



**CONSUMERS'  
FEDERATION  
OF AUSTRALIA**

# **CONSUMER POLICY AGENDA 2022**



The Consumers' Federation of Australia (CFA) is the peak body for Australian consumer organisations.

Consumer organisations include membership-based organisations, organisations that provide information, advice, counselling or assistance to consumers, and organisations that identify regulations or market features that harm consumer interests and propose solutions. CFA's around 40 organisational members and their members represent or provide services to millions of Australian consumers.

CFA and its members consider that the following set of reforms should be urgently implemented to put consumers first in the economic recovery. Competition in key markets is flailing, consumer protections are falling behind international best practice, and our institutional arrangements for consumer protection are not supporting effective reform.

We urge the incoming Federal Government and the 47th Parliament to review the following Agenda, engage with consumer advocates on the ideas presented, and implement enabling policies, regulation and legislation as opportunities arise or where urgency requires swift action.

## ►► Strategic reforms

that would better focus governments, regulators and industry on good consumer outcomes

1. Appoint a **Minister** for Consumer Affairs in Federal Cabinet
2. Re-establish a national **Ministerial Council** for Consumer Affairs
3. Give consumers a **voice** in national policy and regulatory reform
4. Modernise the Australian Consumer Law through an economy-wide prohibition on **unfair trading**
5. Meet community expectations for safety by enacting a **General Safety Provision**
6. Quickly implement existing proposals to allow regulators to impose penalties for **consumer guarantees** and **unfair terms**

## ►► Specific reforms

that will make particular markets work better

1. Modernise **travel** consumer protection
2. Address ballooning **scam losses** through payment system reforms, a new regulator, and a whole-of-government response
3. Regulate **digital platforms** to promote competitive outcomes
4. Target inflationary pressures through improving and expanding **Unit Pricing**
5. Renew **consumer credit laws** to respond to market changes
6. Help consumers transition to respond to **climate change** and **sustainability**





## ►► Strategic reforms

### 1. Appoint a Minister for Consumer Affairs in Federal Cabinet

Australian consumers need a Minister for Consumer Affairs within Federal Cabinet, to send a strong message about the priority of consumer policy initiatives, and ensure that impacts on consumers are addressed in decisions in other policy areas (energy, health, education, etc) at the highest level.

Recent governments have relegated consumer policy affairs to non-cabinet status or combined it with other policy areas, such as small business. A new Minister for Consumer Affairs in 2022 can take leadership for implementing the proposals outlined in this agenda and ensure cross-portfolio coordination of consumer policy issues within the Australian Government.

### 2. Re-establish a national Ministerial Council for Consumer Affairs

Given consumer policy is a joint responsibility of State, Territory and Federal Governments, Australia needs a Ministerial Council for Consumer Affairs. A forum for Ministers is integral to advance consumer policy, particularly recognising the Australian Consumer Law's single law/multiple regulator approach.

In 2020, the Consumer Affairs Forum (which was the forum for Consumer Affairs Ministers) was abolished as a result of the Conran Review of COAG Councils and Ministerial Forums. Only the year prior (2019), State, Territory and Federal Governments signed the second Intergovernmental Agreement for the Australian Consumer Law. That agreement recognised the role of the Ministerial Forum as fundamental to advancing consumer policy and consistent legislative reform.

Besides legislative reform priorities that require the attention and collaboration of ministers, it is important the governments continue to collaborate effectively in relation to a range of matters, including consumer education, dispute resolution and product safety. This needs leadership from a re-established Ministerial Council.

## ►► Strategic reforms - continued

### 3. Give consumers a voice in national policy and regulatory reform

Australia needs a resourced national consumer advocacy voice in Canberra. There are many industry advocates and lobbyists on the national stage, but no publicly-resourced umbrella national consumer voice to provide informed consumer participation in consumer policy development.

An enhanced consumer voice at the national level would co-ordinate and amplify the work done by consumer organisations (including research, advocacy and campaigns) and provide well-developed policy ideas to government and industry.

We also need “Super-complaint” powers to allow designated consumer organisations to lodge complaints about systemic consumer problems and receive a fast-tracked public response from regulators and government.

The benefits of super-complaint powers is evident in the UK, where super-complaints have proven to be a mechanism for high-quality insight which has led to very substantial benefits for consumers, and the broader economy. The Citizens Advice 2018 super-complaint on the ‘loyalty penalty’ in five sectors resulted in the regulator identifying £4 billion of consumer harm and several programs of work, which have worked to recover or remove the loyalty penalty, which affects the most vulnerable. Similarly, the 2016 super-complaint by Which? on scams led to a significant change including stronger reimbursement rights for consumers and improved incentive for scam detection.

In the Australian context, super-complaints should trigger regulator market studies, which have become a feature of the ACCC’s work. Market studies can be improved by enabling the ACCC to use its compulsory information-gathering powers. This will ensure that findings and recommendations to improve consumer outcomes are based in evidence.

The Productivity Commission has supported both these proposals.

### 4. Modernise the Australian Consumer Law through an economy-wide prohibition on unfair trading

Australia is out-of-step with modern economies as it lacks an economy-wide prohibition on unfair trading. This reform would mean our markets meet the expectations and community norms of fairness.

Recent court jurisprudence on unconscionable conduct has confirmed that this prohibition is a very high bar, and just because a product or business practice may have an unfair impact, it will not necessarily be unconscionable. Unconscionable conduct focuses on moral wrongdoing by business, whether it is so far outside the norms of normal business practice, and it does not look at the impact on the consumer.

A prohibition on unfair trading would focus on consumer outcomes of products, services and business practices, including enabling a focus on:

- marketing that manipulates or restricts the freedom of choice of a consumer
- product design so that commercial returns to a firm arise predominantly from consumer outcomes that are consistent with the product’s purpose
- ensuring consumers experiencing vulnerability do not experience worse outcomes than other consumers



## ►► **Strategic reforms** - continued

### **5. Meet community expectations for safety by enacting a General Safety Provision**

As shown by the pandemic, community safety is paramount. Yet there is no specific requirement to only sell safe products in the Australian marketplace.

A general safety provision would place a positive onus on all suppliers (and those in the supply chain, such as importers) to ensure the safety of a product before placing it on the market. This provision would support flexibility for suppliers by being principles-based so that compliance would not be prescriptive.

A general safety provision would require suppliers to adopt a culture of safety by taking positive steps to ensure their products are safe prior to sale rather than the consumer protection system relying on recalls and 'after the fact' compliance initiatives. Many suppliers already have good systems in place to ensure products are safe and may welcome the opportunity to work within a flexible framework that a principle-based general safety provision would bring.

### **6. Quickly implement existing proposals to allow regulators to impose penalties for consumer guarantees and unfair terms**

The Federal Government has introduced legislation that would make unlawful the inclusion of unfair contract terms in standard form contracts. However, it has not passed. This change would give the unfair contract term regime teeth, giving rise to penalties for breach.

Likewise, Federal Treasury has recently consulted on legislation that make unlawful the failure of businesses to honour consumer guarantees. Existing law means that businesses don't have to pay a penalty when they fail to meet the most basic part of the Australian Consumer Law: to fix things when they go wrong.

These reforms must urgently be enacted to complete the unfinished business of the 46th Parliament.



## ►► Specific market reforms

### 1. Modernise travel consumer protection

When the COVID-19 pandemic hit in early 2020, thousands of Australians had money tied up in bookings with travel and tourism businesses located in Australia and overseas. The announcement of the pandemic and associated public health measures meant that these plans fell into disarray.

As consumers sought to change their plans or obtain refunds, many experienced stress and frustration. This was exacerbated by the realisation that the Australian Consumer Law provided limited assistance in the case of cancellations outside the control of the supplier.

CFA-member CHOICE has laid out a sensible plan to improve consumer protection. This plan proposes:

- **Changes to make it easier for people to receive refunds**
- **Minimum voucher/credit rights**
- **A mandatory industry code for all airlines and large travel providers**
- **A travel and tourism industry ombudsman**
- **A mandatory information standard at time of booking**
- **An ACCC market study into the travel and tourism sector**
- **A national travel restrictions website**

This plan would substantively improve travellers' consumer rights and improve confidence in travel during the pandemic recovery period.





## ►► **Specific market reforms** - continued

### **2. Address ballooning scam losses through payment system reforms, a new regulator, and a whole-of-government response**

Scam losses are more than \$1b per annum. This is not only a significant drain on the economy, but large scam losses affect the livelihoods of individuals and families affected.

Improving the safety of Australia's payment systems is a key reform to protect against scam losses. A key way to do this is establishing a commitment to reimburse consumers for scam losses where they are not at fault. This would drive incentives to invest in scam detection and prevention measures, and is an approach adopted in other jurisdictions such as the UK. Given electronic commerce is so central to economic activity, we also need a new national Payment Systems Regulator to provide leadership over the safety and utility of Australia's payments systems.

More broadly, we need a whole-of-government response to tackle ballooning scam losses, recognising that social media, internet platforms and telecommunications services are key entry points for scammers. A reform program needs to be developed that moves away from consumer education towards systemic and structural changes that ensure the key venues for commerce are safe and free of scams and frauds.

### **3. Regulate digital platforms to promote competitive outcomes**

Online platforms are the new monopolies. In the modern economy, it is next to impossible to escape the services and controls of the likes of Google and Facebook, and tackling the market power of these platforms is one of the most urgent policy challenges of this century.

The ACCC, in its world-leading 2019 Digital Platforms Inquiry, made a set of recommendations spanning competition law, consumer protection, and privacy law to address the risk of consumer and community harm. To date, the response has been slow and piecemeal, and while there has been some reform relating to abusive and harmful online content as well as news-media, there remain gaps including the need for:

- **Enhanced privacy protections in the digital age**
- **Better dispute resolution standards, including a Digital Platforms Ombudsman**
- **Measures to tackle the power of data and network effects of digital platforms**



## ►► **Specific market reforms** - continued

### **4. Target inflationary pressures through improving and expanding Unit Pricing**

Effective unit pricing (pricing per unit of measurement) greatly increases price transparency and helps shoppers to make more informed choices and can save them significant amounts of money and time. The annual food price inflation in Australia climbed to 1.3 percent in the September quarter of 2021, up from 0.7 percent. With reports that inflation will continue to rise during the period of economic recovery from COVID- 19, improving and expanding unit pricing will assist consumers.

Although very popular with grocery shoppers, much of the unit pricing provided by supermarkets and online grocery retailers for pre-packaged products is not sufficiently effective, particularly for those who are vulnerable or disadvantaged, aged or with disability. Also, some grocery retailers are not required to provide unit prices, nor are non-grocery retailers of pre-packaged products such as hardware stores, chemists, and pet supplies retailers.

Legislative changes are needed in order to:

- **Make unit prices currently provided by grocery retailers much easier for consumers to notice, read, and use.**
- **Require more grocery retailers to provide unit prices.**
- **Require some non-grocery retailers to provide unit prices.**

### **5. Renew consumer credit laws to respond to market changes**

Over-indebtedness affects hundreds of thousands of Australians and impacts their mental health, wellbeing, and ability to contribute to the economy and society.

While Australia has had a strong consumer credit protection regime, it is now failing to keep up with innovations in the marketplace, including buy-now-pay-later, wage advance products and other fintechs. These so-called innovations are often exploiting loopholes in the law and are creating new risks of economic hardship. For example, research shows that around 20 percent of buy-now-pay-later borrowers are experiencing some level of harm.

More traditional consumer credit products that target and disadvantage the most financially vulnerable, such as payday loans and consumer leases, continue to be poorly regulated. The Federal Government supported recommendations of an independent review into these products in 2016, but has not enacted legislation.

We need to renew our consumer credit laws so that they provide robust protections in 2022.



## ►► **Specific market reforms** - continued

### **6. Help consumers transition to respond to climate change and sustainability**

The impacts of climate change and the need to consume more sustainably is impacting all Australians. There is a need to help consumers transition to respond to climate change across a range of markets, including:

- **With more and more extreme weather, insurance policies are becoming more expensive and there is a growing risk of under- and non-insurance.**
- **There is a need to move away from fossil fuels, including natural gas, and households must be both supported with both capital assistance to switch away from gas appliances and protected from price impacts associated with dwindling gas use.**
- **Energy efficiency of residential buildings needs to be improved to support and protect households, including a move to net-zero building standards.**
- **Products need to be more durable to address product and e-waste ending up in landfill. We need to act on the Productivity Commission's suite of recommendations to improve Australians rights to repair.**