

Chapter 14

Regulatory Consistency and Powers

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I The Setting and the Problem

Recent reforms represent a seismic shift in constitutional and regulatory responsibility for consumer law in Australia. This has come in response to criticisms of regulator inconsistency and the exercise of regulatory power. The approach to reform, however, has not itself been uniform and has not produced a singular result in all cases. There may be good reasons for this. Recent developments in regulatory theory can be used to analyse whether the policy goal of consistency will be achieved in the short to long term and whether this is, itself, good consumer law.

A *Interesting Times*

The first decade of the 21st century produced more profound and comprehensive consumer law reform in Australia than any previous decade.¹ It started with the passage and adoption of changes to the provision of non-credit financial services in the Financial Services Reform (FSR) amendments to the *Corporations Act 2001* (Cth) (*Corporations Act*).² A year before leaving office in 2007, the Howard Liberal-National Coalition government commissioned the Productivity Commission (PC) to conduct an ambitious *Review of Australia's Consumer Policy Framework*.³ Relying on the results of this and other reviews,⁴ the Rudd-Gillard Labor governments instigated the process

1 Jessica Tuffin called it 'a time of rapid and dramatic change in Australia's consumer laws': Tuffin J, 'Responsible Lending Laws: Essential Development or Overreaction?' (2009) 9 *Queensland University of Technology Law and Justice Journal* 280 at 282.

2 *Financial Services Reform Act 2002* (Cth) which amended the *Corporations Act*. See Chapter 10 of this volume,

3 Productivity Commission (PC), *Review of Australia's Consumer Policy Framework* (Inquiry Report No 45, 2008) at <<http://www.pc.gov.au/projects/inquiry/consumer/docs/finalreport>> accessed 14 November 2012.

4 PC, *Review of the Australian Consumer Product Safety System* (Research Report, 2006) at <<http://www.pc.gov.au/projects/study/product-safety/docs/finalreport/keypoints>> accessed 9 November 2012; Commonwealth Consumer Affairs Advisory Committee, *Review of Statutory Implied Conditions and Warranties* (Issues Paper, 2009):

This is a preview. Not all pages are shown.