

Consumer outcomes – moving responsibility form from ASIC to the ACCC

Professor Rodney Maddock,

Advisory Director Monash Business Policy Forum and Vice Chancellor's Fellow, Victoria University

Recommendation

Since 2011 we have a new national consumer law operated by the ACCC.

As a result there is no reason for ASIC to retain consumer protection as part of its mandate.

We do not need multiple consumer protection regulators.

Background

Much has changed since Wallis recommended moving consumer protection in finance into a dedicate agency such as ASIC. Most importantly we have a new body of consumer law, the Australian Consumer Law of 2011 overseen by the ACCC.

Consumers are provided with protection in their commercial relations with businesses through a wide variety of institutions. The ACCC has important broad-brush responsibilities, as do state fair trading bodies, aligned through shared, standard legislation.

Just a small number of sectors sit outside this standard model. In the financial sector ASIC has most of the consumer protection powers; in media and communications ACMA has an important role although telecommunications is with the ACCC; and in sectors like energy and telecommunications ombudsmen provide additional consumer protections. The diversity of paths for consumers is mainly an accident of history.

There are a number of reasons Australia should consider simplifying the structure. It is not clear why the issues of consumer protection in finance as sufficiently special that they should be housed apart for the general framework.

There are advantages to consistency

Complexity does not help consumers to find their way to the right regulator. A one-stop-shop for consumer protection issues has obvious attractions. Given Australia's constitutional structure it may still be sensible to have a national authority, and state authorities, but there seems little justification for having a mix of national, state and sectoral bodies.

A more consistent approach to standards, services and enforcement is also likely to lead to some efficiency gains in the operations of the consumer affairs regulators. Rather than the different regulators developing different codes of conduct, consumer engagement guidelines, consumer reference panels etc they could share those.

APRA has been found wanting

ASIC has come under strong criticism of late in its handling of consumer affairs. The Senate Economics Committee recently released a report highly critical of the way in which ASIC failed to provide adequate protection to investors who worked with particular financial planning groups. The Senate list of criticisms of ASICs operations, practices and culture is very long and twenty-eight of its recommendations relate specifically to suggested improvements and remedies. Rather than limit those remedies to finance, the most valuable should be shared across all consumer affairs regulators, and a number of the changes proposed for ASIC may well already be in place inside the ACCC.

The protection of consumers within the financial sector has also been at the heart of the political debates over FOFA. The sorts of problems characterised by the relationship between consumers and their agents is a very general one in consumer relations and is not simply restricted to finance. If there are lessons to be learnt in finance they should be more generally applied.

The more fundamental reason for moving away from sector-specific regulation is the fear of capture of the regulator by particular interests. It is clear from the Senate report that it felt ASIC had been too lenient in its treatment of CBA, Macquarie Bank and perhaps some other providers, and a number of the Senate's recommendations are directed at toughening ASIC's remediation and resolution mechanisms. Moving the consumer aspects of financial regulation into a broader pro-consumer regulator provides greater protection against capture by any sectional interest.

Separating ASIC's consumer protection function from its other responsibilities will simplify its tasks and seems likely to make its work more effective. At the moment it is expected to be vigilant in protection of consumer interests but at the same time neutral between consumer and corporate interests in many of its other functions. This seems likely to limit its effectiveness. A consumer regulator by design is a motivated regulator, and hence takes a partisan interest. This contrasts with ASIC which in some functions is a pro-consumer regulator but in other functions is a neutral market regulator. Shifting the partisan role to the consumer regulator should make ASIC more effective in its general market surveillance functions.

We have a better body available in the ACCC

Times have changed since the some of these separate regulators were established. Notably Australia's consumer protection laws were significantly bolstered with the introduction of the Australian Consumer Law on 1 January 2011. The law deals with a very extensive and comprehensive range of consumer protection and product safety measures. It has a range of enforcement tools ranging from substantiation notices and information standards to very significant penalties for corporations and individuals. It has been adopted across Australia and is enforced by the ACCC and the state consumer bodies. This requires ongoing and close cooperation between the federal and the state agencies.

Since we have bolstered consumer protection, and have a regulator in place to serve that function, there seems little reason to have other consumer protection mechanisms run by separate regulators like ASIC. Coupled with the failing identified by the Senate inquiry, there is a strong case for establishing and shifting all consumer protection regulation to a single, dedicated federal body.

