

Foundation for Effective Markets and Governance

ACN 094 694 078 ABN 84 094 694 078
PO Box 7017 Yarralumla ACT 2600 Australia
Phone + 61 408 375 642
Email: secretary@femag.org.au
www.femag.org.au



Attached is a Submission to the

Independent Review of the Australian Public Service

ACCESS2 stands ready to provide the review with comprehensive background information on our submissions should the Review wish to receive it.

A handwritten signature in blue ink, appearing to read "Robin Brown".

Robin Brown

Deputy Chair 0403475580

31 July 2018

Independent Review of the Australian Public Service

ACCESS2 notes the scope of the Review includes:

1. driving innovation and productivity in the economy
2. delivering high quality policy advice, regulatory oversight, programs and services
3. tackling complex, multi-sectoral challenges in collaboration with the community, business and citizens
4. ensuring our domestic, foreign, trade and security interests are coordinated and well managed
5. improving citizens' experience of government and delivering fair outcomes for them
6. acquiring and maintaining the necessary skills and expertise to fulfil its responsibilities.

This submission is directed particularly at 2, 3 and 5 though it is relevant to 1 and 6.

The special interest of ACCESS2, as its name suggests, is access for ordinary consumers to effective markets (that is fair and efficient) and access for ordinary citizens to government to

- ensure policy on market regulation and administration of that regulation is in the consumer and wider public interest rather than the producer interest – **effective citizen participation in public policy formulation**, and
- ensure integrity in public administration and general responsiveness to their needs and wants – **a strong “fourth arm” of government**

Information about ACCESS2 may be found here www.femag.org.au

Citizen Participation in Public Policy Formulation

It might be the case that those who first conceived of the idea of representative democracy had in mind that when citizens elected their representatives and delegated to them the task of government they would be happy to leave them to it until the next election. For a very long time now ways and means for citizens to participate in government decision-making beyond the ballot box have been developing in Australia and other representative democracies. In nearly every area of government policy advisory and regulatory bodies with citizen appointees, public inquiries and public meetings of various kinds are commonplace.

The problem of course is that some groups of citizens tend to participate more, or are better able to participate, than others. For many the reason is largely to do with the costs and benefits of participation. If one's livelihood or relative wealth as a farmer, doctor, lawyer or ordinary worker is affected or likely to be affected by a public policy, it makes sense to participate or to pay to belong to an advocacy organisation which will participate on your behalf. The public policy formulation process and public administration including regulation are likely to be influenced to the advantage of, or even captured by, such special interests through their advocacy organisations. However, getting citizens in general to pay up to have their interest represented through an advocacy organisation in relation to a particular policy or regulatory issue as consumers of a good or service or beneficiaries of a clean environment is much harder. The benefits of participation are often seen to fall well below the costs. This is largely due to the "collective action problem" (Mancur Olson, 1965). So, where public policy should reflect a diffuse public or consumer interest, members of the community at large will, not unreasonably, question why they should devote a lot of time and energy with everyone else "free riding" on their efforts.

A good example is industry and trade policy. In many countries this policy area has often been heavily influenced by both major employer and employee groups, at the expense of the economy and citizens as consumers in general. In Australia this was perhaps at its zenith during the Menzies years. There has been progress in this area of public policy, but more is yet to be achieved.

It is important to note that special interest groups range from strong and influential producer groups to weak producer groups such as perhaps some small business sector groups and small trade unions. It is also important to note that there are many consumer special interests. Some of these are able to organise for advocacy and some of these groups have sufficient strength to have an impact on public policy (examples are some particular health consumer groups). However, most are weak public policy actors. There are also the weak special interest voices of people living in disadvantage for whom organising themselves for advocacy is totally impractical.

A school of public policy thought emerged in the late seventies and eighties that said that the best thing was for governments to determine the public interest and the needs of special interests entirely by themselves, isolated from all interest groups. But anyone who has observed the policy process disinterestedly to any great extent knows that this is quite impossible. In most areas policy cannot be made without knowledge of the technical and economic possibilities and practicalities and this can rarely be determined with any accuracy without consulting the relevant producers or providers of the goods or services in question. Thus the door is opened and inevitably what policy advisers hear in such consultations is not entirely objective, factual information unmodified by the interests of the special interest groups involved.

Of course, many public policy practitioners see themselves as ordinary citizens and quite able to work out the public or consumer interest and bring the required balance to a policy decision. This is not easy, though, if the voices of the strong interests are heard more often and if, as is often the case, they are saying that they have worked out what is best for the

citizenry. It makes it even harder when the voices are heard over complimentary drinks at the complimentary ballet or rugby match or some similar occasion.

In today's world the problem is compounded with the trend toward globalisation of public policy. Members of national delegations to international forums are rather more likely to find themselves in the aeroplane in business class, or in the bars of the hotels with the lobbyists of strong special interests than the advocates of weak special interests and of the public or consumer interest. The latter are exerting some influence outside the barriers around these forums, but this does not seem to be the way to develop measured public policy. A good illustration is the recent attempt by USA representatives to prosecute the interests of breast milk substitute manufacturers at the WHO even to the extent reportedly of threatening Ecuador and other nations with trade sanctions should they sponsor a proposal on the issue. In the event Russia sponsored and the proposal succeeded.

The Whitlam government's Interim Commission on Consumer Standards recommended the formation and funding of a consumer organisation 'to provide a national voice for the consumer movement and facilitate communication with government agencies'. The government acted on this and provided funding for the establishment of the Australian Federation of Consumer Organisations (AFCO now called the Consumers' Federation of Australia - CFA) in 1974.

Such funding was endorsed by the Coombs Royal Commission into Australian Government Administration in 1975. It understood the problem of getting the voice of consumers and other weak and diffuse voices into the policy formulation process. It recommended a continuing programme for disbursement of funds to appropriate advocacy organisations

Australian governments, of both complexions have provided such funds, but not as consistently as needed to ensure these voices are heard when they need to be heard. The Consumers' Federation of Australia has, for example, failed to regain government funding since its funding was withdrawn by the Howard Government.

There are, though, three funded specialist consumer organisations: the Consumers' Health Forum, the Australian Communications Consumer Action Network, and Energy Consumers Australia. The first of these is funded from general revenue. The others are funded by levies on the relevant industries. It was actually the initiative of the then Telecom Australia to fund ACCAN's forerunner (the Consumers' Telecommunications Network). Telecom Australia's Ted Benjamin and Dr Terry Cutler understood that telecommunications policymaking would be the poorer without the consumer interest being independently researched and advocated.

Also, it has been the case that governments have generally accepted that wherever there are special producer interest representatives in advisory or regulatory bodies these should be balanced with public and weak special interest representatives as appropriate. The value in terms of knowledge and perspectives public and weak special interest

representatives bring is usually recognised with the payment of appropriate fees, but this is by no means universal. Moreover, it is problematical that producer representatives on such bodies can call on support from well-resourced producer organisations while public interest and consumer representatives are often flying solo.

It is noteworthy that in the USA, where substantial funds are available from the many large private foundations (scarce in Australia and many other countries) observers of the public policy process nevertheless see the need for public funding of public and weak special interest and consumer organisations. William Gormley (1991), one such observer, says: "Without such support, citizens must often choose between passive acquiescence and hysterical appeals to the mass media for publicity. With government support, citizens can sharpen their own understanding of complex issues before they make a case to the bureaucracy. The playing field (between producer and consumer interests) may not be equalized, but it does become more equal."

The benefit of seeking out, encouraging and structuring public and weak special interest and consumer participation in government decision making and properly resourcing it from the public purse far outweighs the cost.

Examples of public policy contributions resulting from the modest funding of the Consumers' Federation include:

- Influence on industry assistance and trade policy reform during the eighties
- establishment of the Federal Bureau of Consumer Affairs and appointment of the first Federal Minister for Consumer Affairs
- significant changes to consumer policy and legislation including class actions and product liability
- establishment of two specialist consumer bodies with dedicated funding - the Consumers' Telecommunications Network (now expanded to the Australian Communications Consumer Action Network) and the Consumers' Health Forum
- significant developments in micro-economic reform and regulatory policy change including in the food, pharmaceutical, aviation, telecommunications and financial services markets
- establishment of industry-based co-regulatory external dispute resolution schemes initially in banking and insurance
- securing consumer representation on all relevant national policy advising and regulatory bodies

The federation also participated in all major policy processes including the economic and tax summits and was represented in the Economic Planning Advisory Council

A particularly important achievement was a landmark win in a court case against the tobacco industry (AFCO V Tobacco Institute of Australia) on the hazards of passive smoking which has allowed much subsequent successful litigation against the industry and supported smoking regulation nationally and internationally.

The Productivity Commission understood the need for an independent well-resourced voice for the consumer interest and in its report on consumer policy recommended funding of a consumer policy organisation.

We call on the Review to:

- **acknowledge the relative much weaker influence of the consumer and wider public interest relative to the producer interest in the public policy process, and**
- **explore ways of establishing long term resourcing of an independent national consumer policy organisation.**

The “Fourth Arm” of Government

Integrity in the administration of government, though not explicitly mentioned in the scope of the review, is nonetheless implicit in all of them.

Over the past 10 years, judicial, academic and public administration officials have posited the value of and need for the recognition of a ‘fourth arm’ of government comprised of independent public agencies whose role it is to:

- provide a window into what the public sector does
- report on how well it is doing its job, and
- provide an assurance to parliaments and the public that what they say is true and fair.

Commonwealth Agencies of relevance include: the Commonwealth Ombudsman, the Office of the Information Commissioner, the Public Service Commission and the Auditor General. The list should include a Commonwealth anti-corruption body; however, no such body currently exists.

ACCESS2 calls on the Review to have regard to the emerging literature and practice in recognising integrity agencies and their ‘fourth arm’ status within the Commonwealth Public Service.

It is our observation that the role accorded to each of the agencies and resources provided to them show long term decline to the detriment of the governance of the public sector.

We call on the Review to:

- **acknowledge the centrality to parliamentary democracy of responsiveness of government and its agencies to citizens**
- **affirm the need for strong, independent integrity agencies in securing the objects of the Review,**
- **consider and recommend measures to both protect and ensure accountability of the agencies to the Parliament, and**
- **explore measures undertaken by State integrity agencies to enhance the operations of parliamentary democracy through providing avenues for public participation, ensuring public sector accountability and dealing with increasingly complex issues of governance.**