

  <p data-bbox="614 358 758 436">Australian Competition & Consumer Commission</p>	<p data-bbox="821 212 1359 302">ACCC Forum Consumer Rights 50 Years on</p> <p data-bbox="1045 313 1359 358">Keynote address</p> <p data-bbox="981 380 1359 425">Rod Sims, Chairman</p> <p data-bbox="885 436 1359 481">15 March 2012, Melbourne</p>
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This is my first World Consumers' Day as Chairman of the ACCC, and I am extremely pleased to be here.

I was recently at an OECD competition meeting where I met many of my international counterparts. It was fascinating to see a separation of competition and consumer issues.

To me, there is no separation. I am equally concerned if there is significant consumer detriment from consumers being misled or suffering from a cartel. Competition is not an end in itself; we want competition because it best suits the long run interests of consumers.

Having one body, the ACCC, dealing with both consumer and competition issues is something we must all support and seek to preserve. Competition and consumers are all the better for this combination.

John F Kennedy's four basic consumer rights

Appearing on the same speaking schedule as John F Kennedy is not something I ever expected to do.

But today is the perfect occasion to do so – the 50th anniversary of his statement to the United States Congress exhorting it to recognise consumer rights in statute.

Internationally, JFK's statement to Congress is regarded as a turning point because the recognition of consumers' rights in the United States, which at that time was the world's largest economy and the birthplace of consumerism itself, was bound to have international consequences.

In the US alone, JFK's statement had far-reaching effects as consumer rights were recognised increasingly in statute and in common law.

Let me reiterate his four rights, which he said should be the foundation of legislation, and which have resonated over 50 years around the world.

- The right to safety: that is, to be protected against the marketing of goods which are hazardous to health or life.
- The right to be informed: to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labelling, or other practices, and to be given the facts that a consumer needs to make an informed choice.
- The right to choose: to be assured, wherever possible, of access to a variety of products and services at competitive prices; and in those

industries, in which competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices.

- The right to be heard: to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.

I am sure you recognise those sentiments in our own legislation and in our national discourse.

Indeed, I'd like to come back to Australia now and reflect on the last 50 years of consumer law and advocacy here; in particular, on some of the key people and landmark changes.

Early years

Ruby Hutchison, the West Australian MLC, is one of the notable people in our consumer history, described as a “tenacious crusader for democratic reform, women's rights and social justice”.

As you know, we honour Ruby's contribution with the memorial lecture, which I and many of you attended last night.

Ruby's pioneering involvement in consumer rights in this country is widely known and applauded, so I don't need to elaborate on her accomplishments to this audience.

As JFK noted, American consumers were routinely exposed to products that were untested and unproven, and some that were downright unsafe.

In 1965, as Choice was getting into the swing of publishing its own magazine in Australia, Ralph Nader published *Unsafe at any Speed* in the US.

Nader's book turned the spotlight on to safety – or the lack of it – in American motor vehicle design.

In doing so, Nader shifted the debate even further than JFK. Nader took consumer protection to the forefront of popular concern in the US.

A couple of years ago, *Time* magazine named its 100 most influential non-fiction books of the 20th Century. *Unsafe at any Speed* easily made the Top 100.

Some of you may know or, like me, remember that Ralph Nader came to Australia, at the peak of his fame, for a series of public appearances.

Notably, at about the same time as Nader's visit, Australia implemented its first national design rules for motor vehicles. The rules led, for example, to a big leap in the proportion of vehicles with fitted seatbelts from 1970 onwards.

More than 40 years on, those rules – known as Australian Design Rules – have evolved into a comprehensive set of standards governing safety and environmental emissions for vehicles.

Another key person in the history of Australian consumer protection is Dr Roland Thorp.

Dr Thorp was a professor of pharmacology at the University of Sydney. He brought to Choice the expertise to undertake an emerging form of advocacy: product testing by a consumer organisation and publication of the results for everyone to read.

Dr Thorp's expertise laid the groundwork for what has become a proud history of product tests and findings that have been published in Choice magazine.

The safety of nightwear for children was the subject of early published tests. Product safety remains a priority for the ACCC.

In a case taken by the ACCC last year, the Federal Court imposed a \$400,000 penalty on a firm which failed to comply with the mandatory standard for fire labelling of nightwear.

I also note that Choice set a trend in humility from the kick-off. In 1968 the magazine changed its mind about an exotic gadget that was appearing on the market, namely the electric toothbrush, declaring that they might be a good thing after all.

The terms of product guarantees, and what they excluded, was also an early concern for Choice. It is a terrific development that consumer guarantees are now statutory provisions in the Australian Consumer Law, which took effect 14 months ago.

Emerging role of agencies and consumer policy

One of the long-run developments in Australian consumer protection is the emergence of agencies that have a statutory mandate to act on behalf of consumers, or that provide information so consumers can represent themselves.

In Australia this is a truly federal effort with the ACCC as Australia's national consumer agency working extensively and increasingly with our state and territory counterparts. Indeed, this is a relationship we value and will increasingly work – conscientiously – to strengthen.

It is instructive to reflect and chart the history of the development of agencies in the state and federal spheres.

The ACCC was preceded by the Trade Practices Commission, which was set up in 1974 as the first standalone federal agency with an a mandate in consumer protection.

But I would also like to acknowledge John Wood, who is here today. He ran one of the other early federal consumer agencies, the Bureau of Consumer Affairs, for 10 years, before becoming the Deputy Commonwealth Ombudsman.

Around the same time as the Trade Practices Commission was established, Bill Morrison was appointed the first Federal Minister for Consumer Affairs.

By the by, on the change of government in 1975, Bill Morrison was succeeded in the portfolio by a newly elected member from Sydney who was enjoying his first ministerial appointment – John Howard.

Notwithstanding the new ministerial portfolio of consumer affairs, however, the Attorney-General in the Whitlam years, Senator Lionel Murphy, was an influential figure in federal policy.

Around the time of the introduction of the Trade Practices Act to Parliament in 1973, Senator Murphy declared the principle of caveat emptor had been overtaken.

Murphy believed that 20th century markets were so sophisticated, and the range of choice so extensive, that a legal principle that was based on trading in village markets was redundant.

Indeed, the efforts of Senator Murphy contributed to consumer protection becoming an area of public policy recognised in its own right.

There is an interesting tale about the passage of the Trade Practices Act through Parliament.

In 1973 the first drafts of the bill included the now famous section 52, outlawing misleading and deceptive conduct. It went further, to outlaw unfair conduct.

But Murphy faced a Senate where the Government did not enjoy a majority.

It's claimed by people who were there that the term 'unfair' was dropped from the Bill in the final hours because Murphy's advisors feared it would give the Senate an excuse to reject the Bill.

The Australian Industries Development Association, predecessor of the Business Council of Australia, claimed that "laws affecting business activity need to be brought in gently and gradually through a process of evolution".

"Is Australia ready for the Trade Practices Bill 1974 in its present form?" the association asked. "The answer was "Not in its present form". Indeed, they opposed the need for laws that prevented firms engaging in misleading and deceptive conduct.

Of course recently the term 'unfair' has returned to national consumer statute, with the provisions in the Australian Consumer Law that outlaw unfair contract terms in standard form consumer contracts.

In parallel with the Commonwealth, consumer agencies were appearing in the states and territories. Victoria established a general consumer agency in 1965, and the Askin Government in NSW set up a similar agency.

Shortly after the Trade Practices Commission was established in 1974, NSW established the first standalone Department of Consumer Affairs in Australia. In the mid-1970s a fully fledged department was created, with resources to assist consumers directly.

Emergence of tribunals and mediation

About the same time as NSW set up a department, it also set up a consumer claims tribunal to allow consumers to take cases against traders. Queensland and Victoria also established small claims tribunals to hear consumer cases.

Today such tribunals are common in Australia and in many other countries.

They are an important feature of the consumer protection landscape because they are a low-cost means by which individuals can resolve disputes, or make claims, on their own behalf.

Taking NSW as an example, last year the NSW Consumer Trade and Tenancy Tribunal dealt with about 60,000 matters.

Many of the states and territories also provide mediation services, which allow consumers to have disputes resolved without appearing before a tribunal.

Between them, the tribunals and mediation provide a lot of day-to-day resolution for consumers.

Another of the big advances in which Australia played a foundation role is the International Consumer Protection and Enforcement Network – known as ICPEN.

ICPEN was established in 1992, with Australia among the first countries represented. Today, 42 countries are represented by member organisations.

ICPEN is effectively the best-practice body for consumer agencies. It allows members to share information on practices, statutory change, and it can facilitate informal cooperation on investigations.

This sort of international engagement is increasingly important in responding to globalised commerce and encouraging the development of policy and enforcement around the world.

Contemporary developments: Australian Consumer Law

Before I close I would like to return to the subject of statutory law.

The two landmark years in national consumer law are 1974, when the Trade Practices Act came into effect, and 2011, when the Australian Consumer Law came into effect.

The achievement that the ACL marks is, I believe, underrated in public dialogue.

The ACL represents a major achievement by COAG, and by the Ministers and officials, from the Federal Government and the states and territories, who mapped out the new law.

In drawing up the ACL, Australia cherry-picked the best examples of consumer law from around Australia, and internationally, including from England, Wales, New Zealand, and North America.

Overall, the ACL shifts Australian consumer law to a 'single law, multiple regulator' footing, under which the ACL is enforced jointly by the ACCC and the state and territory regulators.

The ACL also provides:

- new powers for regulators to expedite investigations
- a new civil pecuniary penalties regime, and infringement notices as a means to deal with minor breaches of the law
- consumer guarantees that have status in statute

- a statutory test for unfair contract terms
- a fully harmonised product safety regime that replaces the previous patchwork approach.

Overall, the ACL ensures that consumers everywhere, from Darwin to Devonport, benefit from the same statutory rights.

Crucially, the courts have embraced the new pecuniary penalties regime. For example, almost \$10 million in civil pecuniary penalties have been awarded by the Federal Court since July 2010. On three occasions we have achieved penalties of greater than \$1m.

In addition:

- More than \$450,000 has been paid under infringement notices issued by the ACCC.
- In the 14 months to the end of February this year, suppliers reported 66 recalls under the new mandatory reporting arrangements that require suppliers to report to the Minister recalled goods that they supply and which pose a risk to the safety or health of consumers.
- And, of most importance I believe, the ACCC and the state and territory fair trading agencies have enjoyed a new level of cooperation and collaboration in enforcing a single statute.

Let me also acknowledge that the same reform process that brought the ACL brought advances in consumer protection implemented by our sister agencies, including the Australian Securities and Investments Commission, which demonstrates the comprehensive set of consumer protection that we have established.

Consumer guidance – carbon pricing claims

One final point I will mention today on consumer protection is the ACCC's role in protecting consumers' interests under the new carbon pricing regime, that takes effect from the first of July.

The ACCC's role – as part of its consumer mandate – is to ensure that businesses do not make misleading claims if they attribute price increases to carbon pricing.

The Treasurer has directed us to make this a priority.

Over the coming weeks we will be launching more guidance for businesses aimed at increasing understanding as to what is acceptable where businesses are passing on legitimate price increases as a result of carbon pricing.

Today we are launching guidance, available in print and online, for consumers on their rights regarding carbon pricing claims – how they can ensure they aren't misled and what to do in order to make a complaint.

Conclusion

So we have come a long way in 50 years.

Thank you for your participation here today at this event to mark World Consumers' Day and, particularly, the 50th anniversary of the announcement by JFK of his four consumer rights.

And thank you to our sister agencies in the Federal Government, to the state and territory agencies, and to the advocacy bodies like Choice and others for your commitment to the cause of consumer protection in Australia.

I strongly believe that if we all work closely together we can achieve so much more for consumers, as our respective roles are often complementary. I have been delighted in my time at the ACCC to see a high level of co-operation, and I am very keen to build on and reinforce this.