



australian network of environmental defender's offices

Submission to Productivity Commission Inquiry into Australia's Consumer Policy Framework

11 May 2007

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The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Submitted to:

Consumer Policy Framework Inquiry
Productivity Commission
PO Box 80, Belconnen ACT 2616

Executive Summary

Sustainable consumption is an issue of consumer protection. ‘It means protecting consumers - the citizens of the world - against environmental and social disaster’.¹ Addressing consumer behaviour is therefore a primary focus of Ecologically Sustainable Development. There is consequently a pressing need to influence consumers to adopt “greener” choices, especially as we move towards a sustainable, carbon-constrained future. The current consumer framework provides a solid base to assist in achieving this goal. However, there are areas where the framework could be improved to accelerate this process. ANEDO therefore makes the following recommendations to the Productivity Commission;

- Establish a mandatory environmental labelling program that is overarching, and that is based on scientific information.
- Expand minimum standards for environmentally deleterious products, and prohibit those products that are particularly damaging.
- A mix of regulatory and non-regulatory tools should be used to ensure a robust consumer policy framework. These include direct regulation, taxes, subsidies and consumer education. However, non-regulatory tools are no substitute for mandatory regulation.
- “Environment claim” should be specifically defined in consumer legislation to require producers to prove the veracity of their claims. This would reverse the current onus of proof that makes it difficult to prosecute offenders.
- Enforcement bodies should be adequately resourced to ensure strict compliance with the law.
- A consumer advocacy body should be established to represent consumer interests, monitor environmental claims, conduct research into consumer behaviour and to conduct independent periodic reviews of the consumer policy framework to identify areas of reform.

The Australian Network of Environmental Defender’s Offices Inc (**ANEDO**) welcomes the opportunity to provide comment on the Productivity Commission’s inquiry into Australia’s Consumer Policy Framework (January 2007).

ANEDO is a network of community legal centres that specialise in public interest environmental law. Its functions include legal advice and representation, law reform and policy work, scientific advice and community legal education. As a result, our comments are given within an environmental context.

ANEDO makes comment on the following questions for consideration that are identified in the Issues Paper;

- 1. Government intervention**
- 2. Behavioural Theory**
- 3. Environmental Information**
- 4. Standards**
- 5. Suite of Tools Approach**

¹ Juan Carlos Brandt, *Setting the Stage - The International Context of Certification and Labelling* (9 October 2003). Speech to “the future of ecolabelling” conference, Canberra.

6. Enforcement
7. Voluntary and Non-Regulatory Approaches
8. Consumer Advocacy
9. Costs

Introduction

Ecologically Sustainable Development (ESD) is the prevailing philosophy guiding governments today. The 2002 *World Summit for Sustainable Development* affirmed the three pillars of ESD- economic development, social development and environmental protection. The concept aims to integrate environmental, social and economic considerations into all levels of government decision-making. It is a “triple bottom line”.² Australia has accepted the principles and objectives of ESD in the *National Strategy for Ecologically Sustainable Development*.

It has long been acknowledged that the way forward in the quest for ESD lies in the attainment of radical changes in consumption patterns and lifestyles.³ Furthermore, according to Agenda 21, the international programme on Sustainable Development, the major cause of the deterioration of the global environment is unsustainable consumption and production, particularly in the industrialised countries.⁴ The Plan of Implementation of the World Summit on Sustainable Development in 2002 calls for “a 10-year framework of programmes in support of regional and national initiatives to accelerate the shift towards sustainable consumption and production patterns that will promote social and economic development within the carrying capacity of ecosystems.” Thus, Australia has committed to establish a robust consumer framework by 2012 that adequately integrates environmental considerations into consumer policy to achieve real reductions in environmentally damaging and unsustainable consumption.

The *UN Guidelines for Consumer Protection*⁵ provide guidance on how to achieve this. Appropriate measures would include mandatory information on the environmental impacts, including climate change impacts, of products⁶, the impartial environmental testing of products⁷, the encouragement of alternatives to environmentally harmful uses of substances⁸, the strengthening of regulatory mechanisms to ensure sustainable consumption⁹, and the introduction of sustainable operations into government practices.¹⁰

1. Government intervention

Notwithstanding its international obligations, there are several key rationales for the Australian Government’s intervention in the consumer realm.

² Lewis Hawke, ‘Walking the talk on sustainable development in the public sector’ (2004) *Public Administration Today* 50 at 50.

³ S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 51.

⁴ Juan Carlos Brandt, *Setting the Stage - The International Context of Certification and Labelling* (9 October 2003). Speech to “the future of ecolabelling” conference, Canberra.

⁵ Available at: http://www.un.org/esa/sustdev/publications/consumption_en.pdf (5 May 2007)

⁶ Guideline 35

⁷ Guideline 47

⁸ Guideline 48

⁹ Guideline 51

¹⁰ Guideline 54

Firstly, as the Issues Paper highlights, inadequate information can prevent consumers from properly judging the attributes and quality of products and services. As a result, governments are justified in regulating to empower consumers with the necessary information to enable them to make informed product choices.

This empowerment must strive to achieve a true bargaining balance between consumers and sellers. As stated by Gordon Renouf, General Manager at CHOICE, Australia's leading consumer protection organisation,

*consumer protection interventions- in the form of laws or otherwise -are justified only to the extent they achieve bargaining equality between buyer and seller...*¹¹

To achieve this bargaining balance, governments need to improve environmental labelling, restrict harmful products and facilitate consumer education. In intervening to educate consumers, the Federal and State Governments need to play an exemplar role. Governments are in fact one of the largest consumers. Governments should therefore set the right example through their purchasing behaviour by purchasing green and environmentally friendly products.

Secondly, by addressing the demand side, this helps to improve efficiency on the supply side. Put simply, improving the flow of information to consumers may lead to changes in producer behaviours. This may involve firms developing new marketing strategies, developing more sustainable products and pushing less environmentally friendly products out of the market.¹² This will in turn give companies an incentive to develop new, and more environmentally benign, products.¹³ The former Department of Environment and Heritage also agreed that "there is considerable potential for environmentally aware consumers to influence industry to provide environmentally sound products".¹⁴ This has been observed in the United States where eco-labelling programs have influenced product design in the areas of life-cycle impact, durability, hazards and recyclability.¹⁵

Thirdly, it is submitted that it is a legitimate government function to intervene to overrule consumer choices that would have significant negative impacts on the wider community. In short, overriding consumer choice through strict regulation is sometimes necessary for health, safety and ecological reasons. In this respect, there is scope for greater consumer regulation in the environmental field, especially in light of the significant dangers posed by climate change. Governments in Australia should intervene to ensure that carbon emitting products are adequately regulated in the form of mandatory information disclosure and minimum standards, and through the prohibition of heavy-emitting products.

ANEDO submits that the appropriate balance between empowering consumers to make their own choices, and proscribing particular outcomes for their protection, is the public

¹¹ Renouf, G (2007) "Consumers, consumer law and the environment" - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender's Office at 3.

¹² M Teisl & B Roe, "Evaluating the factors that impact the effectiveness of eco-labelling programmes" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 65, G Grankvist *et al*, "The impact of Environmental Labelling on Consumer Preference: Negative vs. Positive Labels" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 214.

¹³ J Thogerson, "Promoting "green" consumer behaviour with eco-labels (2002) In T. Dietz & P Stern (eds), *New Tools for Environmental Protection*, pp83-104.

¹⁴ <http://www.environment.gov.au/settlements/industry/corporate/labelling.html> (3 May 2007).

¹⁵ Pacific Northwest Pollution Prevention Resource Center (PPRC). Found at <http://pprc.org/about/> (2 May 2007).

interest. This involves a balancing act to determine whether the dangers posed by non-intervention outweigh the need to ensure that consumers are free to make their own choices in a consumer society. ANEDO believes that the area of greenhouse gas emissions is such an area in need of stringent regulation to protect consumers and future generations from the potentially devastating effects of climate change.

2. Behavioural Theory

The literature on behavioural economics reveals mixed conclusions on the value of environmental information and consumer information generally, and its ability to affect consumer behaviour.

On the one hand, studies have found that consumers do not necessarily make sustainable choices even when they are given greater environmental information.¹⁶ In particular, a weak correlation between environment concern and the choice of eco-labelled products has been shown to exist.¹⁷ The reasons for this are complex. However, at least two explanations suggest themselves.

Firstly, environmental problems are often complex and consumers are asked to perform difficult tasks (such as selecting a more expensive, but more environmentally friendly, product), and as a result consumers will usually decide not to change their behaviour or select an environmentally friendlier alternative without proper information and instructions from external sources.¹⁸

Secondly, another explanation is that consumers do care about, and are willing to pay for more environmentally benign products, but the current state of labeling is slowing the development of the market.¹⁹ Therefore, the problem may be a qualitative one; the information given is insufficient or too complex to achieve the desired result. Indeed, several studies have noted that consumers often have a hard time in understanding what labels are intended to communicate.²⁰ Others note that the credibility of the label is the key issue for consumers.²¹ Viewed in this way, there is a clear role for government in addressing and standardising the quality of information provided to consumers.

On the other hand, other studies have found a positive correlation between increased environmental information and consumer purchasing behaviour.²² Grankvist *et al* found that positive consumer reaction depends on whether the eco-label is expressed in positive or negative terms. A positive label signifies the environment benefits of a product. Alternately, a negative label informs the consumer about the negative environment consequences of a product. The study found that those consumers who professed a strong environmental concern were influenced by positive labelling.

¹⁶ Grankvist *et al*, "The impact of Environmental Labelling on Consumer Preference: Negative vs. Positive Labels" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 215.

¹⁷ *Ibid*.

¹⁸ S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 60.

¹⁹ M Teisl & B Roe, "Evaluating the factors that impact the effectiveness of eco-labelling programmes" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 83.

²⁰ J Thogerson, "Promoting "green" consumer behaviour with eco-labels (2002) In T. Dietz & P Stern (eds), *New Tools for Environmental Protection*, pp83-104.

²¹ M Teisl & B Roe, "Evaluating the factors that impact the effectiveness of eco-labelling programmes" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 83.

²² Grankvist *et al*, "The impact of Environmental Labelling on Consumer Preference: Negative vs. Positive Labels" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 224.

However, those consumers with a weaker environmental concern were primarily attuned to labels signaling negative environmental consequences.²³ Considering that all eco-labels in use around the world are expressed in positive terms, this may go some way to explaining the results that indicate that eco-labels have no impact on consumer behaviour. The introduction of negative labelling would therefore be a positive step. An “in your face” approach is best in bringing home to consumers the fact that certain products have significant impacts on the environment. The purpose of eco-labelling should shift from not only encouraging consumers to choose “green friendly” products, but also encouraging them to *avoid* environmentally damaging products.

Another point to note is that not all consumers need to be affected to ensure that eco-labelling is successful. Even if only a small number of consumers allow environmental information to influence their behaviour, this is sufficient to influence the market behaviour of sellers and producers.²⁴

In interpreting these results, it is important to note that a consumer’s purchasing choice is guided by a variety of mental processes, and, therefore, affected by different kinds of factors.²⁵ These include time pressures, which may increase the likelihood of making a habitual choice. Therefore, consumer purchasing behaviour is a complex, multi-faceted realm. By focusing on this multi-dimensional aspect of consumer choice, studies have found that it *is* possible to specify circumstances where one “should expect high correlations between values and specific behaviours”.²⁶ Hence, the environment in which consumers make their choices determines whether sustainable consumption can become a reality.²⁷

In summary, the current discord amongst behavioural economists, and the disparate results of studies on the utility of equipping consumers with greater environmental information, should not be seen as a reason for non-intervention by government. Indeed given the positive results observed in some studies, the government certainly has a role to play to ensure that environmental information is informative and of high quality. How environmental labelling schemes in Australia could be improved will be discussed below.

3. Environmental labelling

Environmental labelling schemes have been established around the world since the 1970’s. They are currently in existence in at least 30 countries which includes Canada, China, Germany, Japan, United Kingdom and the USA. The most well-known scheme in Europe is the Nordic Swan, which was established in the Scandinavian countries in 1989. The European Commission’s own scheme was established in 1992.²⁸

Australia still has only a very limited set of environmental labels that are restricted to water efficiency and energy efficiency labelling (for a select set of appliances), organic

²³ *Ibid.*

²⁴ T Wilhelmson, “Consumer Law and the Environment: From Consumer to Citizen” (1998) *Journal of Consumer Policy* 21, at 53.

²⁵ S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 45.

²⁶ *Ibid.*

²⁷ Juan Carlos Brandt, *Setting the Stage - The International Context of Certification and Labelling* (9 October 2003). Speech to “the future of ecolabelling” conference, Canberra.

²⁸ Commentators have however noted that existing provisions as to consumer information are very moderate in most of these countries. See T Wilhelmson, “Consumer Law and the Environment: From Consumer to Citizen” (1998) *Journal of Consumer Policy* 21, at 64.

produce and a small number of competing forest products.²⁹ Furthermore, few of these can properly be called independent (of these, only the energy star label has had any real recognition in Australia).³⁰ Labelling schemes are therefore one means by which consumer access to environmental information in Australia could be improved significantly.³¹

ANEDO believes that to improve the consumer framework and to address the sustainable consumption aspect of ESD, a *mandatory*, independent eco-labelling system should be introduced to cover all sectors that potentially contribute to environmental degradation.

Establishing a compulsory scheme has the ability to increase the consumption of environmentally friendly products, whilst decreasing consumption of environmentally harmful products. Indeed, it has been observed that voluntary labelling schemes may not perform as well as mandatory ones.³² There are three main reasons for this;

- 1) Mandatory information would lead to the situation where consumers are confronted more often with environmental information in their daily lives. This could contribute to the growth of environmental awareness in general.³³
- 2) Mandatory, detailed environmental labelling may restrict the seller's ability to make misleading and deceptive claims. That is, producers and sellers would take ecolabelling more seriously and are therefore more likely to ensure that their claims are not false or misleading.
- 3) If it becomes common knowledge that unless certain standards are met, a negative label has to be attached to a product, such products may be withdrawn from the market.³⁴

Thus mandatory labelling schemes have the potential to effect real change in consumption patterns. Such a scheme should consist of positive and negative labelling. That is, environmentally-friendly and environmentally deleterious products should be labelled and certified based on solid scientific knowledge. Furthermore, information should be provided about the life impacts of products. Most international eco-labelling programs rely on some form of life cycle analysis of the whole product process, a cradle to grave approach which also considers disposal and recycling. However, there is little or no such information available in Australia.

An important area for expansion of mandatory information is in relation to carbon emitting substances. Information on fossil fuels, greenhouse gas emissions, and mining

²⁹ Good Environmental Choice Australia. Found at <http://www.acla.org.au/introduction.htm> (4 May 2007).

³⁰ *Ibid.*

³¹ CHOICE has commented that consumers do *not* have sufficient access to reliable and useful information about environmental impacts of consumer and producer actions. See Renouf, G (2007) "*Consumers, consumer law and the environment*" - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender's Office at 6.

³² M Teisl & B Roe, "Evaluating the factors that impact the effectiveness of eco-labelling programmes" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 84.

³³ T Wilhelmson, "Consumer Law and the Environment: From Consumer to Citizen" (1998) *Journal of Consumer Policy* 21, at 64.

³⁴ Grankvist *et al*, "The impact of Environmental Labelling on Consumer Preference: Negative vs. Positive Labels" In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 227.

are obvious areas. In fact, WWF is currently conducting research into the possibility of applying environmental certification to the mining industry.³⁵

4. Standards

Setting minimum performance standards can be an efficient policy tool because it simply eliminates those products that do not comply with certain minimum requirements.³⁶ There are two necessary aspects to standards. Firstly, standards must ensure that products become “greener”. That is, the standards should represent scientifically recognised improvements to the environmental performance of products. Secondly, standards should ensure that products are of sufficient quality, reliability and durability. This is a good thing in itself provided that the first requirement is met. For example, historically it has been observed that older models of whitegoods have greater longevity than newer products. Therefore, standards should ensure that products marry the good environmental performance of “greener” products with the longevity and durability of older products.

The Australian Federal Government has made progress in developing standards. An example is the establishment of the Water Efficiency Labelling Scheme which sets minimum standards for the water efficiency of appliances. State regulations also set minimum standards for electrical appliances. However, problems have been identified relating to the difference in the performance of tested products and their actual use. For example, it has been found that fridges that received a good result on the Energy Star standard under test conditions do not necessarily deliver the same energy efficiency in everyday use.³⁷ This highlights the need for these schemes to be reviewed consistently to ensure that standards are truly representative of practical performance.

5. Suite of tools approach

There is a view, which ANEDO endorses, that to achieve positive environmental outcomes from voluntary consumer action, the orchestrated use of several means of regulation, rather than just one, is needed.³⁸ ANEDO supports such a multi-faceted approach. In essence, the government should utilise a variety of policy tools to achieve measurable reductions in unsustainable product use. These could include environmental standards to eliminate the most environmentally damaging products, taxation for less damaging goods, and mandatory eco-labelling for higher quality, environmentally friendly goods.³⁹

Gordon Renouf of CHOICE describes this “combination of measures approach”. He finds that it could encompass:

³⁵ WWF Mining Certification Evaluation Program. Can be viewed at: http://www.aela.org.au/conference/Conference%20Proceedings/2_1_ContributionsToSustainability/MiningCertificationTrial.pdf (2 May 2007).

³⁶ J Crespi & S Marette, “Eco-labelling economics: is public involvement necessary?” In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 103.

³⁷ Renouf, G (2007) “Consumers, consumer law and the environment” - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender’s Office at 11.

³⁸ S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 60.

³⁹ J Crespi & S Marette, “Eco-labelling economics: is public involvement necessary?” In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 104.

*increased information together with normalisation through both direct regulation (Turnball's lightbulbs), possibly incentives (subsidies on low interest loans paid back through savings etc for installing energy efficient appliances, rebates on water tanks) and cultural change.*⁴⁰

Consequently, labelling, though important, is only one part of the picture in the broader work of formulating policies to meet the growing environmental challenge posed by products. An example of how this “suite of tools approach” may work is where an incentive is given to purchase a “greener” product (such as rebates for rainwater tanks). Studies have found that the positive effects of incentives favouring a desired behaviour “can be multiplied by supplementing it with the right kind of information”.⁴¹ Thus, an incentive, coupled with increased environmental information, is more likely to lead to a positive environmental outcome.

6. Enforcement

The long term effectiveness of regulation will often depend on the institutions charged with managing its implementation and enforcing the law.⁴² Enforcement bodies therefore have a crucial role to play. ANEDO believes that the current consumer enforcement framework at state and federal levels provides a sound legislative basis for enforcement. Furthermore, these Acts contain open standing provisions which allow any person to take action to enforce breaches of consumer laws.

Misleading environmental claims can be prosecuted under misleading and deceptive conduct provisions of the *Trade Practices Act 1974 (Cth)* and various state Acts. This is especially important since studies have found that approximately half of environmental advertising is misleading or deceptive.⁴³ Moreover, the consequences of non-enforcement are quite significant. False and misleading claims can destroy the green products market because consumers become disillusioned about all environmental claims.⁴⁴ This was observed in Australia in the early 1990s.

Recently, Commissioner John Martin of the Australian Competition and Consumer Commission (ACCC) has affirmed a commitment by the ACCC to monitor and prosecute misleading or deceptive environmental claims.⁴⁵ Furthermore, the ACCC signed an agreement in March 2000 with the Australian Greenhouse Office to protect the interests of consumers and to assist Australia in reducing its greenhouse gas emissions. A key role of ACCC under this agreement is to take enforcement action against producers who falsely claim that their products are energy efficient. These are certainly positive developments.

Some commentators have been critical of the current enforcement regime, finding that fair trading laws have not been able to prevent a range of subtle environmental claims

⁴⁰ Gordon Renouf, (personal communication).

⁴¹ S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 60.

⁴² Consumer Affairs Victoria, *Using Licensing to Protect Consumers' Interests* (2006).

⁴³ M Teisl & B Roe, “Evaluating the factors that impact the effectiveness of eco-labelling programmes” In S Krarup & C Russell (eds), *Environment, Information and Consumer Behaviour* (2005) at 85.

⁴⁴ Amanda Cornwall, “Regulating Environmental Claims in Marketing” *Competition and Consumer Law Journal* (1996) 3 at 261.

⁴⁵ John Martin, *Environmental Claims and the Trade Practices Act* (2005). Presentation to Annual National Air Conditioning & Energy Forum.

which are difficult to prove.⁴⁶ Indeed, the current provisions require the person challenging a claim to prove it is misleading. This is often difficult since it requires product information only available to the producer. An attempt to reverse this onus of proof was attempted in Victoria in 1992 where they sought to amend the *Fair Trading Act 1985* to provide a definition for an “environmental claim”.⁴⁷ This required the producer making the environmental claim to prove it could be verified. Unfortunately, the Bill was strongly opposed by industry groups and did not go ahead. ANEDO supports such an amendment to state and federal laws as it provides an opportunity to ensure strict compliance with consumer protection laws. A better alternative however may be to require the complainant to establish a *prima facie* case, after which the onus is reversed to require the producer to substantiate their environmental claims.

Finally, the EDO believes that enforcement bodies should be adequately resourced to ensure a robust consumer regulatory framework. A lack of funding should not lead to a failure to prosecute offenders and to ensure that green claims are accurate and that ‘green-washing’ is not rewarded.⁴⁸ Giving producers and manufacturers the sense that the ACCC is playing a proactive “watchdog” role will ensure that rogue claims are minimal.

7. Voluntary and non-regulatory approaches

Voluntary approaches have a poor track record. The OECD has identified various short-comings of voluntary approaches. These refer to the fact that voluntary approaches often lack: clearly-defined targets, credible regulatory threats, credible and reliable monitoring, third party participation, penalties for non-compliance, and information-oriented provisions in order to maximise the operational soft effects of voluntary approaches.⁴⁹ Similarly, the Australian Government's Industry Taskforce on Self-Regulation has acknowledged deficiencies of voluntary schemes in terms of achieving sufficient industry coverage and publicity, being appropriately administered; and incorporating monitoring and review.⁵⁰ As such, voluntary approaches are not an appropriate substitute for regulation, particularly where significant social and environmental concerns are involved, such as within the consumer policy framework.

Given this background, it is submitted that voluntary measures should not be considered as an alternative to binding legislation, but should form part of a range of mechanisms within the consumer policy framework. For example, there should be greater use of education campaigns and information dissemination to assist consumers to make better decisions.

8. Consumer advocacy

Australian consumers often suffer disadvantages due to the lack of reliable information about products and the inherent power imbalance that underpins the relationship of

⁴⁶ Amanda Cornwall, “Regulating Environmental Claims in Marketing” *Competition and Consumer Law Journal* (1996) 3 at 261.

⁴⁷ *Ibid.*

⁴⁸ Renouf, G (2007) “Consumers, consumer law and the environment” - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender's Office at 12.

⁴⁹ See OECD (2003) “*Voluntary Approaches for Environmental Policy: Effectiveness, efficiency and usage in policy mixes*” Working Party on National Environmental Policies, OECD Environmental Policy Committee.

⁵⁰ Industry Taskforce on Self-Regulation, chapter 6, pp 59-86.

consumers with both government and industry. Consequently, there needs to be overarching body responsible for representing consumer interests to government, addressing consumer complaints and undertaking research into consumer and market behaviour.⁵¹ This would empower consumers to actively participate in consumer dialogue and enable consumers to alter their purchasing behaviours. Consumer participation may also open up new opportunities with respect to the environment.⁵²

A key role of an advocacy body would be to respond to misleading claims made in the market, particularly in relation to the “green” nature of products. It should serve to promote action by regulators under misleading claims provisions.⁵³ It should also have an explicit environmental objective; to promote ecologically sustainable consumer choices. Furthermore, it could undertake research into the driving forces of consumption- that is, why people consume and what their needs are. The Director of the UN Information Centre for Australia and the Pacific has stated that this increased knowledge should be used “to raise awareness throughout society, inspire governments to design incentives and infrastructure for sustainable consumption, and encourage businesses to design and offer better products”.⁵⁴

There are a number of potential actions that could be undertaken by a consumer advocacy body to achieve good environmental outcomes. These include:

- Developing new rules to require the housing industry to build more energy efficiency houses (including the proposed requirement that housing is energy labelled);
- Removing irrational barriers to consumers taking environment friendly action, such as local councils’ requirement that rainwater tanks not be visible from the street;
- Promoting the availability and use of product take-back schemes;
- Campaigning for the proposed one watt standard for standby power;
- Promoting the use of eco-labelling (food miles, other product miles, legally logged timber, emissions labelling),⁵⁵
- Developing higher quality standards for products;
- Ensuring the longevity of the reduced environmental impact of products; and
- Conducting independent periodic reviews of the consumer policy framework to identify further areas of reform.

9. Costs

⁵¹ ANEDO supports a government-funded consumer advocacy body like Consumer Direct in the UK and Consumer International, the international peak consumer advocacy body.

⁵² T Wilhelmson, “Consumer Law and the Environment: From Consumer to Citizen” (1998) *Journal of Consumer Policy* 21, at 65.

⁵³Renouf, G (2007) “Consumers, consumer law and the environment” - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender’s Office at 13

⁵⁴ Juan Carlos Brandt, *Setting the Stage - The International Context of Certification and Labelling* (9 October 2003). Speech to “the future of ecolabelling” conference, Canberra

⁵⁵Renouf, G (2007) “Consumers, consumer law and the environment” - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender’s Office at 13.

The Issues Paper raises the issue of the costs of further intervention in the consumer realm, which are likely to be significant. However, ANEDO submits that there are significant economic, social and environmental costs of non-intervention.

Firstly, the lack of a mandatory eco-labelling scheme that encompasses all environmentally deleterious products leads to market failure. This is a result of an environmentally minded public seeking information on the environmental performance of products and this not being provided. As a result, consumers may decide not to buy “green” products for it will take too much effort for them to obtain the missing information. The market failure occurs because society would be better off if these missing transactions took place.⁵⁶ The ACCC has acknowledged that eco-labelling is one measure that begins to address this information asymmetry.⁵⁷

Secondly, since reducing consumption is a primary focus of the quest for ESD, regulatory tools are needed to facilitate a change in consumption patterns as part of a move to a sustainable and carbon constrained future. The costs of inaction are now well known. The recent Stern Report has demonstrated that climate change has the potential to be the biggest market failure the world has ever seen.⁵⁸ Therefore, the long term costs of inaction far outweigh short-term costs in establishing appropriate consumer safeguards.

Finally it is important to note that the non-economic benefits of increased information extend beyond consumers. Producers and policy makers could also benefit from improved information about environmental impacts.⁵⁹ Better environmental information will assist policy makers in formulating new government policy. On the other hand, manufacturers who provide scientifically robust environmental information about their products may enjoy marketing advantages because the certification identifies their products as environmentally sound.⁶⁰

⁵⁶ Jane Harris & Anne Cole, *The Role for Government in Ecolabelling- On the Scenes or Behind the Scenes?* (October 2003). Paper presented to Australian Environmental Labelling Association conference at 4.

⁵⁷ Jennifer McNeill, “Certification, eco-claims and the Australian Competition and Consumer Commission” (9 October 2003)- Paper presented to “*the future of eco-labelling in Australia*” Conference, Canberra.

⁵⁸ *Stern Review on the economic impacts of climate change*, 2006. Full text available at www.hm-treasury.gov.uk

⁵⁹ Renouf, G (2007) “*Consumers, consumer law and the environment*” - paper presented at *Beyond Environmental Law* conference, Australian Centre for Environmental Law and NSW Environmental Defender’s Office at 6.

⁶⁰ <http://www.pprc.org/pubs/epr/label.cfm> (2 May 2007).