

## Consumer Election Platform 2004

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This document is a Consumer Election Platform for the 2004 federal election, developed by the Consumers' Federation of Australia (the national peak body for Australian non-profit consumer organisations) and a large number of individual consumer organisations and consumer representatives.

The Platform will be provided to all parties and candidates for comment and the consumer movement will assess the responsiveness of parties and candidates to the needs of consumers.

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# 1 Consumer Election Platform Summary

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## 1. Unfair contract terms

Consumers seek national regulation of unfair contract terms. Our Platform is to:

1. Amend Federal and State/Territory fair trading legislation to clearly and consistently regulate consumer contracts in their entirety, and ensure that the contracts entered into by all consumers are safe and fair.
2. Ensure that regulation of unfair contract terms prohibits the use of such terms in consumer contracts;
3. Allow consumers to obtain adequate remedies where they have entered into contracts that contain unfair contract terms, whether or not the trader is seeking to rely on that term.

## 2. Competition law

Consumers seek stronger competition laws in Australia. Our Platform is to:

1. Strengthen the application of the “net public benefit” test in all mergers, acquisitions and applications for “authorisation” under the Trade Practices Act.
2. Provide an open and transparent process for approving mergers and authorisations, including new requirements for public consultation and the conduct of independent assessments.
3. Provide a process for the enforcement of breaches of undertakings, including appropriate sanctions and remedies.

## 3. Advertising and marketing

Consumers seek tougher regulation of advertising and marketing. Our Platform is to:

1. Strengthen regulation of the direct marketing industry through the development of a mandatory Code and the establishment of a national “do not contact” register.
2. Abandon self regulation of the advertising industry and pursue effective co-regulation.
3. Amend the Trade Practices Act to include a specific requirement that all advertising must be clearly identified as advertising.

## 4. Credit

Consumers seek more comprehensive and consistent regulation of credit. Our Platform is to:

1. Establish a comprehensive and independent review of the operations and effectiveness of consumer credit regulation (in cooperation with State and Territory agencies), including the regulation of finance and mortgage brokers. The review should consider whether a transfer of regulatory responsibilities to the Commonwealth would be appropriate.
2. Provide consumers with accessible dispute resolution for all financial services by requiring all consumer credit providers to have current membership of an ASIC-approved EDR scheme.

## 5. Financial services

Consumers seek better and more affordable access to financial services products. Our Platform is to:

1. Mandate the provision of a fee free basic bank account to low income and disadvantaged consumers, in order to ensure that all consumers can participate in the financial system at a basic level.
2. Introduce price exploitation monitoring for all aspects of recent and proposed Payment Systems Reform.
3. Mandate the provision of a single unit of disclosure for investment products, especially superannuation.

## **6. Telecommunications**

Consumers seek better regulation of telecommunications products. Our Platform is to:

1. Develop a "One Stop Shop" for Dispute Resolution:
2. Develop a single Consumer Protection Standard:
3. Freeze Charges on Essential Telephone Services:
4. Improve privacy protections through removal of charges for silent lines and clarifying the effect of the Telecommunications (Interception) Act.

## **7. Real estate**

Consumers seek vigorous and nationally consistent regulation of real estate. Our Platform is to:

1. Provide nationally consistent regulation of all parties involved in the promotion, sale and financing of investment properties, including investment property seminar promoters and two-tier marketing.

## **8. Product Information**

Consumers seek stronger regulation of product information. Our Platform is to:

1. Mandate consistent country of origin labelling to avoid misleading consumers regarding products that are Made in Australia.
2. Mandate clear food labelling, including the ingredients, composition and processes used to produce the food product, plus the provision of accurate nutritional and allergen information.
3. Mandate per unit price information for relevant products to increase price transparency.

## **9. National Consumer Council**

Consumers seek the establishment of an independent National Consumer Council. Our Platform is to:

1. Establish a permanent, appropriately resourced National Consumer Council. This Council would provide strategic advice to Government and regulators on all aspects of consumer protection, and will conduct and commission research on emerging consumer issues and recommend solutions.
2. The National Consumer Council would be an independent body with an independent Chair and a Board of stakeholders appointed by an appropriate statutory formula.

## **10. Consumer representation**

Consumers seek appropriate support and facilitation for consumer representatives. Our Platform is to:

1. Seek direct funding of the national peak consumer representative organisation.
2. Seek increased resourcing of consumer advisory committees and consumer submissions.
3. Consider the allocation of business fines to more closely meet the needs of effected consumers.

## 2 Consumer Election Platform

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### 2.1 Unfair contract terms

Consumers seek national regulation of unfair contract terms.

Although there are a variety of regulatory mechanisms seeking to ensure consumer safety, those mechanisms focus either wholly or predominantly on procedural unfairness, and operate poorly or not at all in the context of substantive unfairness. As a result, a wide range of markets regularly employ contracts that contain unfair contract terms, against which consumers are given no adequate or accessible remedies.

Our Platform is to:

1. Amend Federal and State/Territory fair trading legislation to clearly and consistently regulate consumer contracts in their entirety, and ensure that the contracts entered into by all consumers are safe and fair.
2. Ensure that regulation of unfair contract terms prohibits the use of such terms in consumer contracts;
3. Allow consumers to obtain adequate remedies where they have entered into contracts that contain unfair contract terms, whether or not the trader is seeking to rely on that term. Regulators must also be able to appropriately enforce the prohibition, by taking action in respect of individual matters and in respect of identified classes of contracts where those contracts all contain an unfair term or terms.

### 2.2 Competition law

Consumers seek stronger competition laws in Australia.

Consumers have not been receiving the protection they require from reductions in competition through mergers, acquisitions and collusion. While the underlying competition law in Australia is sound, its detailed interpretation and application has produced less than satisfactory outcomes for consumers, including multiple mergers and acquisitions, and the approval of anti-competitive conduct through “authorisations” without the proper application of the “net public benefit” test.

Our Platform is to:

1. Strengthen the application of the “net public benefit” test in all mergers, acquisitions and applications for “authorisation” under the Trade Practices Act. This reform will include a new, clearer definition of the “public benefit” and a mandatory requirement for the public assessment of the “public benefit” in all applications. In addition we support a workable, balanced s.46 of the TPA, and the use of criminal sanctions for directors involved in hard-core cartels. Consumers oppose mergers going direct to the Australian Competition Tribunal without proper consultation with the public and prior consideration by the ACCC.
2. Provide an open and transparent process for approving mergers and authorisations. This reform will include new requirements for public consultation and the conduct of independent assessments of important issues such as market share. There will also be a prohibition on the ACCC approving a merger or granting an authorisation based on secret “undertakings” which have not been the subject of public consideration.
3. Provide a process for the enforcement of breaches of undertakings, including appropriate sanctions and remedies. Currently there is no system for monitoring or enforcing breaches of undertakings given to the ACCC when they approve a merger or grant an authorisation. Often there are no available sanctions or remedies for such a breach other than de-merger (which is a costly and unrealistic

remedy). This reform would require the establishment of a new monitoring and enforcement regime with separate, realistic sanctions and remedies.

### **2.3 Advertising and marketing**

Consumers seek tougher regulation of certain forms of advertising and marketing.

Many consumer problems and difficulties could be avoided if there was tighter regulation of advertising and marketing in Australia. This regulation would have a preventative effect on the worst cases of business conduct and would be a cheaper solution than repairing the damage after products and services have been purchased. Australia has one of the weakest regulatory regimes for advertising and marketing in the developed world and reform is long overdue.

Our Platform is to:

1. Strengthen regulation of the direct marketing industry through the development of a mandatory Code and the establishment of a national “do not contact” register. Any organisation seeking to call, email or send material to a consumer would be required to check the “do not contact” list. The current voluntary self regulatory codes (there are several) only cover a fraction of the direct marketing industry and the current voluntary “do not call” services are fractured and have very low subscriber levels.
2. Abandon self regulation of the advertising industry and pursue effective co-regulation. The current voluntary (two-page) AANA Advertiser Code of Ethics fails to address key consumer concerns in relation to advertising, and the self-regulatory Advertising Standards Bureau has no enforcement powers and a poor track record of complaints handling. Advertisers sometimes do not even bother to respond to the Bureau regarding complaints. This reform would involve writing a new Code in consultation with all stakeholders and establishing a co-regulatory system with appropriate monitoring and enforcement powers.
3. Amend the Trade Practices Act to include a specific requirement that all advertising must be clearly identified as advertising. This is an appropriate response to the development of new advertising techniques (such as ambient advertising and SUGing – the practice of “selling under the guise” of other conduct such as market research).

### **2.4 Credit**

Current uniform consumer credit legislation is open to avoidance by some lenders, is ineffective in preventing many unfair practices, and amendment to address identified “loopholes” is extremely slow. Unlike consumers of other financial products (which are regulated by the Financial Services Reform Act), credit consumers do not have adequate protections against unsolicited marketing or inappropriate conduct of intermediaries – nor do they have guaranteed access to an approved dispute resolution scheme.

Our Platform is to:

1. Establish a comprehensive and independent review of the operations and effectiveness of consumer credit regulation, including the regulation of finance and mortgage brokers. The review should be conducted in cooperation with State and Territory agencies, and should also consider whether a transfer of regulatory responsibilities to the Commonwealth would be appropriate. (The 1997 Financial System Inquiry recommended that the Consumer Credit Code be independently reviewed after it had been in operation for 2 years; this comprehensive review has not yet happened.)
2. Provide consumers with accessible dispute resolution for all financial services by requiring all consumer credit providers to have current membership of an ASIC-approved EDR scheme.

## **2.5 Financial services**

Consumers seek better and more affordable access to financial services products.

Financial services reform has progressed well in recent years, but significant consumer protections remain 'unfinished' or unrecognised. There has generally been too great a reliance on 'disclosure' and too little emphasis on price and pricing power.

Our Platform is to:

1. Mandate the provision of a fee free basic bank account to low income and disadvantaged consumers, in order to ensure that all consumers can participate in the financial system at a basic level.
2. Introduce price exploitation monitoring for all aspects of recent and proposed Payment Systems Reform. This will ensure that the potential benefits of recent reforms in Credit Cards and proposed reforms in EFTPOS, ATMs, Visa Debit cards and other payment systems are not lost to consumers through bank pricing power or the failure of merchants to pass on savings.
3. Mandate the provision of a single unit of disclosure for investment products, especially superannuation products, so that the financial services providers cannot hide fees and excessive margins behind complicated fee structures.

## **2.6 Telecommunications**

Consumers seek better regulation of telecommunications products, complaints and the protection of personal information.

Regulation of telecommunications consumer protection in Australia has been inconsistent, ad hoc and without leadership. Telecommunications is an essential service, and affordable trustworthy products and services need to be available to all households.

Our Platform is to:

1. Develop a "One Stop Shop" for Dispute Resolution: The Commonwealth should expand the jurisdiction of the Telecommunications Industry Ombudsman to hear all consumer disputes within the communications industry, and, specifically, Pay TV disputes, so as to become the Communications Industry Ombudsman.
2. Develop a single Consumer Protection Standard: The Commonwealth should place a requirement for a single Consumer Protection Standard in the Telecommunications Act alongside other core consumer protection safeguards such as the Universal Service Obligation, the Communications Industry Ombudsman and the CSG and direct the Australian Communications Authority to produce that Standard itself, not via an industry self regulatory process.
3. Freeze Charges on Essential Telephone Services: In recognition of telecommunications being an essential service, the Commonwealth should (a) freeze line rental charges until a detailed review has been conducted, and (b) freeze public pay phone local call costs to consumers.
4. Improve privacy protections through removal of charges for silent lines and clarifying the effect of the Telecommunications (Interception) Act to ensure that the contents of all types of telecommunications are only accessible to authorities under the rigorous Interception warrants regime, up to the point where they have been received and read or listened to.

## **2.7 Real estate**

While financial advisors are nationally regulated by the Financial Services Reform Act, property investment advice is virtually unregulated. We have seen the results of this impact on consumers who have paid for seminars, or actually invested in property, as a result of inappropriate, high pressure “advice”. Whether consumers are investing in shares, or property, they are vulnerable to bad advice. The lack of regulation of property investment advice provides an opportunity for the less scrupulous operators, and leads to overemphasis on property investment as many unlicensed advisors concentrate on this sector.

Our Platform is to:

1. Provide nationally consistent regulation of all individuals and organisations involved in the promotion, sale and financing of investment properties, including investment property seminar promoters and two-tier marketing promoters. There is no excuse for these individuals and organisations falling into a regulatory vacuum because of technical definitions. They are promoting an investment and should be subject to equivalent regulation with other financial services providers. They should be forced to disclose conflicts of interest and secret commissions.

## **2.8 Product information**

Consumers seek stronger regulation of product labelling and increased price transparency.

Consumer demand for effective product labelling in Australia has still not been met by a series of ad hoc industry developments and Government requirements. Reform in this area requires a comprehensive national review including consultation with all stakeholders, followed by the mandating of nationally consistent rules and the labelling of all products. Price transparency is severely reduced by the numerous grocery and other products sold in diverse weight/volume packages. Mandatory provision by appropriate retailers of price per unit weight/volume for relevant products is required to overcome this problem and provide other major benefits to consumers and the economy.

Our Platform is to:

1. Mandate consistent country of origin labelling to avoid misleading consumers regarding products that are Made in Australia.
2. Mandate clear food labelling, including the ingredients, composition and processes used to produce the food product, plus the provision of accurate nutritional and allergen information.
3. Mandate per unit price information for relevant products to increase price transparency.

## **2.9 National Consumer Council**

Consumers seek the establishment of an independent National Consumer Council to undertake research on national consumer issues and ensure that the interests of consumers are taken into account by decision makers. Where change to law, policy or practice is needed, a National Consumer Council would develop and promote practical policy solutions that safeguard the interests of consumers.

The promotion of consumer protection should be given a higher profile and greater resources within the federal Government. The provision of Government resources should more accurately reflect the benefits to the Australian community of informed, protected and confident consumers.

Our Platform is to:

1. Establish a permanent, appropriately resourced National Consumer Council. This Council would undertake research on emerging consumer issues and provide advice to Government, regulators and industry on consumer dimension of issues being considered.
2. The National Consumer Council would be an independent body with an independent Chair and a Board of stakeholders appointed by an appropriate statutory formula.

## **2.10 Consumer representation**

Whether or not the Federal Government establishes a National Consumer Council, there is a need to assist existing consumer organisations to provide policy input.

Numerous Government agencies, businesses, regulators and inquiries/reviews demand and expect submissions and assistance from consumer representative organisations. Indeed, the level of demand has never been as high as it is today. However, established consumer organisations and networks of consumer representatives do not receive federal Government support for this work or for communicating effectively and sharing knowledge and ideas. Continued consumer participation in business and Government processes will require further support and facilitation by the federal Government.

Our Platform is to:

1. Seek direct funding, on a small scale, of the national peak consumer representative organisation – the Consumers' Federation of Australia - to continue to act as a coordinator of consumer networks and to more effectively promote information sharing at the national level.
2. Seek increased resourcing by individual Government agencies and regulators of consumer advisory committees, consumer submissions and where appropriate direct input by independent consumer representatives (eg on decision making panels).
3. Consider the allocation of business fines and penalties to more closely meet the needs of effected consumers, for example through payments to the enforcement departments involved and the establishment of cy pres trust funds.