

# Principles for the Appointment of Consumer Representatives: A process for Governments and Industry

**Consultation Draft**

Commonwealth Consumer Affairs Advisory Council

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# ABOUT THE COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL

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The Commonwealth Consumer Affairs Advisory Council (CCAAC) was established by the Hon. Senator Ian Campbell, Parliamentary Secretary to the Treasurer and Manager of Government Business in the Senate, to provide advice to him on issues affecting consumers.

## CONSULTATION PROCESS

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Comments from stakeholders on this paper are sought by 28 June, 2002.

Comments can be forwarded to;

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Commonwealth Consumer Affairs Advisory Council  
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## ACKNOWLEDGMENTS

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Council gratefully acknowledges the assistance of various consumer, industry and government representatives involved in consultations in relation to consumer appointments during 2001.

The encouragement of Senator Ian Campbell for Council to continue to explore this issue is also acknowledged. Council, however, accepts full responsibility for the views contained in the paper.

## EXECUTIVE SUMMARY

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Consumer representatives play a vital role on government and industry decision-making and advisory bodies. Consumer representation ensures that these bodies have access to a wide range of views. Resulting advice or decisions will be more robust and more likely to be accepted by stakeholders.

Consumer representatives require specific skills, beyond an individual's own personal experiences as a consumer. The most useful definition of these skills is set out in the Benchmarks for Industry-Based Dispute Resolution Schemes<sup>1</sup>, and specifies that consumer representatives must be:

- a) capable of reflecting the viewpoints and concerns of consumers; and
- b) persons in whom consumers and consumer organisations have confidence.

Consistent with this definition, a framework comprising six principles for appointing consumer representatives is set out. This framework, whilst providing much needed guidance for government and industry, is flexible and can be adapted as necessary for particular circumstances.

The Appointment Principles are as follows:

1. Appointments must be made on merit. Nominees must, as a minimum, demonstrate the following:
  - expertise in consumer affairs;
  - links to relevant consumer organisations;
  - capacity and willingness to consult with relevant consumer organisations;
  - knowledge of, or the ability to acquire knowledge of, the industry/issues involved in the appointment.
2. Appointees must be independent of industry or government;
3. Consumer organisations must be involved in appointments;
4. A wide range of candidates should be sought;
5. The appointment process must be consistent with good corporate governance and, where relevant, good practice in self-regulation;
6. The appointment process must be transparent, accountable and cost-effective.

Organisations that appoint consumer representatives would benefit from auditing their current processes against these principles.

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<sup>1</sup> Benchmarks for Industry-Based Customer Dispute Resolution Schemes, Consumer Affairs Division, Federal Department of Industry, Science and Tourism (now part of Treasury), 1997.

Consumer representatives require adequate resources if they are to fulfill their roles. This involves payment of sitting fees or a salary as appropriate, payment of expenses, and access to ongoing training and professional development needs.

# 1 BACKGROUND AND OVERVIEW

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The purpose of this paper is to assist those involved in appointing consumer representatives to government and industry decision-making and advisory bodies. Consumer representatives have a vital role on these bodies – it is critical therefore that the best possible appointments are made.

The appointment of consumer representatives, however, has been a contentious issue. Consumer groups and other commentators have, on occasion, criticised both appointment processes and individual appointees to various bodies. Internally, the issue has also been difficult for consumer organisations.

These problems have been consistently raised for the last 20 years. Various appointment mechanisms have been tried and found wanting. Examples include unilateral appointments by a Minister, unilateral appointments by a consumer organisation or various combinations of both, where say a consumer organisation nominates a panel of possible appointees.

After consideration of this issue, Council came to the view that it is impossible to set out 'one' route for the appointment of consumer representatives. In fact, this may have been the reason no one mechanism has been able to stand the test of time.

Instead, Council has developed six principles to assist government and industry in the appointment of consumer representatives. Council believes this approach provides for a degree of flexibility, but for the first time, sets out a framework that will give government and industry some guidance about how to appoint a consumer representative.



## 2 CONSUMER REPRESENTATION: PURPOSE AND DEFINITIONS

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### 2.1 Why is consumer representation important?

The importance of consumer representation on government and industry decision-making or advisory bodies is becoming well accepted. It is useful, however, to briefly explore the reasoning behind this acceptance, both to put this paper in context and to set out the arguments for future reference.

The inclusion of ‘consumer representatives’ on appropriate bodies<sup>2</sup> is important because:

1. it ensures that government and industry bodies have access to a wide range of views in their deliberations. Subsequent decisions or advice will therefore be more robust and/or more likely to be accepted by stakeholders; and
2. consumers should have input into decisions which impact on them. This can be argued both from a ‘natural justice’ perspective, as well as representing sensible business practice.

In Council’s preliminary work on the subject of consumer representation it consulted with a number of bodies involved in the appointment of consumer representatives.<sup>3</sup> The unanimous view of all those consulted was that carefully chosen consumer representatives added considerable value. There was agreement that it was critical that the calibre of appointments be high – this applied equally to industry and consumer representatives, both of whom needed specific skill sets.

### 2.2 What is a consumer representative?

The broad skills a consumer representative should bring to decision making and advisory bodies are defined in a number of places, including government guidelines and industry self-regulation terms of reference. The underlying principle in all definitions is that a consumer representative should bring positive benefits to the position, including understanding of consumer issues and viewpoints, and have the confidence of the consumer movement.

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2 Note this paper does not examine two other issues surrounding the appointment of consumer representatives: the number of consumer representatives on any body and which particular bodies should seek to appoint a consumer representative.

3 These bodies included the Credit Union Dispute Reference Centre Pty Ltd, Insurance Brokers Dispute Scheme, Australasian Furnishing Research and Development Institute, Insurance Enquiries and Complaints Limited, Financial Industry Complaints Service Limited, Master Builders Association, Mortgage Industry Ombudsman Scheme, Australian Consumers’ Association, Consumers’ Federation of Australia, Legal Aid New South Wales, Insurance Council of Australia, Australian Securities and Investments Commission, Consumer Law Centre of Victoria and AAMI.

*Examples include:*

- 1996 Fair Trading Codes of Conduct – Why Have Them? How to Prepare Them?

*‘Consumer representatives . . . should be capable of reflecting the viewpoints and concerns of consumers and be people in whom consumers and consumer groups can have confidence.’*

- Benchmarks for Industry-Based Customer Dispute Resolution Schemes:

*‘representatives of consumer interests on the overseeing entity are:*

*(a) capable of reflecting the viewpoints and concerns of consumers; and*

*(b) persons in whom consumers and consumer organisations have confidence.’*

- the Insurance and Enquires Complaints Ltd Terms of Reference state that consumer representatives:

*‘shall bring to a panel expertise in consumer affairs’.*

- the Constitution of the Australian Banking Industry Ombudsman Scheme states that a Board member representing the consumer interest shall have:

*‘. . . an interest in and (be) knowledgeable about consumers’ interests relevant to the Scheme’.*

It is worth noting that all definitions use some form of wording stating that a consumer representative must be knowledgeable of the viewpoint of consumers or of consumers’ interests. In Council’s view, an understanding of ‘consumers’ interests’ is much broader than relying on one’s individual experiences as a consumer. It is a truism to state that we are all consumers; it does not follow that this is sufficient knowledge to represent the interests of consumers as a whole.

In Council’s view, although the definitions of a ‘consumer representative’ are very similar, it is preferable to agree on one form of wording. In this regard, the definition set out in the Benchmarks for Industry Based Customer Dispute Resolution Schemes (the Benchmarks) appears the most appropriate. It is clear and captures the importance of a representative having the confidence of consumer organisations and consumers.

## 2.3 ‘Consumer representatives’ and ‘Ministerial representatives’

For the sake of clarity, it is useful to draw a distinction between consumer representatives and ministerial representatives.

The definition of a consumer representative was set out in the section above.

Consumer representatives have no reporting requirement to a Minister since this would obviously raise potential conflicts of interest. In fact, in the case of quasi-judicial

appointments to bodies determining disputes, it would be a conflict of interest for representatives to be in a reporting relationship to a government official.

Ministerial representatives, on the other hand, are appointments to provide a conduit to and from a Minister. A person appointed to represent a Minister would be expected to keep a Minister advised.

Council is of the view that a Minister should be kept well informed about the operations of appropriate bodies in which he or she has a policy interest. This can be undertaken through normal bureaucratic processes, for example by regular written performance reports, through meetings with the Chair of the body or through a Ministerial appointment. It is not the role of a consumer representative to provide information to a Minister.

## 2.4 What is a 'consumer organisation'?

The term 'consumer organisation' also requires clarification, particularly since it could be open to misinterpretation or manipulation. There have been cases, for example, where some so-called 'consumer organisations' have in reality been fronts for industry lobby groups<sup>4</sup>.

Council believes that an appropriate definition of a 'consumer organisation' would be a group:

- whose main objective is to genuinely advance the interest of consumers; and,
- that is independent of industry and government in its decision-making.

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4 See 'The Secret Lobby', *Consuming Interest*, Autumn 1977, p 8-12.



### 3 PRINCIPLES UNDERPINNING AN EFFECTIVE APPOINTMENT PROCESS

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This section of the paper sets out six **principles** underpinning an effective appointment process of a consumer representative. The use of principles, whilst setting out a framework, also provides for a degree of flexibility, allowing organisations subscribing to them to implement them to suit their own specific needs.

The six principles are consistent with the purpose of consumer representation and the definition of a consumer representative as set out above.

#### Principle 1 — Appointments must be made on merit

All appointments must be based on merit. Nominees should therefore be required to meet defined selection criteria. Selection criteria would be developed by bodies requiring representation, but must be consistent with the definition of a consumer representative as set out in the Benchmarks, that is, the nominees must be:

1. capable of reflecting the viewpoints and concerns of consumers; and
2. persons in whom consumers and consumer organisations have confidence.

As a minimum, candidates should therefore demonstrate the following:

- Expertise in consumer affairs;
- Links to relevant consumer organisations;
- Capacity and willingness to consult with relevant consumer organisations; and
- Knowledge of, or the ability to acquire knowledge of, the industry/issues involved in the appointment.

#### *Example*

A government tribunal has a vacancy for a consumer representative. Selection criteria are developed for the position. In the case of this body, an additional criteria to those set out above, is 'an understanding, or ability to acquire an understanding of alternative dispute resolution processes'.

## Principle 2 — Appointees must be independent of industry or government

The independence of a consumer representative is critical to consumer confidence in the body. It is commonly accepted that independence is as much a matter of perception as fact.

Normally, past involvement by a person, as an employee or lobbyist in a particular industry, would preclude that person from later seeking to be a consumer representative in relation to that industry.

### *Example*

A consumer representative is required for the Board of a government authority that oversees the building industry. Some candidates for the position previously worked for industry associations. They are therefore considered ineligible for appointment.

## Principle 3 — Consumer organisations must be involved in appointments

Consumer organisations should be involved in the appointment process. There are many ways this could occur, for example, by asking consumer groups for input by providing a list of possible nominees, to including consumer organisations on nomination panels, to having consumer organisations choose the representative directly<sup>5</sup>.

The identification of the consumer organisations involved in an appointment process, will vary depending on the industry and/or issue. For example, in relation to utilities, the Australian Financial Counselling and Credit Reform Association – whose members often deal with consumers with utility debts – is likely to be a relevant stakeholder organisation; for tenancy matters, the Tenants' Union. The body requiring the nomination, should clearly set out which consumer organisations should be involved, and the extent and type of that involvement.

Unilateral appointments by a Minister, that is, with no consultation, would not be consistent with this principle. This kind of appointment is more properly described as a Ministerial representative.

The involvement of consumer organisations is consistent with the definition of a consumer representative – the representative chosen must have the confidence of both consumers and consumer organisations.

### *Example*

An industry complaint handling body asks a peak consumer organisation to nominate a representative to its Board.

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<sup>5</sup> An audit of the over 130 appointments in which the Australian Consumers' Association is involved, indicated that this is the most common method in use.

## Principle 4 — A wide range of candidates should be sought

Organisations appointing consumer representatives expect to appoint people of the highest calibre. Access to a wide field of candidates is therefore important. Similarly, consumers must be confident that as many people as possible with the relevant skills have the opportunity to be considered.

The appointment process may therefore need to involve advertising the position in relevant media or calling for nominations through established networks. The exact way in which this principle would be met will vary however, depending on the organisation(s) involved.

For example, where it is considered appropriate for a consumer organisation to provide a list of nominees or to nominate a person direct, the relevant body receiving the nominations should satisfy itself that the consumer organisation has appropriate processes in place to ensure compliance with this principle.

### *Example*

An Ombudsman scheme requires a consumer representative. The Scheme advertises in the nationwide press and also requests peak consumer bodies to provide a list of candidates.

## Principle 5 — The appointment process must be consistent with good corporate governance and, where relevant, good practice in self-regulation

Many bodies requiring consumer representatives will either be incorporated associations or companies limited by guarantee and governed under the Corporations Law. The boards/management committees of these organisations have certain governance responsibilities; these certainly extend to ensuring that appointments to the board/management committee or other parts of the organisation will advance the objects of the organisation.

Similarly, many of the bodies requiring consumer representatives will be those set up by industry as part of an overall self-regulatory framework. The appointment of consumer representatives in these cases must ensure that better self-regulatory outcomes will be achieved.

### *Example:*

A Board sets up a 'Nominations Sub-Committee' to oversee the appointment process of new Board members, that is, from developing selection criteria to advertising to short-listing. The final decision as to the successful candidate is made by the Board. The Sub-Committee uses the same approach for both appointments of consumer and industry representatives.

## Principle 6 — The appointment process must be transparent, accountable and cost-effective

The appointment process should not impose an unnecessary cost imposition on any of the organisations involved. Common sense should apply. It would be excessive, for example, to advertise nation-wide for consumer representatives for, say, a body whose decisions will have little impact on the majority of consumers. Realistically it would be better to rely on relevant consumer groups to source nominees through their networks – they are more likely to be able to identify a person with relevant expertise.

The appointment process itself should be documented and records kept of how decisions are made. In terms of accountability, this ensures the process will withstand outside scrutiny.

*Example:*

An electricity retailer is setting up a consultative committee. The organisation asks appropriate consumer groups, such as financial counsellors and consumer legal centres, to nominate representatives. This is the most cost-effective mechanism, given the purpose of the body. The industry regulator, who has required the establishment of this body, approves this approach and 'audits' its implementation.

## 4 RESOURCING OF CONSUMER REPRESENTATIVES

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To adequately fulfil their roles, consumer representatives require adequate resourcing. This involves:

1. Payment of sitting fees or, depending on the body, an annual salary.

No person should be expected to sacrifice their normal salary in order to contribute as a consumer representative. Apart from the lack of equity in such a position, it devalues the role of the representative. Where the body concerned has been set up by government, payment must obviously be consistent with the remuneration guidelines already established.

2. Payment of expenses.

No person should be 'out of pocket' as a result of their role.

3. Access to ongoing training and other professional development.

All members of an organisation need skill development. Members of Boards, advisory committees and similar bodies are not exceptions. The argument could be made in fact, that their need is paramount, given the importance of the role.

Bodies appointing consumer representatives in particular, should consider facilitating the attendance of these representatives at appropriate consumer or industry conferences. Many of these events provide opportunities for consumer representatives to share information, to access specific training and consider industry-wide or systemic issues arising from their roles.

Council notes that all three points above apply equally to industry representatives as well as consumer representatives.