

# The development of a modern Australian consumer movement

On the 30th anniversary of the Trade Practices Act, Louise Sylvan, Deputy Chair of the ACCC, offers a portrait of the development of the modern Australian consumer movement and raises questions about the ability of the 1974 Act to grapple with the new consumer products of the 21st century.

The modern Australian consumer movement dates from 1959. Although consumer issues were tackled by labour and women's organisations since the end of World War I, single issue collective activism on consumer protection began with the foundation of the Australian Consumers' Association (ACA). Ruby Hutchinson was the founder of the ACA and her vision is recognised each year with the presentation of the Ruby Hutchinson Memorial Lecture on 15 March, World Consumer Rights Day.

## Countervailing power—feminist, firebrand and MLC

A Western Australian MLC, feminist and Labor Party activist, Ruby was born the eldest girl in a family of ten children. At the turn of the 20th century, her family moved from Victoria to the gold fields of Western Australia where she grew up among committed activists in the socialist movement.

An unstoppable firebrand, Ruby was elected to the WA Legislative Council in 1954 and announced her first task would be to support Labor policy and work to have the Upper House abolished on the grounds that it was undemocratic. Every year Ruby moved a motion to abolish the Upper House and, consequently, she holds the distinct honour of being the first woman suspended from an Australian parliament as well as the first woman elected to the WA Legislative Council.

In 1957 WA Premier Bert Hawke organised a Trades and Industries Protection Council to patrol the scoundrel practice of exporting WA manufactured goods to the eastern states and then reimporting them at higher prices. Ruby was appointed to the council and Chair of the Women's Sub-committee where she saw an increasing number of complaints against poor quality goods and lack of consumer choice. On an overseas trip she visited the offices of the British product testing and publishing organisation, *Which?*, and the American publications, *Consumer Reports* and *Consumers Research Magazine*. She returned determined to start a similar independent consumers' association and publishing group in Australia.

## Behind every great piece of legislation...

Ruby contacted Edna Roper, a Labor Member of the Upper House in NSW, and suggested they approach the Lord Mayor of Sydney, Harry Jensen, who reputedly had an interest in consumer issues. Alderman Jensen called a public town hall meeting, hundreds of people turned up and the ACA was founded in August 1959.

The foundation of ACA and the publication of *Choice* magazine is the first instance in Australia of citizen-based intervention in consumer markets with respect to information and education, product safety and other consumer protection advocacy. ACA is still, as it was in 1959, the only national consumer research and product testing organisation in Australia.

The populism of Ruby's mission and the ACA provides an insight to the changes occurring in Australian society that would support such a radical piece of law reform as the *Trade Practices Act 1974*. But 30 years in, it is time to question whether markets have developed in ways that take them outside the scope of the Act and the ability of regulators to deal with the issues confronting consumers in the 21st century.

Since time immemorial multiple rules have been imposed on the marketplace controlling some aspects of buying, selling and trader behaviour. Such written rules can be found as early as 4000 years ago. Hammurabi, King of Babylon (Mesopotamia) who ruled between 1792–1750 BC, addressed terms of credit, rents, quality of foods and services, prices, and weights and measures in the famous Code. While we debate whether cartel thieves should spend a term in jail in Australia, Babylon was not so gentle. The Code declares, for example, that builders are responsible for their work: if a building collapses and someone is killed, the builder was executed.

Since the very earliest days of Australian colonisation as well, laws regulated trade in essential goods and services. Bakers, publicans and butchers were licensed as early as 1806 and the British Weights and Measures Act in 1832 established standards and penalties for supplying incorrect or underweight goods. These early codes of conduct were

grounded in moral reasoning, cloaked in ideas of goodness, fairness and rightness. But they came with the caveat of ‘buyer beware’.

The distinguishing characteristic of modern consumer law is, firstly—all the multiple and disparate rules of common law have been codified into one major piece of legislation; and secondly—that the modern code of conduct is based in economic reasoning, not moral reasoning.

The central tenet of this consumer protection—which is also a competition protection—holds that markets will only operate fairly and efficiently if businesses do not mislead consumers in those markets. If competition is to be fair and efficient, businesses cannot enter into price fixing agreements, use bait advertising or engage in other types of deceptive advertising. Among the many merits of the 1974 Act argued by Senator Murphy in his Second Reading of the Bill to parliament, was its anti-inflationary effect. Senator Murphy reasoned that restrictive trade practices—maintaining prices at levels higher than would otherwise prevail—contributed directly to the inflationary trend and therein reduced the likelihood that the benefits of the government’s tariff cuts would be passed on to the public. These economic principles are a sophisticated overlay on the moral axioms of the old common law.

### Raise the bar

The quintessential virtue of the *Trade Practices Act 1974* is that it has made the marketplace a safe place for consumers. It has enshrined in law that consumers do not like to be deceived. It also enshrines a number of statutory obligations such as warranties and refunds for consumer



**Ruby Hutchinson**, founder of the ACA

products. We don’t have to worry if a product doesn’t work because, if it doesn’t you can take the product back and it will be replaced. The Act has, in fact, lifted the entire standard of retail trader behaviour in Australia. Many retailers now operate at a level of consumer protection that goes well beyond the basics of the law and continue to ‘raise the bar’ through customer services in a quest for customer loyalty.

### Thirty years in—is the Act enough?

However, in the global marketplace we have an interesting situation in relation to the newly deregulated products like financial services, telecommunications, energy and other types of services. They’re not things you can hold and examine. In Australia, we find that although the markets are becoming much more competitive, many consumers don’t feel that they can shop or ‘figure out’ these products with confidence.

Health services, for example, have a number of parameters that make it difficult for appropriately competitive markets to exist because consumers are often in no position to judge. Micro-economic reform of this sector would need to be handled with great sensitivity. Telecommunication contracts are often so complicated that many people are not sure exactly what they are buying—they can be hit with nasty surprises post purchase. Energy contracts can be equally difficult to evaluate when, for example, you are offered bundled packages of electricity, gas and internet services. Banking is a prime example of how these new service products arrive in the market without the same consumer confidence in refunds and warranties applying. Consumers don’t believe they can ‘send it back’ if the product doesn’t suit their purposes or meet their needs. In fact, one of the possible results of serious, unaddressed information asymmetry problems of this type is a market where consumers don’t believe they **can** get a much better deal, so shopping around is not seen as worthwhile (e.g. retail bank accounts). With some lock-in contracts and switching costs producing a pricing pattern resulting in a ‘bargains-then-ripoffs’ market, consumers find they have little ability to activate more and better competition.

The issues presented by the new service products are no longer solely misleading conduct issues. They are contractual issues of bundling and blocking and the 1974 Act doesn’t address these matters directly. And wherever consumers don’t feel confident about their likelihood of choosing well in a market, or their ability to avoid potential problems, one often sees a sector with high consumer complaints, consumer mistrust and, in many cases, a market which is not as fully competitive as it could be. Competitive markets exist when consumers can drive them.

These developments pose very significant challenges for consumer activists, regulators and legislators. These new markets demand cutting edge consumer leadership today.

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