

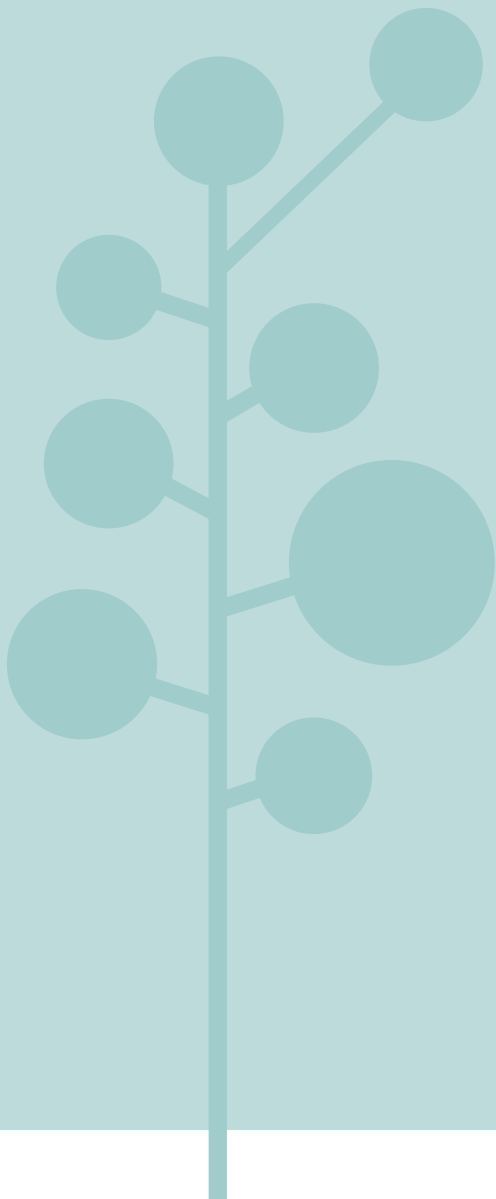


Consumer Affairs

This document is a guide to the Consumer Affairs portfolio and provides a summary of key issues and themes for the next few years. It accompanies the Ministry of Economic Development's briefing *Advancing Economic Development* which provides an overview of its thinking about economic development policy.



MINISTRY OF CONSUMER AFFAIRS
MANATŪ KAIHOKOHOKO



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Introduction

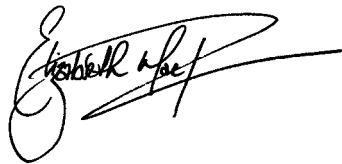
This document is a guide to the Consumer Affairs portfolio and Vote: Consumer Affairs. It summarises key issues and themes for the next few years. It will be supplemented by separate papers as required.

It accompanies the Ministry of Economic Development's briefing *Advancing Economic Development*, which outlines the key issues Ministers need to consider when devising their strategy to raise New Zealand's rate of economic growth. Our current Ministry profile describes the Ministry's five strategic priorities and the work being done to progress them. It also profiles our organisational structure and provides contact details for our key managers.

The issues and outputs covered by this briefing are handled by the Ministry of Consumer Affairs, a semi-autonomous body within the Ministry of Economic Development. Day to day responsibility for these issues has been delegated to Elizabeth MacPherson, General Manager, Ministry of Consumer Affairs.



Geoff Dangerfield
CHIEF EXECUTIVE



Elizabeth MacPherson
GENERAL MANAGER

Overview

Background

The Ministry of Consumer Affairs is part of the Ministry of Economic Development. The General Manager of the Ministry of Consumer Affairs is also a Deputy Secretary of the Ministry of Economic Development, and the Consumer Affairs Branch includes functions that fall within other Votes.

The Ministry of Consumer Affairs was established in 1986 as a semi-autonomous Ministry within the Department of Trade and Industry to provide independent policy advice and with the Cabinet mandate to “be directly responsible to the Minister of Consumer Affairs”. The original rationale for the Ministry’s establishment was a concern that without an entity with an explicit mandate, consumer issues would not be taken account of in government policies, particularly business-related policies, leading to potentially negative impacts for consumers and poorer policy overall.

As the Ministry of Consumer Affairs is a branch of the Ministry of Economic Development, under the Public Finance Act and State Sector Act, the Chief Executive of the Ministry of Economic Development is accountable for all aspects of its performance. The authority to give effect to this Ministry’s mandate therefore sits with the Chief Executive. The Chief Executive currently gives effect to the Ministry’s mandate by delegating the ability to provide policy advice and other contracted services direct to the Minister of Consumer Affairs, including developing and signing purchase agreements.

The practical implications of this structure is that Consumer Affairs has a special identity as the Ministry with a focus on creating an environment in which consumers can transact with confidence, and also works within a broader sustainable economic development framework.

Vote: Consumer Affairs comprises the following areas:

- › Policy responsibility for the three overarching pieces of consumer legislation that form part of the basic framework for effective markets and govern all consumer transactions. These are the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Weights and Measures Act 1987.
- › Policy responsibility for a number of transaction-specific laws that also cover certain purchases or selling methods that present special risks to consumers, including the Credit Contracts and Consumer Finance Act 2003, the Motor Vehicle Sales Act 2003 and the Door to Door Sales Act 1967.
- › Enforcement of the Weights and Measures Act.
- › Product safety banning and recall provisions of the Fair Trading Act.
- › Information provision, either directly or through partnering with other organisations, to consumers on consumer and business rights, obligations and avenues for remedy and redress; and specific information on current scams and how to avoid them. In some cases, information delivery strategies are tailored so as to penetrate to groups of consumers disproportionately affected by bad

- deals. In addition, funding is provided for Powerswitch, a service that allows domestic consumers to compare the deals offered by electricity and gas retailers.
- › Promoting consumer representation in decision-making processes where these processes are likely to impact on consumers.

The annual appropriation of Vote: Consumer Affairs is in the order of \$6.8 million. This introduction highlights the key features of the portfolio and the challenges ahead.

Consumer policy framework

Consumer Affairs's policy focus was reviewed some three years ago. One outcome was that the focus of consumer policy should be on creating the conditions in which consumers can "transact with confidence". In practice this means that consumers should get what they reasonably expect from a purchase and, if not, have access to redress.

Transacting with confidence is not just important for the individual, it is also essential to a thriving, innovative and sustainable economy. When consumers demand higher quality products and services, make effective choices among the offerings of competing suppliers and seek satisfaction when their purchasing expectations are not met, they can stimulate greater economic efficiency and innovation. Effective markets need demanding consumers who take action if business does not meet their needs and demand better service, new products and better value for money.

The key challenge for consumer policy generally is improving our understanding of how consumers make decisions and hence what refinements to policy could be considered to ensure consumers can transact with confidence. Among the initiatives being taken:

- › Assessing the relevance of the relatively new field of behavioural economics to current approaches to regulation. For example, information barriers are a significant reason why consumers do not get what they expect when making a purchase and this has led to an emphasis on information disclosure as a principal regulatory tool. However, consumers do not always respond as expected when better information is available to them. Behavioural economics may offer new insights into consumer behaviour.
- › Improving our understanding of the linkages between consumers, competition and innovation and drawing out implications for policy. As economies seek to become more innovative, there is an increasing focus on what drives innovation. One assumption is that sophisticated, confident consumers can encourage firms to be more innovative, and firms will compete to attract the business of these consumers.
- › Looking at what overseas jurisdictions are doing to encourage consumers to purchase and use products in a sustainable way. This is to assess what role, if any, a Consumer Affairs Ministry might play in this area.

A further key challenge is ensuring that the consumer policy framework is fair to both consumers and business and has the minimum regulation necessary to achieve its goals. Striking the right balance between consumer rights and responsibilities and those of business requires both good evidence and considerable judgement.

Monitoring and enforcing consumer policy and law

To create effective consumer law, the government provides information and establishes market rules and mechanisms for their enforcement (including access to redress mechanisms). The incentives on businesses to behave in accordance with market rules depend on how effective information programmes and rule enforcement are, and also industry self-regulation and voluntary compliance.

The key challenges in this area:

- › Better understand the effectiveness of consumer programmes and laws, both in general and in terms of their impact on particular groups. To this end, we are undertaking baseline surveys of both consumers and traders, and using our networks to develop a comprehensive database on issues of concern to consumers.
- › Better understand how specific consumer programmes and laws are working in practice, and determine whether any weaknesses reflect the rules and/or the enforcement strategy. To this end, we are reviewing the redress and enforcement provisions in the Fair Trading Act 1986 and Consumer Guarantees Act 1993, reviewing the operation of the Motor Vehicles Sales Act 2003, reviewing the initial implementation of the Credit Contracts and Consumer Finance Act 2003, and assessing how effective our information strategies are in reaching vulnerable groups.
- › Differentiate our measurement and product safety compliance approaches depending on the characteristics of the business concerned, for example, by putting more time into rogue traders and less time into minor (and often unintentional) breaches by businesses with a responsible track record.
- › Better understand the contribution that industry self-regulation is making, or can make, to effective consumer law. To this end, we are assessing the effectiveness of current practices in industry self-regulation, as well as its role in the broader mix of regulatory approaches to consumer protection, redress and enforcement.
- › Contribute our knowledge to emerging areas of consumer concern. For example, we will be taking a leading role in the review of financial products and providers, which includes the regulation of financial intermediaries.

Consumer representation

Involving consumers in decision-making processes, where the outcomes are likely to impact on them, helps to ensure policies are developed that reflect a consumer perspective and are likely to be effectively implemented and successful.

We promote consumer representation through providing guidelines on how to select and use consumer representatives effectively. We also provide a free nomination service.

The key challenges in this area:

- › Increase our pool of nominees. We have recently undertaken recruitment and training, attempting particularly to locate good potential consumer representatives outside of the main centres.
- › Ensure that consumer representatives on decision-making bodies are used effectively and are appropriately compensated for their contributions. Unlike many industry representatives, consumer representatives do not get paid to attend bodies such as Standards Committees. This can result in a reluctance, over time, to engage.
- › Make more use of the consumer representation network as an input into consumer and consumer-related government policy more generally.

International dimensions of consumer policy and law

There are two main international dimensions of consumer policy. The first is the opportunity to reduce technical barriers to trade that arise out of different consumer laws in different countries. The second is to manage the risk of goods or services originating in another country escaping the reach of domestic consumer law. Goods sold over the internet are an example of this.

The key challenges in this area:

- › Coordinate our laws with other countries (and in particular Australia in the context of the single economic market goal) in such a way that technical barriers to trade are minimised but allows us to retain our ability to regulate in ways that reflect unique New Zealand conditions or preferences.
- › Design effective cross-border information sharing and enforcement cooperation programmes with other countries.

Strategic priorities

The broader Ministry of Economic Development's strategic priorities focus our expertise and resources on activities that have the most impact for sustainable economic development. In summary, these are:

- › **leadership:** leading a whole-of-government approach to economic development
- › **international linkages:** improving international linkages that allow firms to benefit from trade, knowledge transfer and investment
- › **innovation:** fostering entrepreneurship and innovation in New Zealand firms
- › **regulatory environment:** strengthening the growth focus in the regulatory environment for business
- › **infrastructure:** strengthening the quality and reliability of key infrastructure services.

In keeping with the Ministry's five strategic priorities, the work programme under Vote: Consumer Affairs over the next three years will include:

- › examining whether there are opportunities to further improve growth prospects in New Zealand, using a combination of competition and consumer policies
- › working with Australian counterparts to examine the potential for greater harmonisation of consumer law where this is in New Zealand's best interest
- › undertaking a review of industry-led regulation focusing on when it works, when it doesn't and how it could be enhanced as a tool for achieving policy goals.

Policy Advice Outputs

Consumer Affairs' work is aimed at creating the conditions in which consumers can transact with confidence and give both direct consumer benefits and greater economic efficiency and innovation. The Ministry advises on consumer and consumer-related policy, provides consumer information directly, builds the capability of other organisations to address consumer issues and administers the trade measurement and product safety regimes.

The Consumer Affairs branch is headed by Liz MacPherson and is organised into five functional groups, namely Policy (Consumer and Energy Safety), Research, Information and Capability, Measurement and Product Safety, Energy Safety Operations, and Strategic Branch Support. Energy Safety (policy and operations) and Measurement and Product Safety are funded solely through Vote: Energy and Vote: Consumer Affairs respectively. The other three functional groups contribute to the outputs of and are funded by both Votes.

The discussion of the key outputs for Vote: Consumer Affairs over the next three years follow the headings provided in the Overview:

- › Consumer policy framework
- › Monitoring and enforcement of consumer policy and law
- › Consumer representation
- › International dimensions of consumer policy and law.

A further discussion is provided on the operational aspects of Measurement and Product Safety.

Consumer policy framework

Improving the living standards of New Zealand consumers is the ultimate goal of a thriving, innovative and sustainable economy. Consumers are not simply the beneficiaries of such an economy; they also play an active role in its development and growth through their purchasing or transaction decisions. By demanding higher quality products and services, making effective choices among the offerings of competing suppliers and seeking satisfaction where their purchasing expectations are not met, consumers can stimulate greater economic efficiency and innovation.

Helping to create the conditions in which consumers can transact or purchase with confidence – where they get what they reasonably expect from a purchase, and if not, have access to redress – is the role of consumer policy. Confidence in transacting is important. When consumers are not confident:

- › They may avoid transacting in the future to avoid the possibility of a bad deal and its consequences. This may have far-reaching implications. For example, New Zealanders have a relatively small proportion of their net wealth invested in financial products. There is some evidence that this is due, in part, to a lack of confidence in the range of products on offer (due to their complexity) and the quality of advice received from investment advisors.

- › It may result in consumer inertia. Consumers may opt for an existing supply arrangement because of the perception (real or not) that they will face risk or costs by switching to another supplier or means of supply, even though another supplier or means of supply may offer a better deal. This can lessen the competitive pressures on suppliers, resulting in higher prices, less choice and lower quality products or services. There is some overseas evidence that this situation may apply to energy supply services and banking services.
- › They may spend considerable time and effort investigating or will accept higher costs attempting to avoid a bad deal.

Information barriers are a significant reason why consumers do not get what they expect when making a purchase. Generally, consumers have less information about the product or service they are purchasing than the producer or supplier. Some product defects may not be obvious or may only become apparent through use or over time. New products may be unfamiliar or transactions may be very complex. Information may be costly or difficult to obtain.

Suppliers may also withhold information or make misleading claims about a product or service for competitive advantage. Consumers also vary in their ability to absorb and make effective use of information. They are more likely to make a bad deal when they under or over-estimate the relevance or importance of information about a particular product or service. For example, they may underestimate the importance of the interest rate when entering into a credit contract or over-estimate the importance of the nominal odometer reading when purchasing a used car.

Next three years

Developing a deeper understanding of consumer and trader behaviour and its implications for the effectiveness of consumer and competition policies is a key strategic issue for this Ministry. Currently, information about how consumers and traders behave and make decisions is lacking. New thinking in behavioural economics, however, is beginning to redress this issue.

- › Within the wider Economic Development Ministry, this Ministry is leading a project that will assess common assumptions about the way consumers make decisions. For example, there is an assumption that consumers want and need full information to enable sound decision-making. It will also consider the role of regulation in changing behaviour. In particular, this project will address the challenge of designing regulation so that people's responses further the social and economic objectives that regulation is seeking to achieve.

As economies seek to become more innovative, questions about what drives innovation are becoming increasingly important. Assumptions have been made about the way consumers transact and the impact that consumer behaviour has on sustainable economic development. A key assumption is that in competitive markets, i.e. those markets where consumers have a choice, confident consumers drive innovation by rewarding innovative firms with their business.

While this assumption underpins consumer policy in both New Zealand and other countries, the evidence to support it is largely theoretical. Understanding what happens in practice is critical to unlocking barriers to innovation and competition.

- › Within the wider Economic Development Ministry, the Consumer Affairs Ministry is leading a project looking at the linkages between consumers, competition and innovation. This work, drawing on information from a variety of disciplines, including behavioural economics, will allow us to examine whether changes to competition or consumer policy could foster entrepreneurship and innovation in New Zealand firms.

Concerns about sustainable economic development are leading to a greater focus on the role of the consumer in sustainable management of our resources. Questions are increasingly being asked about the appropriate role for public policy in encouraging people to make sustainable consumption choices. We are currently reviewing the approaches that are being taken to promote responsible consumption in other international jurisdictions to ascertain what role, if any, a Ministry of Consumer Affairs might play in this area, particularly given the existence of agencies such as the Energy Efficiency and Conservation Agency and the Ministry for the Environment.

Monitoring and enforcing consumer policy and law

Creating incentives for good and accurate information flows between consumers and suppliers is the primary aim of consumer policy. To help create good and accurate information flows, government:

- › establishes and enforces market rules
- › promotes and provides access to redress mechanisms
- › provides information
- › promotes consumer representation on decision-making bodies.

Establishing market rules

Consumer law generally seeks to address three broad consumer issues – information availability pre-sale, undue surprises post-sale and duress or undue pressure when purchasing. Three overarching pieces of consumer legislation form part of the basic framework for effective markets and govern all consumer transactions. These are the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Weights and Measures Act 1987.

The Fair Trading Act focuses primarily on the pre-sale environment. Its main aim is to ensure that consumers are not misled about what to expect about a transaction. It therefore requires that all trading activities are based on honest and accurate information. It also allows for bans and recalls of unsafe products and the imposition of mandatory information or product safety standards where necessary. The Consumer Guarantees Act focuses on the post-sale environment and provides statutory guarantees if a good or service does not meet certain

standard consumer expectations (including being safe, fit for purpose and durable). The Weights and Measures Act aims to ensure that consumers get the quantity of goods they have been led to expect.

A number of transaction-specific laws also cover certain purchases or selling methods that present special risks to consumers. For example, the recently enacted Credit Contracts and Consumer Finance Act 2003 aims primarily to ensure that consumer expectations and choices regarding credit are based on clear, accurate information. The Motor Vehicle Sales Act 2003 aims to ensure that consumers have confidence in transacting in the purchase of vehicles through establishing a trader registration regime and ensuring good and accurate information is provided on which to base their purchasing expectations. The pressure associated with door-to-door selling methods can cause consumers to make unwise decisions that they later regret. The Door to Door Sales Act 1967 provides a seven-day cooling-off period in which consumers can unmake these decisions in un-pressurised conditions.

Enforcing market rules

The incentives on businesses to behave according to market rules largely depend on those rules being effectively enforced. Most consumer law relies on consumers taking action themselves by seeking redress from the supplier and, if this is not forthcoming, through the court system (usually referred to as self-enforcement). Where consumer law is publicly enforced, this is generally through the Commerce Commission (as with the Fair Trading Act and the Credit Contracts and Consumer Finance Act). An exception to this is the Weights and Measures Act which is enforced by Consumer Affairs. In addition Consumer Affairs has a complaints handling/investigation role that supports Ministerial decisions on the product safety banning and recall provisions of the Fair Trading Act.

Promoting and providing access to redress

Having effective redress mechanisms available can reduce consumers' assessment of the risk of purchasing from a supplier they do not know or trust (or have imperfect information about). This is because they know they can seek a remedy if things go wrong. The requirement to provide redress can also reduce levels of product and service failure because suppliers have an incentive to meet consumer expectations.

The primary redress mechanism available to consumers is through the court system. The Disputes Tribunal and Motor Vehicle Disputes Tribunal (provided through the Ministry for Justice) aim to provide accessible, lower cost disputes resolution for consumers who are unable to afford District Court action. Government also seeks to improve access to redress by promoting complaints mechanisms run through industry self-regulatory schemes such as the Banking Ombudsman, Electricity and Gas Complaints Commissioner, Insurance and Savings Ombudsman and the Advertising Standards Complaints Board.

Providing information to consumers and businesses

Good and accurate information flows between consumers and businesses at the point of sale is the most effective way of ensuring consumers get a good deal. In addition to providing the incentives for this to occur, this Ministry also provides access to certain types of information. The most important of these are:

- › general information about consumer and business rights, obligations and avenues for remedy and redress, which is provided for example through the internet, printed information resources and through partnering with community organisations such as the National Association of Citizens Advice Bureaux
- › the Scamwatch section on the Ministry website, which has information on specific types of current scams and how to avoid them
- › *Powerswitch*, a Consumers' Institute service funded by this Ministry, which allows domestic consumers to compare the deals offered by electricity and gas retailers. Addressing information barriers and enabling consumers to compare alternative energy options is one of the government efforts to stimulate competition in the energy industry.

Certain groups of consumers are disproportionately affected by bad deals. Such groups' need for general consumer information is met by using tailored strategies to ensure the information reaches them and is seen to be relevant.

Next three years

To assess whether the desired outcome of consumer programmes and laws are achieved, their impact has to be monitored and evaluated. Where improvements or amendments are needed, recommendations to change current practice or amend the legislation will be proposed. The Ministry distinguishes between those projects that aim to generally understand consumers and their issues, and those reviews of specific programmes or laws.

- › During 2005, the Ministry commissioned two major baseline surveys. The first consumer survey involves interviewing 1,000 consumers about their knowledge and attitudes to the consumer protection legislation and their experiences of seeking redress. The second survey will focus on traders. They will be questioned on their knowledge of the consumer protection legislation, how it applies to their business and their experiences of working with the legislation. The data gathered from these surveys will provide us with baseline information and will be used in the review of the enforcement of consumer protection law.
- › A key part of our research strategy is to access available data and qualitative information about the issues of concern to consumers. The primary source of this data is Citizens Advice Bureaux, which provide free consumer advice to the general public under the terms of a partnership agreement between the National Association of Citizens Advice Bureaux and the Ministry. The 75,000-plus consumer enquiries the Bureaux handle annually are potentially a rich source of relevant data and information about consumer issues and how consumers behave in the marketplace. Our data-capture project will enable 12 selected bureaux to collect and deliver data electronically on all the consumer enquiries that they handle.

The Ministry is responsible for a number of specific programmes and laws and is currently reviewing these, or particular aspects of them, to ensure that they are effective, taking into account new ways of buying and selling (such as internet-based trading) and do not place unnecessary compliance costs on business.

Key projects:

- › **Reviewing the enforcement of consumer protection law.** The review is to measure the effectiveness of the current redress and enforcement provisions in the Fair Trading Act and the Consumer Guarantees Act and identify any need for amendments. An initial think-piece document that outlines the scope of the project, and provides a summary of the theoretical and conceptual literature that underpins the review's subject matter, was released in July 2005. A discussion document comparing the redress and enforcement provisions in the two Acts with those found in consumer protection legislation in other similar jurisdictions, is due to be released later this year.
- › **Reviewing the Motor Vehicles Sales Act.** This Act came into force in December 2003. The new regulatory regime moved away from an industry-controlled licensing framework to a registration process, administered and enforced by government agencies. A Motor Vehicle Disputes Tribunal was also established with authority to consider all complaints relating to the purchase of a motor vehicle. There is a statutory obligation to review the operation of the Act after two years and this may give rise to recommendations on amending the Act or its administration.
- › **Monitoring and evaluating the Credit Contracts and Consumer Finance Act 2003.** The Act, which came fully into force on 1 April 2005, regulates the provision of consumer credit – home loans, personal loans, credit sales/hire purchase, credit cards, long-term leases and housing buy-back schemes. The Ministry intends to monitor and evaluate the effect that the Act has had on the credit contracts into which consumers enter. The review will be in two parts: assessing whether the Act has been properly and timely implemented; and whether the Act has achieved the policy objectives that were defined during the review of the consumer credit legislation.
- › **A study into the scope of measurement activity and legal metrology in New Zealand.** A report on this is currently being finalised. This report will outline what legal metrology¹ contributes to economic and social well-being, and identify future legal metrology capability issues and opportunities for New Zealand to use its membership of the International Organisation of Legal Metrology to achieve better health, safety, environment and trade outcomes.
- › **Reviewing the Ministry's information strategies.** Consumers are confident only if they have a basic understanding of their rights and obligations under consumer law. Certain vulnerable groups of consumers (those with low levels of education, English language and income) are less likely to have this understanding or know where to go to obtain information. Consumer Affairs has a number of information strategies in place specifically aimed at these

1 Metrology is the science of measurement. Legal metrology relates to activities that result from statutory requirements and concerns measurement, units of measurement, measuring instruments and methods of measurement.

groups. In the coming year, it will review these information strategies to ensure that they remain relevant, are focused on the right groups and are penetrating to right target audiences.

› **Reports on information strategies focused on vulnerable consumers.**

The State Services Commission recently led a review of targeted programmes. The Ministry tailors its delivery of information to meet the needs of different audiences and the review concluded this was appropriate as the same information is made available to all consumers. However, the Commission recommended assessing whether certain vulnerable groups may require improved access to information. Accordingly, Cabinet has directed the Ministry to report to the Minister of Consumer Affairs on:

- how effectively it provides this information to other vulnerable groups
- how to better meet the information needs of Pacific peoples and any resourcing issues in doing so.

Industry-led approaches to regulation include voluntary codes of conduct and consumer dispute resolution schemes. Industry-led regulation covers schemes such as the Banking Ombudsman, and the Electricity and Gas Complaints Commission.

- › The Ministry is examining the effectiveness of current practices in industry-led regulation, as well as its role in the broader mix of regulatory approaches to consumer protection, redress and enforcement. The first discussion document on this review, which sets out a framework to help consumers and industry establish, operate and evaluate industry-led regulatory schemes, was released in July 2005. Submissions on the discussion paper close 14 October 2005.

Over the last few years, the Ministry has been progressively focusing on particular sectors of the market where significant consumer detriment exists. An area, in recent times, where consumers are experiencing increased detriment is the financial services market. Financial products and services create particular problems for consumers. Key issues impacting on consumers are how the financial services market operates, the complexity of this market and the costs involved. Consumers may find information on financial products and services, produced by independent sources, particularly difficult to source or to understand.

Even when financial providers supply a large amount of information, it may not assist consumers to make the best decisions because they may not be able to interpret the information and easily apply it to their own financial situation. Financial products can be particularly difficult to choose between because it is often not until some future date that consumers can easily determine the real returns on their investments.

- › The Ministry is part of an inter-departmental team that is undertaking a major review of financial products and providers. This review includes considering the Financial Intermediaries Task Force report. This report proposed a range of measures from better access to disputes resolution and enforcement and

clearer disclosure, to the need for consumer literacy education and information. We are taking the lead on consumer dispute resolution, as well as contributing to the broader policy work.

- › The Ministry is closely associated with a national financial literacy survey, expected to be reported on in December 2005. The main sponsors of this survey are ANZ Bank and the Retirement Commission, with the Ministry of Economic Development also contributing financially. Our interest in the survey is in the area of consumers' financial literacy skills when it comes to reading and making sense of investment statements, brochures and prospectuses. The Ministry also wants to know how consumers evaluate financial advisory services.
- › KiwiSaver, a new work-based savings scheme, was announced in the 2004 Budget. The Ministry of Economic Development, together with other relevant agencies, has been directed to develop a communications strategy aimed at those with lower levels of financial literacy so that they can make informed decisions about whether opting out, other savings approaches, or paying off debt is the right choice for them. This Ministry, because of its experience in tailoring information to vulnerable consumers, is leading this work on behalf of the wider Economic Development Ministry. It will be working in partnership with the Retirement Commission and the Inland Revenue Department.
- › The Ministry, together with the Commerce Commission, is leading a whole-of-government effort to raise consumer awareness of consumer fraud. This term is being used to describe a range of fraudulent investment activities perpetrated against consumers, from identity theft and internet banking fraud through to pyramid schemes and so-called Nigerian scams. Globally, consumer agencies are designating February or March 2006 as Fraud Awareness Month. Planning is underway for New Zealand's involvement.

Consumer representation

Effective consumer representatives on decision-making boards and committees add value because they can assess problems from the consumer perspective and identify the consequences of both the problems and any proposed solutions.

The Minister of Consumer Affairs makes appointments to schemes such as the Electricity and Gas Complaints Commission, the Banking Ombudsman and the Insurance and Savings Ombudsman. The Ministry also makes nominations of potential consumer representatives to a range of other boards and committees.

The Ministry has developed a description of the qualities of an effective consumer representative. This has been seen as critical to the success of consumer representatives, has been accepted by Cabinet and has greatly assisted ministerial decisions on appointing lay or consumer representatives.

The Ministry has also developed publications to assist officials to identify effective consumer representatives, help chairpersons guiding consumer

representatives to be effective, and assist those representatives to be effective board members.

The Ministry convenes a consumer representative network, which provides easy access for consumer representatives to advice, information exchange, training, support and mentoring. We also run a consumer representatives' reference group that assists us to select and nominate people who are closely matched to the requirements of a particular board or committee. We have recently undertaken recruitment and training to increase our pool of nominees, in particular, to locate good potential consumer representatives in the provinces.

International dimensions of consumer policy and law

One of the Ministry's strategic priorities is improving international linkages that allow firms to benefit from trade, knowledge transfer and investment. Consumer policy and law can help or hinder international linkages. We work closely with our Australian counterparts within the single economic market framework, and through international fora such as the Organisation for Economic Cooperation and Development (OECD) and the International Organisation of Legal Metrology, (OIML)², to develop a better understanding of the trade and consumer impacts of more liberal international markets and the effect of new trading approaches, such as internet trading. This is also leading to particular initiatives to facilitate trade while, at the same time, managing risks to consumers.

The Minister of Consumer Affairs is a member of the Australia and New Zealand Ministerial Council on Consumer Affairs. The Council is supported by the Standing Committee of Officials of Consumer Affairs that, in turn, oversees technical advisory committees carrying out projects relating to operational and enforcement issues. The advisory committees on which the Ministry participates are:

- › Consumer Products Advisory Committee (product and consumer safety)
- › Fair Trading Offices Advisory Committee (enforcement and consumer protection operations)
- › Trade Measurement Advisory Committee (legal metrology).

The Ministry holds New Zealand's full membership to the International Organisation of Legal Metrology. This is an inter-governmental body, approved by the WTO, which aims to harmonise international requirements for legal metrology (systems of weights and measures).

The Ministry is also a member of the Asia Pacific Legal Metrology Forum, a specialist regional body reporting to the APEC Sub-committee on Standards and Conformance. A sub-group of this Forum is the South Pacific Legal Metrology Forum, set up principally to ensure the developing economies in the South Pacific are able to operate to internationally acceptable levels of measurement accuracy.

² Organisation Internationale de Métrologie Légale.

Next three years

- › The Commerce Commission (Information Disclosure and Fees) Bill will allow the Commerce Commission to share information with competition, fair trading and consumer finance authorities overseas and other regulators in New Zealand and overseas, and where breaches of competition, fair trading or consumer finance laws are suspected. This will facilitate cross-border enforcement of consumer laws.
- › The Ministry is participating in the Review of the Ministerial Committee on Consumer Affairs and the Standing Committee of Consumer Affairs with a view to advancing trans-Tasman cooperation and coordination of consumer protection policies and operational activities.
- › The Australian Productivity Commission is currently reviewing the Australian Consumer Product Safety System. The review is being undertaken in close association with the Ministerial Committee on Consumer Affairs, and New Zealand is taking a close interest. The review will be completed in early 2006.
- › In its review of the enforcement of consumer protection law, the Ministry will explore the issues of cross-border enforcement and consumer protection law.
- › The Ministry's trade measurement area is currently working towards developing mutual acceptance arrangements with a number of International Organisation of Legal Metrology member countries, for a range of non-automatic weighing instruments and load cells (components used in weighing equipment). These agreements will assist in the reduction of technical barriers to trade for the member countries that sign these agreements.

Enforcement and Service Delivery Outputs

The Ministry of Consumer Affairs also undertakes a range of compliance and service delivery functions through the Measurement and Product Safety Service and parts of the Research, Information and Capability Group.

Measurement and product safety

The Measurement and Product Safety Service administers the Weights and Measures Act and aspects of the product safety provisions of the Fair Trading Act 1986.

- › On measurement issues, the Service (or a person accredited to undertake this activity) carries out spot checks of weighing and measuring equipment, checks the weight of pre-packaged goods and investigates complaints from the public. The Service works in an advisory capacity with business to help find ways of accurately measuring product that is sold by weight or volume.
- › On product safety issues, the Service investigates unsafe products and suggests modifications to make products safe, requests that unsafe products are removed from sale, gives advice to companies recalling unsafe products and helps develop self-regulation options. It can also recommend that the Minister of Consumer Affairs recall, ban or make mandatory safety standards for unsafe products. The Commerce Commission enforces the six mandatory safety standards.

The Service also seeks to assist New Zealand businesses to compete internationally by reducing measurement and product safety-related technical barriers to trade. This is achieved through, amongst other things, membership of international, Asia/Pacific and trans-Tasman standards-making bodies and committees.

Next three years

The Ministry of Consumer Affairs, like a number of consumer agencies in other jurisdictions, faces challenges and limitations in its ability to enforce and ensure compliance with legislation in the areas of trade measurement and product safety. These limitations are due to a lack of resources available to undertake these activities. When fully staffed, the Ministry has a total of 18 people to deal with trade measurement and product safety activities nation-wide.

While most businesses are responsible and are aware of their legal obligations, others do not willingly operate within the law. The types of businesses and enforcement and compliance activities with these businesses fall into three general categories:

- › **Well informed and well intentioned** – These businesses are aware of and understand their legal obligations and the need to operate within the law. The Ministry needs to adopt a light-handed enforcement and compliance strategy with these types of businesses.
- › **Ill informed and well intentioned** – These businesses may not be aware of and/or understand their legal obligations, but would operate within the law. We need to adopt an education and information enforcement and compliance strategy with these types of businesses.

- › **Well informed and ill intentioned** – These are rogue traders who have no intention of complying with their legal requirements. We need to adopt a planned and concerted enforcement and compliance strategy with these types of businesses.

One of the key challenges we face in this area is how we prioritise enforcement activities to put our efforts and emphasis into identifying and dealing effectively with the rogue traders, especially when they can be hard to find and tend to operate outside the traditional retail environment.

Providing information and advice

The Ministry, through its partnerships with a range of community agencies, most notably the Citizens Advice Bureaux, provides advice and guidance to members of the public on the full range of consumer issues. These agencies are trained on an annual basis and provided with a detailed manual which allows them to answer most standard queries. Through a free phone line operated by our Research, Information and Capability Group, we provide assistance to the community agencies where they encounter a more difficult question or issue.

Consumer groups often prefer receiving information from members of their own community. To reach certain vulnerable groups of consumers, we therefore seek to develop existing community agencies' capability to provide consumer information and advice. For example, over the last year we have been developing relationships with a number of new migrant support groups in order to assess their capability to provide information and advice to new migrant consumers.

Next three years

Key challenges in this area are:

- › assisting largely voluntary agencies to develop their capability to deliver services, while ensuring that they do not become dependent on our input
- › finding new and smarter ways of dealing with the steadily increasing levels of electronic requests for information from members of the public.

Short-term Issues

Commerce Commission (Information Disclosure and Fees) Bill

Information sharing and providing investigative assistance by the Commerce Commission is part of the work programme endorsed by CER Ministers in September 2003. This work aims to increase coordination of competition and consumer law between Australia and New Zealand. Increased cooperation between the Commission and Australian Competition and Consumer Commission was also recommended by the Australian Productivity Commission, in its 2004 Report on the Australian and New Zealand Competition and Consumer Protection Regimes, as a way of bringing the two regimes closer together.

A draft Commerce Commission (Information Disclosure and Fees) Bill has been prepared for the Minister of Commerce to introduce to the House as soon as possible. This will amend the Commerce Act, the Fair Trading Act and the Credit Contracts and Consumer Finance Act. It provides for information-sharing and investigative assistance between the Commerce Commission and overseas competition, fair trading and consumer finance regulators. The Bill will also provide for information sharing between the Commerce Commission and other domestic regulators. The fees referred to in the Bill relate to adjudication fees, which are part of the Commerce Act only.

Motor Vehicle Sales Act 2003

The Act specifically requires the Consumer Affairs Ministry to review and report (by 15 December 2005) on the operation of the new Act and make recommendations on whether any amendments are necessary.

In preparing the report, the Ministry is required to consult with interested parties, including representatives of consumer interests. The Act's primary operational aspects, and therefore the review's focus, are the registration of motor vehicle traders, consumer information requirements under the Supplier Information Notice and dispute resolution under the Motor Vehicles Disputes Tribunal.

Weights and Measures Act amendments

The Statutes Amendment Bill (No.5) currently contains six amendments to the Weights and Measures Act 1987. These proposed changes stem from a review of the Trade Measurement and Accreditation Scheme in 2004 and also seek to address minor inconsistencies identified in the Act.

The Bill had its first reading in the week of 4 to 8 April 2005 and was referred to the Government Administration Committee. The Committee advertised for public submissions, and none was received on the Weights and Measures Act changes.

The Bill is currently on the legislative programme for progression through the House.

Review of targeted programmes

As outlined earlier in this briefing, a recent review of targeted programmes conducted by the State Services Commission resulted in Cabinet agreeing that the current range of targeted information programmes this Ministry provided was appropriate, and directed it to report to the Minister of Consumer Affairs:

- › by 30 November 2005, on how the information needs of vulnerable groups of consumers will be met
- › by 31 March 2006, on how better to meet the consumer information needs of Pacific peoples and how this might be resourced.

These reports will also advise whether appropriate initiatives are able to be addressed within baseline or whether additional funding is sought.

Minister of Consumer Affairs appointees on industry dispute resolution schemes

The terms of office of the representatives appointed by the Minister of Consumer Affairs to the Insurance and Savings Ombudsman Scheme and the Electricity and Gas Complaints Commission have recently expired. A paper will be forwarded shortly recommending appointees. It is appropriate that you obtain Cabinet agreement to the appointments.

Enforcing consumer protection law

A discussion document comparing New Zealand's redress and enforcement provisions under the Fair Trading Act and the Consumer Guarantees Act with provisions in other similar legislation is currently being completed. It is proposed to include in the document a foreword from the Minister of Consumer Affairs. A paper will be prepared for you to take to Cabinet seeking approval to release the discussion paper and for the Ministry to call for submissions.

KiwiSaver: Financial literacy campaign to support informed choice

As directed by Cabinet, officials are currently developing initiatives for promoting financial education to enable the public to make informed choices regarding KiwiSaver and the alternatives. A submission will be made in October to release funds allocated in the contingency fund for 2005/2006. (It may be necessary to seek to have some of this contingency funding transferred to 2006/07.) This will enable the campaign to be developed and timed appropriately with Inland Revenue's campaign specifically promoting the KiwiSaver scheme.

When more specific details of the proposed promotion have been developed, a further funding bid will be required in the 2006 Budget to release funds set aside for 2006/07 and outyears.

Appendices

Appendix 1: Crown entities

Commerce Commission

The Commission is a Crown entity established under the Commerce Act 1986. Its overriding purpose is to promote market efficiency by enforcing and fostering:

- › healthy competition amongst businesses
- › informed choice by consumers
- › sound economic regulation.

The Commission achieves this objective through its public enforcement, adjudication and litigation services, reporting to the Minister and providing information to the public. The Commission provides these services in accordance with performance measures agreed with the responsible Minister and purchasing Ministers in an annual output agreement. The responsible Minister may also formally communicate statements of government economic policy to the Commission from time to time, and the Commission must have regard to this when exercising its statutory functions.

The Commerce Amendment Act 2001 introduced new prohibitions for abuse of market power and anticompetitive mergers. These saw the Commission assume new regulatory and enforcement responsibilities. Other recent legislation has required the Commission to set up new enforcement regimes for the telecommunications industry, the electricity industry and the dairy industry. Workloads in telecommunications and electricity, in particular, are developing rapidly.

The Commission is also responsible for enforcing the Fair Trading Act 1986 and the Credit Contracts and Consumer Finance Act 2003. The Fair Trading Act covers misleading and deceptive conduct and product safety and consumer information standards (in particular, the motor vehicle supplier information notice). The Credit Contracts and Consumer Finance Act has provisions on buy-backs and consumer credit contracts.

Ownership relationship with the Commerce Commission

The Minister of Commerce, as responsible Minister for the Commerce Commission, is responsible for the overall ownership performance of the Commission. The Minister of Commerce is also the primary purchasing Minister under Vote: Commerce, in his/her own capacity and on behalf of the Ministers of Consumer Affairs and Agriculture. The Minister of Commerce also purchases enforcement and adjudication activities under the Electricity Industry Reform Act 1998 on behalf of the Minister of Energy. The Ministers of Energy and Communications are also purchasing Ministers.

Appendix 2: Legislation

The following legislation comes within Vote: Consumer Affairs:

Auctioneers Act 1928

The Auctioneers Act requires all auctioneers to be licensed. Entry to the occupation is dependent upon applicants being able to satisfy a District Court Judge that they are “fit and proper” and financially secure. This is in accordance with the Act’s primary objective, to protect consumers from reckless/incompetent auctioneers and financial loss. This Act is enforced by the New Zealand Police and also allows for private or self-enforcement.

Consumer Guarantees Act 1993

The Consumer Guarantees Act covers consumer protection in the post-sale period (after a purchase is made). It creates statutory guarantees that are automatically conferred each time a consumer purchases a good or a service from a trader. The Act also provides clear remedies for consumers if a breach of the guarantee occurs. This Act is self-enforcing.

Credit Contracts and Consumer Finance Act 2003

The Credit Contracts and Consumer Finance Act regulates consumer credit, including home loans, personal loans, credit sales/hire purchase, credit cards, long-term leases and housing buy-back schemes. The Act requires disclosure on key information to the debtor, prohibits unreasonable fees, allows for contracts to be varied in cases of hardship and provides for re-opening of oppressive contracts.

This Act replaces the Credit Contracts Act 1981 and the Hire Purchase Act 1971. These Acts apply to credit contracts and hire purchase agreements entered into before 1 April 2005. It is enforced by the Commerce Commission.

Credit (Repossession) Act 1997

The Credit (Repossession) Act standardises procedures relating to the repossession of goods under a security agreement. It covers the repossession process that a creditor (or agent) must follow for all secured loans and hire purchase agreements over consumer goods. This Act is self-enforcing.

Door To Door Sales Act 1967

The Door to Door Sales Act regulates agreements for the sale of goods and the provision of services on credit, entered into at places other than appropriate trade premises. This Act is self-enforcing.

Fair Trading Act 1986

The Fair Trading Act aims to maximise consumer protection in the pre-sale period (before a purchase is made). It attempts to ensure that all trading activities are based on accurate and honest information. It also allows for bans and recalls of unsafe products and the imposition of mandatory standards if necessary. This Act is enforced by the Commerce Commission.

Under Parts 3 and 4 of the Fair Trading Act 1986, the Minister of Consumer Affairs can recommend mandatory standards for products or services, ban unsafe products or order a compulsory recall of an unsafe product. These measures are generally used only when attempts to have the product amended or withdrawn voluntarily fail.

Layby Sales Act 1971

The Layby Sales Act sets out rules for layby sales – where the goods being bought are not available to the buyer until the purchase price is paid off by instalment. The Act does not apply to layby sales over \$7,500 or to a motor vehicle being sold by a licensed dealer. This Act is self-enforcing.

Motor Vehicle Sales Act 2003

The Motor Vehicle Sales Act requires that all motor vehicle traders are registered on the Motor Vehicle Traders Register (including car market operators and vehicle auctioneers). Traders are required to display a supplier information notice, in the form prescribed under the Fair Trading Act, with all used motor vehicles for sale.

The Motor Vehicle Traders Register is administered by the Ministry of Economic Development. Enforcement activity relating to the register is carried out by the Economic Development Ministry's National Enforcement Unit. The supplier information notice is enforced by the Commerce Commission.

Unsolicited Goods and Services Act 1975

The Unsolicited Goods and Services Act provides protection for people who receive unsolicited goods or invoices for unordered goods or services. This Act is self-enforcing. However, parts of this Act provide for criminal penalties.

Weights and Measures Act 1987

The Weights and Measures Act protects New Zealand's system of metric weights and measures, and prescribes their use in the marketplace. It attempts to ensure that goods sold by weight, measure or number are traded fairly and in accordance with internationally recognised principles. This Act is enforced by the Ministry of Consumer Affairs.

Appendix 3: Key stakeholders

Below is a list of key stakeholders who may write to you or seek to meet with you in your first weeks in office. Fuller briefings will be provided if required.

Public sector stakeholders

- › Commerce Commission – Paula Rebstock, Chair
- › Measurement Standards Laboratory (MSL) – Keith Jones, Director and Chief Metrologist
- › Retirement Commission – Diana Crossan, Commissioner
- › Securities Commission – Jane Diplock, Chair
- › Standards New Zealand – Rob Steele, Chief Executive

Non-government organisation stakeholders

- › Advertising Standards Authority – Bruce Wallace, Chairman
- › Consumers' Institute – David Russell, Chief Executive
- › Māori Women's Welfare League – Kitty Bennett, President (outgoing)
- › Motor Trade Association – Stephen Matthews, Chief Executive
- › New Zealand Fair Trading Coalition (NZFTC) – Stephen Matthews, Chairman
- › New Zealand Association of Citizens Advice Bureaux (NZACAB) – Kerry Dalton, Chief Executive
- › New Zealand Federation of Family Budgeting Services (NZFFBS) – Raewyn Fox, Chief Executive
- › New Zealand Retailers Association (NZRA) – John Albertson, Chief Executive
- › Royal New Zealand Plunket Society – Paul Baigent, Chief Executive
- › Safekids – Shelley Hanifan, Executive Director

Ombudsman schemes

- › Banking Ombudsman – Liz Brown, Banking Ombudsman
- › Electricity and Gas Complaints Commission – Judi Jones, Commissioner
- › Insurance and Saving Ombudsman – Karen Stevens, Insurance and Savings Ombudsman

