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VALS submission to the Productivity Commission in response to the Consumer Policy Framework Issues Paper (January 2007) – sent 28 May 2007

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## INTRODUCTION

Thank you for the opportunity to comment on the Consumer Policy Framework Issues Paper (Issues Paper). VALS has responded to some of the questions in the Issues Paper below. VALS argues that any reforms to protection of consumers needs to consider and meet the specific needs of Indigenous Australians.

### Rationales for Government intervention

*What are the key rationales for government intervention to empower and protect consumers? What should be the balance between seeking to ensure that consumer's decision properly reflect their preferences (empowerment) and proscribing particular outcomes (protection)?*

The key rationales for Government intervention to empower and protect consumers are social justice and protection of disadvantaged members of the community. It is VALS' experience that the needs of remote Indigenous Australians are often emphasised or, prioritised in terms of funding, at the expense of the needs of urban/regional Indigenous Australians. Government intervention should acknowledge that both remote and urban/regional Indigenous Australians have needs that should be met.

VALS adds that Government intervention to empower and protect consumers is necessary. VALS supports formal regulation of the market through legislation etc as opposed to market self regulation. This is because the theory of market self-regulation is flawed in practice when it comes to minorities, such as Indigenous Australians, and poor people. In reality, Indigenous Australians do not have enough leverage to effect market self-regulation because they are a minority, which undermines any notion that they have choice or have influence to effect changes that protect their rights. It is important that formal regulation occurs so that standards are established and redress is available before it is too late. Regulation can lead to complexity and VALS argues that regulation that is not complex but simplified will benefit both consumers and those in the consumer industry. Please see further discussion of the issue of simplification of the system below.

Discussion about a consumer policy framework occurs within a Government policy frame which includes National Competition policy. Such policies are demonstrably unfair to disadvantaged people as they presume the presence of a level playing field.

Competition policy is premised on the primacy of competition and market forces to produce efficiency and quality outcomes. The extent of the economic benefit of these policies to the economy are contested with economists such as John Quiggins arguing the benefit is only 0.2 % of GNP. Competition policy has never adequately included protection for vulnerable groups, such as socially, economically and culturally marginalised groups. Even proponents of competition policy have acknowledged that the supposed aggregate benefits may not be enjoyed equally. Within this policy frame any form of Government regulation may be construed as a cost to business.

VALS acknowledges that this is the existing framework but nevertheless argues that a strong effective suite of regulatory measures is necessary in relation to consumer policy precisely because the relative power of consumers compared to industry is so asymmetric and competition policy is handicapped in acknowledging this reality.

The 'playing field' is far from level hence strong effective consumer policy is a necessity. Consequently, it is with some concern that we note that the Issues Paper appears to start from the premise that regulation may be too expensive.

The framing of this inquiry suggests that regulation is unaffordable and ineffective compared to empowerment. More generally the terms of reference imply scepticism about the need to protect consumers and a concern that it 'costs too much' to protect consumers by regulation.

Since the Commonwealth Government removed \$120 million in 1996 from the legal aid system, civil legal aid in Australia has been virtually non existent. The Commonwealth Government appears to have forgotten that not only is effective regulation necessary but effective enforcement must also be available. People on low incomes need access to the civil justice system including consumer protection if this is to be a reality.

The dichotomy between empowerment and protection posed by the Issues Paper is a limiting one. Both *effective* empowerment and regulation are essential if consumers in aggregate and disadvantaged consumers in particular are to be better protected and better prepared.

Consumers who are culturally and/or economically disadvantaged already face a range of disincentives from accessing empowerment or regulatory regimes. However, the complexity of products, services and standards make it a challenge for most consumers not simply disadvantaged ones.

Even if it can be proven that there is no cost benefit to the Government, or to business, of having regulation which protects consumers there would still be a justice benefit. Where that justice benefit was shared at least proportionally by vulnerable groups it could be described as a fairer system.

VALS argues that if the empowerment and regulation strategies simply try to incrementally tinker with the existing system then regulation will become more expensive and empowerment will become more difficult and also more expensive.

Rather than hypothesise a dichotomy between regulation and empowerment it is more productive to articulate what are the goals of empowerment and regulation and what are the synergies; is the primary goal to have a low cost regulatory system or is it to have a fair system? If the answer is to have a fair system then the following questions arise: what standard of protection and what standard of empowerment will be used and what bench marks will be used?

If regulation and empowerment are to be effective at creating a fairer system there needs to be a commitment to reducing the complexity of regulation as well as

improving consumer's access to regulatory enforcement processes. Reduced complexity makes it easier for business and the community to know what is expected. The idea of simplifying regulation is a win-win strategy as it makes it clearer for all parties what standards apply.

There is a risk that simplified regulation would increase the scope for unscrupulous businesses to utilise loopholes to get around simpler legislation. This means review of how the system works and the opportunity for disadvantaged consumers to seek remedies at Courts and Tribunals would have to be re-established through a civil legal aid system. Without effective access to regulatory enforcement most disadvantaged consumers will be continue to miss out on assistance. Even in cases where the monetary value of the matter is relatively small the relative significance to a person of low income may be great and systems need to reflect these issues.

VALS' submission advocates that consumer policies should be framed around achieving a fairer system where aggregate improvements as well as specific improvements to disadvantaged groups of consumers are prioritised.

VALS supports formal regulation of the market through legislation etc as opposed to market self regulation. This is because the theory of market self-regulation is flawed in practice when it comes to minorities, such as Indigenous Australians and poor people in general. In reality, Indigenous Australians do not have enough leverage to effect market self-regulation because they are a minority, which undermines any notion that they have choice or have influence to effect changes that protect their rights. It is important that formal regulation occurs so that standards are established and redress is available before it is too late. Regulation can lead to complexity and VALS argues that regulation that is not complex but simplified will benefit both consumers and those in the consumer industry. Please see further discussion of the issue of simplification of the system below.

### Costs

*What are the important costs of intervention? How significant are the hidden costs of intervention? How do these compare to the costs of not intervening?*

The costs of intervention cannot compare to the costs of not intervening. The costs of not intervening is more significant than the costs of intervening. If intervention does not occur early then costs are incurred and these fall upon society. It is more cost effective to spend money earlier (ie: early intervention) than later (ie: crisis response). In the context of crime prevention it has been proved that intervening early in a young person's development can produce significant long term personal, social and economic benefits, and this is arguably translatable to consumer issues. A long term follow up evaluation of the 1960s Perry Preschool Project in the US found that the program had produced a saving to the community of \$13 for every dollar invested (Schweinhart 2004).<sup>1</sup> Also, the

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<sup>1</sup> Australian Institute of Criminology 'Cost Effectiveness of Early Intervention' *Crime Reduction Matters* no 54, 6 February 2007 as at <http://www.aic.gov.au/publications/crm/crm054.html>

Seattle Social Development Project cost \$4,355 per participant but the taxpayer and crime victims net benefit was \$14, 169.<sup>2</sup>

VALS argues that costs for early intervention are worth it. Funding for early intervention should perhaps focus on essential services rather than non-essential services if cost is considered an issue. VALS repeats that costs for early intervention are worth it.

### Tools

*Are the right tools being used to meet the objectives of consumer policy? Is the current range of tools sufficiently diverse?*

A right tool that is not being used effectively to meet the objectives of consumer policy is data about how consumer rights are not being respected. Uniform data should be collected and used a regulatory tool. For instance, if data was made public then organisations that breach requirements could be shamed. Also, data could be used to build up a body of knowledge about systemic issues and then appropriate advocacy, backed up by evidence, about identified trends could take place.

### Vulnerable and disadvantaged consumers

#### **General**

*What interpretation of the terms vulnerable and disadvantaged should be applied for the purposes of consumer policy? Are the needs of vulnerable and disadvantaged consumers best met through generic approaches that provide scope for discretion in application, or through more targeted mechanisms?*

The terms vulnerable and disadvantaged should be interpreted in the following manner for the purposes of consumer policy: people of low socio-economic status and at risk of not having their consumer rights respected. Also, vulnerability should be interpreted as a *condition*, not a *person* (ie: stigmatization of an individual).

The needs of vulnerable and disadvantaged consumers are best met through both generic approaches (ie: approach that applies to all people) that provide scope for discretion in application and more targeted mechanisms (ie: mechanism that targets a particular group, such as Indigenous Australians).

VALS argues that there is a need for ‘both and’, not an ‘either or’ approach to rights protection. Proponents of the ‘either/or’ approach argue that protection is best advanced through laws that are applicable to everyone (formal equality) and this is used as a rationale for excluding Indigenous Australian specific measures (substantive equality). They argue that formal and substantive equality cannot co-exist and you can only either have a formal or substantive equality approach (ie:

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<sup>2</sup> Catalano Richard , ‘Communities that Care: Using Prevention Science to Improve our Children’s Outcomes’ presented at the ‘Beyond the Rhetoric in Early Intervention: Bridging the Gap between Education, Health and Crime Prevention Conference 26 March 2003.

‘either/or’ approach). Proponents of the ‘both/and’ approach, which VALS is, argues that there is a place for *both* formal and substantive equality and these they can co-exist. VALS adds that cultural awareness training should be delivered to mainstream organisations as to why there is need for a ‘both and’ approach and why special treatment has to offer vulnerable consumers.

### **Specific**

*What are the examples of policies that are very effective in targeting vulnerable and disadvantaged consumers? Are there instances where a desire to protect these groups has imposed significant net costs on the wider community?*

Below is a list of policies that are very effective in targeting Indigenous Australians who are vulnerable and disadvantaged consumers. Mainstream consumer organisations/complaint agencies would benefit from doing the following:

#### **1. Outreach**

Outreach is where a complaint agency visits Indigenous Australian communities, rather than relying on Indigenous Australians approaching it at its office. Evidence exists that outreach programs increase the number of complaints initiated. The employees of the Indigenous Consumers Unit at Consumer Affairs Victoria consider there to be an increase in complaint applications after they undertake outreach.

#### **2. Education campaign that targets the Indigenous Australian community**

An education campaign that targets the Indigenous Australian community is a campaign that delivers messages to the Indigenous Australian community that meets their particular needs. Some aspects of successful education campaigns are in VALS’ experience are:

- Involvement of Indigenous Australians.
- Presence of cultural sensitivity.
- Relevance and meaningfulness to Indigenous Australians
- Indigenous Australian artwork
- Flexible formats, such as case-scenarios, rather than inflexible formats, such as PowerPoint presentations
- Use of plain English
- Visit the Indigenous Australian community on a regular basis. For instance, VALS, CAV and other mainstream agencies have committed to visiting rural Indigenous Australian communities on a regular basis (Keys for Community: Opening the Door to your Rights).

#### **3. Education is important, but the system that consumers are educated about needs to be user friendly**

Education is important, but the system that consumers are educated about needs to be user friendly. Education is not the only answer, the system that education is

provided on needs to be appropriate. It is VALS experience that if VALS teaches the Indigenous Australian community about a mainstream system, but the system is inaccessible, no matter how much education VALS delivers on the system, the Indigenous Australian community will not use it. The system that is promoted in the education session needs to be user friendly.

VALS is concerned that often an emphasis on education overlooks the fact that service delivery processes and complaint processes need to be simplified. It is a concern of VALS that education campaigns do not set the Indigenous Australian community up to fail to follow through with a complaint. Arguably, it is wasteful to undertake an education campaign for the Indigenous Australian community without simplifying service delivery and complaint processes first to make them more accessible. The action of educating the Indigenous Australian community should be balanced with the simplification of processes, perhaps through legislation. The service delivery and complaint process could be simplified if different service providers, complaint bodies and Government Departments adopted similar processes (ie: uniformity through a common model of action which reflects national best practice standards). The service delivery and consumer complaint process should be simplified first and then the Indigenous Australian community educated about them.

#### **4. Information is important, but consumers need to be skilled up and empowered**

Information is important, but consumers need to be skilled up and empowered. Consumers need not only information, but skills. Examples of such skills are the ability to ask questions and sift between what information is relevant and not relevant to them. Skills that empower are important because information changes constantly and so skills are necessary to interpret those changes. It is wrong to assume that just because consumers have information they are in a position to make an informed choice. It may be that the consumers are in a position of information overload and consequently frozen into a state of inaction. It is important that consumer information provision does not result in consumer confusion as consumers who are overwhelmed by a plethora of choice find this disempowering.

#### **5. Education of Mainstream services (ie: cultural awareness training) not just consumers**

Education of Mainstream services (ie: cultural awareness training) not just consumers involves a recognition that mainstream services need education about best practice in relation to meeting the needs of their vulnerable consumers, such as Indigenous Australians. Indigenous Australians should deliver this training to mainstream organisations (ie: cultural awareness training).

Cultural awareness training can make mainstream services aware of the particular difficulties for Indigenous Australian people making a complaint to consumer protection agencies, such as:

- Indigenous Australians still feel the effects of the legacy of inappropriate treatment by authority figures in the past.
- Indigenous Australians have a lack of understanding of what agencies can offer them, low level of education and self esteem and lack of support (ie: advocate).
- Indigenous Australians are unaware of their rights and information is power.
- Consumer protection agencies are inaccessible and lack cultural sensitivity. For instance, Indigenous Australians dislike the call centre model and prefer face to face relationship-based communication.

#### **6. Culturally inclusive approach: The Indigenous Australian perspective considered early rather than later in the decision making process**

A culturally inclusive approach involves the Indigenous Australian perspective being considered early rather than later in the decision making process. The distinct needs of disadvantaged people or particular cultural group should be considered early rather than tacked on the end as an afterthought. An outcome of a culturally inclusive approach is that decisions are made that directly benefit disadvantaged people or people of a particular cultural group and indirectly benefit advantaged and mainstream people (ie: a simplified service delivery or consumer complaints process for all).

VALS argues it is wise to develop a system which will work for the most disadvantaged families and then look at how it fits middle and upper class families. This approach is the reverse of most policy development. The usual approach is to devise policy that suits the needs of the middle/upper class and then add on a couple of additional lines to encompass the specific needs of Indigenous Australians. The needs of Indigenous Australians should be considered at the outset of a policy process and Indigenous Australians should be involved in setting up protections which goes some way to acknowledging their human right to self-determination.

#### **7. Indigenous Australian Employment Strategy**

An Indigenous Australian Employment Strategy involves being strategic about employing Indigenous Australians and also supporting Indigenous Australians once they are employed so that do not suffer isolation. Mainstream services and complaint mechanisms would benefit from such a strategy.

#### **8. Koorie Liaison Officers with investigatory role**

Koorie Liaison Officers are roles preferably filled by Indigenous Australians. Koorie Liaison Officers conduct outreach to the Indigenous Australian community and facilitates the relationship between the client and non-Indigenous Australian Investigation Officer. VALS argues that Koorie Liaison Officers should investigate the complaints that are sparked as a result of outreach because Indigenous Australians prefer to deal with Indigenous Australians who have a hands-on role for the entirety of their complaint. However, often the Koorie Liaison Officer role does not involve direct involvement in the management of a complaint (ie: investigation) but which means that an Indigenous Australian

community member who lodges a complaint at the prompting of the Koorie Liaison Officer does not follow through with the complaint because the Koorie Liaison Officer cannot assist them during the complaint process in a hands on manner.

Mainstream consumer services/complaint agencies would benefit from introducing the position of Koorie Liaison Officers. Please note that multiple Koorie Liaison Officers should be employed as if this was the case Koorie Liaison Officers would have time to conduct investigations.

### **9. Commitment to the principle of Indigenous Australian Self Determination**

Commitment to the principle of Indigenous Australian self determination may involve mainstream organisations developing Indigenous Australian units within their structure which empowers Indigenous Australians with substantive decision making authority (Education Centre Against Violence).<sup>3</sup> Mainstream organisations/complaint agencies should commit to principle of Indigenous Australian self-determination.

### **10. Consumer Advocacy Body**

A Consumer Advocacy Body should be outside of Government otherwise there would be a conflict of interest because the Government has a role in developing/administering regulation. It should be at arms length but funded by the Government.

Advocacy in relation to Indigenous Australian's consumer interests involves highlighting the needs of Indigenous Australians and calling for an appropriate response. Such advocacy could be performed by an Advocacy Body that considers within its jurisdiction the needs of Indigenous Australians. Also, existing services (Indigenous Australian organisations, mainstream organisations and advocacy groups) could form a partnership to advocate on behalf of Indigenous Australian consumers.

### **11. Consultation**

Consultation involves engaging with Indigenous Australians to discover their needs and their expectations of consumer services/protection agencies. The consultation process should be effective and not too rushed.

### **12. Partnership**

Partnership involves co-operation between mainstream consumer services/agencies and Indigenous Australian organisations and can be in the form of a formal agreements. Partnerships would enable the former to learn how to

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<sup>3</sup> Representatives of the Education Centre Against Violence presented a paper at the Home Truths Conference: Stop Sexual Assault and Domestic Violence a National Challenge (September 2004) titled 'Working towards self determination within the confines of bureaucratic/colonial constructs and systems'.

effectively serve the Indigenous Australian community and provide support for the latter.

Partnerships acknowledge that there is a need for both Indigenous Australian and mainstream services, the former struggle in providing a culturally sensitive service and the latter are under-funded.

### **13. Legal Assistance**

Legal Assistance involves using the services of a lawyer. However, access to civil law legal assistance in relation to consumer issues is limited, both at an Aboriginal and Torres Strait Islander Legal Service and Community Legal Service level. VALS argues that it should receive more funding to provide legal assistance to Indigenous Australian consumers. Currently VALS only has one civil law solicitor for the entire State. This solicitor is only able to provide advice over the phone. As a result clients use the services of a private solicitor if they can afford it, or do nothing about their problem because they cannot get a lawyer.

### **14. Holistic Hardship policies**

Holistic hardship policies involves a “whole of Government” approach so that key stakeholders, such as the Electricity Ombudsman, the Energy Regulator, the Welfare Sector and the Electricity Entities to contribute to the development of policy.<sup>4</sup>

## **CONCLUSION**

The key rationales for Government intervention to empower and protect consumers are social justice and protection of disadvantaged members of the community, such as Indigenous Australians.

The ‘playing field’ is far from level hence strong effective consumer policy is a necessity. Competition policy is premised on the primacy of competition and market forces to produce efficiency and quality outcomes. Competition policy has never adequately included protection for vulnerable groups. Both *effective* empowerment and regulation are essential if consumers in aggregate, and disadvantaged consumers, in particular are to be better protected. If regulation and empowerment are to be effective at creating a fairer system there needs to be a commitment to reducing the complexity of regulation as well as improving consumer’s access to regulatory enforcement processes.

The costs of intervention cannot compare to the costs of not intervening. The costs of not intervening are more significant than the costs of intervening. A right tool that is not being used effectively to meet the objectives of consumer policy is data about how consumer rights are not being respected.

The terms vulnerable and disadvantaged should be interpreted in the following manner for the purposes of consumer policy: people of low socio-economic status

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<sup>4</sup> Tasmanian Electricity Ombudsman ‘ Discussion Paper On Hardship And electricity supply: The Power to Connect’ March 2003 as at <http://www.teo.org.au/publications/Discussion%20Paper%20on%20Hardship%20Policy.pdf>

and at risk of not having their consumer rights respected. Also, vulnerability should be interpreted as a *condition*, not a *person* (ie: stigmatization of an individual).

The needs of vulnerable and disadvantaged consumers are best met through both generic approaches (ie: approach that applies to all people) that provide scope for discretion in application and more targeted mechanisms (ie: mechanism that targets a particular group, such as Indigenous Australians). VALS prefers a 'both/and' approach outlined above over the 'either/or' approach (ie: formal and substantive equality cannot co-exist and you choose either the formal or latter).

Policies that are very effective in targeting Indigenous Australians who are vulnerable and disadvantaged consumers are:

- Outreach
- Education campaign that targets the Indigenous Australian community with the following qualifications:
  - Education is important, but the system that consumers are educated about needs to be user friendly
  - Information is important, but consumers need to be skilled up and empowered
  - Education of Mainstream services (ie: cultural awareness training) not just consumers
- Culturally inclusive approach: The Indigenous Australian perspective considered early rather than later in the decision making process
- Indigenous Australian Employment Strategy
- Koorie Liaison Officers with investigatory role
- Commitment to the principle of Indigenous Australian Self Determination
- Consumer Advocacy Body
- Consultation
- Partnership
- Legal Assistance
- Holistic Hardship policies.

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