



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

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prepared for

The Department of Treasury, PNG Government

by

The Review Team, Consumer and Competition Framework Review

CONSUMER AND COMPETITION FRAMEWORK REVIEW

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

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EXECUTIVE SUMMARY

The Consumer & Competition Framework Review (“**Review**”) was initiated by the Department of Treasury in 2014, to examine the laws and institutions that protect consumers and promote competition in PNG.

Thirteen years have passed since the *Independent Consumer and Competition Commission Act 2002 (ICCC Act)* was passed by Parliament. PNG’s economy and business environment have grown and developed in that time. The Government now considers that it is desirable to conduct a comprehensive review of the consumer protection and competition framework, to ensure it meets the needs of the public and businesses.

The purpose of this Issues Paper is to seek comments, experiences, observations and ideas relevant to consumer protection and economic empowerment of women, from organisations and individuals in PNG (or who do business in PNG), by **Friday 11 September 2015**.

A number of questions are set out in **bold type** but comments are welcome on any relevant matters.

In particular, the Review Team seeks comments on the following issues:

- Whether current rules are adequate to ensure that consumer goods are safe?
- Whether misleading or deceptive conduct by traders should be prohibited?
- Whether particular kinds of unfair conduct by traders should be prohibited?
- Whether traders should be required to provide consumers with better information about prices and products?
- Whether current rules for traders’ measuring equipment and packaging are practical for traders and protect consumers?
- Whether specific “consumer guarantees” should apply in PNG?
- Whether changes are required to help the ICCC in investigating and taking action on breaches of the law?

In coming months, two additional Issues Papers will be circulated, on *Competitive Markets and Fair Trading*, and *Industry Regulation and Price Oversight*. It is also proposed that public workshops will be held, to discuss these issues.

I. BACKGROUND

The Consumer & Competition Framework Review (“**Review**”) was initiated by the Department of Treasury in 2014.

The Review is examining the framework that protects consumers and promotes competition in PNG – including its legislation, institutions, regulatory settings and processes – and will provide the Department of Treasury with recommendations for improvement of this framework.¹

Part I of this Issues Paper explains why Treasury has undertaken the Consumer & Competition Framework Review, why consumer protection and economic empowerment of women are important, and what the existing laws and agencies in PNG do to promote consumer protection and economic empowerment of women.

This Issues Paper raises questions for your consideration and comment. These questions are *in bold type*.

A. Aims of the Consumer & Competition Framework Review

Thirteen years have passed since the *Independent Consumer and Competition Commission Act 2002 (ICCC Act)* was passed by Parliament. PNG’s economy and business environment have undergone significant growth and development in that time. The Government now considers that it is desirable to conduct a comprehensive review of the framework for consumer protection and the promotion of competition, in order to ensure that the framework is appropriate to meet the current and emerging needs of the public and businesses.

The Review Team is required to:

- (i) *review the effectiveness of the existing consumer protection and competition provisions and institutions;*
- (ii) *review the effectiveness of the current regime of economic regulation and regulatory administration;*
- (iii) *examine whether government business activities and services providers serve public interests and promote competition and productivity; and*
- (iv) *advise on appropriate changes to legislation, institutional arrangements and other measures.*²

In order to understand the issues faced by PNG consumers and businesses, the Review Team:

- is holding a series of meetings with businesses and organisations;
- has begun to conduct focus group meetings with consumers;
- will schedule Public Workshops to discuss consumer protection and

¹ Department of Treasury, *Terms of Reference: Consumer and Competition Framework Review* (2014) paragraph 5. (Available online at www.ccfreview.info).

² *Terms of Reference* (ibid.), paragraphs 7 to 14.

- competition issues with businesses and members of the public; and
- proposes to publish two other issues papers -- on Competition and Fair Trading; and Industry Regulation and Price Oversight.

The Review Team will later issue a Draft Report for consultation, then a Final Report to the Government, setting out the Review Team's recommendations on ways to improve the framework for consumer protection and promotion of competition in PNG.

The ability of the Review to make recommendations that bring positive results for PNG will depend to a significant degree on the information that is made available to the Review. The Review Team therefore welcomes comments, experiences, observations and ideas from organisations and individuals in PNG (or who do business in PNG), at all stages during the Review process.

At this stage in the Review process, comments are especially sought in response to this Issues Paper on Consumer Protection and Economic Empowerment of Women.

Please provide comments to the Review Team, by **Friday 11 September 2015**, at:

telephone: (+675) 321 0400 (please ask for 'the Competition Review')

email: comment@CCFReview.info

website: www.CCFReview.info

B. Current Framework of Consumer Protection Laws

The main consumer protection law in PNG is the *Independent Consumer and Competition Commission Act 2002 (ICCC Act)*. The main agency responsible for consumer protection is the Independent Consumer and Competition Commission (ICCC).

Part 7 of the ICCC Act declares that:

It is the policy of the State to protect the rights and interests of consumers and to monitor standards for the ethical conduct of those engaged in the production and distribution of goods and services.³

The ICCC Act states that consumers have the following rights:

- right to safety;
- right to choice;
- right to consumer education;
- right to information;

³ *Independent Consumer and Competition Commission Act, s.104.*

- right to representation; and
- right to redress.⁴

Part 7 of the ICC Act contains specific provisions in relation to product safety, product information standards, and compulsory product recall.

Other Acts include provisions that seek to protect consumers' interests. Some Acts that apply only to particular industries include safeguards for consumers in those sectors. These Acts are summarised below:

Act	Relevance for Consumers
<i>Bread Act 1974</i>	Sets the minimum size and weight of loaves of bread supplied in towns and declared areas in PNG.
<i>Commercial Advertisement (Protection of the Public) Act 1976</i>	Prohibits unfair statements in commercial advertising.
<i>Fairness of Transactions Act 1993</i>	Allows a party to seek review by the Supreme Court or National Court of an economic or commercial agreement or dealing, on the ground that it "was not genuinely mutual or was manifestly unfair to a party".
<i>Goods Act 1951</i>	Implies certain terms into contracts for the sale of goods, such as conditions that the goods are reasonably fit for a purpose disclosed to the seller; goods sold by description are of merchantable quality; and the seller has the right to sell the goods.
<i>Hire-purchase Act 1966</i>	Prohibits false statements or representations in hire-purchase agreements and implies certain terms into hire-purchase agreements.
<i>National Information and Communications Technology Act 2009</i>	Provides for "retail service determinations" by the Minister (after Public inquiry by NICTA), which may regulate prices, service standards and other terms of provision of retail telecommunications services.
<i>Packaging Act 1974</i>	Regulates the labelling and packaging of goods that are weighed and measured prior to purchase, and price marking on packaging. Both packers and re-sellers may be penalized for selling under-weight or mis-labelled packages.
<i>Prices Regulation Act 1949</i>	Prohibits unfair pricing and restrictions on the circulation of goods. Also provides for regulating maximum retail prices for certain products and for the display of these prices.

⁴ *Independent Consumer and Competition Commission Act, s 105(1).*

<i>Telecommunications Act 1996</i>	Requires a carrier to price its services in accordance with a tariff filed with NICTA.
<i>Trade Measurement Act 1973</i>	Regulates the units of measurement that can be used when selling goods and requires certification of weights and measures used in trade.

PNG does not have all of the consumer protection provisions that are common in other countries. For example:

- there is no general prohibition against engaging in misleading or deceptive conduct; and
- there are no general guarantees regarding the quality of services supplied to consumers.

It may be appropriate for PNG to introduce some additional consumer protection laws. Balanced against this, the Government is concerned not to burden businesses, or the ICCC, with additional laws unless they are of real benefit for consumers, businesses and the economy as a whole.

C. Consumer Protection Agencies

The Independent Consumer and Competition Commission (ICCC) has a range of consumer affairs responsibilities:⁵

- advising the Minister on consumer policy and legislation;
- investigating consumers' complaints or referring them to appropriate authorities;
- educating consumers about their rights and responsibilities;
- promoting consumer codes of practice among businesses;
- establishing systems for responding to consumer claims;
- encouraging the development of consumers' associations;
- liaising with overseas consumer organisations; and
- other functions relating to consumer affairs.

The ICCC has a Consumer Protection Division. Most of the ICCC's consumer protection personnel are located in Port Moresby, but a small number of staff are located at the Momase Regional Office (Lae); Islands Regional Office (Kokopo); and Highlands Regional Office (Goroka).

In addition to the ICCC, the following government agencies have a role in consumer protection in PNG:

Agency	Relevance for Consumers
Department of Customs	The Department of Customs is responsible for

⁵ *Independent Consumer and Competition Commission Act*, s 106.

	preventing 'prohibited imports' from entering PNG; 'prohibited imports' may include dangerous or sub-standard consumer goods.
Department of Health	The Department of Health regulates the packaging and labelling of food and drugs.
OPP	The Office of the Public Prosecutor (OPP) has responsibility for prosecuting offences in PNG, including offences against consumer protection laws.
NICTA	The National Information and Communications Technology Authority (NICTA) regulates the ICT industry, including pricing of retail telecommunications services.
NISIT	The National Institute of Standards and Industrial Technology (NISIT) sets product standards (some of which are enforced by the ICCC).

This division of responsibilities between agencies may raise possible concerns. There is a risk of different agencies adopting inconsistent approaches, or of issues 'slipping between the cracks' where several agencies could act but each leaves it to the other, or action is delayed due to the need for inter-agency discussions.

Some statutory bodies and state-owned enterprises (**SOEs**) have roles in the supply of goods and services to consumers. For example, Post PNG, PNG Power, PNG Ports, Motor Vehicles Insurance Ltd, Water PNG and Eda Ranu supply services to consumers. Where enterprises that are state-owned operate in competition with enterprises that are privately owned, there is a risk that SOEs may enjoy advantages from their relationship with the state which private-sector enterprises do not. For the private sector to compete on a level field with SOEs, both kinds of enterprises should be treated alike ("competitive neutrality").

Enforcement of consumer protection law is mainly the ICCC's responsibility. The OPP has responsibility for prosecuting offences against PNG laws (though it may delegate this function to the ICCC, in particular cases). Penalties can be imposed only by the courts.

The Review will consider whether consumer protection functions are distributed effectively, and whether agencies could collaborate better, in their public education, investigation and enforcement work.

D. Lack of Consumer Groups

At present there is no clearly identifiable body, other than the ICCC, that represents consumer interests and promotes consumer education in PNG. However, the ICCC functions include the fostering of consumer groups:

[T]o encourage the development of organisations and associations established for the purpose of furthering the interests of consumers, and to liaise and consult with them on the development of consumer

policy and on issues of consumer interest.⁶

Many other countries have organisations that represent the interests of consumers. These organisations may be formed independently of the government, or with the support of public funding and legislation.

At least one social media group (the “PNG Consumer Action Network,” on Facebook) aims to represent consumer interests in PNG.

Consumer groups may usefully channel consumer complaints to the regulator. They may also be pro-active in identifying consumer issues (consumers become the eyes and ears of the regulator, reporting problems to it).

The Review will consider whether there is role for a ‘Consumer Council’ or similar body in PNG.

II. ISSUES IN CONSUMER PROTECTION

This section of the Issues Paper discusses a range of consumer protection issues that the Review Team has identified from its initial work. Other issues may also be important.

The Review Team would welcome your comments on the issues discussed below, as well as on any other relevant issues.

A. Importance of Consumer Protection

The PNG Government attaches importance to effective consumer protection, promotion of competition and regulation of state owned enterprises in PNG.

Protecting consumers is vital, not only to ensure that consumers get a fair deal, but also to ensure that markets operate efficiently, and to drive economic development.

Consumer issues can arise in any retail market, whether in the “formal” or “informal” economy. Markets do not work well when consumers buy goods or services that they would not otherwise have bought, or they pay more for goods or services than they would have paid if they had been better informed. For example, such harms are likely where:

- A seller misleads or deceives a consumer – e.g. a salesperson falsely claims a coat is waterproof when it is not.
- A seller mis-labels goods offered to consumers – e.g. a grocer puts less than 1kg of carrots in a bag labelled “1kg”.
- A seller applies unfair pressure to a consumer – e.g. a door-to-door salesman refuses to leave a person’s house until she signs an order.
- A seller supplies goods that are unsafe to use – e.g. a motorcycle shop sells a helmet that looks solid but is made out of weak plastic.

⁶ *Independent Consumer and Competition Commission Act, s.106(k).*

- A consumer is the victim of a scam – e.g. an email ‘business’ promises an opportunity to make money from home but requires the payment of a ‘deposit’ up front, then disappears as soon as the ‘deposit’ has been paid.

The consumer loses out in such cases because he or she gets less than he or she had bargained for. The community overall will be less well off, because resources are mis-allocated and businesses will be less responsive to consumer needs. Economic development in PNG is also likely to suffer.

Where consumer protection laws are absent or ineffective, consumers must try to protect themselves by being careful to ensure that the products they buy will be satisfactory. If a product turns out to be faulty or unsatisfactory, the consumer might complain to the seller and ask for a replacement, repair or refund. Without legal rights, however, the consumer is in a weak bargaining position. The consumer has no avenue of redress if the seller refuses to put matters right. Effective consumer protection laws put consumers in a stronger position to guard their own interests and to seek a remedy by making a complaint to the regulator if sellers refuse to correct a problem.

Choices by well-informed consumers drive the process of competition between businesses. A business environment that is competitive and dynamic will help to drive PNG’s future economic growth.⁷ The Government therefore supports effective laws and institutions for consumer protection. They are a key element in improving economic welfare and living standards in PNG.

B. Product Safety, Standards and Recalls

Product safety and compliance with product safety standards are serious issues for consumers. Consumers who buy goods or services that are unsafe or unsuitable for their intended use get something that is less valuable than what they bargained for. They may also suffer property damage or loss, injury, illness or death.

Often consumers are unable to assess for themselves whether a good or service offered to them will be safe or suitable for the intended purpose. For example, consumers are not in a position to test whether an appliance is properly insulated, a medicine has the stated ingredients, or a piece of equipment has the safety features claimed. The law therefore seeks to protect consumers against goods or services that are unsafe.

The National Institute of Standards and Industrial Technology (**NISIT**) prepares product safety standards and product information standards or approves relevant overseas standards (often from the EU, Australia or New Zealand). The ICCC has responsibility for enforcing standards and relies on NISIT for testing whether products comply with standards.

The ICCC Act gives the ICCC powers (in Part 7) to help protect consumers

⁷ Government of PNG, *2013 National Budget*, chapter 7.3.

from potentially hazardous products. In recent years the ICCC has been active in promoting product safety:⁸

- Approximately 10% of consumer complaints to the ICCC in 2014 related to product safety issues.
- The ICCC conducts regular store inspections to raise traders' awareness, monitor compliance with product bans, and detect mislabelled goods or expired foodstuffs.
- The ICCC uses media releases, newspapers, radio broadcasts, and presentations at schools and offices to publicize product safety issues (and other consumer protection issues).
- Alerts were issued by the ICCC during 2014 regarding unsafe scuba diving equipment; travel scams; various food products; button batteries; and curtain and blind cords.

In addition to issuing warnings and alerts, the ICCC may:

- Declare goods that may injure a person to be "unsafe goods".
- Impose a "permanent ban" on unsafe goods if a consumer product safety standard is not prescribed for them within 18 months.
- Require a supplier to recall unsafe goods, goods that do not comply with a consumer product safety standard, or goods that are permanently banned.
- Require a supplier to notify the public of procedures for disposal, repair, replacement or refund of price in respect of unsafe goods, goods that do not comply with a consumer product safety standard, or goods that are permanently banned.

In recent years, the ICCC has made use of its powers for product recall (baby formula); interim bans (certain aquatic toys, and non-English labelled foodstuffs); and permanent bans (small high-powered magnets, yo-yo water balls, and toy-like novelty cigarette lighters).

Initial consultations with consumers indicate widespread concerns about the quality of many imported products.

The Papua New Guinea Customs Service ('PNG Customs') can play a role in intercepting imported goods that do not comply with safety requirements but it faces resource and time constraints. It would not normally be realistic to expect Customs to perform or obtain scientific testing of imported goods. An important question arises as to what additional support can be given to Customs, and what assistance Customs can provide in the effort to prevent the importation of unsafe goods.

Unsafe products are usually detected after they have reached the hands of retailers and, often, after they have already been on sale to consumers. Some goods that failed to comply with standards have been confiscated from retailers and destroyed, causing loss to those retailers. It may be desirable for importers to bear an increased responsibility to avoid

⁸ ICCC, *2013 Annual Report*, p.29.

importing goods that do not comply with applicable safety standards (e.g. by way of liability to compensate retailers).

Question 1: Is sufficient information on product safety standards available to importers and retailers to enable them to avoid unsafe goods?

Question 2: Does the Customs Department have adequate capability to detect unsafe goods at the point of entry to PNG?

Question 3: Would more formal cooperation between enforcement agencies (e.g. a joint task force between the ICCC and Customs) improve compliance with product safety standards?

Question 4: Should goods that do not comply with product safety standards be confiscated and destroyed?

Question 5: Should retailers be able to claim compensation from importers for unsafe products that breach the law?

C. Prices of Consumer Products

Consumers will often be concerned about the prices they must pay for goods or services, particularly if those prices seem higher than prices charged in other regions, or when there is significant price inflation.

Regulatory controls on prices might be appropriate in some circumstances, where there is a lack of competition between suppliers. The *Prices Regulation Act* provides for appointment of a Price Controller, who may determine the maximum sale prices for goods or services that have been “declared” by the Minister. This role has been filled by the ICCC since 2002.

A separate *Issues Paper on Industry Regulation and Price Oversight* will invite comments on price control and industry regulation.

D. Misleading or Deceptive Conduct

Some traders may attempt to induce consumers to buy goods or services by misleading or deceiving them. Examples include:

- Giving a consumer false information about a good or service (e.g. by winding-back the mileage on a used car).
- Giving a consumer false information about the price or other terms of the sale (e.g. by advertising a price that does not include taxes and surcharges).
- Remaining silent about something so as to give a consumer a false impression (e.g. where a seller knows the customer intends to repaint a boat but sells paint the seller knows is not water resistant).

Such conduct is unfair to consumers, who are led to make purchases they would not have made if they had been given complete and truthful information. Such conduct also undermines consumers’ confidence in traders, which slows economic growth.

The ICCA Act has no general prohibition against misleading or deceptive conduct. (In contrast, both Australia and New Zealand have laws that forbid a person to “engage in conduct that is misleading or deceptive or is likely to mislead or deceive” in trade.⁹)

The *Hire-purchase Act 1966* prohibits false statements or representations in hire-purchase agreements.

The *Commercial Advertisement (Protection of the Public) Act 1976 (CAPP Act)* provides that “a person, who publishes or causes to be published any unfair statement in any commercial advertisement, is guilty of an offence” (s 4). An “unfair statement” is a statement or representation that is “untrue or inaccurate or misleading or misrepresentative or unreasonable in describing the size, quality, quantity or nature of goods or services in a material particular or a material way.” However, the CAPP Act is limited in scope and effect:

- It applies only to “advertising in the country inviting the public to purchase or use the goods or services advertised or to do certain other things,” and so does not catch misleading statements made in other commercial contexts including negotiations.
- The prohibition does not generally apply to advertisements that originate outside PNG (unless particular consumers in PNG are specifically targeted).
- It is a defence if the advertiser believed on reasonable grounds that the advertisement was not unfair or not likely to deceive or mislead.¹⁰
- The maximum penalty for an unfair statement in advertising is K1,000, which is unlikely to be an adequate deterrent. (Corrective advertising may also be ordered).

A rule against misleading or deceptive conduct in consumer transactions generally would protect consumers by deterring traders from misleading or deceiving consumers into making purchases. It would help to ensure that consumers are given accurate and complete information when entering into transactions.

It might also be appropriate for a rule against misleading or deceptive conduct in trade to apply to transactions in which both parties are businesses (i.e. when no consumer is involved). This could help to protect traders from being misled or deceived by their suppliers or service providers.

Question 6: Should conduct that is misleading or deceptive be prohibited in consumer transactions generally (i.e. not only in hire-purchase agreements and advertising)?

Question 7: Should misleading or deceptive conduct between

⁹ Australian Consumer Law (Cth) s 18; Fair Trading Act 1986 (NZ) s 9.

¹⁰ Publishers, as distinct from advertisers are exempt.

businesses be prohibited (i.e. in cases not involving a consumer)?

Question 8: What penalties and/or remedies should be available against misleading or deceptive conduct?

Question 9: Should the ICCC have the power to order penalties and/or remedies where conduct is misleading or deceptive, or should the courts always determine penalties and remedies?

E. Unfair Conduct

Traders can engage in many kinds of unfair conduct. They include:

- Use of undue influence, pressure or unfair tactics to induce consumers to buy products (unconscionable conduct).
- Unfair terms in standard form consumer contracts (for example, allowing the seller to increase the price or change other key terms in the contract without prior agreement).
- Not displaying the total price of a product.
- Bait advertising (where a product is advertised at an attractive discount, without mentioning that only a small amount of the product is available at that price).
- Referral selling (where when a consumer is persuaded to buy goods or services by promise of a rebate, commission or other benefit for supplying information that helps the trader sell to other consumers, and the consumer does not get the promised benefit unless some other event happens after the agreement is made).
- Forged trade marks (for example, attaching a famous brand's trade mark to a copy of that brand's product).
- Demanding or accepting payment without intending to supply as ordered.
- False or misleading conduct in relation to employment, franchising, or land transactions.
- Offering gifts or prizes to promote goods or services but failing to supply those gifts and prizes, or not supplying them as offered, or offering them in a misleading way.
- Harassing or coercing consumers to induce them to purchase.
- Pyramid selling and similar schemes.
- Traders failing to display prices.
- Traders failing to issue receipts.

- Unsolicited sales practices, including door-to-door and telephone sales.
- Unfair lay-by agreements.

The above kinds of unfair conduct are not specifically prohibited under the ICCA Act. Some of them might be contrary to the *Fairness of Transactions Act 1993*, depending on the circumstances of the transaction and the parties. They are specifically prohibited in many other countries. Such conduct harms consumers and is bad for economic development.

Concern has been expressed about the prevalence in PNG of “payday lending” by lenders who are not banks and who often operate informally. Such payday loans are often made on terms that are unfair to borrowers. Payday lending is not specifically regulated by PNG law, at the present time.

Question 10: Should all of the kinds of unfair conduct outlined above be prohibited?

Question 11: Should “payday lending” be controlled by law?

Question 12: Are there any other kinds of unfair conduct that should be prohibited?

Question 13: Is the right to seek the court’s review of “unfair” transactions (under the Fairness of Transactions Act) effective to protect consumers?

F. Product Information

In order to make informed choices, all consumers need to have information that they can understand and act on. Relevant kinds of information include: price, place of origin, quantity, date of manufacture, date of expiry, and sometimes warranties.

Initial consultations with consumers have revealed that some shops do not display the prices of goods but state a price at the cash register. Imported products are often labelled in foreign languages (e.g. Indonesian, Chinese or Korean). In these cases consumers are not able to make fully informed choices.

Product information is usually communicated to consumers by printed text. Many PNG consumers are unable to read.¹¹ Illiteracy is more common among women than men, and more common in rural than urban regions.

Question 14: Should current labelling laws be changed to assist consumers who cannot read?

Question 15: Should greater assistance be given to consumers who cannot read? If so, how?

¹¹ National Statistical Office, *National Report 2011* (2012).

G. Weights and Measures

Goods are often sold on the basis of a stated price for a measured amount of the good, for example:

- K6.00 per kilogram of potatoes;
- K5.80 per litre of petrol;
- K1.80 per kilometre of travel.

Consumers rely on such measurements and are seldom able to check their accuracy before buying the goods. For example, it would be unrealistic to expect consumers to measure the amount of petrol that garage attendants put into their cars or motorbikes.

PNG has legislation, administered by the ICCC, to help ensure that businesses use accurate measuring equipment and do not supply less of a product than the amount claimed:

- the *Trade Measurement Act* regulates the units of measurement that can be used when selling goods and requires certification of weights and measures used in trade;
- the *Packaging Act* regulates the labelling and packaging of goods that are weighed and measured prior to purchase, and price marking on packaging; and
- the *Bread Act* sets the minimum size and weight of loaves of bread supplied in towns and declared areas in PNG.

In 2014 nearly a quarter of all consumer complaints received by the ICCC related to packaging and advertising. In 2013 the ICCC conducted a total of 110 tests of trade measurement equipment.

Some businesses have suggested that the current certification processes for weights and measures are costly to comply with and unnecessary for modern weighing equipment. Some businesses have suggested that additional organisations should be authorised to test and certify measuring equipment.

Question 16: Are the existing laws on weights and measures satisfactory?

Question 17: Should measuring equipment have to display an annual (colour-coded) certificate of compliance, so that customers can tell if the certification is current?

Question 18: Is modern weighing equipment sufficiently tamper-proof that once-only certification would be enough?

Question 19: What kinds of organisations or companies should be authorised to test and certify measuring equipment?

H. Consumer Guarantees

Consumer guarantees give consumers the following kinds of assurances:

- the supplier has a right to transfer title to (ownership of) the goods;
- the goods are of acceptable quality;
- the goods are fit for particular purpose;
- the goods conform to their description (if sold by description);
- the goods conform to the sample (if sold by reference to a sample);
- the services will be supplied with care and skill;
- the services will be fit for the consumer's purpose; and
- the services will be completed in a reasonable time.

Such guarantees assist consumers by setting out minimum standards on which consumers can rely in every transaction.

In many countries, including Australia and New Zealand, if a supplier does not comply with any of these guarantees, the consumer may claim a refund, repair or replacement of the goods, or a refund of the price of services or have those services provided again.

PNG legislation provides for some of the above guarantees, in relation to sales of goods (under the *Goods Act 1951*) and in relation to goods hire-purchase agreements (under the *Hire-purchase Act 1966*). It appears that buyers of goods could assert their rights in civil claims, before the courts, though this will seldom be appropriate for a consumer.

One issue under review is whether consumers would be assisted more by general guarantees such as those above, applying to every consumer transaction, or by guarantees particular to certain kinds of transactions (e.g. food sales guarantees, building and repairs guarantees, banking services guarantees).

Question 20: Are existing consumer guarantees effective to protect consumers in PNG?

Question 21: Would industry codes of practice, under ICCC supervision, be appropriate to protect consumers' interests in particular sectors?

Question 22: In what ways do goods most often disappoint consumers' expectations?

Question 23: In what ways do services most often disappoint consumers' expectations?

Question 24: In what industries or markets do consumers experience problems most often?

I. Remedies, Sanctions and Enforcement

There need to be effective remedies and sanctions against breaches of consumer protection laws.

First, the Government is concerned that PNG consumers should be able to assert their rights and obtain remedies that assist them.

Initial consultations suggest that consumers often will not seek any remedy for faulty goods, in the belief that nothing can be done. When consumers do seek remedies from sellers, experience with larger stores seems generally to be positive, with the store trying to fix the problem. Larger retailers indicate that they have in place procedures for addressing consumer complaints. This is less likely to be the case with small stores and those operating in the informal sector.

Secondly, if consumers cannot negotiate remedies with traders, they should have the opportunity to seek the ICCC's support.

Few consumers indicate they would complain to the ICCC. Consumers often doubt whether a complaint to the ICCC would help to solve the problem. The ICCC does investigate consumer complaints but, relative to the population size, not many complaints are made. In the last two years, the ICCC has initiated ten successful prosecutions in consumer protection matters (relating to PMV fares).

Thirdly, where the ICCC suspects that consumer protection laws have been breached, it must have power to investigate effectively. Investigations by the ICCC might at present be inhibited by:

- an expectation that investigators obtain a search warrant before removing goods from store displays;
- difficulties (including safety of staff) in obtaining evidence in cases outside Port Moresby;
- delays by other parties (including government agencies) in providing up-to-date and accurate information;
- challenges in coordinating the joint efforts of ICCC and government departments, in cases where their jurisdiction overlaps; and
- resource and equipment constraints within NISIT, on which the ICCC must depend for technical testing in many product safety and weights and measures cases.

Fourthly, penalties for breaches of the law should be sufficient to deter other traders from engaging in similar conduct. The maximum penalties for consumer protection offences are:

- a fine of K50,000 or imprisonment for 6 months, on summary prosecution; or
- a fine of K100,000 or imprisonment for 2 years if prosecuted on indictment.¹²

¹² *Independent Consumer and Competition Commission Act, s 134(1).*

Fifthly, other kinds of sanctions besides fines and imprisonment and additional kinds of remedies may be needed. They include:

- corrective advertising;
- a formal warning notice power for the ICCC;
- statutory powers for the ICCC to accept (and enforce) binding undertakings or commitments by parties who have breached the law;
- orders requiring compensation to be paid to consumers who have suffered loss or damage.

Question 25: In what circumstances should the ICCC have to obtain a search warrant? In what circumstances should the ICCC be able to search without a warrant?

Question 26: Should the ICCC have power to confiscate and dispose of unsafe goods or other goods that breach the law?

Question 27: Should businesses be assisted to establish formal in-house processes for addressing consumer complaints?

Question 28: Should the ICCC be able to impose administrative penalties in less serious cases, rather than take a prosecution to court?

Question 29: Are the maximum financial penalties for consumer protection offences sufficient to deter future misconduct?

Question 30: Should the ICCC be able to require corrective advertising by a trader that has published misleading advertising?

Question 31: Should gaol remain a possible penalty for consumer protection offences?

III. ISSUES CONCERNING ECONOMIC EMPOWERMENT OF WOMEN

This section of the Issues Paper explores women's experience in relation to consumer transactions and whether existing consumer protection laws are helpful for women.

A. Importance of Women's Economic Empowerment

The Government recognises that encouraging women to participate in the economy as consumers, entrepreneurs and employees is essential for economic growth. The PNG Government is committed to gender equality.¹³ This Issues Paper focuses on women as consumers. (A later Issues Paper on

¹³ Government of PNG, *National Policy for Women and Gender Equality 2011 – 2015*.

Competitive Markets and Fair Trading will explore, among other issues, competition issues faced by women entrepreneurs.)

In PNG (as in many countries) women are responsible for their families' day-to-day consumer purchases. Women make many of the consumer choices in buying food, utilities (e.g: energy, water) and education.

Effective consumer protection laws help to improve individuals' and families' economic welfare. Consumer protection laws will only have this positive effect, however, if women consumers are aware of their rights and feel confident to assert their rights.

Women's experiences as consumers might differ from men's experiences. The Review is concerned to understand whether women consumers are treated differently from men consumers, or feel they are disadvantaged as consumers.

Some possible examples include:

- **Price differences:** Sometimes women are charged higher prices than men are charged for the same goods or services.
- **Awareness:** Women and men should both know their rights as consumers and when and where they can obtain information. At present, awareness of consumer rights appears relatively low, for both men and women. Women possibly experience particular obstacles to learning about their rights as consumers (e.g. illiteracy is more common among women), which will require special efforts to overcome.
- **Complaints:** Both women and men consumers should feel confident in making complaints, when the goods or services they buy are not up to standard. Sometimes, though, women consumers feel less confident about making a complaint than men consumers.

Comments are sought from all women regarding their experiences and needs as consumers in PNG.

B. Women's Awareness of Consumer Rights

Consumers benefit from consumer protection laws where they are aware of those laws and able to assert their rights.

Overseas experience has been that women tend to be less aware of their rights as consumers than men, and rural dwellers less aware than urban dwellers. In overseas countries television programs and radio plays have been more successful in raising awareness than traditional newspapers and printed brochures.

The ICC's Consumer Protection Division currently provides information to the community using radio broadcasts, newspapers, brochures, guidelines

and seminars.¹⁴ Women's groups and organisations in which women are heavily involved might assist the ICCC to spread information to women consumers.

PNG does not at present have an organised consumer representative body (though there is at least one social media group organized for consumer interests).

Question 32: What organisations or sources of information do women consumers rely on?

Question 33: What networks or organisations should the ICCC work with to spread information about consumers' rights?

Question 34: Is it desirable for a 'Consumer Council' to be established in PNG?

Question 35: Should the ICCC be involved in the development of a consumer organisation in PNG or should consumers organize one independently?

C. Women's Access to Remedies

Consumers must have access to remedies, for their rights to be meaningful. It appears that women consumers may find remedies more difficult to obtain than men consumers do.

It appears that women consumers may be reluctant to seek refunds or compensation for faulty goods or services. Women consulted by the review team have commented:

- "I would only seek a refund if it is a shop where I have a long standing relationship."
- "I can't expect a remedy from an informal store."
- "I would not feel safe. I would probably do nothing, from fear of harassment."

ICCC records show fewer consumer complaints are made by women than men: out of 34 consumer complaints received by the ICCC during 2014, only 5 were made by women.¹⁵

Question 36: Is it more difficult for women consumers to make complaints to sellers than for men consumers? If so, in what ways?

Question 37: Is it more difficult for women consumers to make complaints to the ICCC than for men consumers? If so, in what ways?

Question 38: How could women be assisted to make complaints to

¹⁴ ICCC, 2013 Annual Report, p 28.

¹⁵ ICCC data, for period from January 2014 to January 2015.

sellers or to the ICCC?

D. Consumer Protection and the “Informal Economy”

Traders in the “informal economy” do not comply with legal obligations imposed on businesses generally – often they are not registered as businesses, do not keep books and records, do not have audited accounts, do not pay taxes, and do not comply with requirements for reporting or insurance. Therefore it is difficult for consumer protection laws to influence behaviour in the informal economy.

The informal economy is economically important.¹⁶ Women consumers, who often have responsibility for purchasing goods and services for family consumption, deal with traders from both the formal and informal economies. It appears that urban PNG households acquire a growing proportion of goods and services they consume from informal suppliers.¹⁷ Rural PNG households probably rely even more on informal suppliers. Initial consultations with PNG consumers indicate that women in Port Moresby regard formal and informal sector vendors as substitutes, particularly when buying foods including rice, vegetables and fish.

PNG consumers indicate that they would be much less likely to return goods and seek a refund from a vendor in the informal economy, because informal suppliers tend to be temporary businesses and are unlikely to provide any remedy or refund.

For consumers, informal suppliers’ non-compliance with food hygiene and safety regulation has been identified as a significant area of concern.¹⁸ Ensuring the safety of food products is important, as it affects the health of all consumers.

Price controls over specific goods would be difficult to enforce effectively in the informal economy.¹⁹

Question 39: Is product safety a serious concern for consumers dealing with “informal” suppliers?

Question 40: Should greater efforts be made to enforce consumer protection in the “informal” economy? If so, how?

Question 41: If “informal” suppliers do not comply with consumer protection laws (including product safety), will consumers shop instead at “formal” suppliers?

IV. CALL FOR SUBMISSIONS

¹⁶ OECD Policy Roundtable, *Competition Policy and the Informal Economy* (2009), pp 149 – 152; available online at: < <http://www.oecd.org/daf/competition/44547855.pdf> >.

¹⁷ Department for Community Development and Institute for National Affairs, *National Informal Economy Policy 2011- 2015* (2011), p 9.

¹⁸ *National Informal Economy Policy 2011- 2015* (ibid), p 29.

¹⁹ *National Informal Economy Policy 2011- 2015* (ibid), p 151.

The Consumer and Competition Framework Review is concerned to understand the needs of PNG consumers and businesses, and how the current laws and institutions could be improved to ensure that the needs of consumers and businesses are met.

Your comments on matters raised in this Issues Paper and other related matters are welcomed.

Please provide comments to the Review Team, by **Friday 11 September 2015**, at:

telephone: +675 321 0400 (please ask for 'the Competition Review')

email: comment@CCFReview.info

website: www.CCFReview.info