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PRE-BUDGET 2021-2022

Submission to the Treasury on the 2021-2022 Budget

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns

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Consumers are the largest single group impacted by economic decision making, and the Budget consequently has an outsized impact on them.

Recommendations

The 2021-22 Federal Budget needs to serve consumers in three key ways:

1. Adequate funding to ensure the continuation of an economically efficient, nationally coordinated approach to consumer regulations;
2. a continuation of the Federal Treasury review of the product safety system; and
3. funding certainty for a Superannuation Consumer Advocate.

To achieve these three objectives, we provide the following recommendations:

- Sufficient financial support to ensure that the Consumer Affairs Forum is able to meet as required to consider matters requiring legislative reform.
- Funding for officials to maintain a system of collaboration via committees and working groups.
- Budget allocation for the continuation of the Treasury review of the product safety system.
- Guaranteed long-term funding for an independent superannuation focused consumer organisation.

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Consumer Affairs Resourcing

The recommendations of the Review of COAG Councils and Ministerial Forums (the Review) that were recently accepted by National Cabinet included the dissolution of the Consumer Affairs Forum (CAF) in its current form.

A key strength of the Australian Consumer Law (ACL) is its status as a nationally consistent law. This has considerable benefits to consumers, businesses and regulators, as foreseen by the Productivity Commission when it recommended the adoption of a nationally consistent approach in 2008. CHOICE notes that there are a number of important reforms that are yet to be considered by Ministers as a result of work arising from the ACL Review completed in 2017, including:

- the potential introduction of a general safety provision;
- exploration of how an unfair trading prohibition could be adopted within Australia;
- the economy-wide study of unsolicited selling, and any reforms that may need to be considered as a result of this;
- potential improvements to regulation of not-for-profit fundraising; and
- enhanced collection and dissemination of product safety data

We also note that other opportunities for reform will continue to arise, such as any that may emerge from the new Productivity Commission inquiry into a 'right to repair'.

Recommendation 1 of the Review explicitly provides that forums such as CAF can meet to consider one-off issues. The commentary relating to this recommendation on page 25 of the Review report notes:

In practice, where substantive roles must be fulfilled (for example, discussing and agreeing legislative amendments or making emergency determinations under relevant legislation), ministers may choose to meet informally and are to determine themselves when such a one-off meeting is essential.

While we acknowledge that some matters previously considered by CAF may be determined without ministers meeting, significant matters of legislative reform benefit from cross-jurisdictional discussion at ministerial level. For this reason, it is critical for the Budget to contain sufficient funding to allow for meeting on an ad-hoc basis where required. This funding should cover practical needs to facilitate a meeting as well as consistent secretariat support required to prepare for detailed discussion.

Besides legislative reform priorities that require the attention and collaboration of both officials and ministers, it is important the officials continue to collaborate effectively in relation to a range of matters, including consumer education, dispute resolution and product safety.

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Consumer affairs officials across jurisdictions have a well functioning system of committees and working groups that facilitate a free flow of information between regulators and helps to support a nationally consistent approach in a multi-regulator model. This aids the efficiency of the system - for example in relation to consumer education, where it helps to avoid duplication of effort or conflicting messages.

While there may be scope to consider whether there are any opportunities to improve how this system works in detail, we ask you to support continued collaboration at the officials level. This should be in the form of continuing, guaranteed funding to ensure that all necessary meetings, processes and activities are able to continue to be carried out at an official level as required throughout the next financial year.

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Product safety

Under current Australian law, businesses are not legally required to ensure the products they sell are safe. This means that businesses are selling potentially dangerous products and are not required to take any action until after their products cause serious injuries. A general safety provision, with an appropriate product intervention power and enforcement instrument, would solve this problem.

CHOICE has been advocating for a general safety provision (GSP) to be incorporated into the ACL for more than a decade. While Australia's consumer protection law is extensive, there's no explicit obligation placed on businesses to make sure they sell safe products. Instead, if a product in Australia hurts someone, that consumer can individually seek a remedy but this will not get the product off the shelves.

The current product safety system is also not equipped to deal with emerging changes to consumer markets. The rise of online shopping, proliferation of low-cost products from overseas and the increasing diversity and complexity of products have all resulted in the present enforcement and compliance problems. A general safety provision will help to stop the flow of unsafe products.

The system is over-reliant on recalls which are both onerous and ineffective in removing unsafe products from people's homes. Recalls are conducted and investigations initiated sometimes only after harm has already been caused. Alarming new data from the ACCC shows that there are 6.6 million individual products currently under voluntary recall.¹ This means that one in four Australian households are currently exposed to potential hazards. The number of recalls in Australia continues to grow annually. In October 2019 alone, there were 59 product recalls.² Without a general safety duty providing a pre-market control, the number of recalls will continue to grow.

In June 2015, Australian Consumer Affairs Ministers, through CAF, requested Consumer Affairs Australia and New Zealand (CAANZ) to initiate a broad-reaching review of the ACL. In April 2017, CAANZ released the Final Report of the ACL Review.

The Review identified some deficiencies embedded in the current product safety system, and put forward legislative proposals relating to product safety, including the introduction of a GSP to improve the product safety framework.

In August 2017, CAF Ministers asked officials to undertake a regulatory impact assessment of a GSP. Ministers noted that further consultation was needed on design and implementation issues.

¹ ACCC 2019, Over a million recalled products still in circulation in Australia, accessed on 19 November 2019, <https://www.accc.gov.au/media-release/over-a-million-recalled-products-still-in-circulation-in-australia>.

² Product Safety Australia 2019, Recalls – October 2019, accessed on 15 November 2019, <https://www.productsafety.gov.au/recalls>.

The Commonwealth Treasury is undertaking this assessment and public consultation on behalf of the Commonwealth, states and territories. CHOICE expects the next stage to be the release of a final proposal or RIS. This has been severely delayed. CHOICE urges that Treasury provide sufficient funding and resources for this process to be completed within the next six months.

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Superannuation Consumer Advocate

An adequately funded Superannuation Consumers Advocate is urgently required to provide a voice for consumers in critical debates on superannuation. The Productivity Commission first recommended the Australian Government should provide adequate and ongoing funding support to an independent members' advocacy and assistance body in its 2018 report on the efficiency and competitiveness of the superannuation sector.

The Government has acknowledged that the complex and compulsory nature of superannuation necessitates an independent consumer body with specialist knowledge. Super Consumers Australia was launched with seed funding to start delivering on that purpose. It is an independent, consumer organisation first funded in 2018 via a Community Benefit Payment. Since its September 2019 launch in partnership with CHOICE, it has:

- provided balanced, practical advice to help people make informed decisions about superannuation;
- applied public pressure to superannuation funds and insurers where they have failed to meet community expectations (this work has taken on new importance in the COVID-19 crisis);
- made a series of constructive, evidence-based policy submissions to government and regulators from a consumer perspective; and
- supported legislation to improve the efficiency of the superannuation system and outcomes for members.

It is important that this work can continue and that the skills and experience being developed in this organisation is not lost. Super Consumers Australia will be unfunded from 2021. We understand the Federal Government intends to run a tender process to determine which entity should take on the role of the Superannuation Consumer Advocate. The tender process is set to be completed by the third quarter of 2021. To ensure continuity of service we recommend the Federal Government make specific funding provisioning available in the upcoming budget. Not doing so would create uncertainty and risk losing the consumer voice in important policy debates on the compulsory superannuation system.

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