

CREATING CONFIDENT CONSUMERS

Background papers to the report:

**“The role of the Ministry of Consumer
Affairs in a dynamic modern economy”**

May 2003

Background papers

1. Literature Review of Analytical Frameworks	1
2. Consumer Policy Tools	21
3. Key Trends in Consumer Policy and the Role of MCA	36
4. Perspectives of the Ministry of Consumer Affairs Stakeholders	50
5. The Establishment and Development of the Ministry of Consumer Affairs	80

1. Literature Review on Analytical Frameworks

Introduction

This paper reviews the major theoretical approaches to consumer policy by drawing on academic literature. The purpose is to identify considerations in formulating the goals of consumer policy and appropriate high-level frameworks that support those goals.

The first part of the paper discusses the scope and boundaries of consumer policy. The academic literature generally assumes a narrow scope, focused on the consumer as a purchaser of goods and services in a market setting. The consumer movement uses a broader definition, and its focus is on the consumer as a recipient of goods and services in a wider setting, including public services. The paper then discusses the goals of consumer law. Writers have noted that consumer protection policy lacks a robust theory or a clearly defined set of goals. Duggan (1991) suggests that there are three theoretical approaches: efficiency, equity and paternalism. Other approaches are libertarian, rights-based and information-based.

While no one framework will provide answers to every consumer problem, it is hoped that this paper highlights the useful role of theory in exposing alternative ways of conceptualising consumer problems and alternative approaches to dealing with those problems.

What is the scope of consumer policy?

There are two definitions of the consumer interest: narrow and broad. The narrow definition focuses mainly on citizens entering transactions to obtain products and services from commercial enterprises (Cranston, 1978). This definition is consistent with the thrust of consumer protection legislation, which confines itself to transactions involving goods and services. The definitions of goods and services exclude such items as tenancy agreements, social welfare benefits and land. Although the scope of the legislation may extend to transactions between commercial enterprises—for example the Fair Trading Act—its primary focus (and its *raison d'être*) is on transactions entered into for domestic or personal purposes.

The theoretical literature also adopts the narrow definition of the consumer interest. Its overwhelming concern is with transactions that take place in a marketplace, with a particular focus on the institution of the contract. Discussion only occasionally extends to transactions outside the marketplace—such as the social welfare or public education system—or between commercial enterprises, even when one party is at a bargaining disadvantage.

Under the wider view of the consumer interest, the term 'consumer' is virtually equivalent to that of 'citizen' (Cranston, 1978). It is said that the "consumer interest is involved when citizens enter exchange relationships with institutions like

hospitals, libraries, police forces and various government agencies, as well as businesses”. (ibid.)

This broad view has been adopted by the non-governmental consumer movement. Cranston describes Ralph Nader’s move from a narrow to a broad definition. Similarly, the definition of a consumer used by the UK National Consumer Council is “everybody in society in one part of their life: that is, as the purchaser or user of goods and services, whether privately or publicly supplied”. (Mitchell et al, 2001.)

In their guidelines for consumer policy, Mitchell et al (who represent various international consumer groups) draw a distinction between the consumer interest and the producer issues: “... issues about wages and conditions of employment are clearly producer issues and do not come within the scope of consumer policy”. Also excluded are ‘citizen’ issues such as “constitutional matters, taxation and the distribution of public resources”. There is an overlap with citizen issues such as “the quality of public services, the most effective ways of delivering public services to consumers, the administration of justice, data privacy” and environmental and trade policies.

The goals of consumer law

Writing in Canada, Cayne and Trebilcock (1973) observed:

Even the most casual observer of contemporary legal literature could not help but note the proliferation of consumer protection rules. The growing importance of consumerism has not yet, however, resulted in a concise statement of the goals which these rules are designed, or should be designed, to achieve. (p396)

They go on to say that for realistic goals to be set, they must be capable of justification against a broad conceptual framework.

Writing in Australia, Duggan (1991) also refers to a proliferation of consumer protection statutory initiatives and states that “there is no clearly articulated philosophy of consumer protection”. Further, taken as a whole, the initiatives that exist are “marred by a failure to be sufficiently explicit about values and to focus sharply enough on objectives” and, further, consumer protection lacks a “robust theory”.

Frameworks for consumer protection policy

Duggan (1991) says that there are three frameworks (or “sets of values”) that underlies nearly all consumer protection measures. This section adapts the frameworks presented by Duggan, so as to help define the goals of consumer policy. The frameworks centre on:

- *welfare considerations*. However, we prefer the phrase ‘efficiency’ to ‘welfare’ and will use it from here on. Under the efficiency approach, the objective of consumer policy is to help consumers meet their preferences in order to achieve an efficient allocation of society’s resources. A consumer’s preferences are not to be questioned and any intervention which interferes with a

consumer's pursuit of these preferences is *prima facie* inefficient and undesirable

- *equity considerations*. Under an equity framework the objective of consumer policy may relate to a 'fair' distribution of losses or resources, or to the power relationship between supplier and consumer (inequality of bargaining power)
- *an eclectic mix of concerns grouped together under the heading 'paternalism'*. An information-based framework is derived from the efficiency framework. However, it is less wedded to certain premises, such as the premise that consumers will always act rationally in a self-interested manner. It also defines a broader agenda for consumer protection, which is concerned with the process of preference formation. The objective of the information-based framework is to protect consumers from the 'bad deal': the transaction where what the consumer gets is not what they intended or expected.

Further frameworks include:

- a libertarian framework
- an information-based framework
- a 'rights' framework.

The efficiency framework

The fundamental goal of the efficiency framework is that 'people should get what they want'; in other words, that consumers' individual preferences should be satisfied. Underlying this goal are the following premises:

- individual consumers know better than anyone else what their preferences are
- although they are not infallible, consumers are less likely to make a mistake about what is wanted than a third party (such as the state)
- the only externally valid indication of a preference held by consumers is their willingness to pay.

From an economic perspective, allowing consumers to pursue their own preferences is the most efficient way to allocate society's resources. It therefore follows that there is only limited scope for consumer protection intervention by the government. Any intervention that takes place must enhance the ability of consumers to meet their individual preferences and therefore must also enhance economic efficiency.

The grounds for intervention under this framework are slim. For example, Hynes and Posner (2001) state that a proper defence of consumer protection regulation

must explain why the market would not supply its benefits if consumers were willing to pay for them.¹

Theorists in this vein seek to demonstrate that there are a number of seemingly unfair contractual outcomes that in fact perform a valuable signalling and informational function between supplier and consumer, and help consumers meet their preferences. For example, consumers who agree in a credit contract to offer all personal belongings as security for a loan may be signalling that they consider that they are unlikely to default—given the inconvenience that would be caused by repossession—and are therefore a good credit risk. The creditor may respond by offering a lower interest rate. In contrast, debtors who are reluctant to put all their personal belongings on the line may be signalling that they think they are likely to default and this risk will be reflected in the interest rate. Regulation² may interfere with these informational outcomes and lead to cross-subsidisation (for example, the creditor may charge all debtors the same interest rate (good credit risks therefore subsidise the bad) and other inefficient outcomes.

The efficiency framework does leave room for intervention if it will enhance efficiency or, in other words, resolve market failures. Imperfect information is the most common barrier to consumers meeting their individual preferences and cause of market failure. Imperfect information has a number of manifestations:

- information may be costly to acquire and interpret
- there may be information asymmetries between supplier and consumer, allowing scope for the supplier to take advantage of the consumer, including through fraud
- consumers may underestimate the value of information about a particular product or service.

The consequence of this is that consumers face information barriers to the satisfaction of their preferences, and the result is that in particular transactions the outcome may not be what they expected. This is sometimes referred to as the “bad deal” (Hadfield et al, 1998).

Consumer protection measures, to the extent that they are justified by the efficiency framework, generally focus on mitigating imperfect information. However, to be efficient the benefit of such measures must outweigh the cost and, if there is a choice of measures, the least costly must prevail. On this basis, the efficiency framework favours measures such as mandatory disclosure of information over alternatives such as occupational regulation or prohibition of particular contractual terms.

¹ The examples of benefits given are from the consumer credit context, being information about terms and conditions, insurance against shocks and protection from discrimination)

² For example, regulation which prohibits the taking of security over household items.

The grounds for intervention on the basis of imperfect information remain limited. For example, in an influential formulation, Schwartz and Wilde (1979) argue that intervention, whether to regulate terms or require information disclosure, is not justified because a number of consumers are ill-informed—“... rather, the normative question should be whether the existence of imperfect information has produced noncompetitive prices and terms” (p631). The same authors (1983) also state that “supracompetitive pricing ... is often the only problem serious enough to justify regulatory concern” (p1391).

Schwartz and Wilde (ibid) also succinctly describe the underlying premise of the efficiency framework:

... we assume that competitive outcomes in markets for contract terms are normatively desirable ... When a market is in competitive equilibrium, firms provide goods and contract terms at the lowest possible cost consistent with the continued existence of these firms. Thus, assuming a given distribution of wealth, consumers cannot do better than purchase in competitive markets.

(pp1392-93)

The efficiency framework does not concern itself with goals such as equality or the fair distribution of resources. The argument is that such goals should not be achieved by consumer protection regulation that restricts the contracting process and thereby interferes with consumers pursuing their preferences. Rather, they should be achieved through instruments such as the taxation and social welfare system.

The libertarian framework

This framework shares many of the assumptions of the efficiency framework. The difference is that the fundamental goal is not efficiency but individual autonomy and freedom. Thus, government intervention that subverts individuals pursuing their preferences is not objectionable on the grounds that it threatens a misallocation of society's resources, but is *prima facie* bad because it infringes individual freedom. 'Freedom of contract' is a moral imperative of the libertarian framework.

Much of 'law and economics' scholarship, particularly the 'Chicago School', demonstrates a libertarian bent. It is generally unsympathetic to consumer protection measures.

The grounds for intervention to protect consumers are limited and restricted to aspects of a transaction that call into question the voluntariness of the parties to the transaction—e.g. physical coercion or serious externalities.

The equity framework

The overriding goal of the equity framework is fairness. However, Duggan points out that there is no universally accepted standard of fairness. He highlights three

theories of justice based on equity considerations that have relevance in the consumer protection context:

- commutative justice
- loss-shifting
- distributive justice.

Also discussed is a more general standard of fairness based on inequality of bargaining power.

Commutative justice

Duggan states that:

Commutative justice is concerned with preserving each citizen's share of the prevailing distribution. It is complementary to the notion of distributive justice which is concerned with how society's wealth is divided among its citizens in the first place. (p257)

Redistribution of wealth should be carried out according to societal standards of fairness and not as a result of ad hoc interactions between parties.

Duggan points to a number of legal doctrines that appear to be based on commutative justice principles, for example the concept of unjust enrichment, the doctrine of penalties and tort rules on damages. All of these doctrines are designed to restore the respective positions of parties to a transaction following a breach of some legal standard by one party against the other, and also to prevent parties from making windfalls from the breach.

In the consumer context, an example might be a rule that sets aside a contract because it is unduly one-sided, such as in the credit context where the Court has the power to reopen credit contracts.³

Loss shifting

This is a legal rule that shifts a loss from a party that might normally be expected to bear it to some other party.

An example arises under the Consumer Guarantees Act 1993 (and the Hire Purchase Act 1971). If a consumer purchases a good on hire purchase and the good is deficient, the consumer may claim various remedies from the supplier. If the supplier is insolvent, normally the consumer must bear the loss. However, the Consumer Guarantees Act gives the consumer the right to sue the financier.

³ However, in practice judges are very reluctant to reopen a contract because of its one-sided nature. They are more likely to be concerned with abuse in the contracting process.

The rationale for this rule is that it is *fair* that the loss should be borne by the creditor because it is more likely than the consumer to be able to absorb it (ie the creditor has 'deeper pockets').

Distributive justice

This relates to the distribution of resources in society, and notions of equality. A distributive justice framework sees consumer protection policy as a vehicle for achieving greater equality in society.

Measures considered to fall within this framework include interest rate controls and restrictions on creditors' remedies following a debtor's default. Such measures have the economic effect of transferring resources from creditors to debtors.

Proponents of a distributive justice framework reject the efficiency framework on a number of grounds:

- The efficiency framework overlooks the "detailed complex of legal, social and economic factors, which constitute the institutional framework of the transactions in these markets and which structure the exercise of power within these relationships" (Ramsay, 1995 p189). For instance, it ignores the existing distributional impact of judicially created "ground rules" of the common law, and power inequalities between suppliers and low-income consumers (in particular). It is therefore wrong to think of market transactions as "simply a consequence of voluntary and mutually beneficial exchanges" (ibid).
- Distributional goals are not necessarily achieved more efficiently through the tax system than through contract regulation (Kronman, 1980).⁴ Similarly, the taxation and social system are under pressure and less able to deliver on distributional goals (Ramsay, 2000).

Proponents of the distributive justice framework argue that the goals of consumer law are aligned to the goals of the welfare state. Ramsay (1995) cites an argument by Wilhemsson for a general principle of social *force majeure* where individuals have been unable to maintain payments on a credit contract because of illness, unemployment or changes in family circumstances. Here, consumer law shares one of the goals of the welfare state, "that of security against consequences of unemployment and illness" (Ramsay, 1995 p195). Ramsay states "this new principle might influence the development of the law, injecting discussion of unemployment and social divisions into the world of contract doctrine and texts" (ibid).

While the efficiency framework is dominant in North American scholarship, a distributive framework has more support in Europe. Brownsword, Howells and

⁴ Kronman does not argue that contract law should pursue distributive goals, merely that if distributive goals are to be pursued contract law is no more inefficient and distortionary than the taxation system. Ramsay, by contrast, appears to argue that consumer law should pursue distributive justice goals.

Wilhemsson (1996) discuss three conceptions of “welfarism” which expand on the point above made by Ramsay:

- minimal welfarism
- personal welfarism
- maximal welfarism.

Minimal welfarism

Brownsword et al (1996) write:

Contract being viewed as a competitive activity, it follows that the regulatory objectives of minimal welfarism are twofold: to provide contractors who deal from below a notional line of minimal wellbeing; and to adjust outcomes that are liable to push a contractor below the line. In other words, the most adverse effects of social inequality and of contractual exchange are cushioned. Where transactions produce cases of severe individual hardship (need) the law should be willing to protect the party in need.

Personal welfarism

This system abandons the competitive model of contracting and seeks to introduce a regime of co-operative contracting such that contractors assume responsibility for one another’s welfare. Co-operative dealing thus replaces a purely self-interested contractual ethic (in which each side acts with a view to maximising its own utility) and seeks to protect the interest of the weaker party (ibid).

Maximal welfarism

This framework is based on inequality of bargaining power. This is not discussed by Duggan as a distinct ‘set of values’—his equity frameworks are more concerned with distributive aspects of equity. However, it is a commonly cited rationale for consumer protection. For instance, Tokely (2000) in her text on consumer law in New Zealand says the basis of justification for consumer laws is “the unequal bargaining power between consumers and traders”.

The distinction between distributive concerns and the more general equity framework based on fairness is usefully summarised by Brownsword et al (1996) under the concept of maximum welfarism:

Rather than looking at the contractor’s position in the overall social order (or hierarchy), maximum welfarism focuses specifically on the power relationship between the particular contracting parties. If one side has greater bargaining strength than the other, then the weaker party will be protected against abuses of contractual power ... The general regulatory objective is to act against inequality of bargaining strength and unfair contractual outcomes that can be generated from such inequality.

This approach underlies a lot of the consumer literature that attacks standard-form contracts, broad security terms and contracts that are substantively unfair. The principal assumptions seem to be that consumers have few options but to purchase and contract on terms set by increasingly large and powerful sellers: disparity in size and resources between sellers and buyers was often thought to equate to bargaining power. Sellers were also able to exploit significant information and sophistication asymmetries in their favour (Hadfield et al, 1998).

Paternalism

As noted above, the efficiency framework does not question that consumers themselves know what their best interests are. An alternative argument is that we cannot always be confident that transactions that reflect parties' present preferences are really in their long-term interests. Intervention that runs counter to the preferences formed by consumers themselves is pejoratively called 'paternalism'.

There are a number of examples of paternalistic interventions, particularly with respect to children—for example, the Minors Contracts Act and various product safety laws. Duggan (1991) argues there are three shades of paternalism, the distinction being based on whether the intervention was intended to correct perceived deficiencies in:

- the way a choice was exercised in favour of a particular preference
- the way a preference was formed
- the outcome of the choice.

However, as the first two points above do not aim to limit consumer choice, or try to exercise it for them, it is not necessarily appropriate to label it as 'paternalistic'. Secondly, it is hard to determine whether there is any real distinction between those points—for example, the way a preference was formed may involve a choice on the part of the consumer. On that basis these two points are not treated as 'paternalism'.

The third type of paternalism is what Duggan calls 'true' paternalism and is based on substantive judgements about the validity of particular preferences. Choices are prohibited because the outcome is considered not to be in the consumer's best interest and people are assumed to need 'saving from themselves'. A number of consumer protection measures, particularly those designed to prevent over-indebtedness, seem to be motivated by this form of paternalism.⁵

In another context, a paternalistic motivation would be to attempt to bring consumer preference-forming into line with scientific 'objectivity' when consumers perceive a risk that science does not (Hadfield and Thomson, 1998). This is highlighted in the debate over GE food. Hadfield and Thomson point out that if

⁵ Such measures have not been enacted in New Zealand but are a feature of Australian consumer credit law.

consumers perceive a risk that science does not, a *non-paternalistic* approach to consumer protection will set as its goal to convey to consumers the information they need to act on their perception. The fact that consumer perceptions are not scientific is not a basis for substituting a principle that those transactions that science would make are those that should guide policy.

On the other hand, where the consumer is underestimating or unaware of a risk that a scientific approach would reveal, it would still be paternalistic to close the gap in favour of the scientific approach—in this case, however, such paternalism is appropriate (ibid).

An information framework

A strict efficiency approach does not question a consumer's preferences and sees no role in the law in shaping preferences. This is because preferences are presumed to be subjective, so there is no basis for enquiring into whether they were validly formed or not, and no way of distinguishing qualitatively between one set of preferences and another (Duggan, 1991).

However, the way consumers form preferences is not inviolable, for example:

- Preferences may be formed on the basis of social conditioning (eg sex and race discrimination), lack of opportunity or habit (ibid).
- Consumers operate under conditions of 'bounded rationality'—they use heuristics to simplify complex decisions (Korobkin and Ulen, 2000). Hadfield et al (1998) discuss how an "important and durable" heuristic device is the general expectation consumers have that products are safe, aside from risks that are obvious. In the case of hidden defects, reliance on this heuristic leads to detriment.
- Consumers often underestimate the value of information, that is, the benefit information is likely to bring to the consumer in terms of making a different choice about what goods and services to buy and on what terms (ibid).

These considerations may go some way towards justifying an agenda for consumer protection that is broader than traditional efficiency considerations would allow—while sharing the same goal that consumers should get what they want.

This appears to be the approach of Hadfield et al (1998) in their recommendation of an information-based framework. Emerging theories in the area of law and behavioural science, with its emphasis on the consumer decision-making process, are likely to add weight to this framework.

Hadfield et al (ibid) begin their discussion with a review of the economic theory that underlies early consumer protection initiatives. This theory was based on simplistic assumptions about market power and inequality of bargaining power. The paper then covers a wide range of modern theories relating to market

structure, bargaining and game theory, transaction costs and comparative institutional analysis to arrive at a modern approach for analysing consumer protection problems.

The central concept is that of the 'bad deal', namely consumer transactions in which what the consumers get out of the transactions deviate from what they intended and expected to get. The concept captures the essential way in which the analysis of consumer protection is grounded in consumers' expectations and desires.

This follows the basic principle of the market economy: that consumers assess for themselves the costs and benefits of various transactions. The fact that consumer perceptions are not scientific or fully rational is not a basis for substituting a principle that those transactions that science would make should guide policy. It is the divergence between what consumers expect, in fact, and what they get, in fact, that drives policy.

That basic approach highlights two important characteristics of the market setting—the value of information and the cost of information. Having established these premises, a framework would follow the steps common to policy analysis, with the following emphasis:

- In defining a public policy problem, the focus should be on the quality and cost of consumer information.
- In deciding whether regulation is a necessary and feasible response, it is suggested that consumer protection regulation is only likely to make consumers better off if it either improves consumers' estimates of the value of information or reduces the cost of information to consumers (or both). In trying to improve consumers' estimates of the value of information, regulation is most likely to be effective where it addresses:
 - hidden risks or hazards that create a gap between consumers' general expectations and reality
 - certain demonstrative cognitive failures to appreciate certain kinds of risk.
- In choosing a regulatory instrument, an instrument should not generate information that is costly for consumers to interpret or access. Nor should the instrument have the effect of increasing the gap between expectations and reality.⁶ There may be trade-offs with respect to instruments which restrict consumer choice (and freedom of contract) but are more successful in reducing information costs (e.g. in respect of product safety), and instruments that lower information costs but also restrict competition or trade.

⁶ For example, licensing systems, and border control measures in respect of odometers, may provide a false sense of assurance if not linked to rigorous quality control standards.

A rights-based framework

Consumer policy is sometimes framed in terms of ‘consumer rights’. It is most common for the consumer movement to articulate consumer policy in this way. For instance, Consumers International state:

Consumer policy promotes the establishment of legislation, institutions and information that improve quality of life and empower people to make changes in their own lives. It seeks to ensure that basic human rights are recognised, and promotes understanding of people’s rights and responsibilities as consumers. These are:

- the right to satisfaction of basic needs
- the right to safety
- the right to be informed
- the right to choose
- the right to be heard
- the right to redress
- the right to consumer education
- the right to a healthy environment.

Consumers also have responsibilities to use their power in the market to drive out abuses, to encourage ethical practices and to support sustainable consumption and production.

(www.consumersinternational.org: accessed 10 October 2002)

General conclusions on frameworks

Having reviewed what appear to be the major analytical frameworks with respect to consumer policy, it is useful to draw a few general conclusions.

The role of theory

Theory (and empirical evidence) represents collective, albeit contestable, wisdom in relation to a particular problem. It can suggest approaches to issues, highlight costs and benefits of a particular approach, reveal aspects where trade-offs and compromises are required, and uncover assumptions, values and linkages.

Consumer policy should be based on the best insights that theory has to offer. Any particular intervention should be supported by and tested against current (and competing) theoretical frameworks. The alternative, to act on “atheoretical intuition” (Schwartz and Wilde, 1983), would seem unsound.

Obviously, however, it does not follow that theory is to be pursued for its own sake. Theory is a tool, not an end in itself, and an aid to, not a substitute for, judgement.

No particular framework

It would seem to follow from the above observation that it would be inappropriate, if not impossible, to simply adopt any of the frameworks discussed above, with the intention that they could be applied to any particular problem that may arise. To attempt this would ignore real life considerations (such as political imperatives, institutional arrangements) that affect the goals that are chosen, and the path taken to achieve those goals, with respect to any particular intervention.

It is more likely that a mix of considerations must be adopted, and as Duggan says (1991), the “challenge is to strike the right balance”. This will often apply on a case by case basis, although broader, high level themes should be applicable across the range of issues.

Framework must be economically grounded

While the efficiency framework may be open to criticism on a number of grounds, it remains important that whatever approach is adopted is economically grounded. After all, that is the basis upon which other important institutional players will assess interventions.

What this means is that in formulating consumer policy we should:

- be aware of relevant economic theory
- be able to identify the costs and benefits of the policy, and identify the trade-offs, in economic terms. In particular, trade-offs at the expense of efficiency and competition must be justified
- be cognisant of the dynamic effects of interventions.

This is not to say that economic considerations must always take precedence. Other non-economic values are important, as are insights offered by other disciplines, especially the behavioural sciences.

Selecting a framework

This section briefly comments on the frameworks discussed above.

The efficiency framework

While the economic efficiency of any particular intervention must be considered, it is not necessarily appropriate to select efficiency as the overriding goal. There are a number of grounds for objecting to the framework described above.

First, and perhaps a little superficially, many of the formal models used to argue for or (more often) against government regulation, or which attempt to explain the functioning of consumer markets, are of such mathematical complexity that they are difficult for a non-specialist to understand and of limited practical utility.

Secondly, traditional cost-benefit techniques are often difficult or impractical to apply to live policy issues.

There are also the objections pointed out by Ramsay (1995, 2000) and others that much of the law and economics literature ignores existing power relations within markets and the various ground rules set by common law and the social order that affect relationships between supplier and trader. Instead, there is a questionable assumption that common law (but not necessarily statute law) seeks economic efficiency (Stigler, 1992).

Similarly, the 'rational choice theory' which underlies the efficiency framework ascribes too much rationality to market actors (and judges) and ignores the way consumers and suppliers actually make decisions and behave (Korobkin and Ulen, 2000; Ramsay, 2000).⁷ Many of its assumptions have been challenged by behavioural scientists.

In some markets, too much faith may be placed on the forces of competition. Hadfield et al (1998) note the tension in perspectives between competition and consumer protection policy:

From a competition policy perspective, markets with low barriers to entry, low sunk costs, many rivals and rapid rates of entry and exit will tend to conform with the textbook model of a fully competitive market. Yet from a consumer protection perspective, such markets (eg used cars, home renovations) may present some of the most severe information problems that consumers confront. (p153)

There is also the criticism that the efficiency framework ignores issues of distribution, as well as values such as fairness, respect and various community values (Cranston, 1978).

The equity framework

With respect to the concept of commutative justice, Duggan (1991) argues that it sits uneasily with efficiency frameworks, because the former is preoccupied with the transaction process (free choice), whereas the concern of the latter is with outcomes (wealth preservation). However, in cases of extreme one-sidedness of outcomes, inferences may be drawn about the quality of the transacting process.

The regulation of contracts for shifting losses or redistributing income receives little support and much criticism in the theoretical literature (eg Cayne and Trebilcock, 1973; Hadfield et al, 1996). The general ground for objection is that such

⁷ However, much efficiency-oriented discussion does attempt to deal with psychological literature, eg Schwartz (1983).

measures involve significant compromises with respect to efficiency and create 'substitution effects'—ie they raise costs, lead to cross-subsidisation or deny access to goods or services for particular consumers. Such measures, therefore, often harm those consumers they intend to assist.⁸

On more pragmatic grounds, explicit adoption of distributive justice goals, or an attempt to align consumer policy with the goals of the welfare state, would not appear to be consistent with goals relating to sustainable economic development. This is because of the substitution effects referred to above. Similarly, adoption of some of the European models of welfarism would involve a fairly radical reconception of aspects of contract law and, on that basis, the Ministry of Consumer Affairs is not well placed to instigate such a project.

The only scope to explicitly adopt distributive goals may, therefore, be in respect of markets that are not workably or highly competitive (Hadfield et al, 1996). Beyond those circumstances, it seems outside the mandate of the Ministry.

The problem with inequality of bargaining power as a framework is that it is insufficiently economically grounded—in the words of Schwartz (1995), it is “obviously shallow”. In particular, it ignores competitive dynamics within markets. For instance, if firms are operating in competitive markets, they are “price takers” (ibid) and do not really have a lot of economic power (Williamson, 1995).

Paternalism

With respect to what Duggan (1991) labels “true paternalism”, the consensus is that it should be given “a very tight rein” or “treated with considerable caution” (Hadfield et al, 1996), particularly in a liberal society which values individual freedom. Duggan argues that once a case for paternalism is admitted in a particular circumstance, there is no logical stopping place: “If there is insufficient discrimination, collective solutions will become the norm, and the market-based economy will collapse”.

In addition, paternalism and efficiency frameworks are incompatible in the sense that they derive from competing premises (Duggan 1991); that is, the efficiency framework assumes people are, in most cases, capable of making their own choices.

However, within the rubric of paternalism Duggan includes a range of considerations relating to measures designed to influence the formation of preferences by consumers, but which stop short of making normative judgements about what it is that consumers should want (Hadfield et al, 1996). This approach should be distinguished from “true paternalism”.

⁸ This is contested by Ramsay (2000), who argues that the empirical evidence suggests otherwise.

An information-based framework

This framework has a number of attractions:

- While being economically grounded, it is not as strict as the efficiency framework. In particular, it seems to allow scope for measures which help shape consumers' preferences (which might be labelled as paternalistic from a pure efficiency viewpoint). For instance, one justification for intervention under the framework would be if the intervention improved consumers' estimates of the value of information.
- It covers, and is derived from, a vast economic literature, including insights from game theory, theories of market structure and the economics of information and is consistent with the developing field of law and the behavioural sciences.⁹
- It ties in well with and refines earlier work by the Ministry of Consumer Affairs looking at transaction costs¹⁰ as the basis of a theoretical framework. In that work (Ministry of Consumer Affairs, 1998), it was stated that:

A major objective of the Ministry of Consumer Affairs, in its policy advice and its operational activities, is to remove impediments to voluntary transactions and to minimise the costs of transactions between consumers and businesses.

However, the information-based framework has the advantage of being more specific and providing greater guidance.

Similarly, the central concept of the 'bad deal' aligns with the concept of 'reasonable expectations' which underpins the Consumer Guarantees Act. The analysis can also be applied to areas such as product safety and other consumer issues.

It explicitly avoids the pitfalls of truly paternalistic approaches. It defers to consumer preferences and consumer judgements about their own interests, including judgements from ethical, cultural and spiritual standpoints.

A rights-based framework

The problem with a rights-based framework is lack of clarity about the basis on which rights are derived. For instance, it does not indicate how trade-offs are to be made between different rights, or between rights and other considerations (such as cost), or how the rights apply to specific contexts.¹¹

⁹ This appears to be a new movement in law and economics, but as yet scholarship has not considered consumer protection policy in detail.

¹⁰ Hadfield, Howse and Trebilcock define transaction costs as "broadly understood to include informational barriers that prevent a perfect alignment between incentives and goals".

¹¹ For instance, what does the 'right to choose' mean in the context of a single provider of a public service (assuming a broad view of the consumer interest is taken)?

A rights-based framework is more suited to an advocacy group, rather than a government agency which must balance the interests of a wide variety of stakeholders.

Conclusion

While a particular framework should not be adopted at the expense of all other considerations, the following conclusion is suggested.

The goal of consumer policy should be to (a) remove barriers and (b) shape expectations, so that with respect to any particular transaction, consumers receive what they intended and expected.

This goal is derived from the efficiency framework, but is broader in that it gives consumer policy a role in shaping consumer expectations and the process of preference formation, while stopping short of making choices for consumers or judgements about what consumers should want. This goal is supported by an information-based framework that is less wedded to certain premises of the efficiency framework.

In general, consumer policy is an inappropriate vehicle for distributing resources or losses. Such goals are only appropriate in limited and defined circumstances and must still be justifiable in terms of costs, benefits and trade-offs.

References

- Brownsword R, Howells G, Wilhemsson T, "Between Market and Welfare: Some Reflections on Article 3 of the EC Directive on Unfair Terms in Consumer Contracts" in Willet C (Ed), *Aspects of Fairness in Contract* (Blackstone, London, 1996).
- Cayne D, Trebilcock M J, "Market Considerations in the Formulation of Consumer Protection Policy" (1973) U of Tor LJ 396.
- Cranston R, *Consumers and the Law* (Weldenfeld & Nicholson, London, 1978).
- Duggan A J, "Some Reflections on Consumer Protection and the Law Reform Process" (1991) 17 Mon U L Rev 252.
- Hadfield G K, Howse R, Trebilcock M J, "Information-Based Principles for Rethinking Consumer Protection Policy" (1998) 21 J Cons Pol 131.
- Hadfield G K, Howse R, Trebilcock M J, "Rethinking Consumer Protection Policy". Paper prepared for University of Toronto Roundtable on New Approaches to Consumer Law, held June 1996.
- Hadfield G K, Thomson D, "An Information-Based Approach to Labeling Biotechnology Consumer Products" (1998) 21 J Cons Pol 193.
- Hynes R, Posner E A, "The Law and Economics of Consumer Finance" (2001) 4 Am L and Eco Rev 168.
- Korobkin R, Ulen T S, "Law and Behavioural Science: Removing the Rationality Assumption from Law and Economics" (2000) 88 Cal L Rev 1051.
- Kronman A, "Contract Law and Distributive Justice" (1980) 89 Yale LJ 472. Ministry of Consumer Affairs, *The Economic Context of the Ministry of Consumer Affairs* (Wellington, 1998).
- Mitchell J, Kutin B, Macgeorge A, "Guidelines for Consumer Policy in Central and Eastern Europe" (2001) 24 J Cons Pol 83.
- Ramsay I, "Consumer Credit Law, Distributive Justice and the Welfare State" (1995) 15 Oxf J L St 177.
- Ramsay I, "The Alternative Consumer Credit Market and Financial Sector: Regulatory Issues and Approaches" (2001) 35 Can Bus LJ 325.
- Schwartz A, "Legal Implications of Imperfect Information in Consumer Markets" (1995) 151 J of Institutional and Theoretical Economics 31.
- Schwartz A, Wilde L L, "Imperfect Information in Markets for Contract Terms: The Examples of Warranties and Security Interests" (1983) 69 Virg L Rev 1387.

Schwartz A, Wilde L L, "Intervening in Markets on the basis of Imperfect Information: A Legal and Economic Analysis" (1979) 127 U Pa L Rev 630.

Stigler G "Law or Economics" (1992) 34 J of L and Eco 355.

Tokely K, *Consumer Law in New Zealand*, (Butterworths, Wellington, 2000).

Williamson O, "Legal Implications of Imperfect Information in Consumer Markets—Comment" 151 J of Institutional and Theoretical Economics 49.

2. Consumer Policy Tools

Introduction

The literature review on analytical frameworks discussed different frameworks for considering the premises for regulating consumer transactions and the goals of consumer law. It noted a number of frameworks that advanced various goals, including:

- addressing market failures or creating efficient markets for consumer goods and services
- advancing normative goals, such as distributive justice or other community-held values
- paternalistic protection of the consumer.

The literature review favoured an information-based framework, in which information is the organising concept for a principled approach to consumer policy. Under this framework, consumer policy focuses on the quality and cost of consumer information.

This paper discusses a number of consumer policy tools which can be used to address consumer policy issues, and identifies some of the considerations which need to be taken into account when choosing the tools to address particular issues. For the purposes of this discussion, and in the interests of retaining consistency with the preceding paper, many of the examples in this paper relate to consumer policy issues identified under an information-based framework. The tools are not peculiar to that framework, and could be used under any of the analytical frameworks discussed in the preceding paper, although the assumptions inherent in any given framework are likely to favour different combinations of policy tools.

This paper does not purport to identify all available policy tools, or all circumstances in which intervention might be considered. In any given case, the range of policy tools will vary according to factors such as the available regulatory and market institutions; the specific nature of the consumer policy issue; the nature and impact of consumer detriment; and the trade-offs available in the circumstances. The existence and impact of these variables means that the discussion in this paper must necessarily be somewhat abstract, and that extrapolation will be required to fit this discussion to particular consumer policy issues.

There are a number of ways in which the market can correct informational problems, by responding to the heuristic devices that consumers use when making decisions under uncertainty. The paper considers the barriers to these responses emerging in a competitive market, and the ways in which the government can help the market to overcome those barriers.

In the absence of a viable market-based solution, government may have to consider regulatory interventions. This paper outlines a number of trade-offs that policy-makers need to consider in designing and choosing policy tools. It goes on to discuss a number of regulatory policy tools that can be used to address informational problems in consumer transactions.

1.1 Options for addressing consumer protection problems

This paper does not discuss the issues underlying, or the process of, problem identification. It starts from the assumption that, in any given case, the problem has been properly defined and scoped.¹² Having said that, problem definition and scoping are important for two reasons:

- In the consumer policy context, the nature of the market in question (competitive, imperfectly competitive, or non-competitive) may impact on the overall approach. If the market is very imperfectly competitive or non-competitive, consumer problems may really be problems that have to be addressed by competition policy or economic regulation.¹³
- Clear and precise policy objectives will help in making a discriminating initial choice of instruments to serve the policy objectives, and in re-evaluating over time how well the chosen instruments are serving those objectives.¹⁴

Once a problem has been identified, policy-makers need to consider the range of interventions for addressing it. Identification of a problem does not create a presumption that government should regulate.¹⁵ Instead, policy-makers should ask whether a market-based solution will emerge in a reasonably timely and effective form and whether that solution will be optimal.¹⁶

¹² For a discussion of problem definition, see: OECD, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* (1995) OCDE/GD(95)95, at 14. Available online: <http://www.OECD.org/EN/document/0,,EN-document-2-nodirectorate-no-6-30839-2,00.html>

¹³ Hadfield, G, Howse, R, Trebilcock, M, "Information-Based Principles for Rethinking Consumer Protection Policy" *Journal of Consumer Policy* 21: 131-169, 1998, at 152.

¹⁴ Trebilcock, M, "Rethinking consumer protection policy", paper delivered to the *Consumer Law Conference*, Auckland 2001, at 15.

¹⁵ This assumption forms the basis of the OECD *Recommendation on Improving the Quality of Government Regulation* (supra at note 1). It is also an underlying principle of the information-based framework (Hadfield et al, supra at note 2, at 155). Note that this assumption also forms part of the government's current approach to regulation. See, for instance, Ministry of Economic Development, *The Code of Good Regulatory Practice* (1997). Available online: <http://www.med.govt.nz/buslit/compliance/regprac.html>

¹⁶ Supra at note 2, at 155.

Market-based solutions

Within a competitive market, the market can itself correct informational problems by responding to the heuristic (determining) devices used by consumers when making decisions under uncertainty—for instance:

- **Price as a signal of quality:** At a certain price, consumers expect to find a certain quality, which allows them to make trade-offs.¹⁷ For instance, consumers may avoid low-priced brands on the supposition that they are of inferior quality, or favour such brands on the basis that they do not require or want the additional quality that comes with additional price.
- **Branding:** One of the most important heuristic devices used by consumers is the assumption that past behaviour is an indicator of future performance.¹⁸ Branding is a means of harnessing that assumption to increase market share.
- **Warranties:** Although generally unenforceable,¹⁹ promises of quality from manufacturers may serve to structure an effective reputation mechanism to enable consumers to identify high quality manufacturers.²⁰ If manufacturers offer a warranty as a signal of good quality but the product is in fact poor quality, consumers would turn away as their beliefs were updated through word of mouth.²¹
- **Experts and third parties:** Independent parties can provide credible information to consumers, which can help them to make discriminating decisions (eg consumer magazines providing product reports and comparisons). However, information is a public good, and free-riding by consumers can result in an under-provision of information.²² In addition, this

¹⁷ Office of Fair Trading, *Consumer Detriment under Conditions of Imperfect Information* Research Paper 11, 1997, at 1998.

¹⁸ *Supra* at note 2, at 160.

¹⁹ Quality claims by manufacturers may not be contractually enforceable unless it can be shown that the manufacturer intended to assume contractual liability. Non-contractual claims may give rise to tort liability if untrue, but the remedies are limited to compensation for harm to person or property (consumers could not, for instance, sue for the difference between the thing as promised and the thing as is). *Supra* at note 2, at 165, n 18. Warranties may lead to liability under the Fair Trading Act 1986 if false or misleading. Civil remedies under that Act include refunds (s 43(2)(c)) and payment of the amount of loss or damage (s 43(2)(d)).

²⁰ *Supra* at note 2, at 142-143.

²¹ *Supra* at note 6, at 119.

²² See generally Hadfield et al, *supra* at note 2, at 144; Office of Fair Trading, *supra* at note 6, at 121; Trebilcock, *supra* at note 3, at 8.

information may be biased in favour of particular consumers, such as the more affluent.²³

- **Experience ratings:** These ratings convey important information at low cost, and respond to the assumption that past behaviour is an indicator of future performance. For example, information such as the number of times a professional or business has been the subject of complaints or investigation.²⁴
- **Department store chains acting as screening agents for consumers:**²⁵ This reinforces the consumer's assumption that products on the markets are generally safe. Depending on the branding of the department store, it can also give consumers an indicator of quality.
- **Voluntary standards and certification:** Standards are documented agreements containing technical specifications or other precise criteria to be used consistently as rules, guidelines, or definitions of characteristics, to ensure that materials, products, processes and services are fit for their purpose.²⁶ Standards are typically either performance (output) standards that require certain conditions to be met at the point of supply but do not specify how those conditions are to be met; or specification (input) standards that compel (or prohibit) the use of specific production methods or materials.²⁷ Consumers can use indicators of compliance with a standard as an indicator of safety or quality, as appropriate.
- **Industry self-regulation:** This gives traders a structured way of assuring consumers of quality of service. Self-regulation may itself use devices such as experience rating, branding, or standards as the mechanisms to provide assurances to consumers.

There are a number of situations where a market-based solution is unlikely to emerge in a competitive market, for instance.²⁸

²³ Twigg-Flesner, C, Weatherill, S, Willett, C, "Law, Information and Product Quality" *Journal of Consumer Policy* 25: 291-297, 2002, at 292.

²⁴ *Supra* at note 2, at 157.

²⁵ *Supra* at note 3, at 8.

²⁶ International Organization for Standardization, definition available online: <http://www.iso.ch/iso/en/aboutiso/introduction/index.html>. See also the definitions of 'standard' and 'specification', *Standards Act 1988*, s 2.

²⁷ Ogus, A, *Regulatory Institutions and Structures*, Working Paper 4 (2001) Centre on Regulation and Competition, University of Manchester, at 6.

²⁸ *Supra* at note 2, at 155-156.

- repeat transactions are rare and consequently the performance incentives created by the possibility of repeat business from satisfied customers are blunted.
- entry and exit costs in the industry are low, leading to the possibility of a large number of fly-by-night operators with few sunk costs and only modest investments in reputational capital.
- many sellers or producers are extra-jurisdictional, making redress through private law more difficult for consumers.
- sellers characteristically have few assets against which a judgment may be enforced.
- the costs to consumers of a 'bad' transaction are delayed or potentially catastrophic, making post-failure relief an inadequate or unsatisfactory solution.
- the small size of a typical transaction creates a significant disincentive to seeking post-failure relief through the courts.

Where a market-based solution is unlikely to emerge of its own accord, the government may use a variety of levers to facilitate the development of a solution. The government can use its influence, resources and expertise to overcome collective action problems, and resource and knowledge barriers to market-based solutions. The government can also use the prospect of regulation to prompt the development of a market-based solution.

Depending on the nature of the problem, market-based solutions may be focused on inputs (eg regulating behaviour of market players) or outputs (eg regulating the products and/or services provided by the market).

Regulatory options

If a market-based solution is unlikely to emerge, even with assistance from government, policy makers need to consider whether regulation is necessary. According to the OECD Regulatory Checklist:

Government intervention should be based on clear evidence that a problem exists and that government action is justified, given the values at stake and current government policies; the likely benefits and costs of action (based not on perfect government, but on a realistic assessment of government effectiveness); and alternative mechanisms for addressing the problem.²⁹

²⁹ Supra at note 1, at 14.

Even where a significant market failure has been identified, the government should act only where it is feasible and cost-effective to do so.

In considering an intervention, policy-makers may have to balance the merits of alternative interventions. It is unlikely in most cases that any one intervention will be completely effective, so the merits of two or more may need to be compared and trade-offs made. These may include the trade-offs between:

- Cost and effectiveness: one tool may fully achieve a given policy objective, but at very high public and private costs. Another may achieve the policy objective only partly, but at much lower costs.³⁰
- Reducing information costs effectively and maximising consumer choice: policy tools that generate information that is costly or difficult for consumers to interpret or access may be counterproductive. Cruder tools that restrict consumer choice (such as bans of hazardous products) may be more successful in lowering information costs.³¹
- Restricting competition and trade, and lowering information costs: because competitive markets are likely to solve many information-related consumer problems on their own, consumer policy tools that have an anti-competitive or trade-restricting effect may be counter-productive.³²
- Being less competitively restrictive and having higher monitoring or enforcement costs: less competitively restrictive tools can result in more significant costs to establish compliance. For instance, it is generally less costly to verify that a product contains a particular design or device than to determine whether widely varying products meet a given standard of safety performance.³³
- Enforcement by a government agency and civil liability: under a liability regime (eg tort, contract), responsibility for enforcement rests with the individual consumer who is best informed at least cost about the occurrence of a 'bad deal' (ie, the consumer has not made the deal he intended or expected). However, these information cost savings come at the expense of a failure to share the costs of enforcement amongst all consumers who might benefit from enforcement in respect of a particular transaction or class of transaction. This

³⁰ Supra at note 3, at 16.

³¹ Supra at note 2, at 159.

³² For instance, licensing directly restricts the number of competitors in the marketplace. Product safety instruments that specify specific inputs rather than requiring products to meet specified safety objectives may exclude competing products from the market, even if they are safe. Requiring certification by a particular body may be competition-restricting if the certification process has subjective or covert protectionist dimensions. Supra at note 2, at 160-161.

³³ Supra at note 2, at 161.

approach is also likely to result in under-enforcement—consumer protection laws that give a private right of action to harmed consumers are notoriously under-used.³⁴

What follows is a non-exhaustive list of different kinds of policy tools which may be harnessed to address information-based consumer protection problems.

Prohibitions and bans

At first glance, product bans appear to restrict consumer choice. However, if a product or service poses a risk to consumer safety or well-being, then the most effective means of addressing the problem may be simply to ban the product. This is especially so where the risk is unlikely to be mitigated through the provision of consumer information (eg that information is high cost, difficult to obtain or understand, or undervalued by consumers through differing perceptions of risk). It may be much more costly to have to obtain specific up-to-date information to avoid purchasing a hazardous product than to simply arrive at the counter to find it is unavailable.³⁵ Although a product ban is a fairly crude tool that restricts consumer choice, it may be more successful in lowering information costs than other tools.

Regulation can also prohibit certain conduct, such as the prohibitions on misleading or deceptive conduct and on unfair practices found in the Fair Trading Act 1986. These prohibitions seek to align consumer expectations and trader conduct, thereby modifying consumers' pre-transaction information costs. Coupled with enforcement and redress mechanisms, such prohibitions also give post-failure relief.

Labelling and warnings

Other consumer policy tools try to reduce information costs without restricting consumer choice to the same degree as prohibitions and bans. Warnings retain consumer choice but do not result in the information cost problems associated with more sophisticated disclosure devices. For instance, prominent labelling of a substance as a poison is a low-cost way of providing important information to consumers. Consumers can then choose to seek a substitute; or to investigate the details of the risk; or to make the purchase and use it with care, based on the precautions most reasonable people take with 'poisons'.³⁶

Another way of providing information to consumers is through mandatory labelling or requirements to provide certain information with a transaction.³⁷ Labelling can be a simple way of conveying important information. However, the goal needs to

³⁴ Ibid

³⁵ Supra at note 2, at 158.

³⁶ Ibid., at 159.

³⁷ See, for instance, consumer information standards made under the Fair Trading Act 1986.

be clear, otherwise consumers may receive information that does not help to align their expectations with the likely outcome of the transaction.³⁸

Mandatory use of information intermediaries

Another policy tool is the mandatory use of information intermediaries (eg pharmacy- or prescription-only medication). This can be particularly effective for reducing information costs where the product has severe risks for certain sub-groups and the intermediary knows both the risks and whether they are likely to affect a particular consumer. This tool also sends a signal to the consumer that there may be value in searching out more precise information and not relying on general expectations of safety.³⁹

Regulation of terms

Where information barriers are significant and unlikely to be overcome by complex disclosure arrangements, a potentially effective mechanism may be to regulate terms in consumer contracts. Regulation of terms can improve the match between consumers' perceptions and sellers' obligations, for instance:

- Imposing a guarantee as to title enables consumers to obtain clear title in circumstances where it may be difficult for them to establish whether the vendor has clear title or whether there are securities over the property in question.⁴⁰
- Consumers are likely to assume that spare parts are reasonably available and that they can take the goods to a repair facility. Imposing a guarantee as to the reasonable availability of spare parts and facilities for repair reduces the need for consumers to search out that information before deciding to buy a particular product.

Imposing guarantees of quality can reduce information costs, particularly with purchasing 'experience goods' (where the attributes can only be determined with use, such as a car) or 'credence goods' (where the attributes may not be discovered or, if they are, only some significant time after use, such as asbestos

³⁸ Note that labelling can serve more than one purpose, which can shift over time. For instance, country of origin labelling is mandatory under the Fair Trading Act. Its original purpose was protectionist—to encourage consumers to 'buy New Zealand-made'. Over time this purpose has shifted, and it can now be seen as addressing consumer information problems: consumers can use country of origin labelling as an indicator of quality and to express through their purchasing ethical views about labour and environmental standards used in the production of goods.

³⁹ Supra at note 2, at 159.

⁴⁰ See, for instance, Personal Property Securities Act 1999, part 5. Section 5 of the Consumer Guarantees Act 1993 gives a right to damages if clear title is not provided.

insulation)⁴¹. In this way, regulation of terms can help consumers to transact with a greater degree of confidence.

Occupational regulation

Occupational regulation may serve a number of goals, including consumer policy goals.⁴² In the past, it has often served to protect professions or industries from competition. More recently, occupational regulation has been seen as an effective tool to provide consumer protection, and it can have a significant impact on the cost of information. If a consumer seeks services or products from a member of a regulated profession, the cost of information is reduced because assumptions can be made as to the competence and performance of that member.

However, if occupational regulation is not based on relevant quality control standards, it will not reduce information costs. Instead, it may increase the gap between expectations and reality by giving the impression that the occupational regulation indicates an actual level of safety or competence.⁴³

Standards

Standards are documented agreements containing technical specifications or other precise criteria to be used consistently as rules, guidelines or definitions of characteristics, to ensure that materials, products, processes and services are fit for their purpose.⁴⁴ Consumers can use indicators of compliance with a standard as an indicator of safety or quality, as appropriate.

Incorporating standards into regulation can result in better coverage and wider adoption of standards, because compliance becomes compulsory and is not limited to those businesses that choose to adopt voluntary standards. Coverage may be a particularly important issue in some consumer markets, eg self-regulatory approaches to weights and measures may result in incomplete coverage, which could cause confusion in relation to a wide variety of consumer goods.

Non-compliance with standards may be subject to some form of sanction or redress due to their incorporation into regulation.

Sanctions and redress mechanisms

Where there is a consumer interest that should be protected by law, policy-makers need to consider whether that interest should be protected through public enforcement and sanctions or through private claims and redress.

⁴¹ Supra at note 2, at 165 n 17.

⁴² See generally Ministry of Economic Development, *Policy framework for occupational regulation: a guide for government agencies involved in regulating occupations* (1999). Available online: http://www.med.govt.nz/buslt/bus_pol/policyframework/index.html

⁴³ Supra at note 2, at 159.

⁴⁴ Supra at note 15.

In making this decision, a number of factors need to be taken into account, including:

- The information costs of compliance or enforcement: eg the choice between performance and specific standards needs to reflect that it may cost less to verify that a product contains a particular design or device than to determine whether products of widely varying design meet a given standard of safety or quality performance.⁴⁵
- Whether there is a public goods aspect to the class of dispute in question which requires a public institutional presence.⁴⁶ In liability regimes (eg tort, contract), the consumer is responsible for enforcement and is best informed (at least cost) about the occurrence of a 'bad deal' (ie the consumer has not made the deal he intended or expected). However, as noted previously, this information cost saving involves a failure to share the costs of enforcement amongst all those who might benefit from enforcement and resulting under-enforcement.
- The positive externalities from the provision of civil justice: providing an avenue for redressing grievances in a socially non-disruptive fashion (ie 'writs rather than rifles'); providing some measure of consistency and predictability in decision making by generating and interpreting legal rules which other parties can rely on as precedents in shaping their own conduct; and the incentive or deterrent effect on third parties of requiring one party to pay compensation to another.⁴⁷

Where the protected class is large and dispersed, and individual claims are relatively small, consideration needs to be given to economies of scale. In this context, public enforcement may be more efficient than requiring individuals to take claims on an individual basis. Alternatively, class actions could be used to achieve economies of scale in litigation where members of a class have similar claims. This would reduce the costs in individual prosecution of each claim, and enhance access where many of these individual claims might not otherwise have been brought.⁴⁸

In some cases, it might be appropriate to use a combination of public and private enforcement. This would harness the efficiencies noted above, providing a measure of protection to consumers who would be unlikely (or unable) to take action on their own behalf. It would highlight under-enforcement in relation to particular classes of case by public enforcement authorities.⁴⁹ It would also

⁴⁵ Supra at note 3, at 13.

⁴⁶ Ibid, at 19.

⁴⁷ Ibid, at 18.

⁴⁸ Ibid, at 31.

⁴⁹ Ibid, at 22.

harness the incentives that competitive firms have to monitor each others' conduct which would, in turn, result in better outcomes for consumers.⁵⁰

There are other possible redress mechanisms, including:

- Facilitating or mandating informal dispute resolution processes within firms, bureaucracies or government agencies. This may be complemented by the provision of internal or industry-wide dispute resolution systems, where consumers with a grievance not resolved within the firm at first instance can seek resolution through an informal, but external, process.⁵¹
- Alternative dispute resolution (ADR), which may be publicly or privately supplied as a complement to the civil justice system. However, consideration needs to be given to whether encouraging parties to rely on ADR may compromise some of the public goods aspects of the civil justice system. In addition, because enforcement (if required) is likely to be through the courts, consideration needs to be given to what forms of public supervision are required of ADR systems (especially privately-provided systems).⁵²
- Self-executing remedies such as cooling-off periods imposed on consumer contracts. These can provide an extremely low-cost remedy for consumers who may have been rushed into a decision.⁵³

Finally, government can provide, or facilitate the provision of, forms of public legal education, to:

⁵⁰ For instance, a significant proportion of private actions taken under the Fair Trading Act 1986 are taken by businesses against their competitors. In this way, the market polices compliance with the Act and contributes to the Act's consumer protection objectives.

⁵¹ Supra at note 3, at 24.

⁵² Options might include ex ante certification of the mechanisms (eg required qualifications of personnel, or decision-making processes) or ex post judicial supervision (eg rights of appeal or judicial review). Supra at note 3, at 19-20.

⁵³ Ibid, at 25.

- enable consumers to avoid potential disputes in the first place
- educate them on how to take complaints effectively on a self-help basis.⁵⁴

Government regulation versus market-based solutions

Government regulation and market-based solutions are not necessarily mutually exclusive. There are many variations of co-regulation that may be considered relating to respective responsibility for rule-making and/or enforcement adjudication. For example, a private association may be involved at the legislation stage by developing a code of practice, while leaving enforcement to the government, or the government may establish regulations but delegate enforcement to the private sector. Sometimes government will mandate that a private association adopt and enforce a code of self-regulation. Often, a private association will engage in self-regulation in an attempt to stave off government regulation. Alternatively, self-regulation may be undertaken to implement or supplement legislation.⁵⁵

Self-regulation will generally be favoured where:

- private parties have a significant comparative advantage in information: either due to specialist technical knowledge or greater capacity to assess the relative costs and benefits of different rules
- flexibility is important: if there is a need to take into account exemptions and exceptions or provide for frequent change of rules over time
- the industry is a cohesive group and is easy to demarcate
- there is a high level of consensus within the industry on the need to improve standards and the standards it wants to promote
- the problems can be fixed within the industry: the industry is not dependent on outside players to assist with the solution
- participation is important to achieve compliance.

Government regulation will generally be favoured where:

- there is a misalignment between private and public goals, which may mean private parties do not have incentives to act consistently with public goals

⁵⁴ Ibid, at 23.

⁵⁵ Supra at note 24.

- the public sector will have a comparative advantage in enforcement through making rules mandatory and having powers of compulsion
- there may be concerns of anti-competitive conduct through rule-making by private parties.

Publicity

Although not necessarily properly characterised as a regulatory intervention, government agencies can and do use publicity to achieve consumer policy goals. This can take a variety of forms, ranging from general consumer information and education, and information on specific issues, through to ‘naming and shaming’ particular traders or sectors. ‘Naming and shaming’ serves as a disincentive to poor conduct, and also as a useful consumer warning.

Publicity may also be used in conjunction with regulatory interventions such as product recalls or bans, or to protect consumer safety. In this context, public statements may be made pursuant to a statutory provision for privileged statements. This mechanism facilitates the use of publicity in appropriate circumstances by reducing the fear of civil proceedings (such as defamation) being launched as a result.⁵⁶

Consumer representation

Consumer representation is the appointment of appropriate people to represent the consumer perspective and consumer interests on statutory boards, advisory bodies, departmental working parties and committees (where the consumer perspective is appropriate or required). This tool does not seek to specify particular policy outcomes for consumers, but instead seeks to improve decision-making processes by bringing decision-makers into contact with a wider range of perspectives. It is assumed that this will result in more robust and longer-lasting decisions, and in policies that can be better implemented.

Consumer representation does this by bringing an informed consumer perspective into the decision-making process, and by facilitating access to consumer expertise and opinions.⁵⁷

Summary

In summary, there is a broad range of consumer policy tools available to policy-makers for addressing problems of consumer protection.

⁵⁶ See, for instance, the Food Act 1981, s 37, which empowers the Director-General to publish statements relating to food or appliances for the purpose of protecting the public. Statements under s 37 are protected by qualified privilege.

⁵⁷ Note that the Ministry has developed guidelines for consumer representation. The guidelines are to be distributed to all Ministers, who are invited to draw them to the attention of their Chief Executives. [CAB Min (02) 32/3B refers].

Problem definition and scoping is an essential first step when addressing consumer issues, because it will help to characterise whether the appropriate intervention is through consumer policy, competition policy or economic regulation. It can also help in making a discriminating initial choice of policy tool.

Identification of a consumer issue does not create a presumption that the government should regulate. Instead, policy-makers should ask whether a market-based solution will emerge in a reasonably timely and effective form and whether that solution will be optimal.

There are a number of ways in which the market can correct informational problems, by responding to the heuristic devices that consumers use when making decisions under uncertainty. There are a variety of barriers to these responses that are emerging in a competitive market, and there are a number of ways in which government can help the market to overcome those barriers.

In the absence of a viable market-based solution, government may have to consider regulatory interventions to address informational problems in consumer transactions. When designing and choosing policy tools, policy-makers need to be aware of trade-offs between different options.

References

Hadfield, G, Howse, R, Trebilcock, M, "Information-Based Principles for Rethinking Consumer Protection Policy" *Journal of Consumer Policy* **21**: 131-169, 1998

Ministry of Economic Development, *The Code of Good Regulatory Practice* (1997).

Organisation for Economic Co-operation and Development, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* (1995) OCDE/GD(95)95

Office of Fair Trading, *Consumer Detriment under Conditions of Imperfect Information* Research Paper 11, 1997

Ogus, A, *Regulatory Institutions and Structures*, Working Paper 4 (2001) Centre on Regulation and Competition, University of Manchester.

Trebilcock, M, "Rethinking consumer protection policy", paper delivered to the Consumer Law Conference, Auckland, 2001

Twigg-Flesner, C, Weatherill, S, Willett, C, "Law, Information and Product Quality" *Journal of Consumer Policy* **25**: 291-297, 2002.

3. Key Trends in Consumer Policy

Trends are defined in the Ministry of Consumer Affairs' Terms of Reference as:

- key changes in the nature of the social, economic, technological and consumer environment since the inception of the Ministry and over the next 5–10 years
- key changes and potential future trends in the nature of consumers and their needs
- international trends in consumer policy (with a focus on 'what works for whom') and the role of key consumer agencies.

Deciding what is or is not a key trend necessitates a subjective analysis of a wealth of material. This paper has drawn heavily on overseas research and analysis that reach conclusions based upon similar market, legal and political structures. The relevance of overseas trends to New Zealand's economic development is evidenced by the pressures of a free market world economy and the resultant emphasis on harmonisation of national trade rules. As a signatory to international trading rules and agreements New Zealand is limited in its ability to autonomously run its domestic economy. Whether we like it or not, key international trends will impact on our economy.

Market trends are only one feature that will impact on consumers and consequently shape the direction of future consumer policy. It is also necessary to have an idea of who New Zealand's consumers are and, in terms of statistical information, how they are likely to develop over the next 10 years. Building an understanding of the likely characteristics of consumers is crucial to the development of relevant consumer policy objectives, and to assist us in determining how to provide consumers with information that encourages effective participation in the economy.

Related to this is the need to build collaborative relationships with other agencies, both within and outside the public sector, and the Government has signalled its expectations in this regard. Non-governmental organisations (NGOs) can be effective representatives of consumer concerns provided they are supported and listened to. This paper raises some key concerns for the future of the consumer movement.

Finally, the paper looks at trends in the law from the United Kingdom that challenge current thinking about the type of information consumers need to inform their purchase decisions, and also suggest new ways of thinking in terms of the methods employed to deliver information.

Who are New Zealand's consumers?

It is helpful to begin this paper with a brief overview of some relevant statistics on New Zealand consumers:⁵⁸

- 86% of New Zealanders live in urban areas.
- People over the age of 65 make up 12% of our population, currently just under 500,000. This figure is expected to more than double by 2051.
- The number of people of Asian ethnicity has doubled since 1991, and they now outnumber people of Pacific ethnicity.
- The number of New Zealanders of European ethnicity declined to 80% in 2001.
- Ten of New Zealand's sixteen regions are expected to grow in population size.
- Only four regions are expected to grow at a rate faster than the national average: Auckland, Bay of Plenty, Tasman and Northland. The Auckland region dominates growth. Currently one in three New Zealanders lives in Auckland.
- In 2001 47% of all households owned a computer and four in ten had Internet access.
- 83% of primary and 94% of secondary schools had Internet access by 1998.
- Households likely to have a lower rate of Internet access are Maori, Pacific, those over the age of 65 and low-income earners.
- At least one in nine Maori and Pacific households do not have telephone, fax or Internet access.

Future consumers

Targeting policy

The Ministry of Consumer Affairs (MCA) and particularly the Consumer Information Service (CIS) have targeted Maori, Pacific peoples and low-income consumers as they are considered less able to be effective in asserting their rights and responsibilities in the marketplace because they are less able to:⁵⁹

⁵⁸ Department of Statistics information available at www.stats.govt.nz

⁵⁹ Review of Consumer Information Service, 1999

- access information to make informed consumer choices
- enforce their legal rights in the market
- sustain the loss as a result of an unsuccessful consumer transaction such as purchasing poor quality goods or a bad credit deal.

The Maori population is projected to reach 21% by 2051.⁶⁰ As with other ethnic groups, the Maori population will become increasingly older with half being more than 32 years of age by 2051. On current trends the Pacific population is growing at a rate 11 times faster than other groups and is expected to double by 2031.

MCA has no evidence to suggest that the rationale for targeting these consumer groups has changed. However, there are other identifiable consumer groups that can also benefit from targeted information.

Older people

At the time of the 2001 census there were more than 450,000 people over the age of 65. The proportion of the population over the age of 65 is projected to comprise 26% of the population by 2051. The median income for those over the age of 65 was \$13,100 compared to the median for all other New Zealanders of \$18,500 in 2001. As our population ages and its buying power decreases, older consumers are most likely to demand better access to information to assist their purchasing decisions. MCA will have to prepare to meet that demand.

Children

Children make up 23% of the population and this figure has remained largely unchanged since 1991. However, significant decreases in the number of children are projected so that by 2051 children will comprise 16% of the population. By ethnic group, there are more children of Maori or Pacific descent than any other group. Access to the Internet varied greatly by ethnic group: 60% of Asian children usually lived in households with access to the Internet compared with 52% of European children, 25% of Maori children and 19% of Pacific children. Coupling this with information about the status of adult Maori consumers today, MCA's current targeting policy is likely to remain relevant for some years. MCA already targets children via its interactive 'Consumerkids' website⁶¹ which is also available in Maori. The website could be a foundation for future consumers to obtain information prior to entering into transactions, creating a demand for pre-emptive rather than post-failure consumer information.

⁶⁰ 'Projections' by the Department of Statistics are subject to uncertainty and are intended as an indicator rather than an exact forecast of future change.

⁶¹ www.consumerkids.govt.nz

Asian peoples

Projections for the growth of the Asian population are based on a net gain of 4,000 immigrants per year until 2016. Provided this target is met, the Asian share of the population will almost double to 9% by 2016. In 2001, 85% of Asian people were able to speak English, with nearly a quarter (24%) speaking only English. In 2001 62% of the Asian population were living in households with Internet access. Although there are similar proportions of children in the Asian and total New Zealand populations (24% and 23% respectively), young people (those aged 15-24 years) made up a larger share of the Asian population. In 2001, those aged 15-24 years comprised 21% (50,991) of the Asian population—up from 18% (18,348) in 1991. This age group comprised 14% of the total New Zealand population in 2001. MCA may consider whether or not the rise in the numbers of Asian peoples requires the development of a specific information targeting strategy.

MCA must meet the challenges that an increasingly aged and culturally diverse population poses. We also have to be aware of other pointers on the spectrum. As children are introduced to technology at an early age, it is likely that the next generation of adult consumers will be more technologically sophisticated than today's adult consumers. Those consumers who are left behind in the technology trend are also those who MCA has traditionally targeted: Maori, Pacific Island and low-income earners.

Future consumer characteristics

In a paper presented at the *Creating the Future* conference held in Brisbane on March 15 2002, Ross Honeywill from the Centre for Customer Strategy⁶² identified three distinct consumer social types: 'Traditionals', 'Evolvers' and 'I-Cons'. The study on which he based his findings surveyed 250,000 respondents living in a number of countries, including New Zealand, over a five year period. The study suggests that consumers can be typified in the following way:

'Traditionals':

- focus on basic need consumption
- are motivated by price and a fair deal
- focus on functionality and the transaction
- trust and respect institutions
- like someone else to organise them.

⁶² National Fair Trading Futures Workshop, held in Brisbane 14 March 2002. More information is available at the website of the Centre: www.customerstrategy.com.au

MCA is familiar with the expectations of 'Traditionals', and the research suggests that this group places the greatest reliance on government to provide them with information that allows them to make decisions with a high level of certainty. It is also suggests that they prefer information that is instructive and requires few choices. As 'Evolvers' age and replace this group, the information that the Ministry currently provides may lose relevance.

'I-Cons':

- focus on discretionary choice consumption
- are motivated by choice and information
- focus on the relationship ahead of the transaction
- do not trust institutions
- insist on organising their own lives.

'I-Cons' are the new breed of knowledgeable consumer who do not rely on government to provide them with information unless it is relevant to them. They consume constantly and have an appetite for technology to accelerate that consumption. They do not fit into traditional demographic descriptions, as they can be identified across all age groups by a range of characteristics which are hinted at above.

'Evolvers':

As their title suggests, evolvers share elements of both the other groups.

Although the above is a simplified representation of Honeywill's detailed study, for present purposes this data may become more relevant when the Ministry chooses future strategies for reaching classes of consumers with very distinct characteristics and expectations. Although 'Traditionals' currently make up more than half of the population, 'I-Cons' are increasing in number and in Australia account for nearly half of discretionary consumer spending. It is also worth noting that the New Zealand experience of an ageing, culturally diverse population, coupled with strong technologically savvy consumers, is not unique.

Market trends

Globalisation

The most prominent market trend for New Zealand is the emergence of the global marketplace. By its nature, globalisation limits New Zealand's possibilities of autonomously managing its domestic economy. Through its international treaty and trade obligations, New Zealand must allow its consumers to participate in the global marketplace, and globalisation provides the biggest challenge to MCA in terms of its borderless nature and the opportunities it makes available to consumers.

To date, online commerce and in particular business-to-consumer transactions have not lived up to early expectations. A recent European Union survey result (*Commission of the European Communities, 2002*) shows that European consumers do not feel well-protected when transacting across borders within the European community itself. Only 4% of consumers identified themselves as frequent purchasers. The reasons for this lack of take-up focus on issues of privacy and security when transacting. Another commentator⁶³ suggests that young, educated and less risk-averse consumers do not hold the same fears. As these consumers increase in number and the current privacy and security issues are addressed internationally, e-commerce will increase its market share.

Consumer-to-consumer transactions

The Internet allows consumers the greatest opportunity to buy from the global marketplace and to avoid dealing with businesses altogether. Locally, there are a number of Internet-based businesses facilitating consumer-to-consumer (c2c) transactions. As already described, issues of privacy and security may be preventing this market from developing its full potential, but as a trend it may require monitoring by MCA.

Technology challenges

The Australian Competition and Consumer Commission (ACCC) (1999) has identified some of the challenges facing consumers in the new Internet-based market as:

- **consumer protection issues:** promise and performance, consumer liability, security, transaction records and audit trails, privacy, identifying reputable traders, pricing, consumer redress and dispute resolution, safety standards and access
- **enforcement issues:** evidentiary issues, jurisdictional issues, choices of law, frauds and scams.

New Zealand participates in international fora considering these and other issues that impact on e-commerce. When the risks identified above have been reduced or removed, there is no practical reason why financial and insurance services, for example, cannot be transacted across borders.

The range of products and services that are available via the Internet is likely to increase. Where 'Traditional' consumers may base their purchase decisions on basic need and best price, 'I-Cons' look for features that offer lifestyle enhancement or uniqueness. If we accept that 'I-Cons' will, in the future, have the most disposable income, it follows that producers will continually innovate to meet their demands.

⁶³ Supra at note 4

The information challenge

Hadfield, Howse and Trebilcock (1996) note that the increasing diversity of products and producers implies increasing demand on consumers to access product information. As producers attempt to distinguish their products and gain market share, consumers are faced with a bewildering breadth of information. A further layer of complexity can be created by the marketing of secondary products and incentives such as extended warranties, easy finance deals and loyalty schemes. The provision of information (whether incentive-based such as a manufacturer's warranty or by the use, in credit for example, of standard form contracts) can operate as a method to shift the terms of trade in favour of sellers (ibid).

Distinguishing between the exploitative use of such provisions ... and their efficient use to reduce the costs that private information imposes on transactions is a difficult, but necessary, task.

Hadfield et al (ibid, p49)

Recognising that different types of consumer do not necessarily need, want or receive information in the same way can assist MCA to design its information strategies.

Whether a transaction is via a traditional retail outlet, telemarketing, door-to-door selling or the Internet, consumers are expected to make complex market choices daily. Today's consumers are time-poor. Whether the consumer making a choice is a 'Traditional' or an 'I-Con', it is recognised that there are five stages in the buying process: recognition of need, information search, evaluation of alternatives, purchase decision and post-purchase behaviour (Asch and Wolfe, 2001).

It is also clear that consumers will undertake a higher level of search for products that are perceived as high risk and/or expensive—a car or a mortgage, for example. In general, consumers receive the most information about the product they wish to purchase from the seller or manufacturer directly (who knows most about the product).

Faced with an increasing choice of producer and product and a hefty time investment in the search for information, even the most risk-averse consumers will make less than optimal choices (Hadfield et al, p50). Rational consumers will stop searching for information when the gains from searching are outweighed by the cost of further searching. Conversely, information can be expensive to produce and disseminate, and at some point the producer must draw the line because the cost of producing information outweighs the benefit the producer will receive. In this way producers strongly influence the size of information shortfalls (UK Office of Fair Trading, 1997).

The choice of how much information consumers should collect before making a purchase will depend on the cost of obtaining and processing the information. But information shortfalls do not necessarily lead to consumer detriment—it is the

extent to which the shortfall could have been avoided that has detrimental potential. Avoidability depends on the remedies available to consumers (ibid, p65).

The UK Office of Fair Trading describes the remedies available as either market solutions which include ‘informational signals’ such as warranties; or interventions which may include forced disclosure or direct regulation. They conclude that the degree to which consumers can judge whether or not a purchase decision is detrimental depends on what consumers can do to remedy it or avoid it altogether. Without considering avoidability, it is not possible to know whether or not the purchase will be detrimental—this is at the heart of most informational problems (ibid, p66).

Informational problems cut across all markets, from high-tech to no-tech markets like door-to-door selling. The Internet is different because it allows consumers to independently search for information, not only from producers and regulators but also from other consumers. In many ways it can be likened to a worldwide word-of-mouth recommendation service.

In the Consumer Guarantees Act and the Consumer Credit Bill,⁶⁴ consumers have legislation that will hopefully be ‘future-proof’; that is, will remain relevant despite future market developments. Flexibility of approach will be of key importance if MCA is to have any impact in a marketplace that is changing rapidly. The challenges identified by the ACCC (above) are shared internationally, but to date they have not been addressed.

Despite all the strengths and opportunities created by the Internet, it will never fully replace personal shopping. In the future MCA may need to devote resources to researching the most effective methods of providing information to consumers on both frontiers.

Consumer representation

Hadfield et al (p30) put forward the proposition that consumer activism seems to be in abeyance, and that attempts to create new consumer groups or to reinvigorate existing ones have largely met with disappointing results. Allan Asher has also noted that unless the consumer movement makes some radical changes, it risks becoming increasingly irrelevant to the changes in the marketplace (ibid, p1). Whether these risks are applicable in New Zealand is not yet clear, but the consequences would be far-reaching if, for instance, New Zealand consumers do not have a voice in the future direction of consumer policy.

The New Zealand experience

In comparison to Australia, Canada and the United Kingdom, for example, consumer organisations in New Zealand are relatively small in size and influence.

⁶⁴ Expected to be passed by the end of 2003

MCA has formalised its relationship with a number of NGOs it believes are key to its ability to tap into grassroots information about consumer needs and wants.⁶⁵ The relationships are based on mutual benefit and trust but may require strengthening and better resourcing if the Ministry's future strategy is to be based on an informational framework. For example, via formal agreement we may request an NGO to provide us with data on the types of consumer complaints received and statistical information about the consumers who use their service. Even though NGOs are an obvious potential source of data to inform consumer strategies, the organisations themselves suffer from a lack of resources, with many reporting that funding by government is targeted at direct service delivery with little or no funding available for research and the collation of basic data. They also report:⁶⁶

- a lack of access to information and communications technology, risking an inability to enjoy the advantages of a 'knowledge economy'
- that access to government funding and the associated accountability processes are complex and time-consuming
- a lack of resourcing to enable information-sharing or research from which to develop policy advice. It is therefore difficult for community groups to respond to the renewed interest by government in seeking community participation in policy development.

As well as seeking the input of key NGOs, MCA will need to work co-operatively with other public agencies to ensure that the above problems are worked through.

The interests of consumers are diffuse—many go beyond the retail transaction and the abstract super-rational shopper looking for the best deal, but not all are represented by special interest groups; consumer interests may not necessarily be evident to policy-makers. We cannot afford to overlook the contribution that other, as yet unrecognised, consumer groups may offer in terms of knowledge of consumer issues. The proliferation of niche interest groups, many of whom may meet on the Internet and require little or no physical participation from a constituent base, may be more attractive to a new generation of consumers who wish to work toward very specific rather than general aims.

New technology, new products

In particular, consumers are demanding from government both input into and information about food and health products. Internationally, the initial reaction of governments and industry was to rely on science to deny the relevancy of consumer concerns. While science may ultimately prove that consumer concerns

⁶⁵ For example, Maori Women's Welfare League and National Association of Citizen's Advice Bureaux

⁶⁶ *Report of the Community–Government Relationship Steering Group*, 2002, p13

are unfounded, the consumer voice in these markets is so strong that it refuses to be ignored. The failure of governments to communicate about the actual concerns of consumers about food technologies has resulted in consumer unease. Whether or not the concerns of consumers are rational according to science ignores the reality that those concerns will have long-term consequences for economic growth. In a discussion paper on developing a food safety strategy, Dr Frewer (UK Institute of Food Research, notes:

To date the response from governments has been: that if consumers understood the science, they would accept the emerging technology and that the way forward for science policy was to 'educate' consumers in order to generate acceptance. It does not take into account the role that trust in institutions and information sources may be in determining public responses to risk communications. There are also likely to be large individual differences in people's beliefs and information needs, and these should be understood and information adapted and targeted to suit these different information requirements.

The reluctance of government to give support to consumer groups championing these and other issues may unintentionally undermine parallel initiatives to gain trust and co-operation from the same groups.

The future provision of legal information

E-government

With the creation of the e-government website⁶⁷ the Government has signalled the future of information provision from government to citizens. This first-generation portal is intended to evolve. Initially it will provide access to information and services for individuals, businesses and communities, but eventually it will also deliver information and services from key NGOs.⁶⁸

MCA's own future strategic direction in relation to the delivery of information to consumers aligns well with the Government's overarching vision: to allow the easy flow of information within and between government organisations, and between government and people.⁶⁹

Possible developments

Professor Susskind sums it up well when he says:

The reality today is that our ability to use IT to capture, store, retrieve, and reproduce information wildly surpasses our ability to use technology to help analyse,

⁶⁷ www.govt.nz

⁶⁸ Summary of the draft portal strategy: www.e-government.govt.nz/docs/nz-gov-portal-strategy-a/ It is of course likely that technological innovation will enable the e-govt portal to develop beyond what can be currently envisaged.

⁶⁹ *ibid*

refine, and manage the mass of information which conventional 'data processing' itself has created for us.

(Suskind, 2000 p9)

For example, New Zealand's legislation is now available free for browsing, downloading and reproduction off the Internet; eventually the government and consumers may ask whether more value can be added to that resource by more refined metadata standards that enable analysis and smart searches.

Professor Suskind is writing about the interaction between information technology and the future of law. There are two central concepts to his thesis which are of interest—the technology stage and the latent legal market.

The technology lag

This refers to the gap between 'knowledge processing' and 'data processing'. It is the transitory stage society is in currently, where print-based information is merely supported and supplemented by technology-based information. Thanks to the age of data processing, consumers are able to access massive quantities of data on the Internet, but the legal material available can be of such complexity that it may be impenetrable to anyone other than specialist audiences.

Suskind predicts that this era, where technology seems to give us less rather than more control over information demands, will be replaced by the arrival of smarter technologies such as artificial intelligence and expert systems. Research and development in technology will encourage the delivery of proactive and personalised information to consumers.

They will not replace conventional legal services, but they will provide affordable, easy access to legal guidance where many have [been] unaffordable or impractical in the past.

(Suskind, 2000, p260)

The latent legal market

This 'market' consists of all those situations when a consumer may have benefited from legal information or advice, but any one of a number of factors has prevented them from obtaining it. For example, consumers may think they need advice from a solicitor and not consider contact with a government agency, or may not even know that their problem gives rise to a question of law at all. Suskind argues that this 'market' of consumers can be liberated by the availability of straightforward online legal information, which is characterised not by extensive narrative but by eliminating irrelevant information, pinpointing pertinent information, produced in plain language that tells consumers precisely what they want to know *and nothing else*.

Future generations of consumers will see the Internet as the first port of call when they are seeking information and they may well demand free access to legal

information and/or guidance from a source they trust to advise them correctly—the government. There are obvious limitations to the type of information that agencies such as MCA can provide on the Internet, but there is huge potential for MCA and other government agencies to take a collaborative approach to the pro-active provision of legal information to consumers.⁷⁰

Work of this kind has already begun: the New Zealand Law Foundation and the Department of Courts have produced a report (McKechnie, 2002) on the provision of judicial and court information to the public through the use of the Internet.

The Law Foundation is expected to decide imminently whether to begin work on an Internet portal for case law information. While this portal will not provide access to free legal information (*Dominion Post*, 2002) it may be a key step along the path to such a future.

Professor Susskind provides some helpful analysis of the future of legal information generally, and the role of government agencies in ensuring that consumers have access to the knowledge they need to be effective participants in society.

For example, when a consumer buys faulty goods or considers the difference between entering a hire purchase, revolving credit or lease agreement, they could have at their fingertips practical, focused and applicable guidance to assist them to make a decision. He offers a list of ways that information technology could help in offering public access to the law; a number of which are either in existence or currently being developed in New Zealand. Of interest to MCA in particular are the following:

- A portal offering public access to law—a master website or gateway to legal services. Consistent with the e-government strategy, the links and guidance would not be listed under conventional classifications but orientated towards real-life events (eg buying a car, improving your credit rating, or private sales of goods).
- Online legal guidance systems—to help consumers understand their rights and obligations and appreciate how to enforce those rights, and to offer preventative legal guidance. These guidance systems recognise that many consumers are not familiar with the many advantageous legal facilities available today, such that there is often little possibility of achieving legal health promotion.
- Greater empowerment of the voluntary sector by providing legal information facilities which will extend the capability and areas of competence of, for example, CABX and Community Law Centres.

¹³ If consumers become conditioned over time to undertake Internet information searches prior to transacting, pro-active advice aimed at healthy decision making will lessen the demand for post-transactional redress.

Other agencies have already begun work on these and other areas.⁷¹ Other initiatives being considered may, for example, allow electronic filing of Court documents and electronic dispute resolution. The benefits of interacting with consumers over the Internet are only beginning to be understood, and the above is just a short overview of some of the possibilities on offer.

Conclusion

The trends identified illustrate the need for MCA to promote awareness and responsiveness in its operating environment to the changes that are a feature of the global economy. As cross-border transactions increase and market innovations introduce new products and services to consumers, MCA may find it increasingly difficult to keep apace of developments unless it does so in a calculated rather than ad hoc way.

MCA may also need to review its informational strategies. If the predictions with regard to population and consumer characteristics in this report are borne out, many consumers, and potentially many who we would regard as 'target consumers' are unlikely to access, or find helpful, the information we currently produce. However, across government there are a number of interesting initiatives which suggest that MCA is not alone in recognising the need to develop new information strategies.

MCA would benefit from stronger alliances with other government and non-government agencies. A lot of work is currently being undertaken to strengthen these ties. One of the benefits could be access to consumer data that assists us to choose the right informational strategies and to identify market failures quickly. Work is already being done in this regard.

Overall, the trends identified are predictable, given New Zealand's place in the global economy and the trend toward ethnic and cultural diversity seen worldwide.

⁷¹ The Department of Labour is running the Digital Divide project, which refers to the gap between those New Zealanders who have access to information and communications technology and those who do not—essentially MCA's target consumers. The project is also focusing on increasing the IT literacy of consumers.

References

ACCC, “Trends in international consumer protection policy”, speech given by Allan Asher, June 1999 at 2–3.

Asch and Wolfe, *New Economy—New Competition*, April 2001 Palgrave Macmillan NY, USA.

Commission of the European Communities, *Follow up communication to the Green Paper on EU Consumer Protection*, June 2002 at p8

Hadfield GK, Howse R and Trebilcock MJ, *Rethinking Consumer Policy*, June 1996

Report of the Community–Government Relationship Steering Group, August 2002 at 13

Review of Consumer Information Service, Ministry of Consumer Affairs, May 1999
UK Institute of Food Research, Dr L Frewer, *Developing a Food Safety Strategy* at 4: www.who.int/fsf/PAPER_NUMBER6Frewer.pdf

UK Office of Fair Trading, *Consumer Detriment under conditions of imperfect information*, August 1997, p64

Susskind R, *Transforming the law: essays on technology, justice and the legal marketplace*, UK OUP 2000 p 9

McKechnie D, *The use of the Internet by Courts and the Judiciary*, August 2002, www.courts.govt.nz

“Law portal awaits funds”, *Dominion Post*, 9 December 2002

4. The Perspectives of the Ministry of Consumer Affairs' Stakeholders

Note

This paper is the story from the stakeholders' point of view. There has been no editorialising of views by the writer, but conclusions have been drawn in terms of the potentials and issues we could consider.

There were consistent themes in the responses from the stakeholders and the paper reports this. Most of the quotations used indicate the views of a range of stakeholders. Where the views came from one particular stakeholder only, they are identified.

1. Definition of stakeholders

Stakeholders are those individuals or groups/businesses/departments who depend on the Ministry of Consumer Affairs (MCA) to fulfil their own goals and on whom, in turn, MCA depends in some way. A complete list of MCA's stakeholders is attached as Appendix A.

2. Assumption

The list of stakeholders interviewed is attached as Appendix B. It is assumed that the group of stakeholders interviewed is representative of MCA's stakeholders.

3. Methodology

The methodology followed in completing these interviews is attached as Appendix C.

4. About the stakeholders

4.1 Internal stakeholders

Ministry of Economic Development (MED)

MED is MCA's primary internal stakeholder.

Structure

In terms of processes, MCA is a branch of MED. Chief Executive Officer (CEO), Geoff Dangerfield, is accountable to the Minister of Consumer Affairs for the performance of MCA. CEO delegates functions and authority to the General Manager (GM) MCA. GM is seen by the CEO as his delegate operating with his authority.

CEO decides the shape and capability of MED/MCA, ie how they achieve as well as what they achieve. CEO is responsible for the values, performance, and ethics of the whole agency. The staff of MED and MCA are, therefore, one staff and

loyalty and allegiance are expected to be to the whole agency. In other words, MCA is a component part of MED in terms of the legal position and in terms of accountability, but it has a separate branding.

The practical interface between MCA and all other branches of MED is the Senior Leadership Team (SLT). The GM MCA and the Branch Managers (Deputy Secretaries) of MED are members of this team, which is led by the CEO. This forum is reported by MED members of SLT to be an exercise of influence through debate.

Although members of SLT reported that there was much greater understanding and commonality of philosophy between MED and MCA now than there was five or so years ago, there was still a feeling that there was not yet a common philosophy, and there was also a view expressed that MED relied on MCA to have a different perspective.

MED's core outcome

New Zealand's business environment actively promotes and enables a higher rate of sustainable economic development.

MED/MCA

Between MED branches and MCA the interest in developing relationships varies according to synergies in workloads. Resources and Networks Branch and Regulatory and Competition Policy, in particular, expressed considerable interest in maintaining good working relationships with MCA and in having shared philosophies.

Relationships with RCP and RNB were built from the experience of working with the MCA policy group. They were reported as if they are personal working relationships rather than structural relationships. They happened, rather than being deliberately sought outside the need to work together on a particular project.

Other internal stakeholders

There are four stakeholders who are actually groups set up by MCA for specific purposes. They are the Maori Reference Group, the Pacific Island Reference Group, the Consumer Representative Network, and the Consumer Nominations Group.

Maori Reference Group

Roopu Tohutoro Maori, the Maori Reference Group, was set up by MCA to advise MCA staff on:

- what matters are of interest to, and specifically relate to Maori consumer needs
- whether it is necessary to go beyond the resources of the group to seek a wider Maori representational view

- with whom, in addition to the group members, you should consult.

The group is to be consulted, when required, in the early stages of project planning relating to Maori, as well as throughout the project.

When consulted the group has provided valuable assistance to staff. The question is — have they been consulted in every appropriate case? There is no evaluation available.

Pacific Island Reference Group

The Pacific Island Reference Group consists of 10 representatives reflecting a fair balance of gender and age: two Samoans, two Tongans, two Cook Islanders, two Niueans, one Fijian, and one other.

The Pacific Island Reference Group was set up within the Consumer Information Service (CIS) to:

assist and advise the Ministry on our Pacific Island (PI) networking activities and provide ideas and initiatives to improve our approach given the limited resources we have

effectively promote the appropriate use of the CIS services

help promote the Ministry to the PI communities and inform the MCA of consumer issues affecting the PI communities

assist with nominations of PI people as part of the Consumer Nominations Group.

It is an Auckland group which is co-ordinated by MCA Pacific staff in Auckland. The role of CIS' Pacific staff in activating this group is significant.

The Pacific Island Reference Group acts in an advisory and consultative capacity. The group also see themselves as being able to pass on consumer information to their peoples in their own language.

Evaluation tools are yet to be developed.

Consumer Representative Network

The Consumer Representative Network is a network of people who are, have been, or aspire to be laypersons or consumer representatives on statutory and other boards. The composition of the group is intentionally weighted heavily towards those who are currently or have recently served as consumer representatives.

The first national meeting of the Network was held in Wellington on Saturday 22 June 2002. The next meeting is planned for February 2003. The objective is to

create a network of representatives who can consult and assist each other, build the skills and knowledge of representatives, and give MCA access to a wider spectrum of consumer opinion and expertise.

Evaluation tools are being developed; however, at this time it is too early to evaluate effectively.

Consumer Nominations Group

The Consumer Nominations Group was set up in 2002. Its membership is 12 consumer representatives selected on the basis of their extensive networks and willingness to assist the Ministry by identifying candidates for layperson or consumer positions. This initiative replaces the MCA database. The group is already somewhat successful, having provided the successful candidate for 36% of the positions they made nominations for.

The composition of the group is reviewed at least annually in terms of their individual contributions and the group's contribution as a whole.

4.2 External stakeholders

Commerce Commission

The Commerce Commission is funded by MED to enforce the Fair Trading Act. Because of its limited funding the Commission selects the issues they investigate on the basis of agreed criteria such as widespread detriment or the need for a warning to be issued.

The Commission doesn't seek redress on behalf of individuals. It acts to penalise the culprit firm and stop the behaviour. Individuals have to seek redress through the usual channels (disputes tribunal, courts).

Ministry of Justice

The Public Law Group of the Ministry of Justice works with MCA policy unit on a range of matters including occupational regulation and commercial and property matters. The Ministry of Justice also currently enforces the Credit Contracts Act. The new Act will be enforced by MCA.

Banking Ombudsman Commission

This is a well-established self-regulating body for banking. The fundamental characteristic of the Banking Ombudsman is the impartiality of the office. Banking Ombudsman Liz Brown is quite clear that she cannot and should not act as a consumer advocate.

Ninety percent of the Ombudsman's role is in providing a dispute resolution service. The Ombudsman is also required to monitor the Code of Banking Practice.

MCA is involved in the regular reviews of the Banking Ombudsman Commission Code and in advising the Minister on the consumer appointments to the Commission.

Electricity Complaints Commission

The Commission was established in 2001 and is still developing. The Commission is developing the Code of Practice at the moment. There are issues about membership of the scheme but the Commissioner believes these to be primarily about the cost rather than principle, a matter which may be resolved by the Code.

The Commissioner is also heartened by the company support of the scheme. They are taking the Commission seriously and are very interested in the comparative statistics of complaints (and she reports that companies have even brought in complaints which are outside the Code).

MCA had a significant involvement in the establishment of the Commission, working with MED. It will continue to be involved at this level and in advising on appointments to the Commission.

Maori Women's Welfare League (MWWL)

The MWWL is a premier organisation recognised by Maori and Pakeha for its influence amongst Maori and within government. The League talks about itself as providing a place where Maori women will get information. The League is a national organisation with well-established regional structures and strong networks.

Maori are a target group for MCA. MCA, through the CIS, has a contract with the League. The League is working with CIS to make consumer information available to Maori women. The expectation is that this will be a long-term and growing relationship.

Consumers Institute

The Consumers Institute began as a product testing organisation—now 50% of their testing is of services. The Institute publishes a monthly magazine which is purchased by subscription, and is also active in the media. The Institute is willing and able to comment with common sense and force on consumer issues. In particular, the Institute is concerned about the ever-increasing disparity in knowledge between consumers and traders/service providers.

The Consumers Institute's constituency is the readers of its magazine who are primarily Pakeha and middle-class, in other words a substantial group of New Zealanders. The Institute also attempts to think beyond the boundaries of its constituency.

The Consumers Institute is an effective and accepted lobbyist on consumer matters. It enters debates often on the basis of research or knowledge and realistically weighs up the respective roles and expectations of consumers and traders/service providers. For these reasons it is respected by Ministers and by a significant proportion of the New Zealand community.

Nevertheless, funding is as much a problem for the Consumers Institute as it is for community groups.

New Zealand Citizen's Advice Bureaux (CABX)

The CABX is a nationally co-ordinated organisation of local CABs. CIS has a contract with CABs to provide a telephone advice service on consumer matters. MCA provides funding and manuals to local CABs, and, in addition, provides training annually for local volunteers.

CABX has 80,000 contacts with consumers and sees itself as the primary frontline contact on consumer issues. Both Consumers Institute and MCA refer to CABX. However, CABX believes that this role is not acknowledged by MCA in terms of the funding/resourcing provided. MCA provides \$7,000 per annum plus information manuals and updates, and training. CABX claims the actual cost of providing the service for MCA is \$440,000 per annum (@ \$5.50 per enquiry: total costs of CAB ÷ total number of enquiries).

CABX wants more funding, and ongoing, regular contact with MCA, not just consultation on issues—perhaps regular meetings with the General Manager or with the CIS Manager. They intend to use the process of reviewing the Memorandum of Understanding as a way of developing influence and also of seeing how things work in MCA.

New Zealand Federation of Family Budgeting Services (NZFFBS)

The NZFFBS is the nationally coordinated body of local Budget Advice Service branches. CIS provides the branches with funding, training, and a manual.

The national body is not funded by CIS. Although there is no direct funding of the national body, MCA does benefit from the presence of a national structure. For example, NZFFBS Chief Executive Raewyn Nielsen points out that if there was no national structure, there would be no economies of scale, and there would be less professionalism in the service because it is the national structure which builds this.

NZFFBS has also identified a developing problem for itself and potentially for MCA. It reports that there is a drastic shortage of volunteers for budgeting work. NZFFBS has lost 200 volunteers each year for the last five years but has only recruited about 160 each year. This is already beginning to impact on its ability to provide the service.

NZFFBS has plans to establish three regional paid positions to recruit volunteers and provide direct support for volunteers to meet this looming crisis but needs to locate funding first.

New Zealand Retailers Association (RTA)

The RTA represents retail businesses in New Zealand. The membership includes 130 of the 160 national chains of stores and 4,000 independent retailers.

Only 40–45% of RTA's funding comes from subscriptions. The rest comes from corporate sponsorship and other special arrangements with corporates. Events must all be self-funding.

RTA is hosting a major international conference in New Zealand in 2003.

New Zealand Bankers Association

The Bankers Association has adopted an attitude of enlightened self-interest and is looking for positive, constructive discussions with government and opportunities to make a useful contribution. It recognises that there are other parties who also have vital interests and is prepared to take that into account in any discussions. The Bankers Association advise that they have moved a long way in recent discussions about the Code of Banking Practice.

More and more of the Association's work is in developing effective technical standards in banking rather than commenting on broad industry issues.

Sensortronic Scale Ltd

Sensortronic is a small/medium business set up to supply and repair weighing equipment. Their contact and interest with MCA is as a private sector verifier of weighing equipment authorised under the legislation.

4.3 Stakeholders in terms of power/interest matrix

The power/interest matrix basically divides stakeholders into four categories: those who are key players; those who we keep satisfied; those who we keep informed; and those with whom we make a minimal effort. The matrix is attached as Appendix D

It is clear from the transcripts recorded as MCA managers and stakeholders identified positions that:

- Each person had their own criteria for deciding where a stakeholder belongs. There was no known or shared approach between MCA managers or between MCA and stakeholders. This lack of congruence probably signals that there is not a formal structured or strategic approach to stakeholder relationships within the Ministry.

- There does not appear to be a consistent or strategic approach across the Ministry in terms of which stakeholders meet with GM and which meet managers or other staff. This means that all relationships fundamentally tend to lean to the personal rather than the institutional.

- SLT sees MCA's contribution to the overall MED outcome in the following terms:

A market-based economy relies on trust to function effectively. If it does there are wealth and welfare gains for New Zealand. That is why it is appropriate to have someone looking at those transactions from a consumer view but also business to business. Ultimately consumers are critical to that.

(Lewis Holden)

Economic development is just a proxy for well-being, which is about consumers, not producers. Economic development is about improving the well-being of consumers.

(Roger Proctor)

The role of regulation is extending in terms of reach, which is going to bring us more directly into dealing with consumers.

(Mark Steel)

- MCA controls all its relationships with stakeholders except the Minister of Consumer Affairs and CEO. The comment was often made by stakeholders that MCA tended to deal with them on an issues basis rather than a relationship basis. And several managers commented that stakeholders could have more influence and they were surprised that they didn't try to have more influence
- MCA decides its work programme without reference to their stakeholders.

From the completed matrices it is evident that:

- The majority of MCA's stakeholders are trader/service provider groups. There are only four consumer groups consistently mentioned. They are MWWL, NZFFBS, Consumers Institute, and CABX.
- There is agreement that the most influential stakeholders are the Minister of Consumer Affairs and Chief Executive Officer MED.
- There is little agreement between MCA managers, and between managers and stakeholders, about where organisations sit on the matrix. The greatest disagreement is around the extent of the influence stakeholders have.
- There are stakeholders who participate across the Ministry and then there are those who specialise only in one area.
- Relationships between MCA and MED are relatively underdeveloped. This is a consequence of history and everyone being very busy rather than any ill-will.

- Although Maori and Pacific peoples are targeted in MCA policies, the relationships between MCA and Ministry of Pacific Island Affairs (MPIA) and especially Te Puni Kokiri (TPK) are not developed. There was evidence of considerable effort having been exerted in terms of TPK but to little or no account. MCA does have a working agreement with MPIA and there is considerable goodwill there.
- MCA has not apparently fostered ongoing relationships with any other departments, even those they may have affinity with. There may be strategic value in deliberately setting up such relationships to extend MCA's influence and sources of information. In the workplace, personal friendships between MCA staff and staff members from other departments often yield vital information.
- Given the expected role of global markets in the near future, there may be value in building a range of international relationships. At the moment, outside Trading Standards, international relationships are generally narrow.

4.4 General state of relationships

The overriding conclusion from the research must be that MCA has, in general, developed sound and friendly working relationships with their various stakeholders. It has a good base on which it can build if it wishes to.

External stakeholders all feel that relationships with MCA are honest and that MCA listens to them respectfully, but they are not always sure that their advice has the desired result. They also reported that they are not involved in the setting of agendas in MCA. Rather MCA determines the agenda and invites them to comment on it.

In terms of relationships of a contractual nature where MCA purchases services (eg CABX, MWWL, NZFBBS), all raised the need for adequate funding levels, longer term funding to enable them to maintain capacity, and the role of volunteerism.

5. Stakeholder expectations of MCA

5.1 Provide the consumer perspective

MCA is expected to know and provide the consumer perspective on relevant issues.

Can't leave it to the Consumers Institute and the Citizen's Advice Bureaux to provide the consumer perspective. The consumer perspective is a specialist area and it must be fed into the government decision-making process, the public policy machine, otherwise the consumer view won't be put forward properly and effectively.

Must have a detailed knowledge of consumer interests and knowledge of economic interest so they can provide balance in discussions across departments. Also expect them to provide advice at a slightly more practical (operational) level.

5.2 Conduct research

There is an expectation that MCA has expertise in consumer needs, interests, and perspectives. This knowledge is important to the outcomes set within MED and also to other agencies who generally lack and appreciate that expertise. The level of expertise described is considerable.

MCA needs to provide good, robust analysis of the impacts on consumers, particularly around any reforms.

MCA needs to understand how consumers behave, what they need to trust markets and have effective markets. It needs to be on top of recent developments/know the nature of consumer problems and what can be done about them.

5.3 Develop policy/legislation

There is no doubt that MCA must provide policy, particularly to protect consumers and deal with market failure. This is seen as core business.

There is also an expectation that we will continue to update and administer legislation. There was also some comment that MCA should administer all the consumer legislation it is responsible for. Particular reference was made to overlapping legislation administered by more than one department.

MCA is there to provide public policy advice to government on consumer issues. That has to be done. There does need to be a consumer perspective fed into the government decision-making process. It is a specialist area.

MCA must develop policy. That is how you get others doing the Ministry's work (eg the Electricity Commission).

New Zealand needs high levels of consumer confidence and trust to develop new markets. MCA needs to provide for consumer protection and develop policies to maximise confidence in transactions between consumers and business.

There is consumer legislation that needs to be administered, updated, and made to work effectively. There will always be feral organisations and you have to have someone to intervene and protect those who cannot protect themselves.

5.4 Provide information

The provision of information for consumers and business is seen as core business.

MCA must be responsible for ensuring that consumers and retailers know their rights and responsibilities, and consumers have access to information and support.

5.5 Advocate for consumers

Advocacy is seen as an important function of MCA. The definition of advocacy matters, however. If you are talking about advocacy that doesn't bring a researched and balanced view then that isn't what MCA does. If you are talking about MCA coming from the consumer perspective in a broader debate and representing consumer interests where others are representing other interests then that is seen as our function.

MCA must be the advocate for the consumer. The Consumers Institute acts for its members, someone must act for all. And the Ministry must be able to stand firmly behind the consumer—eg the Electricity Commissioner is necessarily impartial which means that she depends on a strong industry and a strong MCA to ensure a robust relationship.

MCA is there to represent consumers, as advocates. If there was no MCA our members' (retailers) customers would be disenfranchised not our members.

There is an element in any population Ministry where they need to have credibility with, understanding of, and be sympathetic to the group they are representing. This means MCA does need to be part-advocate and part-dispassionate advisor. It is a tension but you do have to make consumers feel that their interests are being reflected.

It is quite difficult for a policy Ministry to perform [the watchdog] function but the role does need to be performed and a public watchdog does need to be taken seriously by the government. Perhaps MCA funds someone to do this?

5.6 Target specific consumers

MCA currently targets low-income consumers and Maori and Pacific Island consumers particularly. The targeting of those least able to look after themselves is an expectation of government in general. The extent and nature of the activities associated with the targeting were a matter of discussion.

SLT members were also interested in knowing whether the present targeting is effective.

MCA must look after the interests of those least able to represent themselves, represent consumer interests in government circles, continue its overview of legislation and coordinate it.

Protecting the vulnerable and disadvantaged is a legitimate role for government and not an unreasonable proposition. But MCA needs to look for long-term solutions.

MCA needs to provide service in languages other than English and fix problems brought to them by disadvantaged consumers, not just give advice.

5.7 Support self-regulation schemes

The self-regulatory bodies stand apart from MCA on a day-to-day basis. MCA is, however, involved in the review of the various schemes and largely represents the

consumer perspective in these reviews. In addition, the Minister of MCA appoints the consumer representatives to these bodies.

By and large the expectation is that MCA will continue to do what it does. The Ombudswomen and the Electricity Commissioner are all tasked to act in an impartial manner and they, therefore, see MCA as providing the consumer representation which necessarily balances the industry representation.

The Ministry having integrity with the [electricity] industry is very important to me so they can be strong in an argument. Self-regulation is only good if it's robust, only good if people keep an eye on it and are able to have robust debate about issues. [The] Ministry must be strong. If the Ministry is not, then consumers lose power because the commissioner's role is to be independent.

MCA has a role in arguing with the industry, persuading them to see the consumer view.

5.8 Provide training

The groups contracted to provide consumer information services expect that MCA will continue to provide training for their volunteers.

5.9 Promote itself

The low profile of MCA was mentioned several times during the interviews. There was not necessarily an expectation that MCA would deliberately raise its profile, but there was some discussion of the benefits of raising MCA's profile in terms of consumers knowing what we do.

Need more promotion of MCA (especially radio and especially in PI and other languages) so that people know about MCA outside the government sector. (Pacific Island Reference Group, MCA)

5.10 Remain focused on core business

The greatest expectation of all is that:

MCA needs to stay focused on the things that otherwise fall through the cracks rather than making a material input into every government paper.

6. Future consumer issues

6.1 E-commerce

Building consumer confidence in e-commerce and further advances in communication technology.

6.2 E-government

Government introducing a demand for consumers to access computers, assuming that consumers can access computers.

6.3 Self-regulation or government regulation

The role of self-regulation vis-à-vis regulation—which is the most effective in economic and consumer protection terms?

6.4 Globalisation

- Cross-border transactions and all their problems.
- The economic and social consequences of reducing costs to do with distance. Will the risks increase for consumers; will there be greater distrust as a consequence in the market?
- The challenge of an ever greater array of goods arriving as a result of globalisation will continue and the global market for the provision of services will present a new challenge.
- Internet sales.
- Will there need to be global consumer groups to keep up with the issues?
- Trade-offs between efficiency and equity.

6.5 Labelling

There will be an intensification of the requirement for the extensive labelling of products in terms of safety. Food labelling will have been taken over by New Zealand Food Safety Forum (NZFSA).

6.6 Safety

The issues labelled as ‘consumer safety’ are likely to disappear because the Ministry has done so well that only information will be required. But trans-Tasman product safety management will be an issue, as well as trans-Pacific, and Australia-United States.

6.7 Weights and measures

- Trade Measurement (TM) will become the central government advisory service for legal metrology.
- TM will also be involved in trans-Tasman and trans-Pacific issues, and have a closer working relationship with South Pacific economies.
- Will trust be maintained in weights and measures?

6.8 Credit

The unreality of credit cards in terms of money, plus the distance of the actual credit providers from the people taking the credit, will mean that the availability of credit to people with insufficient ability to pay will continue. You can't legislate against consumers?

6.9 Targeting

There is no expectation that poverty/lack of employment will have lessened in five years, nor that good levels of service will have been restored to rural areas. Therefore, these will remain issues and targeting will continue to be necessary.

6.10 Goods and services

A range of matters were raised by the stakeholders:

- Where will the vulnerabilities of the average consumer lie over the next 10 years? Should we be systematically checking systems to find out?
- Closer regulatory integration with Australia—one market through CER and one set of regulatory institutions. Australian and American standards are going to push against some elements of New Zealand's regulatory agenda but the prize for New Zealand will be access to vast markets. What will the trade-offs be? Will some consumer benefits be lost? For example, the United States dislikes the concept of Pharmac and the control of the purchase price of drugs; Australia tends to have a greater degree of government regulation.
- Too much choice and never enough information/too much information.
- Bundling of services will make it difficult for the consumer to unravel the real costs of each service. For example, one service provider providing the following services for one fee: telephone, satellite TV, Internet, electricity, and insurance. There will be a need for impartial analysis.
- The boundaries of all legislation will be pushed to the limit—for example, what is a sale? Air New Zealand promotion of fares to Telecom customers who frequently call Melbourne?

6.11 The cost of home ownership

6.12 Retirement savings, superannuation, ageing population

Will superannuation be a consumer issue? Will the large retired population bring other new issues?

7. Potentials/issues for MCA raised by this research

7.1 Treaty of Waitangi

The role and implementation of the Treaty of Waitangi is a fundamental issue across government.

MWWL sees MCA as not exercising the real consultation rights under the Treaty, and that MCA needs to be moving towards making this a full and equal partnership where tangata whenua has power equal to the Crown.

MWWL sees this as a consumer issue—the level of recognition that is given to the Maori viewpoint. They believe that non-Maori/Maori are the two perspectives and both should have equal positions.

MCA may need to assess the current and future role of the Treaty in this Ministry and in MED overall, and the appropriate response to that.

7.2 Expectations of MCA

In general, MCA needs to be very clear about its role and boundaries, and how it will deal with the tensions between the expectations of the stakeholders, as the potential is for the Ministry to be simultaneously pulled in all directions. Stakeholders, on the one hand, want MCA to develop policy and legislation, and on the other provide advocacy and other services directly.

7.3 Functions of MCA

Using the information arising from the review (including future trends and stakeholder expectations), MCA may identify any additions to or modification of its functions. Issues raised by the interviews with stakeholders include:

- administration of consumer legislation
- knowledge of consumer behaviour
- role and definition of advocacy
- lessons learnt in the past
- new issues, trends, expectations
- role of consumer representation.

7.4 Research

MCA may consider whether there is a role for research (empirical and other) in MCA, and, if there is a role:

- what that role is
- how research will contribute to the effectiveness of the Ministry
- whether the role can be provided within the existing budget.

Clearly this indicates a thorough analysis.

7.5 Consultation

All branches of MCA are involved in consulting consumers and traders at various points in their work. However, there does not appear to be any recommended practice associated with this consultation. The question is: should there be? Should we be the experts in consultation and set ourselves a standard?

Establishing practice guidelines or requirements would include deciding:

- when do we consult? Do we consult before we set our agenda and about what?
- how do we identify the groups we consult?
- how do we ensure that those we consult have integrity?
- what is the consultation process?

7.6 Strategic approach to relationships with stakeholders

There may be benefit in taking a strategic and structured approach to our relationships with stakeholders (external and internal) and others. There is a sound base of goodwill to start from so no repairs are needed.

Such an approach would indicate:

- consideration of the balance of our stakeholders (traders and service providers, consumers, departments, other)
- analysis of the stakeholders—their goals and capabilities including, for consumer groups, the availability of volunteers
- identification of the purpose and nature of our relationships
- identification of the current and potential role of stakeholders vis-à-vis MCA's current and future needs
- development of criteria for stakeholder relationships (MCA preferences and requirements)

- identification of other potentially valuable relationships (eg government departments)
- funding implications.

It may be useful to include MCA's internal stakeholders—Maori Reference Group, PI Reference Group, Consumer Representatives Network, and Consumer Nominations Group—in any such discussion and planning. The relationship between MED and MCA is considered separately here.

7.7 Relationship between MED and MCA

The interviews revealed that there is general agreement that the relationship between MED and MCA is a useful relationship and there would be “significant impacts on MED if MCA was gone”.

Closer integration and identification with MED is definitely proposed. Given that this is a fundamental decision, MCA needs to consider this matter comprehensively before any change occurs so that the greatest benefit comes to MCA. Consideration should include the following:

- pair analysis of MED and MCA
- how, what, why, where, when in terms of closer integration
- points of contact and identification, synergies
- consequences for MCA and MED.

Possibilities identified in the research

- Better integration of MCA into the strategic planning process, better identification of synergies between Ministries, and better integration overall so that the two Ministries are both more effective. This is a significant and far-reaching discussion which needs to be approached comprehensively and with care.
- “Need to look at the best fit between RCP/MCA. When is it appropriate for MCA to take the lead and when RCP?” (Mark Steel).
- MCA could take opportunities to leverage off MED's clout and credibility.
- MCA and MED to take their policy analysis to a new level by combining their forces.
- MCA perspectives to be picked up and taken more seriously within MED.

7.8 Commerce Commission

The Commerce Commission has offered an opportunity to examine how MCA and the Commission may work more closely together. MCA may choose to take this opportunity. As the Commerce Commission said, we “need a project plan which incorporates both the Commerce Commission and MCA. At the moment we work in isolation, not in tandem”.

7.9 Contractual relationships and funding of stakeholder groups

Now that longer term contracts can be put in place (3–5 years), MCA may take the opportunity to look particularly at these relationships and:

- identify the extent to which these contracts meet our current needs
- upskill Non-Governmental Organisations (NGOs) by ensuring there is continuity of staff, one year contracts often mean that people are trained and then immediately lost because there is no job certainty
- investigate the contribution and value of national offices of NGOs
- identify the intentions, focus, information potential and expertise available through NGOs
- identify additional capacity which would benefit MCA
- identify the costs and benefits of building this capacity.

7.10 Targeting consumers

Targeting is agreed by most stakeholders to be an appropriate activity for government, particularly with Maori and PI consumers. MCA may consider putting in place an appropriate evaluation of targeting so that it may identify the benefits of this policy and identify ways in which it may be more successful.

7.11 Recognition of MCA expertise

There is an issue in the recognition of the expertise of the Ministry in every respect across government (eg, usually low-ranked Minister outside Cabinet).

MCA also has a challenge in dealing with the perception of it as a constituency Ministry because that means that Departments have to consult them because they represent that constituency. These expectations may be problematic.

As part of the analysis of relationships, MCA may consider the perceptions of the Ministry in the marketplace and in the government arena.

1. Appendix A

1.1 Complete list of identified stakeholders

Stakeholders are those individuals or groups/businesses/departments who depend on the organisation to fulfil their own goals and on whom, in turn, the organisation depends.

MCA (Managers)

Liz MacPherson
Liz Stretton
John Barker
Tony Leverton
Rob Bowie

MED (SLT)

Geoff Dangerfield
Katrina Bach
Neville Harris
Lewis Holden
Mike Lear
Roger Proctor
Mark Steel

Government Ministers

Minister of Consumer Affairs
Minister for Economic Development
Minister for Industry and Regional Development
Minister of Pacific Island Affairs
Minister of Maori Affairs
Minister of Justice
Minister of Energy
Associate Minister of Energy

Government departments/agencies

MED
Commerce Commission
Treasury
State Services Commission (SSC)
Ministry of Pacific Island Affairs
Te Puni Kokiri
Ministry of Health
Ministry of Justice
NZFSA

Accident Compensation Corporation (ACC)
Department of Labour (Occupational Health and Safety)
Ministry of Foreign Affairs and Trade
Measurement Standards Laboratory
Standards New Zealand

Consumers

Pacific Island Reference Group
Maori Reference Group
Maori Women's Welfare League
MCA's Nominations Reference Group

Other

Pat Cunniffe

Consumer watchdogs/services

Consumers Institute
New Zealand Citizen's Advice Bureaux
New Zealand Federation of Family Budgeting Services
Safekids
Target
Fair Go

Self-regulators

Banking Ombudsman Commission
Insurance and Savings Ombudsman
Electricity Complaints Commission

Specific business stakeholders

New Zealand Retailers Association
Financial Services Federation
New Zealand Bankers Association
Motor Vehicle Dealers Institute
Motor Industry Association
Independent Motor Vehicle Dealers Association
Plunket
Barnardo's
Business New Zealand
Importers Institute
Sensortronic Scale Ltd
Toltec Scales Ltd

International stakeholders

Consumers Association

Consumer International

FSANZ

Trade Measurement Advisory Committee (TMAC)

CPAC

FTOAC

SCOCA

MCCCA

ERAC

GTRC

APEC

OECD

NWML (UK)

NSC (Aus)

International Accreditation New Zealand (IANZ)

International Organisation of Legal Metrology (OIML)

Asia Pacific Legal Metrology Forum (APLMF)

2. Appendix B

2.1 List of interviewees

2.1.1 MCA Managers

Liz MacPherson
Liz Stretton
John Barker
Tony Leverton
Rob Bowie

2.1.2 MED SLT

Geoff Dangerfield
Katrina Bach
Neville Harris
Lewis Holden
Mike Lear
Roger Proctor
Mark Steel

2.1.3 Government agencies

Commerce Commission
Ministry of Justice

2.1.4 Self-regulators

Banking Ombudsman Commission
Electricity Complaints Commission

2.1.5 Consumer stakeholders

Maori Women's Welfare League
Pacific Island Reference Group
Consumers Institute
New Zealand Citizen's Advice Bureaux
New Zealand Federation of Family Budgeting Services

2.1.6 Business stakeholders

New Zealand Retailers Association
New Zealand Bankers Association
Sensortronic Scale Ltd
Plunket (not completed)

3. Appendix C

3.1 Methodology

Information was gathered from 1-1 interviews with key stakeholders including MCA Managers and SLT. Interviewees were not given the questions in advance.

3.2 Interview procedure

- Interviews were recorded verbatim and checked with the interviewee in each case.
- Interviewees were advised that they were contributing to an MCA Review and that they would see the final report.

3.3 Selection of interviewees

The time was confined so a clear decision was made to interview the 20–25 key players. They were identified through discussion with managers, GM, and the review team.

3.4 List of stakeholders for interview

The list of stakeholders interviewed is on the front page of this report.

3.5 Questionnaires

- 3.5** The graph which is the core tool of the questionnaire is attached. Please let me know if you believe I need to cover other matters at this stage.

3.5.1 1. Questions for MCA General Manager and Managers

The MCA Managers are dealing with a much broader list of stakeholders. In each case they identify all of the stakeholders they deal with.

- Place each stakeholder you have identified on the interest/influence chart today and where you would like to see them in five years and justify your decisions.
- Identify the key issues for you now and in the next five years.

3.5.2 2. Questionnaire for MED SLT

MED's current role in MCA/interest/influence/expectations (with justifications)

- Preferred role in the future (in five years) role/interest/influence/expectations (with justifications)

- Place themselves on the interest/influence graph and explain/justify positioning.

3.5.3 1. If possible:

With a view to identifying where MED and MCA could work together, or in complementary fashion, it would also be useful to identify:

- the current interactions between MED and MCA at policy, operational, and administration level
- the potential for relationships between MED and MCA. Where there are potential synergies, where we can work back to back (same work/different client) etc; the similarities/differences at strategic level, in culture, and so on.

3.5.4 2. Questionnaire for other stakeholders

- Place yourself on the power/interest matrix A as you are right now, and justify your placement (eg what is your current relationship with MCA?).
- Place yourself on power/interest matrix B where you hope they will be in five years. Justify any change of position (eg what are your expectations of MCA and how would you prefer the relationship to be?).
- Do you see changes in the next 5–10 years which will require a change in your relationship with MCA? Explain.

3.5.4.1 If not included in justifications:

- What are the big consumer issues in your sector now, and in the next five years?
- What is it that you think the Ministry must do because no-one else can do it?

4. Appendix D

4.1 Power/interest Matrix A

4.1.1.1 Notes

1. Stakeholders were asked to identify positions right now and then in five years' time.

2. MCA managers placed all of the stakeholders within their portfolios. All others just placed themselves.

4.1.1.2 Level of interest

(How interested are they in bringing MCA to their view?)

A
Minimal effort

B
Keep informed

C
Keep satisfied

D
Key players

5. Establishment and Development of the Ministry of Consumer Affairs

The purpose of this paper is to inform the current review of the Ministry of Consumer Affairs by providing background information on its establishment and development. The paper:

- sets out the legal and economic context in which the Ministry was established
- discusses the fourth Labour Government's desire for a consumer affairs agency
- sets out the Ministry's initial role and functions
- sets out the institutional arrangement in which the Ministry operates
- discusses how the Ministry has evolved
- discusses how the Ministry's functions have grown
- sets out the Ministry's current shape and form
- sets out the relationship between the Ministries of Consumer Affairs and Economic Development.

The paper is structured using the above themes as subheadings, with the text set out as a series of notes under each heading. A summary of the key issues and themes identified is provided as a conclusion.

The legal and economic context

Until the mid-1980s the development of consumer law had been ad hoc, responding to changes in the marketplace and the inadequacy of common law to deal with new trader practices (Kalapu, 1997). The body of consumer law that did exist was administered by a variety of government agencies including the Departments of Trade and Industry (DTI), Justice, and Labour.⁷²

The mid-1980s was also a period in which government policy shifted away from regulation and protection of sectors of the economy towards creating the

⁷² Pre-1984 consumer legislation included: Sale of Goods Act 1908, Weights and Measures Act 1925, Merchandise Marks Act 1954, Door to Door Sales Act 1967, Consumer Information Act 1967, Lay By Sales Act 1971, Hire Purchase Act 1971, Commerce Act 1975, Unsolicited Goods and Services Act 1975, Motor Vehicle Dealers Act 1975 and Credit Contracts Act 1981.

conditions for a competitive market environment, with the aim of increasing economic efficiency and, through this, increased welfare. Competition and consumer policy were seen as integral parts of the government's economic policy.

Increasing welfare through competitive markets was identified as relying on consumer awareness of both the price and quality of products, as well as the choice and availability of competing or substitute products. The premise was that competitive markets would operate best where consumers were selective over their purchases, but accurate information was necessary for this to occur (Consumer Affairs Unit, 1985).

The consumer law of the time had a number of shortcomings and did not contribute to the implementation of the government's economic policy. For instance:

- it did not provide a general standard for trade descriptions and trade conduct—this impacted on the supply of consumer information
- consumers had no direct access to redress, which reduced the incentives to comply with consumer law
- regulation-making powers for the provision of information were spread over a range of statutes, creating the possibility of differing and/or conflicting rules
- the law relating to fair trading was variously described as “ineffective”, “outdated”, “haphazard” and “inefficient” (Consumer Affairs Unit, 1985; Shields, 1985).

The call for a consumer affairs agency

Prior to the election of the Labour government in 1984, the Labour Party had promised the establishment of a Ministry of Consumer Protection to undertake consumer law reform, support consumer groups, co-ordinate consumer policy across government, and undertake consumer education (Consumer Affairs Unit, 1985).

A Minister of Consumer Affairs was appointed in 1984. Shortly afterwards the Consumer Affairs Unit (CAU) was established within DTI,⁷³ reporting directly to the new Minister on policy matters. The purpose of CAU was to report to the government on the objectives, functions and structure of a Ministry of Consumer Affairs (the Ministry), and related consumer policies.

Key issues identified in CAU's 1985 report included (Consumer Affairs Report, 1985):

⁷³ Prior to the CAU, three officers within the DTI were responsible for consumer policy and enforcement of the consumer legislation for which DTI was responsible.

- The unco-ordinated and fragmented approach to consumer law in New Zealand.
- The lack of a representative structure for providing consumer advice to government.
- The international trend of growing consumer involvement in policy development, which was not mirrored in New Zealand (mainly due to the two points noted above).
- Recognition that consumer protection legislation was ineffective if consumers were unaware of their rights. Existing consumer information/ education initiatives were criticised as middle class-orientated and as failing to reach the regions.
- Recognition that voluntary consumer organisations provided worthwhile services but faced a number of constraints including funding, resources and training.
- A trend in most countries to locate government consumer agencies within organisations dealing with commercial and economic matters.

The role and functions of the new Ministry

In approving the Ministry's establishment, Cabinet agreed its mission was "to develop consistent and co-ordinated consumer policy; to provide consumer support measures that meet the needs of all groups in the community and to promote these widely; and, in so doing, to create an informed marketplace" (Office of the Minister of Consumer Affairs, 1986 Appendix 1).

The Ministry's functions were to:

- advise the government on matters affecting consumers
- promote and participate in the review of consumer-related legislation, policies and programmes
- promote awareness among consumers and the business sector of their rights and obligations in the marketplace so that exchange activities are undertaken without loss or disadvantage to either party
- support and co-ordinate non-governmental involvement in consumer issues
- undertake such tasks as the Minister may from time to time direct.

The Ministry was not intended to have a wide economic reporting role. Instead, it was to develop checklists to assist with assessing the impacts of economic and social policies on consumers. A Cabinet directive required Departments to consult with the Ministry on legislative and administrative matters affecting consumers (Office of the Minister of Consumer Affairs, 1986). This directive is still in effect and the current Ministry routinely provides comments on policy proposals with a consumer dimension.

An enforcement role for the Ministry

A theme that came through in public submissions on the 1985 report was that the Ministry should have enforcement powers, especially in relation to the Fair Trading Act 1986.

Before the CAU released its report, Cabinet had decided that the Commerce Commission would enforce the Fair Trading Act. However, the report noted that there were "... strong practical grounds for separating policy and enforcement functions. Indeed these are widely accepted in a number of overseas jurisdictions..." (Consumer Affairs Unit, 1985 p41). Boston *et al.* (1991, p258) argue that the government's chief rationale for separating the provision of policy advice from the provision of services at the time was to reduce "... the potential for the policy advisors to be captured by those delivering the services which the government has purchased".

Cabinet decided that the Ministry's main functions would be in relation to policy work on fair trading and other consumer-related legislation, including product safety standards.

A complaints service

Another theme that came through in public submissions was disappointment that the Ministry would not provide a complaints service, even though such a service was then operated by the Consumers Institute and funded by the government. Submissions indicated that this service was not widely promoted (Synergy Applied Research, 1985).

Cabinet decided that a core function for the Ministry would be consumer education, but that this would not extend to the operation of a consumer complaint service. Cabinet envisaged the Ministry developing a system for recording details of consumer complaints in order to highlight systemic problems (Shields, 1986).

Institutional arrangements for the new Ministry

It was envisaged that the Ministry would be:

- small and compact
- well resourced

- regionally based
- accessible to consumers.

Structurally, the Ministry was to be located within DTI, but would report directly to the Minister of Consumer Affairs. The policy and administrative relationship between the Ministry and DTI was to be set out in a memorandum of understanding among officials and endorsed by the Ministers of Consumer Affairs and Trade and Industry (Office of the Minister of Consumer Affairs, 1986). This endorsement was to be by way of an information report, so there was no actual requirement that the memorandum be signed by Ministers.

At the time, the Ministry's proposed structure was considered to be contentious. The institutional arrangements were widely described as 'unusual', and there were concerns with the Ministry's ability to provide independent policy advice within DTI, and that this did not conflict with broader economic policy. For example:

- Care needed to be taken that there was no conflict between the obligations of the Secretary of DTI to ensure administrative and organisational efficiency, and the policy independence of the Head of the Ministry (State Services Commission, 1986).
- The Ministry needed to be "... seen to be scrupulously independent". While a clear statutory statement might achieve this,⁷⁴ there were doubts that a memorandum of understanding would achieve this in the "public's mind" (Department of Justice, 1985 p2).
- Consumer policy should not cut across broader economic policy. Locating the Ministry within DTI, which focused on broad economic objectives, was seen to mitigate this risk (Treasury, 1985).
- An internal report to the Secretary of DTI noted that establishing the Ministry within DTI "... would allow any potential conflict between 'consumer' and 'business' interests to be internalised and hopefully resolved" (Department of Trade and Industry, 1985 p3). Conversely, the report noted that if the Minister of Consumer Affairs wanted to pursue policy lines to which DTI might object on the basis of competition or cost effectiveness, then DTI would have to espouse both sides of the argument and subordinate either the consumer or business side. A memorandum of understanding was not seen to provide a suitable resolution to this issue.

It is worth noting that Cabinet's decision on the Ministry's establishment was made without an expected report from The Treasury on the relationship between the

⁷⁴ While noting precedents for the establishments of smaller Ministries within large Departments, such as the Ministry of Civil Defence, Justice noted that these had been established by statute.

Ministry and the DTI. The need for such a report was overridden on political grounds (Department of Trade and Industry, 1986).

It was also proposed that the Ministry's relationship to the Commerce Commission be set out in a memorandum of understanding between the Chair of the Commerce Commission and the Minister of Consumer Affairs (Consumer Affairs Unit, 1985).

How has the Ministry evolved?

Purpose and objectives

The Ministry's mission in 1987 was: "to develop consistent and co-ordinated consumer policy; to provide consumer support measures that meet the needs of all groups in the community and to promote these widely; and, in so doing, to create an informed marketplace" (Ministry of Consumer Affairs, 1987 p5).

This mission has evolved over time, influenced by factors such as the acquisition of new functions,⁷⁵ resource constraints and changing approaches to economic regulation.

The consumer portfolio is horizontal in nature and intersects with a number of policy areas vested in other government agencies. Because a small Ministry could not cover the potential range of consumer issues, a number of attempts have been made to define a proper sphere for the Ministry, giving due recognition to the policy functions and portfolios of existing government agencies including Health, Social Welfare, Education, Labour, and Environment.

By 1990 the Ministry's focus had shifted and was much more directly concerned with consumer transactions in the marketplace. Its purpose statement in 1990 was: "... to promote a fair and informed marketplace through the provision of relevant and timely advice to Government on consumer policy and the provision of consumer programmes which meet the needs of all groups in the community" (Ministry of Consumer Affairs, 1990 p3).

By 1993 the Ministry's focus had been further refined and the distinction between consumers who pay directly for goods and services and the "... citizen who pays indirectly through taxation for public services without a relationship to use" was made (Ministry of Consumer Affairs, 1993 p4). The Ministry's purpose was, therefore, "... to help New Zealanders prosper by promoting a fair and informed marketplace for consumers... Those purchasing goods and service in the market for personal or domestic use" (Ministry of Consumer Affairs, 1993 p4). This purpose statement aligned with the Ministry of Commerce's wider purpose of "helping New Zealand prosper".

⁷⁵ The Ministry started as a small policy unit that included product safety. A year later an operations section was added to develop resources for consumers on consumer law and to educate and inform consumers. The Trade Measurement Unit (including policy and enforcement functions) was incorporated in 1988. The Consumer Complaints, Liaison Service and the 'education in schools' function were added in 1989.

The distinction between consumer and citizen, and the operational definition of consumer above, was reinforced in subsequent briefings to incoming governments (Ministry of Consumer Affairs, 1996; Ministry of Consumer Affairs, 1999).

The mid-1990s was also a period when the Ministry sought to clarify its role with stakeholders. It advised the Minister that: “Despite some belief to the contrary, the Ministry is not responsible to consumers or consumer groups, nor is it an advocate for consumers, although it does provide a channel by which the concerns of consumers and consumer groups can be communicated to government” (Ministry of Consumer Affairs, 1993 p9).

By 1999 the Ministry’s purpose statement explicitly set out the economic framework in which it operated. The Ministry was “... primarily responsible for helping create a fair and informed marketplace—one in which there is a balance⁷⁶ between the interests of consumers and businesses, and a minimum of transaction costs”⁷⁷ (Ministry of Consumer Affairs, 1999 p4).

Following the establishment of the Ministry of Economic Development (MED) in 2000, the Ministry’s purpose and objectives are now derived from MED’s strategic planning. The relationship between MED and the Ministry is discussed later in this paper.

Evolving institutional arrangements

The structure of the Ministry as a relatively small semi-autonomous body with an independent policy report has raised tensions. In 1990 the Ministry recommended that its location and lines of accountability be re-examined, and noted three options: to subsume the Ministry into the Ministry of Commerce;⁷⁸ to retain the status quo; or to create a stand-alone Ministry (Ministry of Consumer Affairs, 1990).

The issues underlying the recommendation were (Ministry of Consumer Affairs, 1990 p6):

- **Accountability**—the Secretary of Commerce was administratively responsible for the Ministry but did not report to the Minister who agreed to the Ministry’s outputs. This was inconsistent with the accountability structure under the State Services Act 1988 and the Public Finance Act 1989.

⁷⁶ ‘Balance’ was described as taking into account the interests, concerns and needs of both consumer and business communities as part of assessing the costs and benefits of a policy proposal (Ministry of Consumer Affairs, 1999).

⁷⁷ Transaction costs include the costs of obtaining the information necessary for the transaction, the immediate costs involved in the transaction and the costs which arise as a consequence of the transaction, including monitoring, redress and enforcement (should the transaction subsequently ‘go wrong’) (Ministry of Consumer Affairs, 1999a).

⁷⁸ The Ministry was then located within the Ministry of Commerce, formerly DTI.

- Consumer policy—in attempting to correct bargaining and legal imbalance, the equity objectives of the Ministry were seen as interventionist by nature and inconsistent with the business perspective of Commerce, which tended away from direct intervention unless the market had broken down. The Ministry felt that Commerce viewed it as an impediment to business.
- Contestable advice—the location of the Ministry within Commerce meant that there was a tendency for the consumer perspective to be lost, and it noted that as the Ministry had grown, conflicts in perspective had increased.
- Identity— there was a tendency by other agencies to view the position of Commerce as that of the Ministry's, and vice versa. The maintenance of a separate image for the Ministry was an objective behind its establishment, but this had become increasingly difficult.
- Service delivery—various delivery functions of the Ministry were of a social policy nature. This was not seen to fit comfortably within Commerce.

The Secretary of Commerce shared the view that there were tensions in the structural arrangements and considered that the Ministry should remain within Commerce, with the General Manager reporting through the Secretary to the Minister (Ministry of Consumer Affairs, 1990). This would have removed the Ministry's independent policy report and its status as a semi-autonomous body. It is worth noting that the memorandum of understanding proposed in 1986 between the General Manager and the Secretary of DTI was never implemented (Ministry of Consumer Affairs, 1991c).

In 1991 concern about the transfer of funds from other Votes within Commerce to support the Ministry over the preceding two financial years⁷⁹ led the Secretary of Commerce to seek a State Services Commission (SSC) review of the lines of accountability around the Ministry's outputs (Ministry of Commerce, 1991). This proposed review was overtaken by a wider SSC review in 1992 into the resources of small government agencies and the possible consolidation of the stand-alone 'population' Ministries. Specific consideration was given to Consumer Affairs, its structure and relationship to Commerce (State Services Commission, 1992).

The SSC described the Ministry as a structural "oddity", although it noted that its relationship with Commerce did work. The SSC sought Cabinet agreement that the priority for consumer affairs expenditure was policy advice and trade measurement, with operations (ie the consumer advice service) as a second 'discretionary' priority (Office of the Minister of State Services, 1992). The administration of trade measurement was identified as a statutory function and it was noted that there was little scope for further cost saving.⁸⁰

⁷⁹ There was concern about the cost of proposed redundancy and related payments associated with the restructuring of the Trade Measurement Unit at that time.

⁸⁰ Trade Measurement funding was reduced in the 1991 budget baseline reductions.

Options from the SSC review presented to Cabinet were the status quo or the withdrawal of the Ministry's operation functions. If Ministers decided that the operations function should not continue, then agreement was sought to either integrate the policy advice function into Commerce, or retain the policy unit as a separate unit reporting independently (Office of the Minister of State Services, 1992).

In an annex to the SSC Cabinet paper the Ministry made a number of comments on the options presented. At a general level concern was expressed that, with an emphasis on cost savings, the Cabinet paper failed to address the role of the Ministry in seeking to maximise economic welfare and consumer policy's grounding in open and competitive markets. In particular, the paper failed to address the role of the Ministry's activities (Office of Minister of State Services 1992) in:

- enabling consumers and traders to participate in the market on a fair, informed and effective basis
- minimising consumer detriment and consequential cost to the economy, through education and prevention
- stimulating the excellence and quality of suppliers.

Regarding the proposal that the policy unit be subsumed into Commerce, the Ministry raised concern that this would erode the provision of contestable advice to Ministers on consumer issues and noted that this advice was not duplicated either in Commerce or in other government or voluntary agencies. The Ministry also questioned the appropriateness of government receiving business and consumer advice from the same source (ie Commerce) (Office of the Minister of State Services, 1992).

The Ministry justified the continued provision of services by operations (education, advice and consumer, and trader assistance) on the grounds that (Office of the Minister of State Services, 1992):

- for an open market to work effectively and at minimum cost, both consumers and suppliers needed to be equally well informed about their rights and obligations
- there was no evidence that either voluntary or commercial organisations would fill this role should services be withdrawn
- services were targeted to meet the needs of those consumers who have the most 'problems' (and were most at risk of economic detriment), and to groups of traders where research had identified shortcomings that would not otherwise be met.

Unfortunately the Ministry's records do not contain a Cabinet minute relating to the outcome of the review, although the continuation of the Ministry's form and functions suggests that its impact was not significant.

Clarifying the structural arrangement—letter of relationship

In July 1996 the General Manager and Secretary of Commerce signed a letter clarifying the relationship between the Ministry and the Ministry of Commerce. The files appear incomplete, but it appears that this is the first time the overall relationship between the two organisations was formally set out.⁸¹

The letter was intended to recognise the balance between independence of approach and effectiveness in integration. Key features were (Ministry of Consumer Affairs, 1996a):

- The General Manager is accountable to the Minister for the delivery of annually agreed outputs (the quantity, quality and cost). The Secretary is responsible for monitoring the delivery of those outputs.
- The General Manager provides appropriate strategic direction and leadership on policy and operational matters, but will inform the Secretary of matters of 'note'.
- The General Manager is accountable to the Secretary for the effectiveness and efficiency of the Ministry.
- On policy/advisory and operational matters the General Manager reports directly to the Minister of Consumer Affairs and has an independent voice (from Commerce) on consumer matters.
- The purpose of the Ministry, "... to help New Zealanders prosper by promoting a fair and informed marketplace for consumers", was encompassed within the Ministry of Commerce's purpose "... to help New Zealanders prosper".

Chief Executive's Delegation

With the establishment of the MED the letter of relationship has been replaced with a Delegation from the Chief Executive to the General Manager of Consumer Affairs. The introductory context to the Delegation (Dangerfield, 2002) sets out the relationship between the Ministry and MED. It notes that:

- the Ministry is part of MED

⁸¹ Reference to a Memorandum of Understanding is not made either the 1990 or 1993 Ministry briefings to incoming governments.

- the Chief Executive is responsible to the appropriate Ministers for carrying out the functions and duties of the Department, and the efficient, effective and economical management of the Department's activities
- the Ministry of Consumer Affairs has the status of a semi-autonomous body within MED and has a mandate to provide advice direct to relevant Ministers
- there is a requirement for close co-operation and alignment of goals and outputs for each part of MED, to ensure that both organisations take advantage of the synergies of incorporating the Ministry within MED, which is focused on the Government's economic development strategy.

Legislative responsibilities

At the time of the Ministry's establishment, the Department of Justice considered it inappropriate that the Ministry in its proposed form promote and control legislative reviews—the Ministry should be restricted to a supporting role only (Department of Justice, 1985).

Other than the Fair Trading Act,⁸² the Department of Justice administered the bulk of consumer legislation until 1995. Effectively, therefore, the Ministry's success in promoting and participating in reviews of consumer legislation was dependent on the administering Department's commitment to allow a review to be conducted. As early as 1990 the Ministry had formed the view that administering Departments had not accorded the necessary priority to consumer legislation to administer it effectively. Further, monitoring and promotion of consumer legislation was accorded a low priority by other Departments (Ministry of Consumer Affairs, 1990).

Following a SSC review of the Department of Justice in 1994, the Government agreed that the primary source of advice on commercial and corporate legislation should be the Ministry of Commerce. Specific consumer protection statutes⁸³ were transferred to the Ministry from Commerce in 1995.

At the time, legislation which regulated specific markets in the consumer interest, such as occupational regulation, was seen to impact on competition and market entry as much as on consumer transactions. On the basis of this, and out of concern that the Ministry did not have the resources to administer licensing or disciplinary boards, it was recommended that legislation such as the Real Estates Agents Act 1976 and the Motor Vehicle Dealers Act 1975 not be administered by the Ministry (Ministry of Consumer Affairs, 1993a).

⁸² The Department of Trade and Industry developed policy behind the Fair Trading Bill, and the Ministry became immediately responsible for its administration once enacted.

⁸³ Layby Sales Act 1971, Hire Purchase Act 1971, Unsolicited Goods and Services Act 1975, Sales of Goods Act 1908 and Consumer Guarantees Act 1993.

Consumer Credit Bill

The Consumer Credit Bill was introduced into Parliament in 2002. The background to the Bill's development illustrates the tensions around reviewing legislation administered by another Department.

Credit law reform has been a major goal of the Ministry since its establishment, and began in 1988 in conjunction with the Department of Justice. By 1990 a drafting priority for new credit legislation was sought (Office of the Minister of Consumer Affairs, 1990), but the Department of Justice withheld comment. Subsequently, and with the agreement of the Minister of Justice, the Minister of Consumer Affairs sought and was granted Cabinet approval to administer consumer credit legislation (Office of the Minister of Consumer Affairs, 1990a). However, following a representation from Justice officials to the Minister of Justice, Cabinet approval to administer the credit legislation was rescinded.

It was not until 1995 that progress was made in reviewing credit law when 'ad hoc amendments' were progressed that resulted in the Credit (Repossession) Act 1997 (Ministry of Consumer Affairs, 1995). By 1998 the Ministry of Justice consented and allowed the Ministry to conduct a full review of consumer credit law, which resulted in the current Bill.

Current legislative programme

With the recent reviews of credit law and the Motor Vehicle Dealers Act 1975, the Ministry's legislative activities have increased. Both the Consumer Credit Bill and Motor Vehicle Sales Bill (currently before Parliament) are for the purpose of consumer protection. The Ministry has also assumed responsibility for reviewing another piece of occupational regulation legislation, the Auctioneers Act 1928.

Functions of the Ministry

When officially launched in March 1987 the Ministry was divided into two sections: policy (including product safety), and operations. It subsequently acquired the following functions:

- Trade Measurement Unit, December 1988, from the Department of Labour
- Consumer Complaints, January 1989, from the Consumers Institute
- Liaison Service, January 1989
- Consumer Education Resource Project, March 1989, from the Consumers Institute and the Ministry of Education.

Trade measurement

A 1987/88 review into the functions of the Department of Labour concluded that the Weights and Measures Division was related more to consumer protection and assistance to commerce than to labour market issues (State Services Commission, 1988).

In October 1988 Cabinet agreed that the Weights and Measures Division be transferred to the new Ministry of Commerce (Cabinet Office, 1988). It appears that, at short notice, the Ministers of Commerce and Consumer Affairs agreed in November that the Weights and Measures Division should be incorporated into the Ministry (Ministry of Consumer Affairs, 1988).⁸⁴ The origins of the move appear to be based in a paper of June 1988 to the Minister of Consumer Affairs (Ministry of Consumer Affairs, 1988a). The paper proposed a rationalisation of Weights and Measures legislation and the Fair Trading Act—effectively splitting the policy and enforcement functions of Weights and Measures between the Ministry and the Commerce Commission (Ministry of Consumer Affairs, 1988a).

In agreeing that the Weights and Measures Division move, Cabinet also directed that it be reviewed to meet a revised set of objectives.⁸⁵ In the course of the review,⁸⁶ consideration was given to merging the Weights and Measures Act and the Fair Trading Act. The objective was to combine enforcement functions so that Weights and Measures inspectors would enforce the Fair Trading Act from within the Ministry or, conversely, allow the Commerce Commission to enforce Weights and Measures legislation. Reasons cited for merging the legislation included (Hawes, 1989a; Preston, 1989; Ministry of Commerce, 1989):

- Administration of Weights and Measures legislation was specific and detailed. The Fair Trading Act sets out broad principles for trading conduct. In the absence of a change in policy direction it was preferable to keep the Acts separate.
- Enforcement provisions under the Fair Trading Act and Weights and Measures Act 1987 differed.
- Trade Measurement officers could already pass information to the Commerce Commission about a possible breach of the Fair Trading Act.

⁸⁴ The Trade and Industry Repeal Bill transferred Weights and Measures from the Department of Labour to Commerce. An amendment to the Bill was made in select committee so that the Minister of Consumer Affairs became the responsible Minister for Weights and Measures.

⁸⁵ The objectives for government involvement in weights and measures were identified as establishment and enforcement of standards and disclosure rules, the provision of remedies for misleading or deceptive conduct in relation to weights and measures and ensuring harmonisation between Australia and New Zealand in respect of CER.

⁸⁶ The review was undertaken by the Ministry of Consumer Affairs.

- The links between Trade Measurement and the Commerce Commission could be enhanced without combining enforcement functions.

The absorption of overheads and costs associated with the transition of Weights and Measures to the new Trade Measurement Unit within the Ministry, and the 1991 budget cuts, resulted in the closure of three of the Unit's seven regional offices.

Regional consumer liaison service

Reflecting community consultations on the establishment of the Ministry, a pilot programme ran from 1989 until March 1990 in Otahuhu, Rotorua and Christchurch. The aim of the service was to raise the level of awareness, knowledge and assertiveness amongst disadvantaged consumers. An extension of the programme was sought after a successful pilot stage, but funding for the programme ended with 1991 budget cuts and the service ended that year.

Complaints service

Prior to 1989 the Consumers Institute had provided a government-funded consumer complaints service. With the withdrawal of government funding this service was transferred to the Ministry. The Complaints Service began operating in January 1989 from Otahuhu, Rotorua, Wellington, Christchurch and Dunedin.

The main functions of the service were the provision of information, advice and assistance to consumers with the emphasis on self-help, and acting as a resource for other organisations and traders on consumer matters. The Ministry was also concerned that Maori, Pacific Island and low-income consumers had not accessed the service run by the Consumers Institute (Ministry of Consumer Affairs, 1989). The 1991 budget cuts led to the closure of the Rotorua and Dunedin offices.

The service was renamed the Consumer Advice Service in the early 1990s to reflect its focus of empowering consumers with advice and information so that they could resolve their own problems. It was not the role of the Ministry, nor did it have the authority, to resolve individual consumer complaints itself.

Consumer Education Resource Project

This project was transferred to the Ministry of Consumer Affairs from the Consumers Institute and the Ministry of Education. Its aim was to provide an integrated programme for consumer education from junior classes to secondary school, and to develop resources supporting this. The project effectively ended⁸⁷ in 1997 when education was given a lower priority relative to the goal of targeting Maori, Pacific Island and low-income consumers.

⁸⁷ Note that the Ministry currently provides 'Kidsite', an information/education website targeting students and teachers with consumer information.

The Ministry's current shape and form

The Ministry's current shape and form largely reflect the outcome of a rolling review in 1997. Its objective was to ensure that available resources were organised in the most effective way to meet the Ministry's goals. It resulted in:

- refocusing the Operations section (Consumer Advice Service) into the Consumer Information Service (CIS)
- reviewing the Policy section and its work
- placing Consumer Safety and Trade Measurement together with a Trading Standards Service.

The Energy Safety Service joined the Ministry in December 1999.

Operations section

Since its establishment the operations unit of the Ministry had targeted those consumers who were considered to be in a 'weak' bargaining position (Ministry of Consumer Affairs, 1987). This was generally identified as low-income, Maori or Pacific Island consumers (Ministry of Consumer Affairs, 1996). Focusing operational activities on specific groups of consumers was a way of managing resource constraints.

By 1997 it was considered that the Consumer Advice Service was not reaching target audiences.⁸⁸ At the same time, demand on the telephone-based complaint service had increased following the introduction of the Consumer Guarantees Act 1993 (Ministry of Consumer Affairs, 1997):

Consistent with the objective of ensuring that available resources were organised in the most effective way to meet the Ministry's goals, key outcomes of the review were (Ministry of Consumer Affairs, 1997):

- appointment of specific staff to co-ordinate relationships and projects for particular client groups
- enhanced relationship management with key community advisory agencies
- enhanced training and support for key agencies providing consumer advice and information
- a focus on target consumers in respect of information and education activities and on an advocacy service to target consumers who had consumer problems of significant detriment

⁸⁸ In 1994/95 less than 20% of the 47,000 calls to the Ministry's telephone complaint service were from targeted groups (Ministry of Consumer Affairs, 1997).

- the closure of the telephone consumer advice service.

Policy unit

Since its establishment, the Ministry's policy unit had been involved in formulating a mix of operational, substantive and strategic policy. To meet a revised set of unit capabilities⁸⁹ the unit was restructured to focus on the strategic and substantive end of the policy spectrum. The unit was intended to have good environmental scanning ability, excellent processes, networking and research capability, and to be the hub for developing ideas and strategies that would form the basis of the Ministry's projects (Ministry of Consumer Affairs, 1997a).

Operational policy was to be dealt with through the following mechanisms (Ministry of Consumer Affairs, 1997a):

- by the Trading Standards Service or Consumer Information Service when agreed by managers and the management team
- by other agencies and organisations where possible
- through careful use of resources to contract out specific operational work (eg the implementation of a set of benchmarks in an industry).

Trading Standards Service

In 1997 the Consumer Safety function was moved from the Policy Unit to be placed with the Trade Measurement Unit in a combined operation that became the Trading Standards Service (TSS). The rationale was to harness the complaint investigation skills possessed by Trade Measurement regional staff for consumer safety work. The objective of a regional presence was to increase monitoring for consumer safety, particularly if a national consumer safety issue emerged. It would also provide better access for consumers making safety complaints (Ministry of Consumer Affairs, 1997c).

Energy Safety Service

The Energy Safety Service (ESS) was established in December 1999 with the aim of bringing together the skills, expertise and resources of those involved in promoting the safe use of energy, and of establishing closer and more productive working relationships across the energy sector. It is part of the Ministry of Consumer Affairs, but is accountable to the Minister of Energy.

The move to the Ministry of Consumer Affairs was prompted by the synergies of activity between energy safety and product safety and the outcomes sought by both groups in regard to:

- safety and quality of product and services

⁸⁹ Capabilities identified as being critical for the policy unit and the Ministry's success were strategic capability, operational excellence, an integrating perspective, and enhanced relationship management.

- a balance between rights and interests of consumers and business
- redress and enforcement mechanisms that meet the needs of consumers and business
- safe products in the marketplace
- appropriate, accurate and accessible information, education and advice for consumers and business.

The establishment of ESS was the result of a 'stocktake' of the relationship between industry and the Energy Inspection Group. The focus of the stocktake was to record and validate outstanding issues associated with this relationship and look at ways to improve the operational performance of the Group, particularly in regard to meeting the needs of industry.

The relationship between the Ministries of Consumer Affairs and Economic Development

As an operating branch of MED, the Ministry's purpose and objective should contribute to MED's major outcome—"New Zealand's business environment actively promotes and enables a higher rate of sustainable economic development"—which is supported by a subsidiary set of growth and foundation outcomes (MED, 2002 p11).

The Ministry's activities are mostly directed at the foundation outcome, "the regulation of economic activity is effective and low cost" and particularly through the supporting goals of (MED, 2002 p12):

- "Transaction costs are minimised for consumers and businesses in domestic and international markets."
- "Markets, businesses and consumers have access to and use information held by the Ministry that enables them to conduct business effectively."
- "New Zealand's international connections enhance and increase business opportunity."
- "New Zealand's regulatory institutions can effectively monitor and enforce business regulations."

The Ministry also contributes to the growth outcome, "regional development, business growth and innovation are actively facilitated and encouraged" through the supporting goal of "increased Maori and Pacific Island participation in New Zealand's economic development" (MED, 2002 p12).

At a broad level the Ministry's role in contributing to a sustainable economy is identified as addressing the barriers that consumers face when making choices and effective decisions about the purchase and subsequent use of goods and services. The most significant barrier consumers face is access to and use of information.⁹⁰ Other barriers include uncompetitive markets and unequal bargaining power (Ministry of Consumer Affairs, 2002).

The basic premise is that if the barriers consumers face are removed or overcome, consumers can play an active role in economic development and growth. "By demanding higher quality products and services, better choice, clear information, value for money and by challenging unethical business practices, the New Zealand consumer stimulates greater economic efficiency and innovation" (Ministry of Consumer Affairs, 2002 p4). Innovation and efficiency are identified as being key to economic growth, and ultimately to higher levels of well-being.

Within the context of sustainable economic growth described above, consumer policy is identified as having the following objectives (Ministry of Consumer Affairs, 2002 p4):

- reduced transaction costs in dealings between consumers and suppliers
- confident consumers
- adequate information for purchasing decisions
- ethical trading practices
- fair competition in the marketplace
- the elimination of unfair trade practices, such as pyramid selling schemes
- access by consumers to complaints resolution and redress
- representation of consumers' interests at decision-making levels.

Summary

A number of key issues and themes in the Ministry's establishment and development are evident. These are:

- New functions—originally the Ministry was composed of a small policy and operations unit. The addition of new functions appears to have been ad hoc, a response to a change in the activities and resources of other agencies.

⁹⁰ Information barriers occur when, for example, product defects may not be obvious (or only become apparent through use or over time), when new products are unfamiliar, transaction costs are high or suppliers may withhold information.

- Legislation—a driver behind the Ministry’s establishment was the uncoordinated approach to consumer law. It was not, however, until relatively recently that the Ministry has been in a position to update and review significant pieces of consumer legislation.
- Institutional arrangement—at the time of the Ministry’s establishment the mechanism through which it would retain an independent voice on consumer policy matters was not resolved. The current Delegation is in response to the State Sector and Public Finance Acts.
- Purpose and objectives—in response to the horizontal nature of consumer policy the Ministry’s purpose and objectives have, over time, become increasingly refined, focusing on a narrow definition of a consumer in the marketplace.
- Relationship to MED—the Ministry is an operating branch of MED and contributes to its major outcome by addressing the barriers that consumers face when making effective purchasing decisions.

References

- Boston J, Martin J, Pallot J and Walsh P, 1991. *Reshaping the State: New Zealand's Bureaucratic Revolution*. Oxford University Press, Auckland.
- Cabinet Office, 1988. *Transfer of Weights and Measures from the Department of Labour to Ministry of Commerce*. Unpublished.
- Consumer Affairs Unit, 1985. *Report of the Consumer Affairs Unit on the Establishment of a Ministry of Consumer Affairs and related Policies*. Consumer Affairs Unit, Department of Trade and Industry, Wellington.
- Dangerfield G, 2002. *Delegation from Chief Executive, Ministry of Economic Development, to General Manager, Ministry of Consumer Affairs*. April 2002. Ministry of Economic Development. Unpublished.
- Department of Justice, 1985. *Establishment of the Ministry of Consumer Affairs*, Report to the Minister of Justice, 17 December 1985. Unpublished.
- Department of Trade and Industry, 1985. *Report of the Consumer Affairs Unit*, Report to the Secretary. Department of Trade and Industry 1985. Unpublished.
- Department of Trade and Industry, 1986. *Establishment of the Ministry of Consumer Affairs*. Report to the Secretary, Department of Trade and Industry, 24 June 1986. Unpublished.
- Kalapu L, 1997. 'The development of consumer protection and the Fair Trading Act', in *A decade of Fair Trading in New Zealand*, Le Lievre, E. (ed), Commerce Commission, Wellington.
- Ministry of Commerce, 1991. *Ministry of Consumer Affairs—Overall Responsibility*, Letter to SSC, 1 May 1991, Unpublished.
- Ministry of Commerce, 1989. *Incorporation of the Weights and Measures Provisions in the Fair Trading Act*. Legal Opinion to the Weights and Measures Review. Ministry of Commerce. Unpublished.
- Ministry of Commerce, 1989a. *Weights and Measures*. Internal report to the Weights and Measures Review. Ministry of Commerce. Unpublished.
- Ministry of Consumer Affairs, 2002. *Vote: Consumer Affairs, Briefing to Incoming Ministers*. Ministry of Consumer Affairs, Wellington.
- Ministry of Consumer Affairs, 1999. *Overview of the Ministry of Consumer Affairs*. November 1999, Ministry of Consumer Affairs, Wellington.
- Ministry of Consumer Affairs, 1999a. *The economic context of the Ministry of Consumer Affairs*. August 1999. Ministry of Consumer Affairs, Wellington.

Ministry of Consumer Affairs, 1997. *Executive Summary—Report on the Provision of Consumer Information and Advice*. June 1997, Ministry of Consumer Affairs, Wellington.

Ministry of Consumer Affairs, 1997a. *Review of Policy Section/Work and Management Report*. July 1997. Ministry of Consumer Affairs, Wellington.

Ministry of Consumer Affairs, 1997b. *Strategic Review of the Consumer Safety Team*. May 1997. Ministry of Consumer Affairs, Wellington.

Ministry of Consumer Affairs, 1996. *Relationship—Ministry of Consumer Affairs and Ministry of Commerce*. Unpublished.

Ministry of Consumer Affairs, 1996. *Post Election Briefing*. December 1996, Ministry of Consumer Affairs, Wellington.

Ministry of Consumer Affairs, 1995. *Credit Ad Hoc Amendments*. Report to the Minister of Consumer Affairs. Unpublished.

Ministry of Consumer Affairs, 1993. *Briefing for the Incoming Government*. Ministry of Consumer Affairs, Wellington.

Ministry of Consumer Affairs, 1993a. *Administration of Consumer Legislation*. Report to the Minister of Consumer Affairs. Unpublished.

Ministry of Consumer Affairs, 1991. *Proposed letter to SSC concerning Ministry Status*. Letter to Minister of Consumer Affairs, 1 May 1991. Unpublished.

Ministry of Consumer Affairs, 1991a. *Review of MCA Accountability within Commerce*. Letter to Secretary of Commerce, 21 November 1991. Unpublished.

Ministry of Consumer Affairs, 1991b. *Background papers on MOC/MCA relationship for SSC review*. Internal report to GMMCA. Unpublished.

Ministry of Consumer Affairs, 1990. *Briefing for the Incoming Government*, Wellington.

Ministry of Consumer Affairs, 1989. *Ministry Report 1, December 1988–31 March 1989*. Unpublished.

Ministry of Consumer Affairs, 1988. *Trade and Industry Repeal Bill*. Letter to the Minister of Consumer Affairs, 17 November 1988. Unpublished.

Ministry of Consumer Affairs, 1988a. *Weights and Measures*. Report to the Minister of Consumer Affairs, 20 June 1988. Unpublished.

Ministry of Consumer Affairs, 1987. *Post Election Briefing 'Black Book'*. July 1987, Ministry of Consumer Affairs, Wellington.

Ministry of Economic Development, 2002. *Advancing Economic Development—Briefing to Incoming Ministers*. Ministry of Economic Development, Wellington.

Office of the Minister of Consumer Affairs, 1990. *Consumer Credit Legislation*. Submission to Cabinet Social Equity Committee, 6 August 1990. Unpublished.

Office of the Minister of Consumer Affairs, 1990a. *Consumer Credit Legislation*. Memorandum to Cabinet Social Equity Committee, 8 August 1990. Unpublished.

Office of the Minister of Justice, 1990. *Responsibility for Credit Legislation*. Memorandum to Cabinet Social Equity Committee. Unpublished.

Office of the Minister of State Services, 1992. *Small Departments: Fiscal Impact*. Memorandum for Cabinet Expenditure Control Committee, 3 April 1992. Unpublished.

Preston J, 1989. *Letter to Weights and Measures Review*. Commerce Commission. Unpublished.

Shields Margaret, Hon, 1985. *Fair Trading Bill, First Reading Speech*. *Hansard*. pp 7884-7901

Shields Margaret, Hon, 1986. *Establishment of the Ministry of Consumer Affairs*. Press Statement, 30 June 1986.

State Services Commission, 1986. *Establishment of Ministry of Consumer Affairs*. Unpublished.

State Services Commission, 1988. *Department of Labour's Weights and Measures Service Transfer*. Unpublished.

Synergy Applied Research, 1985. *Synopsis of Public Consultation on Consumer Affairs*. Consumer Affairs Unit, Wellington.

The Treasury, 1985. *Establishment of a Ministry of Consumer Affairs*. Report to the Minister of Finance, 25 November 1985. Unpublished.