

“The dangers of taking the consumer out of consumer advocacy”

A speech delivered by David Tennant
Director, Care Inc Financial Counselling Service
At the 3rd National Consumer Congress, hosted by Consumer Affairs Victoria
Melbourne 16 March 2006¹

The task of responding to the detailed Discussion Paper by Chris Field being released today is not an easy one. For a start it is a document clearly intended to influence the design and delivery of consumer advocacy in Victoria and I live and work in the Australian Capital Territory. That rather begs the question why I have been invited to speak at this congress and you are not hearing from someone or some agency either directly interested in or potentially impacted by the proposals for change in Victoria. There are benefits in inviting the views of an external commentator, although it might equally be another phenomenon I have seen some evidence of over the years – ‘this could get ugly...let’s flick it to Canberra’.

Notwithstanding the title of the Discussion Paper, the basic concepts underlying the plan the author puts forward for Victoria are not limited by State boundaries. Consideration of the structure and significance of consumer advocacy is a subject that is gradually starting to receive some long overdue attention in Australia. I congratulate Chris on making a further contribution to the development of that discourse, but do not however share his vision of what consumer advocacy is, who does it or how it should be delivered.

It will be for others to respond to Chris’s suggestions for the consumer advocacy landscape in Victoria. My comments respond to the more general messages in the Discussion Paper and in the brief time available today I will focus on two central themes, where my personal understanding and experience lead to different conclusions than those Chris has reached:

- 1) What it means to be a consumer advocate and
- 2) The dangers associated with policy dogma.

What it means to be a consumer advocate:

*“Consumer advocacy should be a voice for the maximization of the long-term interests of all consumers, distributed in a way that accords with our agreed notions of justice”.*²

¹ This speech responds to a Research Paper, *Consumer Advocacy in Victoria*, by Chris Field that was launched at the National Consumer Congress on 16 March 2006. In the original preparation of this speech, I relied on a confidential draft provided by Consumer Affairs Victoria. In light of the possibility that the final version of the paper might vary from the draft provided I attempted to keep direct quotations from the Paper to a minimum. The references have been updated since the final report was released.

² Examples include a slightly varied version of the statement which appears in the Executive Summary on page 1 of the Research Paper, the above quote is used as a paragraph heading on page 7, and a varied version appears in the summary of section 1 of the Research Paper on page 13.

The Discussion Paper presents the above proposition as more than just a working definition of consumer advocacy. It is given almost the significance of a mission statement, being referred to on several occasions presumably to emphasise what consumer advocacy should be all about.

As a general statement of intended outcomes the quote above appears entirely reasonable. Trying to achieve the best results for as many people as possible, in ways that meet a general societal expectation of what is fair and just is a worthy goal. But does it fulfil the responsibility that follows being asked to speak for another? If the other is a person or people of average means, with average capacities and expectations, perhaps it does. In my view however consumer advocacy requires a working definition sufficient to meet the needs of those who are not average, pressing for responses that are not simply reflections of current societal norms. Indeed, it is often the case for the vulnerable or disadvantaged that normal societal activity has caused or contributed to the harm they need to have addressed.

My employer is Care Inc Financial Counselling Service. Care has been the main provider of financial counselling in the ACT and region since 1983. The Consumer Law Centre of the ACT is co-located with Care and there are a number of other service programs, including a NSW outreach service, a No Interest Loans Scheme and a Community Development and Education Program. Our clients are low to moderate income consumers usually experiencing problems with credit and debt and rarely being able to rely on safe, fair access to a wide variety of consumer markets. Across its various service programs Care responds to between 2000 and 2500 new requests for assistance each year

There seems to me no better way to commence a discussion about consumer advocacy than to defer to the consumers who access and benefit from that advocacy. Care invites feedback from its clients. For example, clients are asked what they expected on presenting. Here is a sample of the responses that Care received and reported to funding bodies in 2005:

- *Help to resolve financial issues.*
- *I did not have any idea.*
- *Humiliation!*³

And here are some examples of the comments made on exiting about the assistance that was received:

- *It was helpful to know the service was there and prepared to act on my behalf.*
- *What can I say? Thank you. I can now see the light at the end of a very long dark tunnel.*
- *I felt overwhelmed and anxious and my counsellor listened carefully and assured me that I could get through this difficult task at hand – keeping my*

³ These and the following quotes below are drawn from Care's Client Evaluation forms which are summarised and appear in Care's 6 monthly reports to the ACT Department of Housing, Disability and Community Services. (These specific quotes appeared in reports for the periods 1 January 2005 to 30 June 2005 and 1 July 2005 to 31 December 2005.)

dignity at all times! It was a tremendous support when my counsellor assisted me to negotiate with my creditors.

This is not a marketing presentation for my employer. The purpose of providing the preceding quotes is not to try and convince you Care does nice things. It was to present the voice of the consumers accessing the services.

The client group Care works with are amongst the most vulnerable in our community. They also tend to be the least commercially attractive. If and when product and service providers compete for these clients' business, far too often that competition is about exploiting their vulnerability and disadvantage even further. Respect and dignity are not concepts that Care's clients would consistently associate with their market interactions. But respect, dignity and responsiveness to needs are precisely what Care aims to provide. The standard may not be met all of the time, but the aim is a reliable commitment.

Staff at Care have a pretty straightforward view of consumer advocacy. It means acting in the interests of our consumer constituency. From individual assistance and representation, through to activities that seek to address collective concerns, the needs of our clients are paramount. That is not to say Care does not have other duties, or stakeholders with which it is required to interact. For example, there are reporting obligations under funding contracts, legal requirements as part of being an incorporated body and so on. But the central duty to the clients is unassailable. It is, in short, the reason for the agency's existence. This central tenet of prioritising the needs of a consumer constituency is a feature common to other agencies with which Care interacts and that we would identify as consumer advocates.

Why make an issue of this? There is an increasing tendency to want to broaden the description of consumer advocacy in a way that I personally find meaningless. At the extreme end of the spectrum, it is sometimes suggested that as everyone is a consumer – we are all potential consumer advocates. The Discussion Paper recognises that any consumer with a view about consuming is not necessarily consumer advocacy. It does however seek to stretch the concept across activities that are not in my view consumer advocacy and to stakeholders that are not consumer advocates. Specifically Chris's division of consumer advocates into categories and subsequent mapping of the current landscape for consumer advocacy in Victoria and beyond includes industry, government and regulatory bodies⁴. Individually and collectively industry, government and regulatory bodies play crucial roles in delivering good consumer outcomes. They are not however consumer advocates.

Let us consider the example of government agencies like Fair Trading Offices or Consumer Affairs Bureaux. Government's interest in consumer issues is real, significant and of critical importance. Commonwealth, State and Territory regulators like our hosts, Consumer Affairs Victoria, provide vital services to consumers. Through events such as this congress they stimulate debate and discussion and shine a light on issues that can deliver enormous consumer benefits. Initiatives like the recently released Report of the Consumer Credit Review can seek to articulate and

⁴ The mapping is undertaken in narrative form and then appears in a table on pages 21 and 22 of the Research Paper. Interestingly, there is no reference to the 100 or so financial counsellors currently operating in Victoria in a mix of full-time, part-time and volunteer roles.

rectify imbalance in the way our laws operate in practice. That said, Consumer Affairs Victoria and its colleague agencies around the country balance roles and duties owed to more than one group or interest. Consumer needs are considered and balanced, sometimes even prioritised – but they are not the primary and overriding duty.

Similarly it has been suggested that industry groups can advocate for consumers. There is evidence of a growing culture in the world of commerce that recognises social responsibilities. Industries are being challenged to better serve the communities in which they operate in ways that benefit more than just the bottom line for shareholders. Some of the initiatives created and pursued by individual companies, even on occasions by industry groups have been fabulous and have produced genuine community benefits. But in recognising those benefits and acknowledging, even applauding some of the advances, it is a much bigger leap to include industry as a category for consumer advocacy.

Turn it around the other way for a moment. Using the same broad logic applied in the Discussion Paper, consumer advocates would equally be a category in the mapping of government. Or they might appear in the corporate structural diagram presented in Annual Reports to Shareholders. Stakeholders yes. Important ones – I hope so. But undertaking the same roles with the same sets of responsibilities – I don't think so.

Perhaps a better test of what constitutes consumer advocacy is that of primary obligation. If the central and over-riding obligation is not to consumers, then those undertaking the activities are not consumer advocates. Whether that test holds true in all circumstances is something that could undoubtedly benefit from further analysis and discussion.

The dangers of policy dogma:

At the heart of Chris's proposals is a belief in the current dominant force in market economics:

Consumer advocates should, as a first principle, be a voice for competition.⁵

The statement is developed and qualified by other observations about balancing the unintended consequences of market failure and of addressing the needs of the vulnerable and disadvantaged. Competition remains however a key focus of the entire work; a recurring theme in how consumer advocates should undertake their activities. Chris prioritises the commitment to competition in listing the four matters that in his view consumer advocacy groups must address and promote:

- *consumer advocacy should provide a voice for competitive markets,*
- *consumer advocacy should provide a voice for consumer protection regulation,*
- *consumer advocacy should provide a voice for consumer redress and*
- *consumer advocacy should provide a voice for distributive justice.⁶*

⁵ This is another of the statements that receives more than one reference in the Research Paper, appearing initially in the Executive Summary (page 1).

When one tackles the sacred subject of competition policy in Australia, you can actually feel the shift that occurs. As the topic is being raised today, I have no doubt that a proportion of people in the room will experience their pulses starting to race and be fighting an urge to curl their top lips in a collective sneer – as another luddite, flat earth, pinko-lefty *consoomer* whinger wants us to hold back the wheels of commerce. Equally others might be getting a sense that they can start to stomp and cheer, or link arms for a stirring rendition of ‘*Give peace a chance*’. If that describes a feeling that is building for you, take a deep breath – nothing so dramatic is going to take place.

Competition has delivered some extraordinarily positive outcomes. As a nation we are more prosperous and have more choices available to us as a result of embracing and promoting competitive markets.

Competition is however a tool. As Chris importantly notes:

...competition is never an end in itself, it is simply a means to an end, that end being to achieve an efficient allocation of resources and the maximization of the long term interests of consumers.⁷

The Discussion Paper warns consumer advocates to avoid being seen as unthinking protectionists. I agree but do not accept that the way to achieve that end is to become primarily an advocate for the current dominant economic paradigm. In fact the weakest part of the entire paper for me is how consumer advocates, particularly those acting for low income consumers are actually supposed to tackle instances of market failure. There are plenty of references to distributive justice and to sharing the wealth created by competition, but almost nothing about articulating the failures of competition to deliver acceptably equitable outcomes and, more specifically, what to do when the nature of the competitive activity itself actually causes the consumer harm.

If we return to the concerns expressed in the preceding section about what is consumer advocacy and who does it, the great danger in taking the Discussion Paper too literally is that one actually sees no role for consumer advocates at all. I agree absolutely with observations about the need for more and better policy voices in the consumer landscape. Not at the expense of coalface service delivery however, especially for low income and disadvantaged consumers. Even in rather better designed and resourced landscapes such as exist in the United Kingdom, those front line activities must play a central role in consumer policy development ground up, rather than top down. Similarly, prioritising the needs of the vulnerable is a good use of resources, rather than a drain. If we are serious about empowerment, focussing on the excluded and working with those people to move them to a position of inclusion must be the priority.

⁶ The four headings are utilised throughout section 1 of the Research Paper, to introduce and then summarise the author’s identified priorities.

⁷ Page 8 of the Research Paper.

Another way to understand the dilemma is to consider it through the framework of how government and regulatory agencies might seek to engage with communities more broadly. I will try to explain that briefly.

If consumer advocates are considered as those owing their primary and over-riding duty to consumers, they are both custodians and communicators of community views. The refreshing new approach to community engagement being championed by government trailblazers like the Victorian Department of Communities, does not seek to require of the community the discipline (or limitation depending on one's perspective) of government service. Instead there is an apparently genuine recognition of the need to hear from communities, through the voices of communities, in ways that are simple and accessible and then to look for outcomes through partnership or through building local capacity.⁸

The Discussion Paper, even though written by a respected former consumer movement colleague, promotes a potentially less effective approach to communication. The paper seems to shift to consumer advocates the responsibility to learn and use another language that is not primarily about consumer needs. Further it suggests that consumer bodies must weigh the costs and benefits and present for consideration the solution that produces the *maximized outcome to meet the long term needs of all consumers*. What that sounds like to me is shifting the role of government to consumer advocates, with government asking to only being told what it wants to hear. It is a recipe for reading down, or diminishing the actual voice of consumers in favour of a more sanitised version of the reality. It might also be called a conflict.

Summary:

Let me end as I began. The Discussion Paper presents a model for the design and delivery of Consumer Advocacy in Victoria. It will therefore be important for consumer advocates in Victoria to digest and respond to the work and I hope they take that opportunity.

In relation to the broader issues raised in the Discussion Paper my comments have been direct and largely critical. I do however acknowledge the significant work the paper represents on Chris's part and the importance of ventilating those issues. Consumer advocates should never, in my view, feel embarrassed or apologetic for speaking plainly on the part of the consumers they represent. It is ultimately part of discharging the duty that speaking on behalf of another represents.

March 2006

⁸ These are broadly goals encompassed in the design principals adopted by the Department of Communities. For a discussion of these principles see Yehudi Blacher, *Changing the Way Government Works*, Public Administration Today, October – December 2005, pp 38-42