

Submission to Issues Paper: Consumer Protection and Economic Empowerment of Women in PNG

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Introduction

We would like to thank the review team of the Consumer and Competition Framework Review and the Department of Treasury for the opportunity to comment on this issues paper.

Mobilising Australia’s largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieves real change on the issues that matter most. CHOICE also works with international partners such as Consumers International to protect the interest of all consumers. As one of Australia’s closest neighbours, we hope that this review will be an opportunity to provide PNG consumers with stronger protections and enforcement similar to those afforded to Australian consumers under the Australian Consumer Law.

In our submission we would like to raise the specific issue of door-to-door sales, with illustration of a case study from the Rai Coast, Madang Province. We are particularly concerned by the increase in aggressive travelling salesmen pitching pseudo-scientific products to consumers who have no ability to verify the true nature of such products.

We welcome the review process as one that can draw attention to some areas of the consumer law which may not provide sufficient protection to consumers, particularly in the areas of misleading or

deceptive conduct, unconscionable conduct and consumer guarantees. Should changes to these laws be made, the review should also consider appropriate penalties and enforcement mechanisms to ensure consumer detriment is minimised.

Furthermore, we would encourage the creation or support of a formal independent consumer advocate group as one that can protect and education consumers on their rights.

Yours sincerely,

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Summary of recommendations

Section D: Misleading or deceptive conduct	The ICCA Act incorporate specific provisions for misleading and deceptive conduct to protect consumers
Section E: Unfair conduct	We recommend that the Act is amended to prohibit the following: <ul style="list-style-type: none"> • Pyramid selling and similar schemes • Referral selling where payments to the referrer are dependent on other consumers acquiring the goods or services
Section H: Consumer guarantees	Stronger consumer guarantees, including specific directions for goods to be of acceptable quality, fit for purpose and to conform to description and demonstration, should be introduced.
	Guidelines for travelling salesmen, door-to-door salesman and telephone salesmen are introduced to assist salesmen in conducting their business in a lawful and appropriate manner.
Section I: Remedies, sanctions and enforcement	Penalties for breaches of the ICCA Act be increased.
	Secondary measures are introduced to improve consumer protections including provisions for corrective advertising, adverse publicity orders, injunctions, powers to order compliance programs, compensation orders, payment for damages, disqualification orders and the ability to issue court enforceable undertakings.
	A consumer council is created and funded by the proceeds of penalties issued by the ICCC. Its purpose would be to advocate for and educate consumers on their rights.
Other issues	The ICCC and consumer advocates work with government organisations and NGOs to ensure that essential items, like sanitary pads for women, are available at a reasonable and fair cost to consumers and that distribution plans for such items are in place

Consumer protections in PNG

Consumers are protected by a number of legal instruments, including the *Independent Consumer and Competition Commission Act 2001* (ICCA Act). The discussion paper notes consumers' basic rights, including consumers':

- Right to safety
- Right to choice
- Right to consumer education
- Right to information
- Right to representation
- Right to redress

Protections for consumers could be improved, both in improvements in the law itself, as well as improvements in consumer education, advocacy and enforcement and penalties. Recommendations for improvement are discussed in relation to our case study below.

Additions to the ICCA Act

As discussed in Issues Paper number 1, the law should be amended to protect consumers.

As highlighted by the case study below, PNG consumers would benefit from:

- Laws against misleading or deceptive conduct
- Laws against unconscionable conduct
- Laws prohibiting pyramid schemes
- Greater awareness and education of consumer rights
- Increased consumer advocacy, potentially through the formation of a consumer council or other independent advocacy body

All of the above points have been raised as potential changes in the issues paper and would strengthen the protections available to consumers in PNG. These changes would also align legal and other protections with neighbouring jurisdictions, like Australia (see: *Australian Consumer Law*), where more robust protections for consumers are available.

Case study: travelling salesman in Rai Coast, Madang Province

The following incident was witnessed by Australian National University researcher Shaun Gessler on Sunday April 24th on the Rai Coast District, Madang Province. While this case study illustrates just one incident of travelling salesmen's tactics (or 'door-to-door' sales), it is indicative of a wider practice in both rural and urban PNG, where individuals are targeted through pseudo-scientific presentations and elaborate pyramid schemes which provide no benefit to the consumer.

On Sunday 24th April, 2016 I witnessed a travelling salesman give a product demonstration to around 70 people at the Mindere Lutheran Church, Mindere Village, Ward 28, Rai Coast District, Madang Province. The travelling salesman said he was selling products on behalf a company called "JM Ocean Avenue", and placed a large bag

marked with the JM Ocean Avenue logo on a table during his presentation. He mentioned the company's website: <http://www.jmoceanavenue.com>

The salesman displayed three products for demonstration:

1. "Angel's Secret" Female sanitary pads
<http://au.jmoceanavenue.com/AngelsSecret.aspx>
2. "Alphameta" nutritional supplement powder
<http://au.jmoceanavenue.com/AlphaMeta.aspx>
3. An "Alpha Spin" disc
<http://au.jmoceanavenue.com/AlphaSpin.aspx>

The salesman claimed that the disc was made in Germany and could "energise water", "energise motor fuel", and "protect yourself from the harmful effects of mobile phone radiation". He told audience members to check the website for more information about the product. The salesman then waved the disc around some bottles of water, gave the water to four audience members to drink, and then instructed the four audience members to lift a man sitting on a chair off the ground. The audience members successfully lifted the seated man off the ground, and the salesman said that they were only able to do this because they had drunk the water which had been "energized" by his disc.



Figure 1: A Travelling salesman at Mindere Village, Rai Coast District, Madang Province

When audience members expressed interest in buying the disc, the salesman stated that it cost K1,800. The salesman said that while this may seem expensive, the audience members would be able to buy the disc, if they first became registered on-sellers of JM Ocean Avenue products, like himself. If they purchased enough JM Ocean Avenue products from him, and then sold these products on to other people, the salesman claimed that eventually they would earn enough money to buy the disc.

The salesman said that after selling a certain number of products, they would advance through the company from Silver to Gold and then to Platinum status. The salesman also said that each customer who purchased products from JM Ocean Avenue would “earn points”, although the purpose of these points was not made clear to those participating in the demonstration.

While I have no problems with anyone promoting feminine sanitary pads to women in rural areas, I found the salesman’s claims about the “AlphaSpin” disc to be deceptive and misleading. The promotion of the ‘Angel’s Secret’ product in this manner, however, increased the salesman’s credibility with the audience when he proceeded to demonstrate the ‘Alpha Spin’ disc.

Discussion of the case study and recommendations

A number of elements of the salesman’s tactics, products and approach are problematic. These sales tactics were targeted at both men and women, including the ‘Angel’s Secret’ sanitary pads which the salesmen marketed to both men and women. As described in the case study, the salesman made a number of claims that would be unable to be substantiated, making potentially misleading claims about the products and making clear reference to the pyramid scheme-like nature of JM Ocean Avenue.

These problematic elements could be addressed by changes or improvements in the ICCA Act and through improved consumer advocacy and education.

Misleading or deceptive conduct (Section D)

Inclusion of a specific protection prohibiting misleading or deceptive conduct in the ICCA Act would ensure that consumers are protected against products that do not perform as they should, especially in cases where consumers may be lead to believe a product has particular properties (such as the ability to ‘energise water’ as described above) through pseudo-scientific demonstrations which may be perceived by some consumers as legitimate science. In such cases, the ability for the regulators to ban such practices would be helpful for consumers.

Any law prohibiting misleading and deceptive conduct should also be applied even if the business or salesman did not intend to mislead or deceive or if no one has suffered any loss or damage as a result of the conduct. This would ensure consumers are fully protected against claims that they may not be able to verify, such as the scientific veracity of a product such as the ‘Alpha Spin’. These changes would align consumer law in PNG with protections provided to consumers in Australia and New Zealand.¹

Recommendation:

- The ICCA Act incorporate specific provisions for misleading and deceptive conduct to protect consumers.

¹ See the *Australian Consumer Law* (Cth) s 18; *Fair Trading Act 1986* (NZ) s 9

Unfair conduct (Section E)

The case study illustrates a number of ways in which the ICCA Act could benefit from specific reference to some kinds of unfair conduct. This would improve the clarity of the law for businesses selling products, advocates and lawyers.

In particular, the prohibition of pyramid and referral selling schemes would be of great benefit to consumers who encounter salesmen like the one described in our case study. Pyramid and similar schemes are prohibited in many other countries, including Australia and New Zealand. This is an important protection for consumers in those countries and would greatly benefit consumers in PNG.

The Commission should also consider further discussion around protections for consumers trading in the informal economy. Further education on consumers' rights in such instances would be beneficial for both businesses and consumers.

Recommendation:

- We recommend that the Act is amended to prohibit the following:
 - Pyramid selling and similar schemes.
 - Referral selling where payments to the referrer are dependent on other consumers acquiring the goods or services.

Consumer guarantees (Section H)

Goods should be fit for the purpose for which they were sold. As the case of the 'Alpha Spin' highlights, consumers may face particular barriers when purchasing goods from travelling or door-to-door salesmen.

It would be difficult for a consumer purchasing an 'Alpha Spin' to know if their good:

- Was fit for purpose, including being fit for all the purposes for which goods of that kind are commonly supplied.
- Corresponded with the description provided in the demonstration.
- Corresponds with the sample or demonstration model in quality, state or condition.

Should these stronger guarantees be both introduced and enforced, we believe that products such as the 'Alpha Spin' would not be able to be sold to consumers.

In this particular case study, it is not clear whether sufficient information was given to consumers to enable them to return goods that did not meet an acceptable quality. For remote communities and people purchasing products from travelling salespeople, it could be extremely difficult to return goods. While we acknowledge that such types of sales may be of some benefit to remote communities (particularly for people who are not able to regularly travel to purchase goods), there are also many instances, such as in our case study, where these consumers are particularly vulnerable to predatory sales tactics.

Stronger consumer guarantees need to be introduced.

Recommendations:

- Stronger consumer guarantees, including specific directions for goods to be of acceptable quality, fit for purpose and to conform to description and demonstration, should be introduced.
- Guidelines for travelling salesmen, door-to-door salesman and telephone salesmen are introduced to assist salesmen in conducting their business in a lawful and appropriate manner.

Remedies, sanctions and enforcement (Section I)

The discussion paper highlights that many consumers are reluctant to report faulty products or services or dodgy sales practices. While larger retailers may have formal procedures in place for addressing consumer complaints, this does little to assist consumers dealing in the informal economy or with smaller businesses in regional and rural areas.

Penalties, and the ability to enforce these penalties, would greatly enhance the power of the ICCC. Stronger penalties would both assist in the enforcement of the ICCC Act as well as raising revenue for the ICCC to prosecute businesses and provide broader advocacy and education services to consumers.

Corrective advertising, compensation for loss or damages (to consumers) and court enforceable undertakings should also be possible remedies. These mechanisms are in place in neighbouring countries such as Australia and New Zealand and assist in the robust enforcement of those countries respective consumer laws.

In particular, the Australian Consumer and Competition Commission has had success with measures such as banning companies from specific types of trading that engage in unconscionable conduct in remote, indigenous communities². Such measures would be effective in similar circumstances in PNG.

An increase in consumer advocacy and education would greatly improve outcomes for consumers. The discussion paper raised the potential for a consumer council to be created. We strongly support the creation of an independent consumer council and recommend that this council be funded from the proceeds of penalties raised from breaches to the ICCA Act. As Australia's largest independent consumer advocacy organisation, CHOICE stands ready to provide advice and assist in the establishment of a PNG consumer council.

A council would be responsible for consumer advocacy and education of consumers across PNG, similar to the advocacy efforts of similar organisations in other countries in the region, including CHOICE (Australian Consumers' Association), Consumer NZ and the Consumer Council of Fiji.

Recommendations:

- Penalties for breaches of the ICCA Act be increased.
- Secondary measures are introduced to improve consumer protections including provisions for corrective advertising, adverse publicity orders, injunctions, powers to order compliance programs, compensation orders, payment for damages, disqualification orders and the ability to issue court enforceable undertakings.

² See *Jackson Anni and FDRA sales agents not to enter Indigenous communities to sell goods or services*: <http://www.accc.gov.au/media-release/jackson-anni-and-fdra-sales-agents-not-to-enter-indigenous-communities-to-sell-goods-or-services>

- A consumer council is created and funded by the proceeds of penalties issued by the ICCC. Its purpose would be to advocate for and educate consumers on their rights.

Other issues

Availability of essential goods in regional and remote areas

We are also concerned about the availability of certain goods for consumers in rural areas of the country. In particular, sanitary pads are expensive and often not available in villages. Villages may be located far from major centres and women will not have access to these essential products. For example, as in the case study, purchasing the ‘Angel’s Secret’ sanitary pads may be the only option, or one of a limited number of options, for purchasing feminine hygiene products in remote areas. When villages do stock these products, they are often expensive.

We recommend that the ICCC and consumer advocates work with government organisations and NGOs to ensure that essential items, like sanitary pads for women, are available at a reasonable and fair cost to consumers and that distribution plans for such items are in place.