visit the circumstances of a recent airline communication impasse, that resulted in observable harm to consumers / customers and which anecdotally, I understand, has been often repeated. The penalties applied, for alleged contract (unwritten) breaches, whether intentional or not, are too often excessive eg. excess baggage charges by Commercial Airlines. Such practices are not usually covered in any written contract and are penalties imposed by Airlines on vulnerable stranded customer "victims". Such practices must be stopped. If Consumer Protection authorities are incapable of so doing then perhaps resolution of the problem will require special, separate Commonwealth legislation. But to be administered by whom? Perhaps by a new Commonwealth "single law, single Federal regulator"?

(1) The disgraceful, recent, out of control, ultra vires any specific contractual arrangements (oral if not written), unfair etc (I am biased!) Airline penalty imposition, involved, inter alia:

- (a) Two passengers, my stepdaughter and granddaughter (who had just turned 21)
- (b) a 25/5/16, 12.20 am return flight from Denpasar, Bali to Melbourne (copy of tickets attached)
- (c) with the notorious, and cheap, Tiger Airlines, and
- (d) Australian carrier Virgin Air line (Bali to Sydney) and Tiger again (Sydney to Melbourne) (Copy of tickets attached)

(2) The passengers were denied "booking", as their flight had left earlier:

(a) A review of the ticket by family members elicited the same reaction i.e. the flight was scheduled to leave on 26/5/16 at 12.20 am.

(b) Tiger Airlines put a different interpretation on the ticket wording and insisted their missing the flight was the fault of the consuming "victims". At best the wording on the ticket is misleading.

(c) Tiger Airlines' staff, at the booking desks, advised the passengers that they would have to pay for another ticket, each, to return to Australia on a future flight.

(d) But here's the "sub". They were also advised by staff at the booking desks that "Tiger" policy was not to issue one way tickets, but only return fare tickets which they would have to purchase (without any discount) per flight with no right to dispute.

(e) My step daughter and her daughter, the "passengers", immediately had to seek out alternate arrangements. They ended up purchasing one way tickets, again at undiscounted prices, on a Virgin Airline flight due to leave at 10.25 pm on 25/5/16 but flying to Sydney, not Melbourne.

(3) Such unconscionable behaviour will lead to a claim (no doubt disputed and refused) to Tiger Airlines for a refund of the Virgin (Bali to Sydney) and Tiger (Sydney to Melbourne) fares. A concurrent complaint to the ACCC (or should it be CAV - they "pass the buck" between each other) will seek, and no doubt unsuccessfully so, a determination that Tiger was in blatant breach of Consumer Protection legislation, and its actions should attract appropriate financial penalties - both fines and compensation and damages for the consumer "victims".

Past experience tells me that the 'standard format' Commonwealth response, through its ACC, will be "no breach" or re-present the complaint, and associated claim, to CATV (the beginning of the circular denial of responsibility / get out of jail card).

(4) Such an "experience", in many ways, mirrors my personal experience, with Distlines, in the mid 1990s, an experience I shall never forget, and which, due to its nature, could not, but should have been able to, be referred, at least as complaints to Commonwealth Consumer Protection authorities. There were two "victims," myself and the Ansett employee.

(a) I had booked a TAA flight home, from Melbourne to Queensland (Gold Coast) - for "family" emergency" reasons, serious enough for me not to appear in a Victorian Supreme Court hearing at which I was the applicant. But I tried to leave on an flight, earlier to that on which I had booked. I approached the TAA flight desk but was (incorrectly as it turned out) advised that there were no seats available on the "current" flight which was leaving shortly.

(b) In view of the urgency of my return home, I had no alternative but to purchase another ticket from the competing Ansett airline. I approached the Ansett booking office and the officer, instead of selling me a ticket, on being advised of my circumstances, and without question, checked his computer screens and established that there was a seat available on the earliest TAA flight, that was denied to me by TAA airport management.

(c) The Ansett booking clerk, and compassionately so, directly booked me onto a seat in the TAA flight, rather than "oversell" another Ansett ticket to myself.

(d) when TAA airport management realized what had happened, I was embarrassingly confronted by TAA's airport manager, in the boarding queue. But on my reminding him that I was recovering from heart surgery (inlet alia), he backed off. I flew back to my home on the Gold Coast, in that earlier TAA flight.

(e) Unfortunately, I subsequently ascertained that the sensitive helpful and sympathetic Ansett administration officer had been "fired" for helping me. In consumer protection terms, I ask - what rights did he have, including within the existing A^oW scheme - yet another reason for disbanding the scheme and replacing it with a structure that can "actually" and positively help consumer victims, AND those who help such victims.

QUO VADIS ?

Alan Chalmers