

CREATING CONFIDENT CONSUMERS

The role of the Ministry of
Consumer Affairs in a dynamic
modern economy

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Introduction

In 2002, the Ministry of Consumer Affairs celebrated its sixteenth birthday. During its sixteen years, the Ministry has grown and changed – acquiring some functions and devolving others. Change has also occurred around it. The Ministry has seen its parent Ministry, the Ministry of Economic Development, change and evolve and that, in turn, has affected Consumer Affairs and how it operates. As well, technology, globalisation, and changing consumer characteristics are altering the nature and mix of the consumer issues to which the Ministry needs to respond.

This raft of changes makes it timely to examine and review the Ministry and its policy and operational environment, with the aim of clarifying its role in a dynamic modern economy, and so enable it to respond to consumer needs now and into the future. A representative Review Team was assembled – drawing its members from inside and outside the Ministry – to carry out this task. This Report is the result of the Review Team’s deliberations.

The Report examines the current role and scope of consumer policy and identifies the key strategic issues that may influence or have an impact on the outcomes the Ministry wants to achieve over the next 5 to 10 years. The Report also considers the implications of these issues for the things the Ministry does now and needs to keep doing, including the organisational capabilities the Ministry will need in order to achieve its outcomes in the future. The Review Team considers it important that all of these issues be examined and articulated. This is so there is a clear and shared understanding of the Ministry’s origins and the ideas that have underpinned its evolution over the past sixteen years – and also a shared vision of where it is going in the future.

The Review Team confirms that the Ministry remains on the right track. The Team has also highlighted developments the Ministry might wish to undertake to strengthen its current work and prepare to meet the challenges of the future. Some examples are that the Ministry should: be able to speak authoritatively on consumer issues by developing and increasing its understanding of consumer experience, consumer behaviour, trader experience, and trader behaviour; put in place processes to audit the effectiveness of its interventions; and apply consistently a set of “guidelines for involvement” when setting priorities about which issues to take up. These developments are the subject of the Review Team’s recommendations.

1. Key conclusions

This section identifies the Review Team's major conclusions regarding the strategic direction of the Ministry of Consumer Affairs, what this means for its role, and what it needs to focus on to achieve this role.

Perhaps the most critical question the Review team asked itself is "*What is the Ministry (on behalf of government) seeking to achieve?* Put another way, what outcome should the Ministry be working towards? The Review Team has concluded that the Ministry should be seeking to create an environment in which **consumers transact with confidence**. *What does this mean?*

Ultimately that, when consumers purchase a product or service, their reasonable expectations of that transaction will be met and, if not, consumers will have access to effective redress.

Consumers may have a variety of expectations, around issues such as safety, quality (relative to price), performance, quantity and price. So for example, when purchasing an appliance consumers are likely to expect that it is safe and will function as expected. Similarly, parents are likely to expect that the toy or baby equipment they have purchased is fit for the purpose and safe. The regulatory framework for consumer safety is designed to ensure this expectation is met, and educational campaigns inform consumers of their responsibilities regarding safe use and proper maintenance of equipment and appliances.

So what is the primary reason why consumers don't get what they expect from a transaction (or in other words get a bad deal)? Having reviewed a number of different ways of thinking about consumer issues, the Review Team has concluded that information barriers are the major reason for the gap between what consumers expect and what they get from a transaction. This is referred to in the report as an "information-based" framework for thinking about consumer issues.

The causes of these information barriers are many and varied. For example, information might be costly to obtain and difficult to interpret. An imbalance of information between consumers and suppliers (about a car or a credit contract, for example) may provide scope for suppliers to take advantage of the consumer. Consumers may simply underestimate the value of information about a particular product or service. Their background and previous experiences shape their likes and dislikes, the way they interpret and use information and the way they make decisions.

So is there a link between consumer policy and economic development, and if so, what is it? The Review Team has concluded that creating an environment in which consumers can transact with confidence is critical to a thriving, innovative economy. Consumers have a vital part to play in the development of dynamic and competitive markets through their purchasing decisions. They satisfy their own needs as individuals. Their collective decisions also help ensure competition amongst suppliers. Consumers who use information to make sophisticated choices and demand high quality products and standards

of service will stimulate providers of goods and services to innovate as a means of improving their quality and efficiency. In addition, through providing incentives for suppliers to focus on consumer expectations, consumer policy provides an additional stimulus for product and service improvements.

As consumers, products and services, and ways of doing business change so do the challenges facing consumer policy. The Review team has identified a number of key challenges for consumer policy in the next 5-10 years. These include:

- the changing *age and ethnic profile* of consumers
- potential shifts in attitudes amongst consumers themselves
- changing *market practices* resulting from new technology, but also simply from the ways suppliers adapt products, services and behaviour to attract and retain customers and in response to the way markets are designed
- how best to approach *information “overload”* issues
- globalisation – the implications of cross-border transactions for NZ consumers and overseas consumers of NZ goods and services. The interaction of consumer policy with trade policy generally will become an area for increased focus.

Given the wide range of issues that the Ministry of Consumer Affairs could become involved in, the Review Team has developed some *guidelines for involvement* to help determine where the Ministry should put its effort. Essentially the message behind the guidelines is the need to focus the Ministry’s effort on those consumer problems and issues that are likely to make the biggest difference for consumers as a whole.

So what is the role of a Ministry of Consumer Affairs in a dynamic modern economy?

The Review team has concluded that the Ministry’s primary role is **to create an environment that is conducive to good and accurate information flows between suppliers and consumers so that consumers can transact with confidence**. This is fundamentally about developing, or assisting in the development of, the rules (whether self-regulatory or regulatory) that govern the behaviour of consumers, suppliers, institutions (such as the Commerce Commission) and markets in general so that the gap between what consumers expect and what they get from a transaction is as small as possible. For example, the Fair Trading Act is designed to ensure that consumers are not misled about what to expect from a transaction. The Weights and Measures Act is designed to ensure that consumers get the quantity of goods that they expect. Good consumer policy should improve consumer’s estimates of the value of information or reduce the cost of information to consumer’s (or both).

The Ministry also has an information delivery role with respect to consumer and supplier generic rights and responsibilities under consumer law, some consumer safety issues and for some targeted groups of consumers.

So what does this all mean?

The review team concluded that 'nothing was broken' within the Ministry. However, there are a number of issues that the Ministry must address in order to ensure:

- effective results for consumers
- businesses understand and meet their obligations under consumer law
- the consumer/trader environment contributes to a sustainable increase in economic growth.

Particularly, in order to deliver on this role into the future the Review Team has concluded that the Ministry needs to:

- strengthen its policy capability
- ensure that policies and programmes are informed by an in-depth understanding of consumer and trader experiences and behaviour and “what works for whom” by focusing on:
 - ⇒ fully exploiting the ability of the operational arms of the Ministry to gather “intelligence” about consumer issues
 - ⇒ strengthening the links between policy and operations, particularly those between the Policy Team and the Consumer Information Service
 - ⇒ better utilising and extending its networks and contacts with consumers and businesses
 - ⇒ improving access to and addressing gaps in consumer data
 - ⇒ further developing its capability to research or contract research on consumer issues
 - ⇒ enhancing its ability to monitor and evaluate the impacts of consumer policy (including enforcement, compliance and redress policies and their application in practice) on consumers and society in general.
- build better links with the rest of the Ministry of Economic Development in order to gain leverage from the wider organisation and ensure that a consumer perspective is taken account of in economic development policy
- examine the impact of changes in demographics, and evolving consumer/supplier characteristics and needs, on the ongoing effectiveness of the Ministry's current information-delivery strategies

- take a systematic approach to the identification, development and maintenance of key stakeholder relationships
- have greater input into the discussions between MED (led by Regulatory and Competition Policy Branch) and the Commerce Commission on accountability and monitoring issues
- move quickly to address succession planning issues, particularly those in the Trade Measurement area where potential loss of staff skills and expertise threatens the viability of the NZ trade measurement infrastructure.

We believe that if the issues discussed in this report and the recommendations in section 9 of this report are addressed then the Ministry will remain a relevant and dynamic organisation in the foreseeable future.

2. Background to the review and outline of this report

The Review was initiated late in 2002 at the request of the then Acting Minister of Consumer Affairs, Hon Jim Anderton. A full review of the Ministry's role and functions has not been undertaken since its establishment in 1986, although there have been a number of changes to the Ministry's roles and functions during that time.

The Ministry's parent agency, the Ministry of Economic Development (MED), has developed a vision for the year 2012 that includes "knowing what matters for consumers" and being "the key link between the government, the business community, and consumers". The Review is intended to allow the Ministry to focus on how it should respond to these challenges, and to consider further the role of consumers and consumer policy in achieving MED's objective of sustainable per capita income growth for all New Zealanders.

The task

The Review has been divided into two phases. This first phase is intended to provide an assessment of the Ministry's strategic direction – "what" the Ministry does and "why". The second phase will provide an assessment of the organisational implications raised by the recommendations from Phase One – "how" the Ministry should be organised and what it needs to do its work most effectively.

The Terms of Reference provided that:

Phase One will focus on the strategic direction of consumer policy over the next 5-10 years, within the context of the government's overall strategic direction and goals, and what this means for the role, purpose and scope of the Ministry of Consumer Affairs. This will include an assessment of:

- the key objectives of consumer policy in a dynamic modern economy
- the relationship between consumers, consumer policy and sustainable economic development
- the key strategic issues confronting consumer policy over the next 5-10 years:
 - key changes in nature of the social, economic, technological and consumer environment since the inception of the Ministry and over the next 5-10 years

- key changes and potential future trends in the nature of consumers and their needs
- international trends in consumer policy (with a particular focus on “what works for whom”) and the role of key consumer agencies
- key interfaces with other “consumer-related” agencies.

The output of this phase of the review will be a report analysing and making recommendations on the implications of these factors for the role of the Ministry of Consumer Affairs and, should this prove necessary, the policy and institutional framework within which it operates.

The Terms of Reference made it clear that the Review Team was not to include a strategic review of energy safety policy or the Energy Safety Service that resides within the Ministry. Considerable strategic planning is continuing in the area of energy safety.

The Review Team understood from the Terms of Reference that it was being asked to develop a high-level strategic direction for the Ministry that would allow the Ministry to position itself effectively into the future. In responding to this task, the Review Team considered that there were three questions that it needed to answer:

1. What is the Ministry trying to achieve?
2. What does the Ministry need to do to achieve these things (and how will it know whether it has achieved them)?
3. What capability does the Ministry need to do these things?

The answers to these questions would provide the necessary information and conceptual materials for putting together the Ministry’s strategic direction, and so this Report is structured along these lines.

Structure of the Report

What is the Ministry trying to achieve?

For the Ministry to remain effective, it needs to have a clear sense of what impact it is seeking to have on society through its activities. This is the fundamental starting point for determining its strategic direction, because the Ministry’s desired impacts (or outcomes) on society provide a clear focal point for the Ministry’s activities. It is very difficult for an organisation to determine what it will do unless it first understands what it is trying to achieve.

Section 3 of the Report considers, at a general level, the role of consumer policy in a dynamic modern economy. Section 4 then translates this into a hierarchy of specific outcomes that are intended to function as the high-level structure for organising the Ministry’s activities.

What does the Ministry need to do to achieve its outcomes?

Once the Ministry's outcomes are clearly defined, the next phase of strategy development is to determine what activities (or outputs) the Ministry should undertake in pursuit of those outcomes. Sections 5 to 7 examine and develop in some detail the key issues and strategic approaches the Ministry needs to consider in deciding what consumer issues it should take up as priorities.

The general principle supported by the Review Team is that the Ministry needs to focus on those things that enable it to best achieve its outcomes. This implies a concentrated focus on the consumer problems and issues that are most likely to have a significant effect on these outcomes – that is, in what areas of consumer policy can the Ministry make the most impact?

This Report does not propose specific activities that should be undertaken by the Ministry, recognising that the Review's purpose is not to undertake detailed strategic and business planning. This is a task for the Ministry as part of its annual planning processes in which it will develop its outputs for the year. The Team did consider, however, that its role did extend to providing the general strategic direction and framework for thinking that would guide the more detailed planning effort.

These sections of the Report have three main purposes.

Firstly, the Report identifies and broadly considers the possible implications of key strategic or emerging issues that are likely to have an impact on the Ministry's stated outcomes. The intention is to draw these high-level issues to the attention of those in the Ministry who will be developing work programmes each year, to ensure that the implications of these issues are considered fully and integrated into the Ministry's activities.

The Team acknowledges that it is identifying issues and implications at a particular point in time. The reality is that the external environment continues to evolve, new issues do arise and implications are clarified as knowledge develops. To be effective, the Ministry needs to commit itself to an ongoing process of identifying important consumer issues and their implications on a continuing basis. It then needs to respond by adjusting its strategy, if necessary.

The second purpose is to offer specific guidance to help the Ministry think about what issues it does or doesn't get involved in. "Guidelines for involvement" are suggested – criteria that can be applied by Ministry staff when confronted by an issue that the Ministry might potentially take on. The aim of the guidelines is to help staff determine whether the issue is appropriately one for the Ministry, and the relative priority of the work that might result from dealing with it. The guidelines draw upon basic elements of the standard policy-development process, and link back to the outcomes as the focal point for the Ministry's activity.

The third purpose is to reach conclusions on the high-level role of the Ministry in getting involved in consumer issues, and to explain the different facets of those functions the Ministry might perform in carrying out its role.

What capability does the Ministry need?

Section 8 of the Report considers the capability issues that the Ministry will need to address if it is to achieve its outcomes in an effective way. The theme of this section is that the Ministry will need to be able to do certain things on an ongoing basis to maximise its outcomes – including the ability to identify and make judgements about which issues are the most important, and to measure the impact of its activities.

Recommendations

Section 11 is a set of recommendations that point towards areas and activities where the Ministry needs to take action, if it is to achieve its aims.

Methodology and overall approach

To undertake the review, the General Manager of the Ministry established a Project Steering Group and appointed a Review Team. The Review Team comprised Ministry policy and operational staff, and a representative each from MED's Medium Term Strategy Group and its Regulatory and Competition Policy Branch. A Staff Reference Group and a Key Stakeholders Group were also established to be consulted during the Review. Appendix A lists the stakeholders interviewed. Appendix B names the Review Team and the Project Steering Group.

Comments from the Staff Reference Group and MCA staff not incorporated into this report are included in Appendix D for the information of the General Manager.

The Review Team worked with an external consultant at two points during the review to help shape the review process and clarify the issues to be examined.

The Team undertook background research on the issues identified in the Terms of Reference, and developed five background papers to inform their thinking. All of these papers will be available on the Ministry's website at www.consumeraffairs.govt.nz or from the Ministry in printed form. It should be noted that the Review Team did not undertake a detailed analysis of the mix of consumer policy tools used by consumer agencies in other countries. An analysis of that kind involves significant resources, and is unlikely to be of great value without detailed discussions with regulators about why particular approaches have been taken.

The *Literature Review on Analytical Frameworks*, written by Nick McBride, is the first of the background papers and it reviews the major theoretical approaches to consumer policy. Writers in this area note that consumer policy lacks a robust theory or clearly defined set of goals, but the McBride paper

nevertheless identifies an information-based framework as an appropriate one for consumer policy in New Zealand.

This framework provides that the goal of consumer policy should be to remove barriers and also shape expectations “so that, with respect to any particular transaction, consumers receive what they intended and expected. This goal is derived from an efficiency framework but is broader in that it gives consumer policy a role in shaping consumer expectations and the process of preference formation while stopping short of making choices for consumers or judgements about what consumers should want.”¹ The Review Team has based its proposed outcomes framework for consumer policy on the information-based approach discussed in this paper.

Consumer Policy Tools (Sarah Kerkin and Karen Chant) describes the broad range of tools available to policymakers in dealing with problems of consumer protection. The assumptions inherent in any framework – including the information-based framework proposed by the Review Team – will tend to favour different combinations of policy tools. This paper identifies some of the considerations that policymakers need to take into account when selecting tools for particular issues, and discusses the trade-offs that need to be considered in designing and choosing policy tools. This paper informed the Review Team of the options available within consumer policy for making an information-based framework an effective form of consumer protection.

Key Trends in Consumer Policy and the Role of MCA (Jeanette Harris) identifies key issues that will most affect the Ministry’s effectiveness and outcomes over the next ten years. The changing face of New Zealanders and their characteristics as consumers will influence where and how the Ministry provides information. Changes in the market will raise new issues for policy and information delivery. The paper discusses how the voice of New Zealand consumers might be heard in the future, and how the flow of information between government and people might be radically different from what it is today. The issues this paper raises highlight how important it will be for the Ministry to keep pace with developments in an organised way. It also emphasises the need to strengthen its relationships with other agencies in order to identify the right strategies for delivering information and to recognise market failures quickly.

The Establishment and Development of the Ministry of Consumer Affairs (John Barker and Jamie Kerr) reviews how and why the Ministry was established. A significant reason for its establishment was the uncoordinated approach to consumer law that existed at the time. This paper also describes changes that have occurred in the Ministry and why they came about – one feature of the Ministry’s history has been the ad hoc addition of new functions over time. Until now the Ministry has never undertaken a review to define the desired outcomes for consumer policy and the Ministry’s own role.

¹ *Literature Review on Analytical Frameworks* p16 (this paper is available from the Ministry and is also online at <http://www.consumeraffairs.govt.nz>).

The fifth paper, *Perspectives of the Ministry of Consumer Affairs Stakeholders* (Lesley Harwood) summarises the perspectives of the stakeholders of the Ministry who were interviewed during the review. Their expectations of the Ministry were varied, which highlighted the need for the Ministry to be very clear about its boundaries. Some expectations were that the Ministry would provide the consumer perspective on issues; conduct research on consumer behaviour, problems and the impact of consumer policy on consumers; develop policy and legislation; provide information; be an advocate for consumers; target specific consumers (which is seen as a legitimate role for government); and support self-regulation schemes. The issues seen as being relevant to the Ministry in the future were generally consistent with those the Review Team identified in its research or with those that the Ministry is already working on. This paper was an essential tool in assessing whether stakeholders' expectations and the outcomes framework would be in accord.

Through these background papers, the Review Team was able to propose a set of outcomes for consumer policy in New Zealand that adopted an information-based approach to consumer policy and which drew on the expectations of stakeholders and the analysis of the key trends that face the Ministry in the future. To do this, the Team used strategic planning tools adopted by MED. The outcomes framework encompasses what the Review Team sees as key objectives for consumer policy. The advantage with developing a framework of this sort is that linkages can be identified with MED's outcomes in its annual Statement of Intent. This helps to clarify the Ministry's role and functions within MED and also the role that consumer policy plays in economic development generally.

3 Putting the Ministry Of Consumer Affairs in context

Institutional arrangements

In considering the role of the Ministry, it is informative to review the Ministry's institutional arrangements and their implications for the Ministry's role.

The Ministry is an operating branch of MED. Historically, the Ministry has always been part of a larger department that is focused on broader commercial and economic issues.²

This kind of arrangement is not unusual. Many OECD, Commonwealth, and European governments have located their consumer policy agencies within larger organisations, usually with a focus on commercial or economic interests and, in particular, on competition policy. For instance, Australia's national consumer policy agency is housed within the Commonwealth Treasury. Similarly, consumer policy is located within ministries responsible for business and/or economy in Denmark, Canada, the United Kingdom, and France.³

MED is focused on the Government's economic development strategy. Both the 1996 letter of relationship between the Ministry of Commerce (as it was then) and the Ministry of Consumer Affairs, and the subsequent more detailed Delegation by the Chief Executive of MED to the General Manager of Consumer Affairs, have clarified that the Ministry has a role to play with respect to economic policy and economic development. This appears to have been a response to tensions that have arisen from time to time, when it has been perceived that consumer policy pulled in a different direction from broader economic policies.

The Delegation sets out the institutional arrangements that align the Ministry much more closely with MED than has been the case in the past. Interviews with members of MED's Strategic Leadership Team (SLT) indicated a desire for a "common philosophy" between MED and the Ministry. They noted that while this has not yet been achieved, there is now a much greater understanding between MED and the Ministry. The Ministry contributes to MED's economic objectives, and MED relies on the Ministry to bring a consumer perspective to the table.

² In its first iteration, the Ministry was established as a Consumer Affairs Unit within the Department of Trade and Industry (1984). A Ministry of Consumer Affairs was subsequently established within the Department of Trade and Industry in 1986. When the Department became the Ministry of Commerce, the Ministry of Consumer Affairs remained an operating branch of that new Ministry, and continued as such when the Ministry of Commerce became the Ministry of Economic Development. For a full discussion, see the Review background paper *Establishment and Development of the Ministry of Consumer Affairs* (available from the Ministry and also online at <http://www.consumeraffairs.govt.nz>).

³ Mitchell J, Kutin B and Macgeorge A (2001) "Guidelines for Consumer Policy in Central and Eastern Europe" *Journal of Consumer Policy* 24: 83-109 p94.

Also part of the Ministry's institutional structure is the Energy Safety Service (ESS), which is accountable through the Chief Executive of MED to the Minister of Energy.

The establishment of ESS in December 1999 followed a review of energy functions in the then Ministry of Commerce. Its placement in the Ministry of Consumer Affairs was prompted by the synergies between energy safety and the Ministry's functions, particularly in relation to trade measurement and consumer safety.

The move to the Ministry was also intended to address concerns about over-fragmentation in the way that safety and measurement issues were being dealt with across government agencies.

Apart from its specifically consumer-oriented activities, ESS performs important functions related to public safety and safety in the workplace. Responsibility for workplace safety is to be shifted to the Occupational Safety and Health Service through the Energy Safety Review Bill, currently being drafted for introduction to Parliament. However, to avoid further fragmentation of responsibility for safety issues across government agencies, ESS will retain responsibility for public safety.

For further details on the development of the Ministry's institutional arrangements, see the Review background paper *The Establishment and Development of the Ministry of Consumer Affairs*.

4 The Ministry's existing core functions

The Ministry currently operates in four sections covering the five functions (Trade Measurement and Consumer Safety are combined in the Trading Standards Service) described below.

Policy unit

The Policy Unit carries out a range of policy functions and administers a body of consumer law, including:

- Consumer Guarantees Act 1993
- Credit (Repossession) Act 1987
- Fair Trading Act 1986
- Hire Purchase Act 1981
- Lay-by Sales Act 1971
- Unsolicited Goods and Services Act 1975
- Auctioneers Act 1928.

It also monitors industry self-regulatory schemes (the Insurance and Savings Ombudsman scheme, the Banking Ombudsman scheme, the Electricity Complaints Commissioner) and direct-selling codes of practice.

The Policy Unit is involved with a number of initiatives both domestically and internationally to reduce consumer detriment, and boost consumer confidence, in cross-border transactions. It also advises government on matters that affect consumer transactions in the marketplace including:

- examining how laws and practices affect consumers
- promoting good business practice for consumer transactions
- providing a consumer-policy perspective on policy proposals developed in other government agencies
- developing consumer information standards under the Fair Trading Act and
- recommending legislative changes in response to market failures that impact on consumer transactions.

Consumer Information Service (CIS)

The Ministry produces information on consumers' and suppliers' rights and responsibilities under the consumer law administered and enforced by the Ministry.

There is also direct contact with community agencies and the Ministry's target consumers. CIS functions include:

- providing written information on consumer law for consumers and suppliers
- providing information directly to low-income, Maori, and Pacific consumers
- providing support in the form of training in consumer law and/or information resources for community agencies
- informing policy development processes and interventions through its understanding of consumer behaviour, the problems consumers face in the marketplace, and the communication preferences of the Ministry's target groups
- facilitating the appointment of appropriate people to represent consumer perspectives and interests on statutory boards, advisory bodies, departmental working parties and committees.

Trade measurement

The Ministry administers and enforces the Weights and Measures Act 1987 and the Weights and Measures Regulations 1999. It does this by:

- ensuring that the instruments used for weighing and measuring are accurate
- informing consumers and suppliers about the requirements of the legislation
- achieving compliance with the legislation through investigation, education, and enforcement as appropriate
- providing advice to government on national and international legal metrology issues
- networking with interested national and international organisations.

Consumer safety

The Ministry carries out a number of product safety functions, including:

- developing consumer information standards and product safety standards under the Fair Trading Act 1986

- advising the Minister of Consumer Affairs on the Minister's powers under the Fair Trading Act 1986 to recall or ban unsafe products
- Ensuring harmonisation / consistency between Australia and New Zealand in respect of CER and the TTMRA in relation to consumer products
- investigating unsafe products, and working with companies to improve product safety
- helping companies to recall unsafe products
- supporting the development of self-regulatory measures such as voluntary standards
- educating consumers and suppliers in identifying safe products and using them safely.

Energy safety

(Noted here but not included in the Review)

The ESS administers parts of the Electricity Act 1992, the Gas Act 1992, the Plumbers, Gasfitters and Drainlayers Act 1976 and the Ministry of Energy (Abolition) Act 1989.

The ESS works to ensure:

- electricity and gas are produced, distributed and used safely
- electrical and gas equipment, installations and appliances are safe for consumers and the public
- energy measurement is accurate and fair
- petroleum fuels, electricity and gas are fit for their purpose

It does this by promoting effective practices, and ensuring compliance and conformity with those practices.

Part 1: WHAT IS THE MINISTRY TRYING TO ACHIEVE?

5 The role of consumer policy in a dynamic modern economy

The Ministry's functions are relatively wide ranging within the "traditional" domain of consumer policy. This section now develops more fully the relationship between this traditional role of a consumer policy organisation and the broader perspective of economic development – a particular emphasis is on the role that consumers play in competitive markets and how this stimulates economic efficiency and innovation.

The role of consumers in competitive markets

Successive governments have been concerned with improving New Zealand's economic growth rate in a way that leads to improved well-being for all New Zealanders. Improved economic growth is partly underpinned by the existence of dynamic and competitive markets, which stimulate the innovative potential of firms and set the stage for improved productivity that will lead to a higher growth rate.

Consumers have a vital part to play in the development of dynamic and competitive markets through their purchasing decisions. First, they satisfy their own needs as individuals. Second, their collective decisions ensure competition amongst suppliers.⁴ Consumers who use information to make sophisticated choices and demand high-quality products and standards of service will stimulate providers of goods and services to innovate as a means of improving their quality and efficiency.

As the proposed outcome framework set out in Section 4 below will suggest, the Review Team considered that if consumers are to participate actively and fully in the economy they need to be able *to transact with confidence*. The fundamental principles underlying this concept are described in further detail below.

A framework for consumer policy

From a traditional economic perspective, allowing consumers to pursue their own preferences is the most efficient way to allocate society's resources. A strict efficiency framework does not question a consumer's preferences and sees no role for the law in shaping preference; the grounds for government intervention are slim. But while the economic efficiency of any particular

⁴ Mitchell J, Kutin B and Macgeorge A (2001) "Guidelines for Consumer Policy in Central and Eastern Europe" *Journal of Consumer Policy* 24: 83-109 p94.

intervention must be considered, efficiency is not necessarily the most appropriate overriding goal.⁵

The way consumers form preferences is far from perfect. For example:

- Preferences may be formed on the basis of social conditioning, lack of opportunity, or habit
- Consumers' ability to obtain and process information is limited and so they often use mental short cuts of various kinds to simplify complex decisions – for example, consumers generally expect that products are safe if they do not have obvious visible risks. In the case of hidden defects, this may be a faulty expectation that leads to consumer detriment
- Consumers often underestimate the value of information, that is, the benefit that information may bring in terms of making a different choice about what to buy and on what terms.

These constraints on how consumers form preferences provide some justification, therefore, for a different and broader agenda for consumer protection, while sharing the same goal that consumers should get what they want. The thrust of consumer law in New Zealand and elsewhere is consistent with this approach. It is also consistent with the bulk of theoretical literature on consumer policy.

This broader approach may be found in an *information-based framework*: that consumers are generally in the best position to form their own preferences and decide whether or not to enter into a transaction.⁶ The central concept is that of the bad deal (that is, consumers did not get what they intended or expected out of a transaction).

Information is central to this approach. Within such a framework, consumer policy is aimed at reducing the gap between consumers' expectations and reality by ensuring that:

- consumers can get the information they need to make decisions
- consumers understand and value accurately that information (so they are more likely to seek it out and use it)
- consumers are not exposed to hidden risks or hazards
- consumers have access to redress in the event of failed transactions.

⁵ See the background paper *Literature Review on Analytical Frameworks* for further discussion of these frameworks. (This paper is available from the Ministry and is also online at <http://www.consumeraffairs.govt.nz>).

⁶ It is acknowledged, however, that there is a role for government policy in seeking to change consumer behaviour where that behaviour is contrary to broader social interests.

It also means that consideration has to be given to the quantity and quality of information consumers need in order to transact with confidence. A flood of information can be as much of a problem as not enough information. Regulatory frameworks may assist consumers by creating an environment where rules under which traders behave free consumers from having to make judgements about whether, for example, a product weight is as stated by a manufacturer or whether an electrical appliance is safe.

The Review Team considers that an information-based framework is the most appropriate for use in New Zealand. Inevitably, issues will emerge that require a solution based on a different framework. In these cases it will be necessary to articulate the reasons for preferring an alternative framework, which would involve stating why the information framework is not appropriate in the circumstances.

The information interface between competition and consumer policy

The proposed information framework highlights the connection between competition policy and consumer policy. In a theoretically perfectly competitive market, consumers have perfect information and zero search costs. This means they can assess the prices of all suppliers in the market, which ensures effective competition and results in optimum pricing. But if there is imperfect information, this can lead to imperfect competition because:

- There may be too few searchers in a market – too few consumers searching for information will reduce suppliers' incentives to compete effectively (and optimally) on price.⁷
- Information is not discrete – for instance, information may apply to a whole product type (such as wholemeal bread) rather than a particular brand of product. Suppliers advertising the benefits of their product type cannot effectively prevent competing suppliers from “free-riding” on this advertising.⁸
- Suppliers may have a common incentive not to disclose information – for instance, cigarette manufacturers compete among themselves for market share but have a common incentive not to disclose information about the risks of smoking.⁹

⁷ Schwartz A and Wilde L L (1979) “Intervening in markets on the basis of imperfect information: a legal and economic analysis” *University of Pennsylvania Law Review* 127: 630 p638.

⁸ Golan E, Kuchler F and Mitchell L. (2001) “Economics of Food Labelling” *Journal of Consumer Policy* 24: 117-184 p130.

⁹ Hadfield G K, Howse R, and Trebilcock M J (1998) “Information-based Principles for Rethinking Consumer Protection Policy” *Journal of Consumer Policy* 4: 131-169 p153.

- Transaction costs – information may appear too costly for consumers to access in relation to the perceived benefit of the information.

Both consumer and competition policy have a shared objective – improved consumer well-being. Competition policy aims to achieve this objective by ensuring that consumers have a meaningful range of options and that prices reflect competition between suppliers. Consumer policy, on the other hand, aims to achieve the objective by ensuring that consumers' reasonable expectations of transactions are met, and is primarily concerned with reducing the gap between their expectations and the outcome of the transaction. The point of overlap between competition and consumer policy is in ensuring that consumers have effective access to information.

Choosing the right mix of policy tools

Where a consumer issue or problem is information based, the analysis undertaken may suggest the use of competition policy tools, or consumer policy tools, or a combination of both.

This has important implications for MED as the home of both consumer policy and competition policy, because the interaction between the two areas means that each must be informed by the other. There needs to be a close relationship between the Ministry's Policy Unit and those branches of MED responsible for competition policy – that is, the Regulatory and Competition Policy Branch and the Resources and Networks Branch.

It must also be recognised that the two policy areas do come from different perspectives, which means they might approach problems differently. This makes it important to retain expertise and an independent voice for both, so differences can be resolved in such a way that the policy objectives are achieved and adverse impacts on markets and consumers are minimised. It seems clear from the interviews with SLT members that MED relies on the Ministry to have a different perspective, which is clearly distinct from that of competition policy.

6 An outcomes framework for consumer policy

The previous section on “The role of consumer policy in a dynamic modern economy” established an approach to consumer policy based on *three fundamental principles*:

- consumers should get what they expect
- consumers sometimes do not get what they expect because of a variety of information barriers
- these information barriers need to be resolved so that consumers get what they expect.

The next stage is to put these principles into practice in a way that means they underpin the Ministry’s essential role as an organisation. This can be done by deriving from the principles a framework of outcomes that the Ministry is seeking to achieve.

Elements of the outcomes framework

The Ministry’s outcomes framework has a strong information dimension, because information is central to consumers’ expectations of transactions being met. This, in turn, is likely to enhance consumers’ confidence in making transactions.

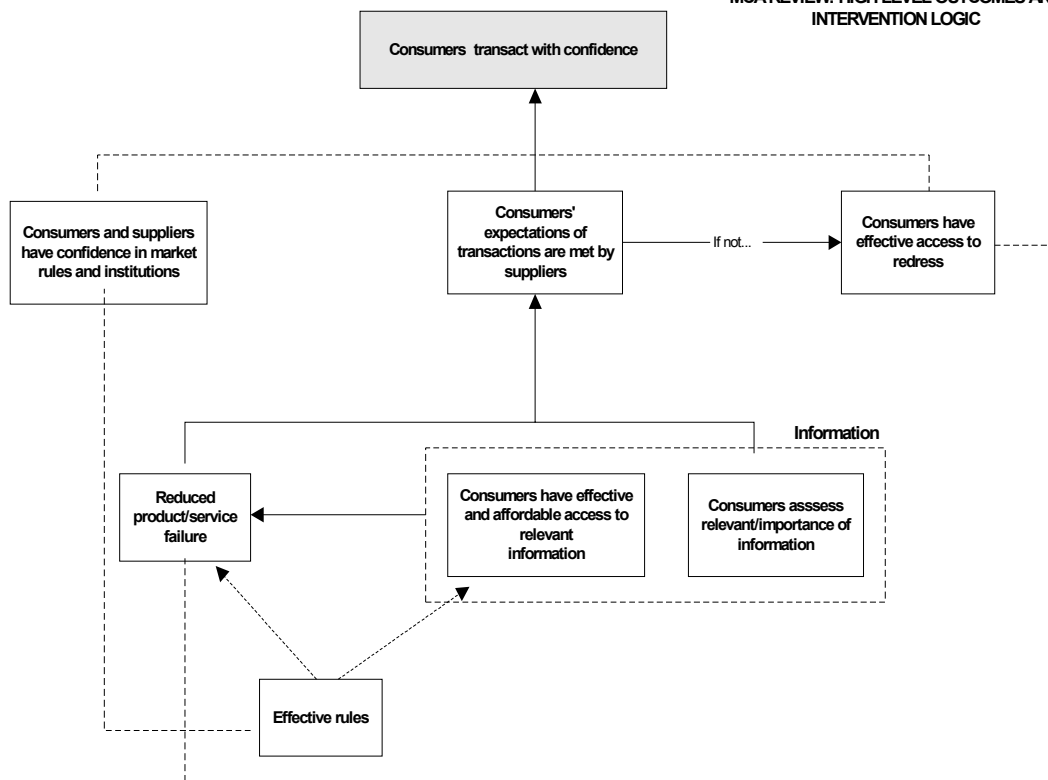
There is a single high-level outcome:

- consumers transact with confidence.

As well, there are three contributing outcomes that support the high-level outcome:

- consumers’ expectations of transactions are met by suppliers
- consumers and suppliers have confidence in market rules and institutions
- consumers have effective access to redress.

The framework reflects the fact that the Ministry is primarily problem-focused. An outcome can be thought of as the “flip” side of a problem – if there were no problems in a particular area in the absence of government intervention, it would be unnecessary to state an outcome. The overall flow of consumer and supplier interactions in an information framework can be seen in the diagram below, which also shows how the normal functioning of these interactions contributes to the Ministry’s high-level outcome of “consumers transact with confidence”.



NOTE

The flowchart represents the primary drivers of the Ministry’s work. However, the public as opposed to the "pure" consumer safety aspects of Consumer Safety’s work* do not fit within this framework. No implication should be drawn from this. In particular it does not mean that these functions should not be carried out within the Ministry. Indeed, there are pragmatic reasons why this work should continue.

**ESS has similar public safety functions.*

The Ministry’s high-level outcome

Consumers transact with confidence

Our high-level outcome that “consumers transact with confidence” recognises three factors:

- consumer expectations are influenced by the quality of information available to them about a transaction – when consumer expectations are met, transactions are successful and, collectively, successful transactions generate confidence
- market rules and institutions influence the confidence of consumers
- consumers have a reasonable expectation that effective redress is available.

The Review Team's approach to developing a high-level outcome as a goal for consumer policy was that for it to be meaningful it should be consistent with MED's strategic framework, because this framework is focused on improving New Zealand's rate of economic growth through, in part, the existence of competitive and dynamic markets.

Consumers have a vital role to play in the development of such markets through making decisions between products, services and suppliers, and demanding new and better products and services. Optimal participation in these markets over the long term depends on confident consumers. Creating the conditions for this confidence is the primary focus of the Ministry's outcomes framework.

Confidence in transacting is important. When consumers are not confident:

- they may avoid transacting in future so they don't have to face the possibility of a bad deal and its consequences
- it may result in consumer inertia – they may opt for an existing supply arrangement because of the perception that they will face risk/costs by switching to another supplier or means of supply, even though another supplier or means of supply may offer a better deal or
- they may spend considerable time and effort investigating or will accept higher costs attempting to avoid a bad deal.

In other words, consumers may incur additional costs, or competition may be adversely affected through consumers transacting less and suffering from inertia.

Consumer confidence comes from:

- having the skills and knowledge to be able to transact effectively
- having ready access to information about the characteristics of the products and services consumers intend to purchase
- not being subjected to concealed risks, either from hazardous goods or from "rogue" suppliers
- having effective access to redress when the market fails
- having robust market rules and institutions that govern consumer transactions.

The Ministry's intermediate outcomes

Consumer confidence in transacting is influenced by three main factors (the Ministry's intermediate outcomes), and the Review Team has assumed that the combination of these three factors will create an environment that allows consumers to transact with confidence. The Ministry therefore needs to focus

on these intermediate outcomes as the major contributors to its high-level outcome “consumer transact with confidence”.

1. Consumers’ expectations of transactions are met by suppliers

Consumers enter into transactions with certain expectations. In particular, they may expect to receive: a particular product or service; of a particular description, quality, and quantity; at a particular price; or on particular terms. Consumers also have fundamental expectations around product safety. If those expectations are met, consumers’ confidence in the particular supplier, and in the market overall, is likely to be reinforced.

When consumer confidence in the market is reinforced, it is likely to spread to other consumers. Indications that the market is working may be the absence of bad deals, or other market signals such as the number of transactions being made. If consumers’ expectations are not met, that could result in a spreading unease in the market through negative comment, warnings to other consumers, and publicity. In extreme cases, this unease can lead to widespread loss of confidence and even to market collapse.

There are two key issues that will be crucial in determining whether consumer expectations of transactions will be met.¹⁰

1a. The role of information in creating consumer preferences and expectations

Information helps shape the formation of consumer preferences and expectations about the process and outcome of a transaction.

Consumers *assess the relevance/importance of information* – they value information by assessing its relevance and importance, and they then make better choices about whether to enter into a transaction. Consumers are more likely to make a bad deal when they overestimate or underestimate the value of information. For example, they may underestimate the importance of the interest rate when entering into a finance deal, or overestimate the importance of the nominal odometer reading when purchasing a used car.

The “cost” of information is important to consumers. Consumers are likely to be better informed about a transaction when the cost of information is low relative to the value of the information. They therefore require *effective and affordable access to relevant information*.

Consumers who have affordable and ready access to information, and who assess its importance accurately, are more likely to have their expectations of

¹⁰ Hadfield GK, Howse R, and Trebilcock MJ (1998) “Information-based Principles for Rethinking Consumer Protection Policy” *Journal of Consumer Policy* 4:131-169 p152.

transactions met. The more consumers' expectations are met, the more their confidence in transacting will be reinforced.

1b. Reductions in the level of product or service failures

Consumers generally make assumptions about the safety and quality of products and services. Assumptions about quality and fitness for purpose are likely to be informed by price and will vary accordingly. Consumers are likely to assume that products on the market are safe.¹¹ If there is a gap between assumptions and reality (the outcome of a transaction), consumers risk getting a bad deal.

There are some circumstances when an information-based or "market" solution may not be effective or appropriate:

- The cost to the consumer of a bad deal is too high, and society is likely to judge that access to redress would be ineffective or inappropriate – for example, where there is a risk of injury to the consumer.
- Suppliers are not aware of the problem (the causes of failure are complex, and the absence of failure may be hard to identify). This is particularly likely with "credence" goods (goods that have to be taken on faith even after using them, such as medicines) as their characteristics are not readily apparent.
- The existence of redress mechanisms does not provide an incentive for suppliers to reduce the levels of product/service failure – for example, the cost to consumers of seeking redress may outweigh the cost of the bad deal.
- The provision of consumer information would be ineffective or inefficient in the circumstances.

Rules covering product safety, or the ability to ban or recall "unsafe" goods, provide an incentive for suppliers to reduce their rate of product/service failure. A low rate of product/service failure will mean that most consumers' expectations of transactions are met. In turn, this will reinforce consumer confidence in transactions.

¹¹ Ibid p158.

2. Consumers and suppliers have confidence in market rules and institutions

Ideally, consumers and suppliers have confidence in the market as a whole. Confidence is self-reinforcing: if market participants believe the market works well, they act with confidence and that tends to reinforce confidence and further strengthen the market. Rules and institutions that contribute to well-functioning markets can reinforce consumer confidence by influencing the weighting consumers give to different assumptions when making decisions in the face of imperfect information.

Market rules and institutions (such as Disputes Tribunals and the Commerce Commission) may also operate to align suppliers' performance with consumers' expectations and vice versa. For instance, rules may codify consumer expectations by imposing guarantees of quality, or prescribing safety requirements, or prohibiting deceptive conduct. Institutions and enforcement measures, such as sanctions or naming and shaming, may provide incentives for suppliers to comply with market rules.

Confidence in rules and institutions may not play a major direct role in a consumer's decision to transact. For example, a consumer in the market for a new kettle will probably look for particular features but not consciously appreciate that all kettles on sale in New Zealand have passed stringent testing under Electricity Regulations. Consumers are more likely to assume the product is safe.

If rules and institutions do not give effect to this assumption, then consumer confidence will be undermined and may result in increased transactions costs as consumers seek to minimise their risk. Consumer confidence will most definitely be undermined at a point when market rules fail.

While the Ministry currently has responsibility for some of the rules governing consumer markets, the totality of the rules and institutions governing consumer markets go well beyond the proper scope of the Ministry's influence. Therefore, it is likely that the Ministry will seek to influence some of these things directly but that other outcomes are more likely to be sought by government as a whole (for example, through recommendations and best-practice approaches developed in international forums such as the OECD).

3. Consumers have effective access to redress

The availability of effective redress can build consumer confidence in transactions by influencing the weighting consumers give to different assumptions when faced with imperfect information. Accessibility of redress mechanisms may reduce consumers' assessment of the risks of transacting with a supplier they do not know or trust (or have imperfect information about) because they are aware they can seek a remedy if things go wrong.

In this context, redress mechanisms might include:

- supplier-based mechanisms such as returns and refunds under the Consumer Guarantees Act 1993, and internal complaints-handling mechanisms
- privately run alternative dispute resolution services such as facilitated negotiation or mediation, either offered face-to-face or online
- complaints mechanisms run by industry self-regulation schemes such as the Banking Ombudsman, Electricity Complaints Commissioner, the Insurance and Savings Ombudsman, and the Advertising Standards Complaints Board
- traditional mechanisms such as civil justice through the courts or disputes tribunals.

The availability of redress can lead directly to consumers' expectations being met for specific transactions through requiring suppliers to meet the consumer's reasonable expectations.

Redress mechanisms can also result in reduced levels of product and service failure, by providing an incentive for suppliers to meet consumer expectations about product and service performance. If suppliers know there is a real likelihood of them having to provide redress in the event of product or service failure, that can act as an incentive for them to take steps to avoid that failure. Where redress involves court action, legal precedents provide a measure of consistency and predictability in decision making – suppliers can rely on court decisions and shape their own conduct accordingly.

A note about the Energy Safety Service

The Terms of Reference for the Review excluded a strategic review of energy safety policy, but it is clear that the energy safety functions of the Ministry may have two outcomes. The first outcome is about consumers' purchase and use of energy appliances (this area of responsibility fits within the outcomes framework). The second is concerned with the safety of members of the public

in their interactions with energy (this public safety aspect sits outside the outcomes framework).

How the Ministry's consumer outcomes fit within MED's strategic framework

The Ministry's proposed outcomes framework clearly fits within the wider MED framework relating to economic growth and the contribution consumers make to the operation of competitive and dynamic markets. (The diagram at the end of this section gives an overview of the flows and interactions between the two frameworks.)

MED also seeks to promote increased levels of international commerce and knowledge transfer that will contribute positively to productivity growth. There are a number of dimensions to this, but only two are directly relevant to the Ministry's outcomes framework.

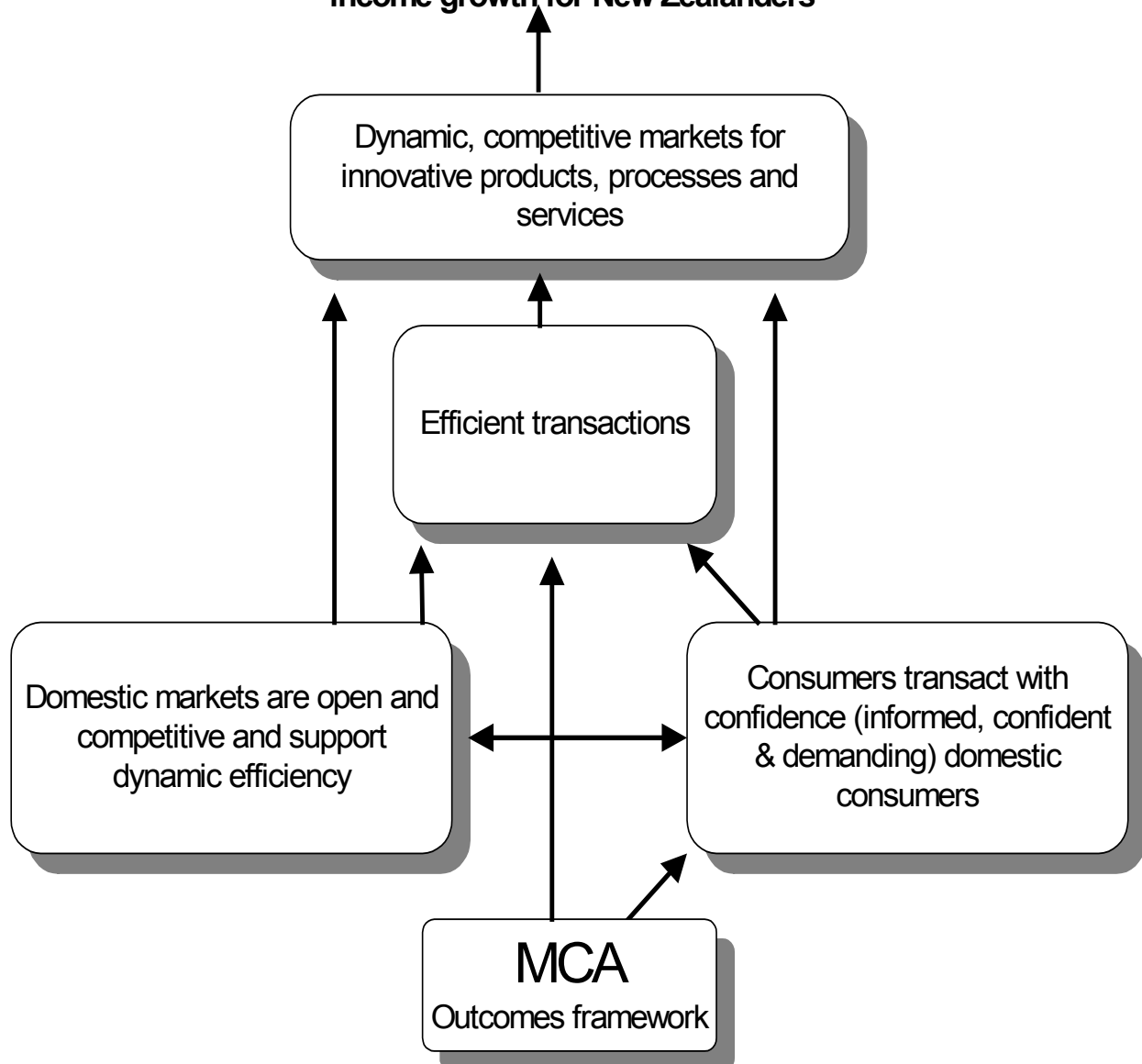
First, MED is concerned with using multilateral and bilateral regulatory co-operation, and unilateral regulatory reform, to reduce the frictions and costs associated with trading and operating in two jurisdictions. A related concern for MED is understanding and addressing the reasons why foreign consumers may not have confidence in the quality of New Zealand markets, firms, products, and services – particularly in the context of electronic commerce.

Second, from an economic growth perspective, it is important for New Zealand importers and exporters that:

- domestic consumers can purchase imports with confidence knowing that they are safe, fit for purpose, and so forth
- foreign consumers can have confidence in transacting with New Zealand firms, and purchasing products and services from New Zealand.

The Ministry's contribution to this policy objective is through its involvement in international standards setting and the development of international guidelines and methods of best practice. These activities improve consistency between New Zealand's rules and those of key trading partners, which facilitates the flow of products and services across New Zealand's borders. When New Zealand's consumer policy represents or improves on international best practice, exporters can use it to build consumer confidence in export markets or as a basis for establishing compliance with consumer policy in those markets.

New Zealand's business environment promotes a sustainable increase in income growth for New Zealanders



Part 2: WHAT SHOULD THE MINISTRY DO TO ACHIEVE ITS OUTCOMES?

7 Emerging consumer issues

The general principle supported by the Review Team is that the Ministry needs to concentrate its efforts on those consumer problems that are most likely to have a significant impact on its proposed outcomes.

This section now examines a set of emerging consumer issues that the Review Team believes will be important influences on whether the Ministry achieves its outcomes in the long term.

The aim is to draw these high-level issues to the attention of those in the Ministry who will be developing work programmes each year, to ensure that the implications of these issues are fully considered and integrated into policy as required.

This is not intended to be an exhaustive list of possible issues: the Review Team looked specifically at those issues it thought would affect the Ministry's outcomes. These issues need to be considered in the Ministry's work programme as a matter of priority, if it is to achieve its outcomes in the long term.

The Review Team acknowledges that it is identifying issues and implications at a particular point in time. The external environment evolves over time: new issues arise and implications become clearer as our knowledge develops. Accordingly, it is crucial that the Ministry commits itself to reviewing important environmental issues and their implications on an ongoing and regular basis, and that it adjusts its strategy accordingly.

Future consumers

New Zealand's population is changing – and this affects the make-up, characteristics, and expectations of New Zealand's consumers. The Ministry can therefore expect the factors driving consumer confidence to alter over time. It will need to adapt its strategy to ensure it continues to meet these consumers' needs.

It is helpful to begin with a picture of who New Zealand's consumers are.

New Zealand consumers are likely to live in urban areas, and one in three will live in Auckland.¹² Ten of New Zealand's 16 regions are expected to grow in population size, with Auckland, Bay of Plenty, Tasman and Northland leading this growth.

¹² Unless stated otherwise, all the statistics in this part of the paper have been obtained from the Department of Statistics (available online at <http://www.stats.govt.nz>).

New Zealand consumers are ethnically diverse. While 80% of the population is of European ethnicity, the proportion of people of European descent continues to decline. The number of people of Asian ethnicity has doubled since 1991, and is now greater than those of Pacific ethnicity. The Maori population is also increasing.

Many New Zealand consumers are connected to the global electronic environment. In 2001, 46.6% of all households owned a computer, and 48% of people had internet access at home.¹³ Seventy-two per cent of people had access to the internet at work, schools, libraries, and internet cafes.¹⁴ In 1998, 83% of primary and 94% of secondary schools had internet access.

A significant proportion of people cannot access this networked world, and the consumers who are least likely to be able to do so are those whom the Ministry has traditionally targeted: Maori, Pacific, and low-income earners. At least one in nine Maori and Pacific households do not have telephone, fax, or internet access. Households composed of members over the age of 65 are also likely to be disadvantaged in terms of internet access.

Changing consumer demographics

There are two key changes in consumer demographics. These changes are likely to affect both consumption patterns and the nature and mix of issues that the Ministry will have to deal with.

First, the population is ageing. At the time of the 2001 census, more than 450,000 people (12%) were over the age of 65. This proportion of the population is expected to more than double to 26% by 2051.¹⁵ These people are likely to have a more restricted income: the median income for those over 65 was \$13,100 compared to the median for all other New Zealanders (\$18,500 in 2001). As our population ages and faces a decrease in buying power, older consumers are likely to demand better access to information to assist their purchasing decisions.

Second, the population is becoming more ethnically diverse:

- Maori are projected to reach 21% of the total population by 2051. In common with other ethnic groups, the Maori population will become increasingly older: half will be more than 32 years of age by 2051.

¹³ Ministry of Economic Development (May 2002) *Statistics on Information Technology in New Zealand [Updated to 2002]* p5 and p8. Available online at <http://www.med.govt.nz>.

¹⁴ Ibid p8.

¹⁵ "Projections" by the Department of Statistics are subject to uncertainty and are intended as an indicator rather than an exact forecast of future change. For further information, see <http://www.stats.govt.nz>.

- On current trends, the Pacific population is growing at a rate 11 times faster than other groups and is expected to double by 2031.
- Projections for the growth of the Asian population are based on a net gain of 4,000 immigrants per year until 2016. If this continues, the Asian share of the population will almost double (to 9%) by 2016. It is relevant to note that in 2001, some 85% of Asian people were able to speak English, with nearly a quarter (24%) speaking only English.

Changing consumer characteristics

Demographic information is essential but, as the Department of Statistics itself has recognised, there is a strong need for statistics that allow connections to be drawn between social, economic, cultural, and environmental measures.¹⁶ Categorising consumers across a range of measures may assist the Ministry in the future to develop focused information strategies.

For example, a recent large study suggests a model for thinking about consumers in three distinct consumer social types: “traditionals”, “evolvers” and “I-cons” (individualistic consumers).¹⁷

The greatest distinction is between “traditionals” and “I-cons”:

Traditionals

Focused on basic needs

Motivated by price and a fair deal

Focused on functionality and the transaction

Having trust and respect in institutions

Liking someone else to organise them

I-cons

Focused on discretionary choice

Motivated by choice and information

Focused on the relationship ahead of the transaction

Not trusting in institutions

Insisting on organising their own lives

Evolvers share elements of each of these groups and may become I-cons over time.

The research suggests that traditional consumers place the greatest reliance on government to provide them with information that allows them to make decisions with a high level of certainty. They prefer information that is

¹⁶ Department of Statistics *A Social Statistics Programme for New Zealand: Discussion paper on Information needs – Issues and Gaps*. Available online at <http://www.statistics.govt.nz>.

¹⁷ Paper presented by the Centre for Customer Strategy at the National Fair Trading Futures Workshop, Brisbane, 14 March 2002. More information is available online at <http://www.customerstrategy.com.au>. The study was conducted over a five-year period and involved 250,000 respondents from a number of countries, including New Zealand.

instructive and requires few choices. The Ministry is familiar with the expectations of “traditionals”, and the information it provides is likely to find its way to this group of consumers. As “evolvers” age and replace this group, the information that the Ministry currently provides may lose relevancy.

“I-cons” are the new breed of knowledgeable consumers who do not rely on government to provide information unless it is relevant to them. They consume constantly and have an appetite for technology to accelerate that consumption. They do not fit into traditional demographic descriptions, as they can be identified across all age groups by the range of characteristics outlined above.

Although “traditionals” currently comprise more than half of the population, “I-cons” are increasing in number. In Australia, they account for nearly half of discretionary consumer spending.¹⁸ It is also worth noting that the New Zealand experience of an ageing and culturally diverse population, coupled with young technologically-savvy consumers, is not unique.

Young consumers

Children make up 23% of the population. While this figure has remained largely unchanged since 1991, significant decreases are projected. Children and young people are entering the consumer markets at increasingly younger ages. They are also being introduced to technology at an early age, which means it is likely that the next generation of adult consumers will be more technologically sophisticated than today’s adult consumers.

Although there are similar proportions of children in the Asian and total New Zealand populations (24% and 23% respectively), young people (aged 15-24 years) made up a larger share of the Asian population. In 2001, 15 to 24-year-olds comprised 21% (50,991) of the Asian population but only 14% of the total New Zealand population. Sixty per cent of Asian children usually live in households with access to the internet, compared with 52% of European children, 25% of Maori children, and 19% of Pacific children.

There are more children of Maori or Pacific descent than any other group. It is likely that the future consumers who will be left behind in the technology trend will be the groups that the Ministry has traditionally targeted: Maori, Pacific peoples, and low-income consumers.

Future consumers: implications for the Ministry

Changes in consumer demographics and consumer characteristics have significant implications for the Ministry – and, in particular, for its information-related functions.

¹⁸ See Review background paper *Key Trends with Implications for Consumer Policy and the Role of MCA* p5 (this paper is available from the Ministry and is also online at <http://www.consumeraffairs.govt.nz>).

The Review Team has identified a number of issues, all of which require further study for their implications to be fully understood:

- As “traditional” consumers are replaced over time by “evolvers” and “I-cons”, the Ministry will need to assess the continuing effectiveness of its information strategies, given the suggestion that “I-cons” in particular receive information differently and have different information demands. The available research suggests that “I-cons” prefer self-help to government assistance, are more likely to want information tailored to their particular circumstances, and possibly want pre-transaction information rather than post-failure assistance.
- The Ministry will need to discover whether “evolvers” and “I-cons” experience problems transacting with confidence. If they do experience problems, the Ministry needs to understand the nature of those problems and identify a mix of solutions aimed at the needs of these consumers and the ways in which they receive information.
- Thought needs to be given to the implications of an emerging class of technologically-savvy young consumers who have discretionary income and who are targeted by suppliers. The extent to which these consumers know their rights and responsibilities under consumer law is not known. The Ministry already targets children via Consumerkids,¹⁹ a bilingual website, which could become a foundation for young consumers to obtain pre-transaction information. Even so, the Ministry must ensure it understands how young consumers receive information so that it can shape its policy advice and information delivery accordingly.
- Demographic changes need to be monitored to ascertain whether non-targeted groups of consumers (such as those over the age of 65, Asian, or young consumers) experience problems that affect their ability to have their expectations met and therefore transact with confidence.
- The Review Team is aware from its stakeholder interviews and analysis that there is an expectation that government will target certain consumers based on welfare and equity considerations. Stakeholders are also of the view that the Ministry needs to look for long-term solutions in relation to its target consumers. The Review Team’s proposed outcomes framework allows the Ministry to take a longer-term view and be concerned with achieving consumer welfare through economic growth underpinned by dynamic and competitive markets. Targeting is appropriate where some groups of consumers are more likely to make bad deals because they face particular barriers to accessing and using information. The Ministry must assess the need to target particular groups of consumers in the light of demographic trends and must monitor regularly the effectiveness of its targeting programme.

¹⁹ See <http://www.consumerkids.govt.nz>.

All of this suggests that the Ministry needs to be aware of changes as they occur. Changes are likely to have more than one implication and the effects may flow through various areas of the Ministry's work. To take one example: if "I-cons" are focused on self-help, that may mean they will not use recognised channels for assistance that capture data on emerging consumer issues (such as the Citizens Advice Bureaux). This could have an impact on the sources of data available to the Ministry.

Information volume

The increasing diversity of products and producers implies an increasing need for consumers to access and process product information.²⁰ As suppliers attempt to differentiate their products and gain market share, consumers are faced with increasing volumes of competing information. This is compounded by the marketing of secondary products such as extended warranties, easy finance deals and loyalty schemes – all of which require reading of the fine print. Supplier information of whatever kind can operate as a method to shift the terms of trade in favour of suppliers.²¹

Information problems cut across all markets, from high-tech internet-based markets to "no-tech" markets such as door-to-door selling.²² Whether a transaction is made using a traditional retail outlet, telemarketing, door to door selling or the internet, consumers are expected to make complex market choices daily. Consumers are likely to undertake a higher level of search for information about products that are perceived as high risk and/or expensive – a car or a mortgage for example. But when faced with an increasing choice of supplier and product, and a hefty time investment in the search for information, even the most risk-averse consumers will make less-than-optimal choices.²³

Many consumers will stop searching for information when the gains from searching are outweighed by the cost of further searching. In general, consumers receive the most information about the product they wish to purchase from the seller or manufacturer directly (these are the people who

²⁰ Hadfield G K, Howse R, and Trebilcock M J (1996) "Rethinking Consumer Policy" a paper prepared for University of Toronto Roundtable on New Approaches to Consumer Law held June 1996 p50.

²¹ Ibid p47.

²² The internet gives consumers access to a huge volume of information and can act as a worldwide word-of-mouth recommendation service. However, because the information is essentially unfiltered, it can be difficult to assess the validity and accuracy of information. This means consumers have to make a new set of choices regarding what information they can trust. In this way, the internet may add to the complexity of decision-making rather than reducing it.

²³ Hadfield G K, Howse R, and Trebilcock M J (1996) "Rethinking Consumer Policy" a paper prepared for University of Toronto Roundtable on New Approaches to Consumer Law held June 1996 p47.

know most about the product). Information is expensive to produce and disseminate, however, and at some point the cost of producing information will outweigh the benefit the producer will receive. Because of this, producers can influence the size of information shortfalls.²⁴

Information volume: implications for the Ministry

Information overload is a potentially significant issue for the proposed outcomes framework because it is itself an information-based approach. Nevertheless, it has to be remembered that information volumes are increasing as a result of highly competitive borderless markets. Intervention by government will not necessarily mitigate the effects on consumers of imperfect information.

Even if the Ministry was to intervene, its influence over information volumes would be limited. There is no relevant legislation, and no obvious mechanism, to restrict information volumes. The Ministry could respond by providing information itself, to help consumers to filter information provided by suppliers. But there is a risk in doing this – the Ministry may just become another competitor in the information market and so compound the problem. The recognition that not all consumers need, want or receive information in the same way can help the Ministry to achieve its outcomes. This is especially so for intermediate outcome 1: that consumers' expectations of transactions are met by suppliers. It is here that information plays a key role through the relevance and importance consumers place on it.

This suggests the Ministry should seek ways to enhance the operation of the market so that, for example, information overload for consumers becomes less of a problem. One way to do this is through effective market rules and institutions – the Ministry's second intermediate outcome. Weights and measures legislation and effective rules to reduce safety risks are two examples of this approach. Similarly the Ministry should consider mechanisms for addressing information shortfalls where they occur. That is, the Ministry needs to respond to problems that arise in particular contexts in which it is an appropriate agency, and for which it has established clear guidelines for intervention.

Globalisation

Consumer choice is no longer restricted to the goods and services provided by domestic suppliers.

The global electronic environment allows consumers and suppliers to make transactions easily, cheaply, and quickly across increasingly invisible national borders.

²⁴ United Kingdom Office of Fair Trading (1997) *Consumer Detriment under Conditions of Imperfect Information* Research Paper 11 p64.

While the global electronic environment has opened up new opportunities for consumers through enhanced choice, it has also opened up new opportunities for some suppliers to defraud consumers. Anecdotal evidence in international policy and enforcement forums suggests that the perpetrators of online scams can be well-organised and set up their operations to maximise the advantage to be gained from the barriers to cross-border enforcement. These barriers can include limitations on territorial application of law, jurisdictional issues, evidence gathering, cross-border co-operation between enforcement agencies, and cross-border recognition and enforcement of redress.

Inconsistent approaches to consumer policy by different countries may result in gaps that can be exploited by rogue traders. They may also pose real obstacles to consumer redress for failed transactions. While national borders are comparatively invisible when online transactions are entered into, they can become highly visible when transactions fail and questions of jurisdiction, applicable law, and applicable forum need to be considered.

One way of overcoming this is to work internationally to develop common approaches to consumer policy and mutual assistance and co-operation in operations and enforcement. The Ministry has already built strong international links – for example, with the International Organisation of Legal Metrology (OIML), OECD, APEC, and various Australian advisory committees. Most of the Ministry's involvement is with developed economies, to ensure that our clients and competitors have confidence in the New Zealand consumer environment and also to build the confidence of New Zealand consumers in purchasing from these markets.

Increasingly, these organisations are looking to build the capacity of developing economies. This is an important issue for the Ministry to consider, because New Zealand's geographical location means it has a sphere of influence with the Pacific nations and the ASEAN group of nations, and because New Zealand consumers are increasingly purchasing goods and services from suppliers in Asia and the Pacific. As part of its outcomes framework, the Ministry could help consumers transact with confidence with these nations and facilitate New Zealand's trade and economic growth by assisting these economies in developing modern consumer legislation and providing robust enforcement. For example, some weights and measures legislation in the South Pacific region is borrowed from outdated Australian regulations that no longer follow international best practice. Strengthening these economies' consumer regulation and enforcement will, in turn, improve their ability to be credible trading partners with New Zealand and other developed economies.

Globalisation: implications for the Ministry

The growing influence of the global market means consumer policy tools used in New Zealand have an impact on businesses and consumers beyond our borders. The growth in cross-border consumer transactions raises particularly difficult policy issues, in part because of the jurisdictional issues raised by these transactions and in part because of the nature of these markets.

Because the global electronic environment facilitates business to consumer (B2C) transactions, it can be difficult, if not impossible, to assert jurisdiction over a supplier who is based overseas; and non-compliance with consumer law is difficult to detect when goods enter the country in packages destined for individual consumers rather than in shipments for distributors.

A key issue for the Ministry's role here is that where suppliers enter into cross-border consumer transactions, a market-based solution is less likely to emerge of its own accord because the legal machinery is not in place to hold overseas suppliers to account. Given the absence of international legal frameworks governing such transactions, there may be a legitimate role for New Zealand to work with other governments and establish appropriate legal machinery to protect consumers.

The stakeholders consulted in the stakeholder analysis agree that New Zealand needs high levels of consumer confidence and trust to develop new markets, and that the Ministry needs to provide for consumer protection and develop policy to maximise confidence in transactions between consumers and businesses. This means the Ministry needs to understand the factors that influence trust and confidence, and to keep abreast of developments so that consumer problems affecting the outcomes framework can be identified and resolved.

Changing market practices

Within competitive markets, suppliers innovate to attract and retain market share. This can result in market practices changing over time. New market practices can respond to underlying consumer demand and offer consumers benefits, and can negate in some cases the need for the application of consumer law. Of course, new market practices can also result in new consumer issues that are not addressed by existing consumer law, or issues arising in particular consumer markets that are not well-understood by regulators or well-policed by enforcers.

Not all of these new market practices are technology-driven. For instance, the Ministry is aware of instances of new immigrants attempting to transact (as suppliers and consumers) using practices to which they are accustomed but which are not in accordance with New Zealand's consumer law. As New Zealand's population becomes more ethnically diverse, it is possible that there will be more instances of this.

Changes in consumer demographics and characteristics are also likely to encourage suppliers to innovate, both in products and practices that may or may not be associated with technological advance.

Consumer-to-consumer transactions via internet auctions

Internet auctions are one supply practice made possible by new technology. These auctions – which are more like a series of closed tenders than a traditional auction – act like an electronic notice-board for people to post offers and counter-offers for buying goods. They are sophisticated versions of trade

and exchange arrangements, and have increased the popularity of consumer-to-consumer (C2C) transactions.

Internet auctions have clearly met a latent consumer demand;²⁵ and when they work well they offer an efficient market. Bargaining is a more efficient way of reaching a price in terms of level of demand and willingness to pay than the retailer “menu type price-setting” offered by retailers. Evidence from overseas, however, suggests that internet auctions can pose a risk of consumer detriment that may ultimately undermine consumer confidence in the medium. Consumer Sentinel²⁶ figures for the 2002 calendar year noted that half of the 102,517 internet-related fraud complaints (received largely from US complainants) involved internet auctions.²⁷ On face value this number of complaints may appear small - however a substantial number of consumers, particularly those from outside the USA, may be unaware that they can lodge such complaints.

Internet auctions also blur the distinction between consumers and traders for the purposes of consumer law. In New Zealand, it seems unlikely that an internet auction operator is required to be licensed under the Auctioneers Act 1928. Furthermore, the electronic medium allows people to masquerade as consumers to intentionally subvert consumer law. It can also make collusion between purchasers difficult to detect. Other common problems associated with internet auctions include non-delivery and non-payment.

Changing market practices: implications for the Ministry

New supply practices – often driven by technology – will continue to emerge. The Ministry needs to assess new supply practices for their impact on the proposed outcomes framework, so that appropriate policy responses can be developed if the impact is assessed as adverse. All three of the Ministry’s

²⁵ In 2001, eBay had more than 22 million registered users around the world. See “eBay opens website for New Zealanders” *New Zealand Herald* 28 March 2001. Note however, that this is not an indicator of the number of transactions made in 2001. e-Bay does not release this information.

²⁶ Operated by the US Federal Trade Commission.

²⁷ Federal Trade Commission (2003) *National and State Trends in Fraud and Identity Theft: January-December 2002* p7.

intermediate outcomes are likely to be affected by changing market practices – which suggests that a complex mix of interventions may be required if a particular market solution proves ineffective.

8 Deciding when to get involved – guidelines for involvement

This section of the Report suggests some “guidelines for involvement” – criteria that can be applied by Ministry staff when confronted by an issue in which the Ministry might potentially have an interest. The guidelines should help staff to determine whether the issue is an appropriate one for the Ministry to address and assess the relative priority of the work that might result. The guidelines also draw upon basic elements of the standard policy development process, and link back to the Ministry’s outcomes as a focal point for its activities.

The Review Team has been keenly aware of the way consumer issues intersect with a number of policy portfolios vested in other government agencies – which means it is not always easy to draw neat boundaries around consumer policy. Various agencies will have differing perspectives, which means the Ministry often has to manage other agencies’ expectations that it will pick up what they see as consumer issues. For example, in the area of consumer safety the Ministry could involve itself in injury-prevention initiatives led by other agencies such as ACC or the Ministry of Health or, alternatively, could work with other agencies to ensure that its consumer safety interests are being picked up within their portfolio responsibilities.

The Ministry should not get involved with issues simply because they involve consumers: every transaction involves consumers either directly or indirectly. Many consumer issues will, and should, be handled by other government agencies. Having a clear understanding (which is shared by others) of the parameters of consumer policy, coupled with a clear sense of what it is trying to achieve, will help the Ministry to concentrate on core issues that will maximise consumer well-being in the economy.

The Review Team considers that this approach is appropriate. It is consistent with the Ministry’s location within an agency focused on economic development, and it reflects the nature of the legislation administered and enforced by the Ministry. The Review Team did not receive any indication from stakeholders that the Ministry’s focus should be broadened beyond consumer issues in the marketplace.

Guidelines for involvement

The Ministry has always made judgements about whether and how to intervene in emerging consumer issues. In future, these judgements will be enhanced by a clear set of guiding principles or “guidelines for involvement”.

The guidelines for involvement are really a set of questions that will help the Ministry when it makes judgements about whether any given consumer issue is properly an issue for it. The guidelines for involvement will not give a definitive answer, nor can they be applied mechanistically. Instead, they are intended to ensure that decisions about picking up issues are principled and outcomes-focused, and that they take into account the impact on the

Ministry's other priorities. The guidelines for involvement will also help the Ministry communicate in a clear and principled way to external agencies and stakeholders how it determines what issues it becomes involved in.

The Review Team recommends that the guidelines for involvement be reviewed from time to time, to ensure they remain relevant and useful.

The guidelines for involvement

1. Is there a problem – that is, does the market operate in a way that prevents consumers from transacting with confidence?
2. If there is a problem, what are the possible underlying causes?
3. Is there a role for government in addressing the problem? If so, what is the nature of this role? For example:
 - Rule-setter (e.g. regulatory framework; standards setting)?
 - Referee (i.e. compliance and enforcement)?
 - Player in the game (e.g. co-ordinator, provider, funder)?
4. Does the benefit of government involvement outweigh the costs to society as a whole?
5. Which agency is best placed to take a lead role on this issue? This may require consideration of issues such as:
 - Statutory obligations – if the problem is associated with legislation, who administers and/or enforces the legislation?
 - Which agency is best placed to influence the outcome?
 - Likely impact on the problem and consequences (e.g. on compliance costs to business).
6. If the Ministry is best placed to respond, what priority should be given to the issue? Priority setting will be influenced by the size of the problem and its impact on the Ministry's outcomes.

Is there a problem – that is, does the market operate in a way that prevents consumers from transacting with confidence?

The Ministry should be aware of issues that lead to bad deals, which in turn could reduce consumer confidence in future transactions or in rules and institutions.

For example, the recent problems with weathertightness of houses could be seen as a consumer issue that, if not addressed, could reduce consumer

confidence in the rules and institutions that govern building construction. The weathertightness issue can be seen as an information problem – there has been a gap between what consumers expected (a home of acceptable quality) and what they got – even though there is a regulatory framework governing building construction. Consumers' financial risk in housebuilding is significant, which means that their confidence in building construction may spiral downwards rapidly. This has serious implications for both the construction industry and the housing market, and may have wider economic consequences.

If there is a problem, what are the possible underlying causes?

Understanding the cause of the problem should help in assessing the appropriate response, which may include market-based responses such as providing information or self-regulation, or government intervention using competition or consumer policy tools.

The problem may be caused by the market's structure (making it non-competitive or imperfectly competitive), in which case competition policy may be an appropriate response.

Or the problem may be information-based, and so a consumer policy response may be appropriate. There may be a number of possible causes of an information-based problem – and these will need to be assessed. For instance:

- Are consumers able to form preferences and weigh alternatives in the marketplace?
- Do consumers have effective access to the information they need in transactions?
- Do consumers know the information exists? Have they understood its importance?
- Do consumers have too much information, so they are unable to find the right information?
- Are they exposed to hidden risks?

Is there a role for government in addressing the problem? If so, what is the nature of this role?

A crucial first question is: "Will the problem resolve itself in an acceptable time period and in a socially optimal way?"

Where any of the following characteristics exist in a competitive market, a solution may not develop by itself:

- repeat transactions are rare and consequently the performance incentives created by the possibility of repeat business from satisfied customers are blunted
- entry and exit costs in the industry are low, leading to the possibility of a large number of fly-by-night operators with few sunk costs and only modest investments in their business reputation
- many sellers or producers are extra-jurisdictional, making redress through private law more difficult for consumers
- sellers characteristically have few assets against which a judgement may be enforced
- the costs of a bad deal or transaction are delayed or potentially catastrophic, making post-failure redress an inadequate or unsatisfactory solution
- the small size of a typical transaction creates a significant disincentive for individual consumers to seek redress through the courts, although the “economic cost” collectively may be significant.

If these characteristics (or others that suggest a solution will not develop by itself) exist, the next question is: “Can those characteristics be altered so that a market solution develops?”

Government could provide information, or require information to be provided, so that consumers are better informed about market or product characteristics. For instance:

- Odometer tampering – this issue arose because consumers were at risk of making bad deals if they relied on odometer readings as an indicator of a car’s value. While there was a real problem in some odometers being wound back, consumers were ignoring better indicators of a car’s value, such as a mechanic’s report. Sustained publicity about odometer tampering over a number of years is having a positive effect in changing the value that consumers’ place on odometer readings when purchasing motor vehicles. A new regulation under the Fair Trading Act 1986 will help reinforce the message that consumers should be wary when relying on odometer readings.

Government could regulate to restrict a particular product or activity, or it could regulate to change enforcement and compensation mechanisms. For instance:

- Pyramid selling schemes – the legal prohibitions against pyramid selling schemes did not appear to be deterring people from operating them in New Zealand. On closer examination, it became apparent that the potential financial gains significantly outweighed the fines likely to be imposed if a scheme was detected and enforcement action taken. A new penalty provision linked to the commercial gain from schemes is currently

before Parliament. It is intended to alter the incentives for engaging in pyramid selling by rendering schemes profitless if enforcement action is taken.

Government could choose to deal with a problem itself, or use intermediaries. For instance:

- Government has a role in ensuring the delivery of information about consumers' and suppliers' rights and responsibilities under consumer law. The market is unlikely to provide this information on its own, and the delivery of this kind of information is one way of ensuring that regulation helps to make markets fair and transparent. Whether this role involves providing information directly, or funding its delivery by community agencies, will depend on what is the most effective and efficient means of delivering that particular information.

If government intervention is justified, a basic principle underlying the selection of consumer policy tools is that they should embody an information-based framework. Within this framework, the choice of policy tools may improve consumers' access to information, or improve consumers' estimates of the value of information, or carry out both roles in some circumstances.

For more detail on consumer policy tools see the Review background paper *Consumer Policy Tools*.

Does the benefit of government involvement outweigh the costs to society as a whole?

Government intervention should be based on clear evidence that a problem exists and that government action is justified, given current government policies, the likely benefits and costs of action (based on a realistic assessment of effectiveness), and alternative mechanisms for dealing with the problem.

An intervention can impose considerable costs on business, and in turn these will, in all probability, be passed onto consumers. Therefore there needs to be an identified benefit that clearly outweighs the costs of any intervention.

Who is best placed to take a lead role on this issue?

This requires a judgement about whether the Ministry should take up the role on behalf of the government.

In the following situations, the Ministry may not be well-placed to take a lead role on an issue:

- Another government agency administers the market rules and/or institutions – for instance, specific food labelling requirements are contained in the Food Standards Code administered by the New Zealand Food Safety Authority (NZFSA). This suggests that the Ministry's role

regarding food labelling is a supporting role, with the NZFSA playing the lead role.

- Another government agency has more influence over relevant stakeholders and key players than the Ministry –for example, on many issues to do with health or accident prevention.

In both these situations, the other government agency would be better placed than the Ministry to take the lead role.

If the Ministry is best placed to carry out this role, what priority should be given to the issue?

The Ministry is a small agency that has to deal with a potentially very broad policy portfolio. It has a number of statutory obligations and other functions that need to be performed regardless of the emerging issues it may need to pick up. This means it needs to assess emerging issues in relation to its other priorities. In particular, the Ministry must balance the size of the problem against its impact on the Ministry's outcomes.

The problem may be severe, in which case it may have a significant impact on consumer confidence, even if the group of affected consumers is relatively small. For instance, the recent problems of weathertightness of homes have potentially severe financial consequences for individual consumers, and could also have a destabilising effect on the housing market. Alternatively, the problem may be widespread, even if individual losses are small. If the problem does not have a significant impact on the Ministry's outcomes, a judgement will need to be made as to whether the Ministry becomes involved.

9 The Ministry's role

The role of the Ministry of Consumer Affairs is to get the environment within which consumers and traders interact right, so that consumers can transact with confidence.

Fundamentally, this is about setting appropriate rules governing the behaviour of consumers, traders, markets, and institutions so that the gap between what consumers expect and what they get from a transaction is as small as possible. These rules include the rules governing enforcement and redress, as these mechanisms provide important incentives for suppliers to comply with consumer regulation and so meet consumers' reasonable expectations.

In deciding whether regulation (including self-regulation) is an appropriate response to a problem the focus of the Ministry should be on improving the consumer's estimates of the value of information and/or reducing the cost of the information to the consumer.

In addition to its primary role in creating an environment that is conducive to good and accurate information flows between suppliers and consumers, the Ministry also has an information delivery role. This includes:

- Explaining consumers' and suppliers' rights and responsibilities under consumer law.
- Providing information on the safe use of products, where doing so fills an information gap that is unlikely to be filled in any other way.
- Targeting consumers who are more likely to face barriers to information access. Such consumers are more likely to make bad deals, and so are less likely to be able to transact with confidence.²⁸

Government agencies such as the Ministry are in an ideal position to provide unbiased information as they do not stand to gain from promotion of a particular brand or product.

Other organisations, however, may be better placed than the Ministry to deliver such information to consumers – because the Ministry, as a small central government agency, lacks economies of scale and does not always have direct links into communities around New Zealand. Where this is the case, the Ministry should provide information through organisations that have the necessary connections.

²⁸ The Ministry of Consumer Affairs and in particular its Consumer Information Service (CIS) currently targets Maori, Pacific peoples, and low-income consumers.

Part 3: WHAT CAPABILITY DOES THE MINISTRY NEED?

10 Key capability issues

In considering what the Ministry does now, and what it should continue to focus on, it has become apparent to the Review Team that there was nothing seriously wrong with the Ministry's current approach – rather the Review Team saw the need to articulate a more specific focus for what the Ministry should be seeking to achieve. Nevertheless it was apparent to the Review Team that there are a number of capability issues the Ministry must address in order to carry out its work programme more effectively.

The key strength of the policy team lies in its ability to focus closely on delivering effective policy projects – although, being small, it has less of an ability to maintain knowledge of particular policy areas. The strength of the Consumer Information Service team is in its understanding of how things are working in the community and in its strong links with community agencies and networks with consumer representatives; but it is not currently able to access the wealth of data available that would ensure it could provide robust information on consumer behaviour and market interactions. Together, these two areas of the Ministry have not fully realised their potential for ensuring that government policy is informed by a detailed understanding of how consumers behave and interact with markets.

The Ministry is also part of a bigger organisation (MED), which it can both gain leverage from and have more influence on through bringing a consumer perspective to the development of economic policy. In order to achieve its outcomes, the Ministry could make better use of its relationship with MED as well as those it has with agencies in the community.

Another key capability issue for the Ministry is its small size. It relies heavily on very experienced staff, and is vulnerable to the loss of skills and experience.

In this section the Review Team explores the key capability issues in detail.

Skills

Highly skilled staff are key to the Ministry meeting its objectives and achieving real outcomes for consumers. The Ministry is small and any loss of experience creates succession issues.

In the policy and consumer information areas, the Ministry has a small pool of dedicated, highly skilled advisers. Maintaining and enhancing its capability to advise the Minister, government, business, and consumers, and to develop lasting and meaningful policy on consumer-related issues, will be a key to the Ministry's future success. New issues and strategic priorities will continue to

challenge the Ministry and require it to maintain high skill levels in the policy and information advice areas.

Just as important to the Ministry and its clients is the professionalism and technical competence of a small group of staff in the areas of trade measurement, consumer safety, and energy safety. These areas of activity have relatively low staff turnover: staff have been with the Ministry, and its predecessors, for a considerable time (in one case 35 years). This low turnover, however, presents a difficulty in itself. In the next few years staff, particularly in the Trade Measurement area, will retire and with them will go considerable experience and institutional knowledge. Maintaining capabilities through an appropriate recruitment and training programme will present a challenge for the Ministry. It must attract enthusiastic and dedicated people and provide new staff with good training and relevant qualifications that will be recognised by future employers.

Research and data collection

Undertaking research into existing and emerging consumer issues is essential for the Ministry to achieve its outcomes – a stance that was supported by stakeholders in the stakeholder analysis.

Research will provide the Ministry with an in-depth understanding of consumer experience, consumer behaviour, trader experience, and trader behaviour – including the way consumers access and use information, and the way in which consumers, traders, and markets interact. Research can also serve as a radar, informing the Ministry about issues that it may decide to engage in proactively, rather than being forced into a reactive position. More generally, research will enable the Ministry to develop expertise in and collect data on consumer perspectives and consumer interests.

The gathering of appropriate information can be undertaken in several ways, some or all of which should be harnessed depending on the circumstances.

These include:

- literature search
- deliberate networking
- empirical research, including snapshot surveys
- systematic collection of statistics (possibly in conjunction with other agencies such as Statistics New Zealand)
- media searches.

The Review Team considers that the Ministry is not currently devoting enough energy to research and data collection, leaving it with an underdeveloped radar for identifying emerging issues, and insufficient information for engaging in systematic and productive monitoring and evaluation of its effectiveness.

In particular, the Ministry needs to:

- research the implications of new marketplace practices for consumer policy and delivery
- develop a more in-depth understanding of consumer behaviour.

Given that some research capability already exists in the Ministry, the issues may simply be a need for focused training and improving capacity by addressing workload issues. The Review Team anticipates that in Phase 2 of this Review the Ministry will identify how the research and data collection 'gap' can be resolved and look at appropriate means of improving the Ministry's capacity.

Monitoring, evaluation and learning

For the Ministry to be most effective in “managing for outcomes”, it needs to be able to provide robust analysis of the impact of its policy and operational outputs on the outcomes it is trying to achieve. Evaluation provides an important mechanism for improving the effectiveness of policies and programmes. Building evaluation criteria into policy proposals provides a focus on desired outcomes right from the outset. The need to think about evaluation at this stage in the policy process ensures a link between the proposed outputs and the outcomes framework. Systematic monitoring and evaluation provides a vital feedback loop into the future design and review of policies and programmes. Learning from experience can also be achieved in other ways, such as through comparative analysis across a range of countries that have similar policy settings.

Monitoring and evaluation capability is underdeveloped in the Ministry, as it is across much of the public sector. Work is currently being undertaken by central agencies to provide guidance to departments on how best to undertake effective monitoring and evaluation. Phase 2 of the Review should consider ways of enhancing the Ministry's monitoring and evaluation capability, having regard to monitoring and evaluation within the wider MED, as well as best-practice guidelines being developed across the public sector generally (for example, as part of the Pathfinder Project).²⁹

The Review Team highlights the need for the Ministry to develop appropriate measures of its impact upon consumers and society generally, as a first step towards effective monitoring and evaluation. However, this is not an issue for the Ministry alone. It will be critical that other key players within the consumer outcome framework are conducting appropriate monitoring and evaluation,

²⁹ The Pathfinder Project is an initiative seeking to better integrate outcome information into the Public Sector Management system. See <http://www.ssc.govt.nz>

such that the Ministry on behalf of Government and consumers can be assured of their effectiveness.

Relationships with stakeholders

Strategic relationships with stakeholders are an important element of any organisation's capability. The information sharing that arises out of such relationships can better inform research into emerging issues, facilitate data collection (which can be used in monitoring and evaluation), and enable work programmes to be aligned in related areas. In the product safety area, for example, the Ministry could work with ACC and/or the Ministry of Health to develop an injury prevention programme. The Review Team also notes that, given the expected role of global markets in the near future, there may be value in the Ministry consolidating and building its existing range of international relationships.

The Review Team considers that the Ministry's existing relationships with stakeholders are extremely positive, but that these relationships

- tend to be personal rather than institutional
- are in some cases underdeveloped – this includes relationships with other departments whose functions are closely aligned with the Ministry (such as Te Puni Kokiri, the Ministry of Pacific Island Affairs, and the Ministry of Justice) and
- are not subject to regular review.

A number of these relationships are crucial to the Ministry achieving its outcomes. This includes the Maori Women's Welfare League who undertake consumer activities in the Maori community, the Citizens Advice Bureaux who provide advice on consumer law and the Commerce Commission which, via its enforcement activities, impacts on suppliers' incentives and on consumer confidence in transacting.

Internal relationships, within the Ministry and also within MED, are equally important if the Ministry is to achieve its outcomes. These, too, are underdeveloped and every opportunity should be taken to strengthen them. In particular, the relationship with MED's Regulation and Competition Branch (RCP) is important because of the close relationship between consumer and competition policy.

In addition, the Review Team has noted that the Commerce Commission's accountability arrangements are with the RCP Branch and that the Commerce Commission is the agency responsible for enforcing New Zealand's major consumer law - the Fair Trading Act 1986. We consider it is important that MCA works more closely with RCP on developing the accountability arrangements in relation to the enforcement of consumer law.

Key areas for future work

The Team has identified two key areas for future work. These are:

- Enforcement, compliance and redress (including self-regulation). At the inception of this Review, questions were asked whether the boundary between policy advice on and enforcement of the Fair Trading Act is appropriate. As the Review progressed, it became apparent that this issue was too large to be considered here. Consequently, the Review Team suggests that these issues be addressed as part of the proposed review of consumer protection law and its enforcement.
- Examining the impact of changes in demographics, and evolving consumer/supplier characteristics and needs, on the ongoing effectiveness of the Ministry's current information delivery strategies. This includes considering:
 - the information needs of targeted consumers in the context of what information the market is likely to supply or not, and
 - where it is appropriate for the Ministry to supply information, how that information needs to be delivered to achieve its purpose.

11 Recommendations

Having considered all of the issues canvassed in this Report, the Review Team recommends that the General Manager:

1. **Agree** that the Ministry's activities (outputs) should be aimed at achieving the high-level outcome: "consumers transact with confidence". This outcome underpins dynamic and competitive markets, and contributes to MED's major outcome: "New Zealanders attain a sustainable increase in income growth, promoted by a supportive business environment".
2. **Agree** to adopt the guidelines for involvement, as they will help the Ministry in exercising its judgement about whether to get involved with different consumer issues. The guidelines for involvement should be reviewed from time to time to ensure they remain relevant and useful.
3. **Note** that the Ministry has a role in:
 - establishing, administering, and implementing consumer policy and in enforcing the Weights and Measures Act 1987
 - facilitating the development of, and monitoring the effectiveness of, market-based solutions to consumer issues, including self-regulation
 - delivering information to consumers and suppliers, including: requiring the provision of information by suppliers where necessary and desirable; explaining consumers' and suppliers' rights under consumer law; providing information on the safe use of products; and targeting groups of consumers who face particular barriers in accessing information.
4. **Agree** that the Ministry must maintain internal capability in policy, operational and technical expertise – and, in particular, the Ministry needs to manage succession issues that risk the loss of considerable experience and institutional knowledge.
5. **Agree** that the Ministry should understand consumer experience, consumer behaviour, trader experience, and trader behaviour and undertake research into existing and emerging consumer issues in order for the Ministry to achieve its outcomes.
6. **Agree** that the Review has highlighted several significant issues which, with further clarification, may be included in the Ministry's work programme in the medium term. These issues concern:
 - the ongoing effectiveness of the Ministry's information strategies
 - the information needs of targeted consumers, young consumers, and non-targeted vulnerable consumers

- the assessment of new market practices as they emerge, including cross-border transactions.
7. **Note** that the Review Team endorses the priority that has been given in the Ministry's proposed work programme for 2003/04 to initiate:
 - a "review of consumer protection law and its enforcement"
 - a first-principles review of self-regulation, and the Ministry's involvement in it.
 8. **Agree** that the review of consumer protection law and its enforcement should consider the mix of approaches to redress and enforcement (including the role of self-regulation) that will best contribute to the Ministry's high-level outcome of consumers transacting with confidence.
 9. **Agree** that the Ministry should be able to provide robust analysis of the impact of its policy and operational outputs on its outcomes.
 10. **Agree** that the Ministry should work with other key government, State Owned Enterprises and industry bodies in the consumer environment to monitor and evaluate their effectiveness in achieving consumer outcomes.
 11. **Agree** that the Ministry should adopt a more systematic approach to its relationships with stakeholders, including identifying and developing structured institutional relationships with stakeholders who:
 - are key players in the consumer outcomes framework
 - can act as a radar for emerging issues
 - can provide information to assist in monitoring and evaluation of Ministry policies and programmes
 - can directly assist the Ministry in achieving its outcomes, while recognising that changing priorities will dictate a need to reprioritise relationships.
 12. **Agree** that the Ministry should seek to have greater input into the discussions between MED (led by RCP Branch) and the Commerce Commission on accountability and monitoring issues.

And the Review Team recommends that the CEO of MED:

13. **Incorporate** the Ministry's outcomes framework in MED's intervention analysis because of the contribution it makes to MED's major outcome that "New Zealanders attain a sustainable increase in income growth, promoted by a supportive business environment".

APPENDICES

Appendix A: List of stakeholders interviewed

Ministry of Consumer Affairs Managers

Elizabeth MacPherson General Manager

Liz Stretton, Manager, Consumer Information Service

John Barker, Manager, Trade Measurement

Tony Leverton, Manager, Standards and Safety

Rob Bowie, Chief Advisor, Policy.

Ministry of Economic Development –

Strategic Leadership Team

Geoff Dangerfield

Katrina Bach

Neville Harris

Lewis Holden

Mike Lear

Roger Procter

Mark Steel

Government agencies

Commerce Commission

Ministry of Justice

Department for Courts

Self-regulators

Banking Ombudsman Electricity Complaints Commissioner

Consumer stakeholders

Maori Women's Welfare League

Pacific Island Reference Group

Consumers' Institute

NZ Citizens Advice Bureaux

NZ Federation of Family Budgeting Services

Business stakeholders

NZ Retailers Association

NZ Bankers Association

Sensortronic Scale Industry (NZ) Ltd

Appendix B: Members of Project Steering Group and Review Team

Members of the Project Steering Group

Elizabeth MacPherson	General Manager, Ministry of Consumer Affairs
Roger Procter	Group Manager, Medium Term Strategy Group, Ministry of Economic Development
Fergus Welsh	Chief Financial Officer, Ministry of Economic Development
Ken Heaton	General Manager, Commerce Commission

Members of the Review Team

Project Manager

Liz Stretton	Manager, Consumer Information Service
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Team:

Nick McBride	Policy Unit, MCA until December 2002
Sarah Kerkin	Policy Unit, MCA
Jamie Kerr	Policy Unit, MCA
Jeanette Harris	Consumer Information Service, MCA
John Barker	Trade Measurement, MCA
George Ria	Standards and Safety, until September 2002
Lesley Harwood	Consumer Information Service
Richard Tait	(Medium Term Strategy Group, MED)
Karen Chant	(Regulatory and Competition Branch, MED) until December 2002
Sandra Murdoch	Project Support Officer

Appendix C: Detailed flowcharts of the Ministry’s outcomes framework

The Ministry’s high-level outcome is that:

Consumers transact with confidence

Our high-level outcome that “consumers transact with confidence” recognises three factors:

- consumer expectations are influenced by the quality of information available to them about a transaction – and, collectively, successful transactions generate confidence
- market rules and institutions influence the confidence of consumers
- consumers have a reasonable expectation that effective redress is available.

The high-level outcome is supported by the following intermediate outcomes:

Consumers’ expectations of transactions are met by suppliers

Consumers enter into transactions with certain expectations. In particular, they may expect to receive: a particular product or service; of a particular description, quality, and quantity; at a particular price; or on particular terms. Consumers also have fundamental expectations around product safety. If those expectations are met, consumers’ confidence in the particular supplier, and in the market overall, is likely to be reinforced.

The role of information in creating consumer preferences and expectations

Information helps shape the formation of consumer preferences and expectations about the process and outcome of a transaction.

Reductions in the level of product or service failures

Consumers generally make assumptions about the safety and quality of products and services. Assumptions about quality and fitness for purpose are likely to be informed by price and will vary accordingly. Consumers are likely to assume that products on the market are safe.³⁰ If there is a gap between assumptions and reality (the outcome of a transaction), consumers risk getting a bad deal.

³⁰ See the Review background paper *Literature Review on Analytical Frameworks* p158 (this paper is available from the Ministry and is also online at <http://www.consumeraffairs.govt.nz>).

Consumers and suppliers have confidence in market rules and institutions

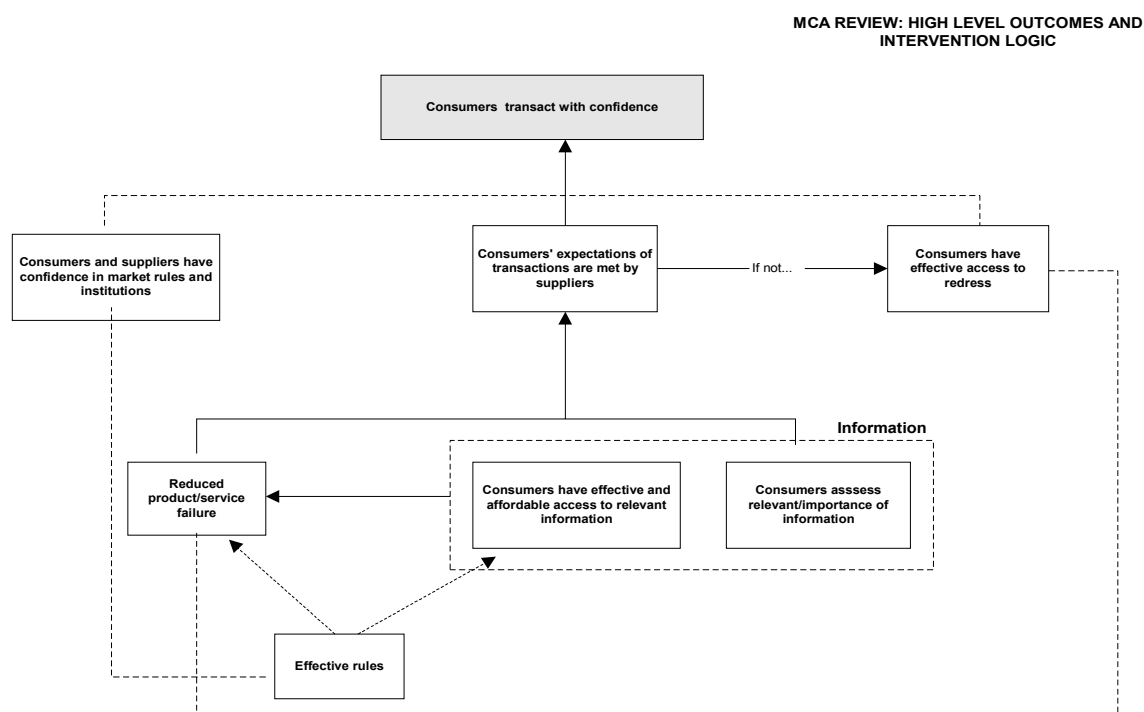
Ideally, consumers and suppliers have confidence in the market as a whole. Confidence is self-reinforcing: if market participants believe the market works well, they act with confidence and that tends to reinforce confidence and further strengthen the market. Rules and institutions that contribute to well-functioning markets can reinforce consumer confidence by influencing the weighting consumers give to different assumptions when making decisions in the face of imperfect information.

Consumers have effective access to redress

The availability of effective redress can build consumer confidence in transactions by influencing the weighting consumers give to different assumptions when faced with imperfect information. Accessibility of redress mechanisms may reduce consumers' assessment of the risks of transacting with a supplier they do not know or trust (or have imperfect information about) because they are aware they can seek a remedy if things go wrong.

The flowcharts in this Appendix show the underlying assumptions and detailed interactions between consumers, suppliers and possible interventions by the Ministry – and how these interactions then link to the Ministry's specific outcomes.

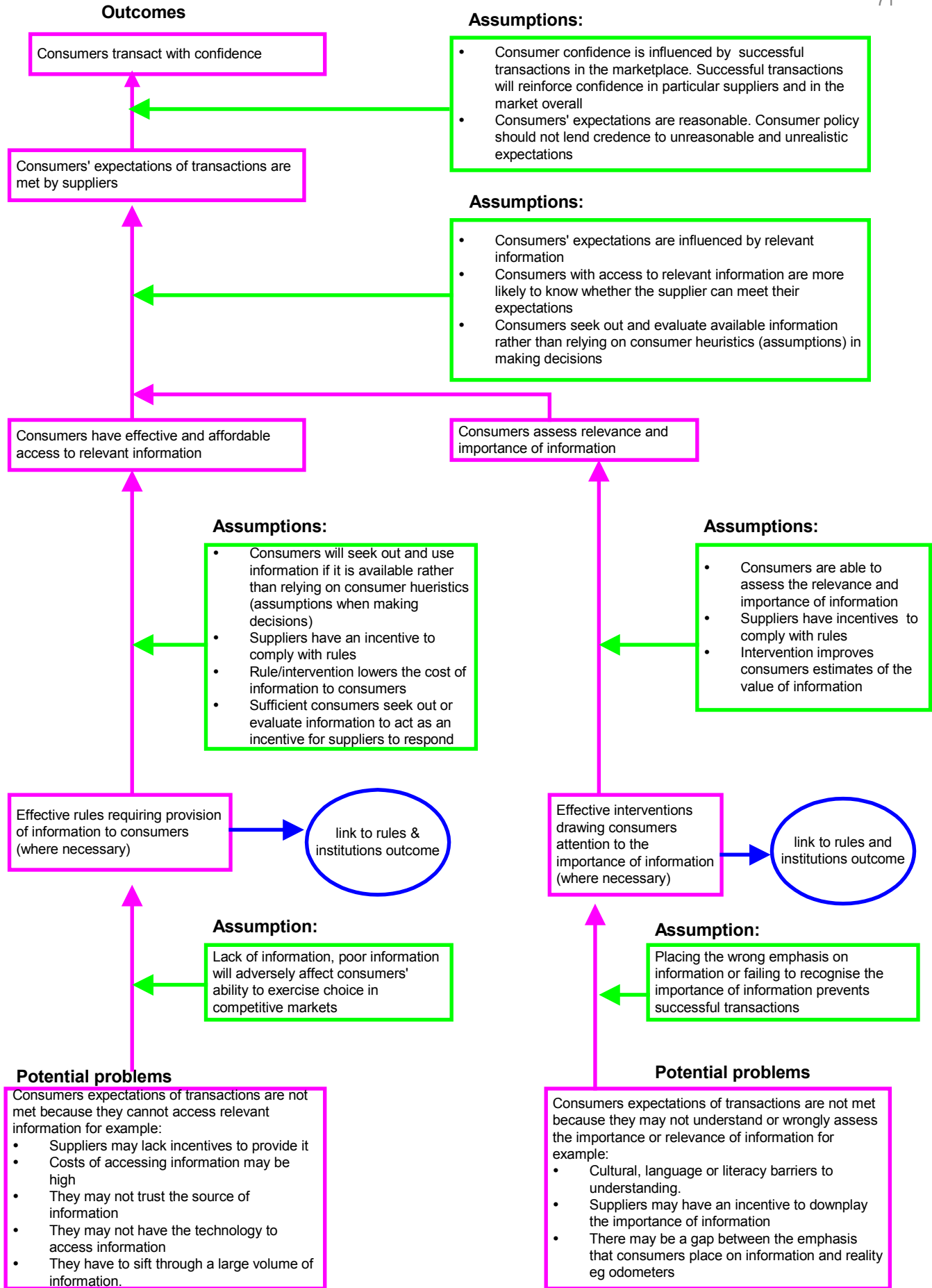
Flowchart 1: the Ministry's outcomes framework



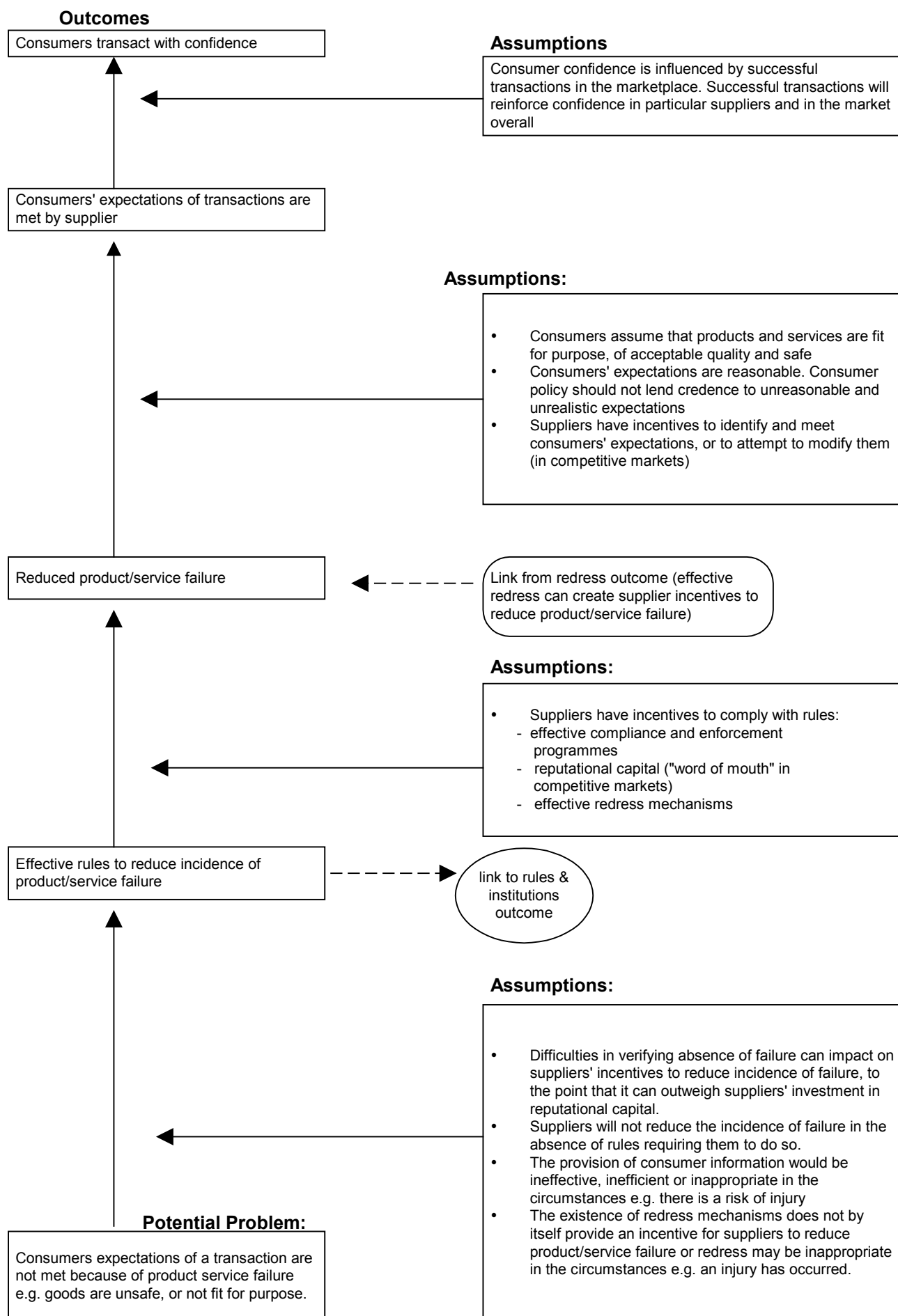
NOTE

The flowchart represents the primary drivers of the Ministry's work. However, the public as opposed to "pure" consumer safety aspects of Consumer Safety's work* do not fit within this framework. No implication should be drawn from this. In particular it does not mean that these functions should not be carried out within the Ministry. Indeed, there are pragmatic reasons why this work should continue.

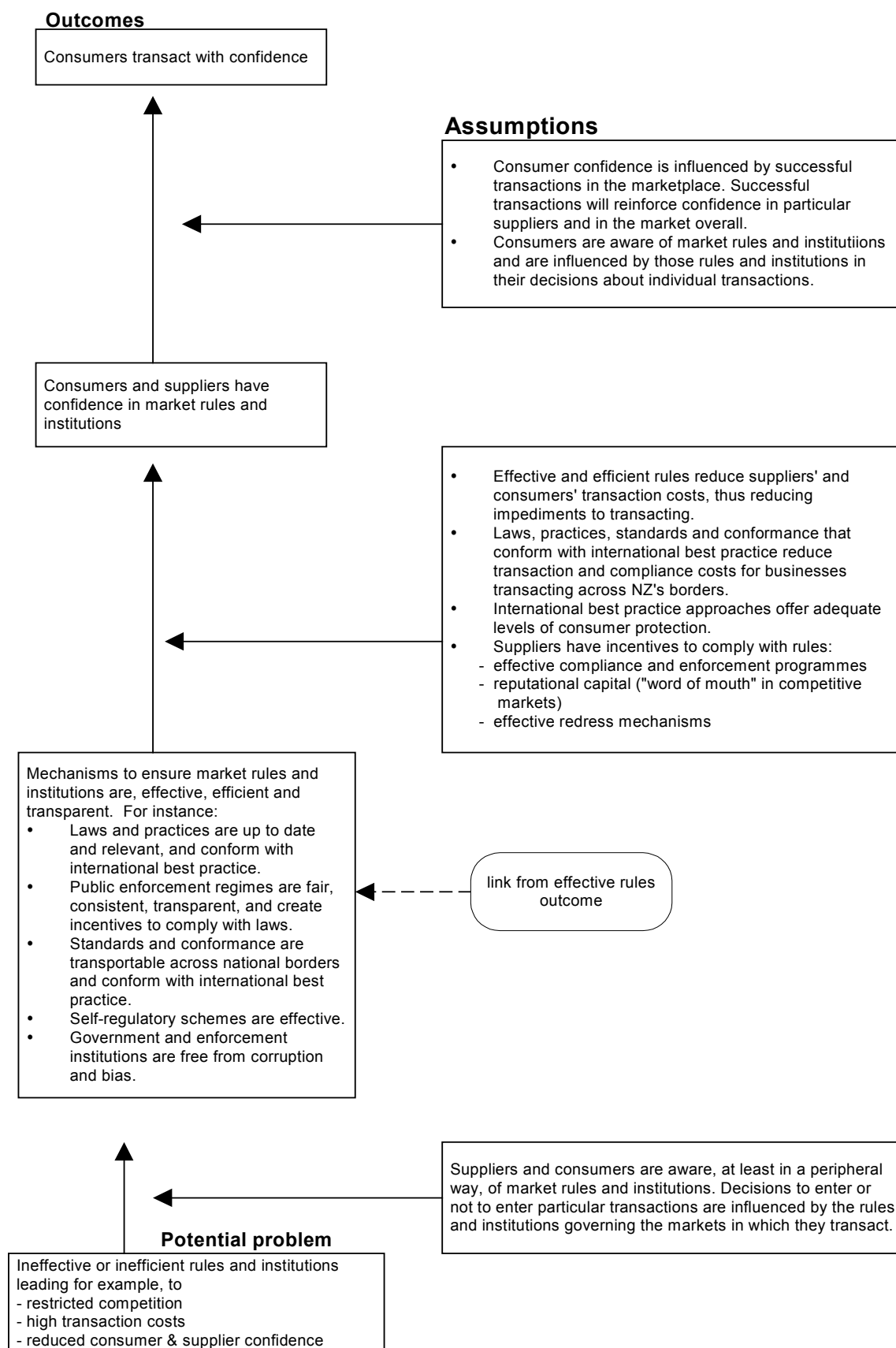
**ESS has similar public safety functions.*



Flowchart 3: Meeting consumers' expectations - reduced product/service failure



Flowchart 4: Meeting consumers' expectations - have confidence in market rules and institutions



Flowchart 5: Meeting consumers' expectations - have effective access to redress

Outcomes

Consumers transact with confidence

Assumptions

- Effective consumer access to redress gives suppliers incentives to meet consumer expectations and avoid product/service failure. This will result in fewer bad deals
- Consumer confidence is influenced by the existence of accessible redress mechanisms

link to reduced product/service failure outcome

link to consumers and suppliers have confidence in market rules and institutions outcome

Consumers have effective access to redress

- Consumers are aware of existence of redress mechanisms
- At least some consumers will use redress mechanisms if barriers are removed or reduced. If some consumers use them, suppliers will have an incentive to meet the expectations of all consumers

Barriers to redress are reduced, for example:
Cost barriers - access to redress is affordable and proportionate to the amount in dispute.

Procedural barriers - redress mechanisms are user-friendly.

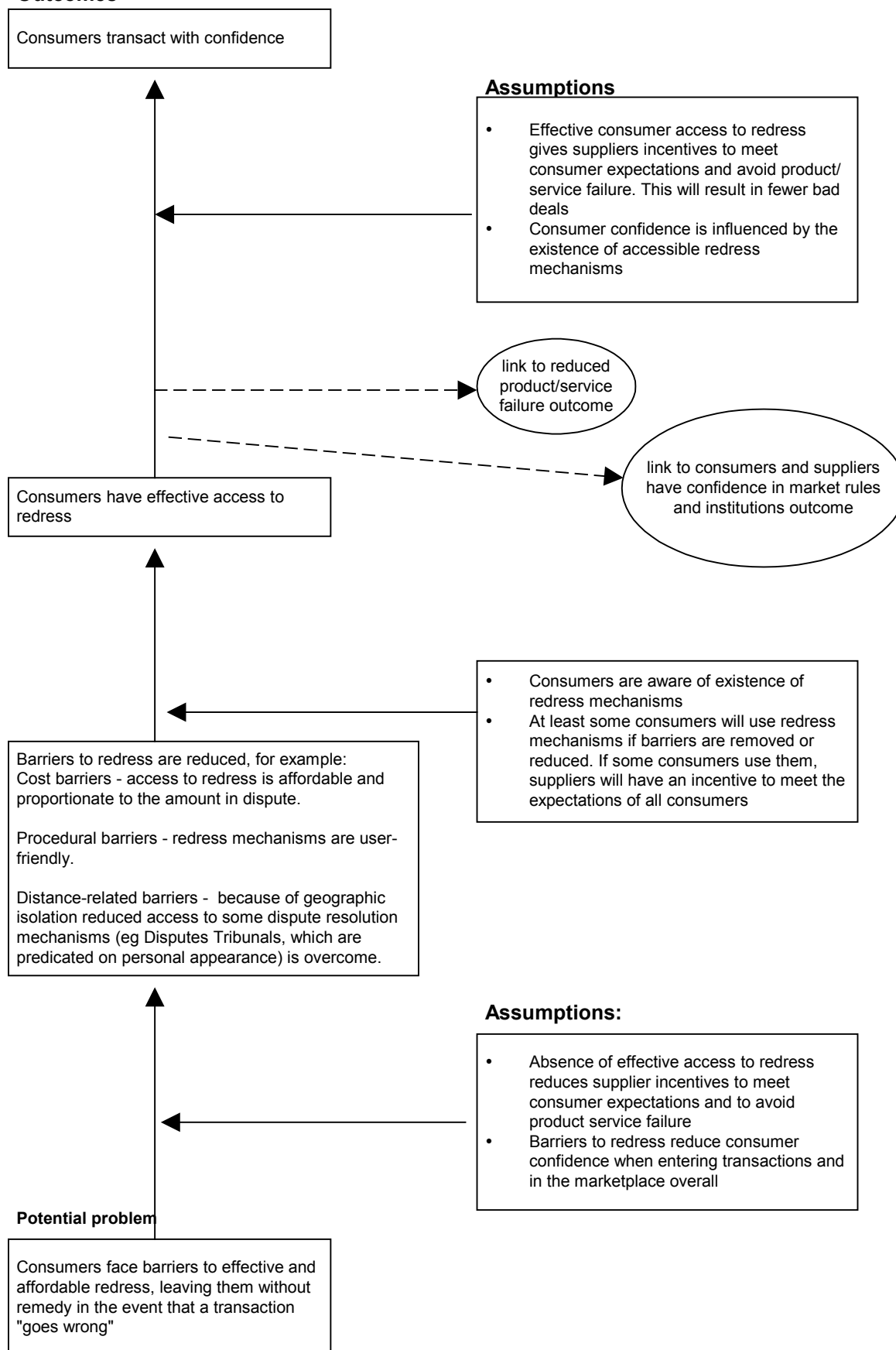
Distance-related barriers - because of geographic isolation reduced access to some dispute resolution mechanisms (eg Disputes Tribunals, which are predicated on personal appearance) is overcome.

Assumptions:

- Absence of effective access to redress reduces supplier incentives to meet consumer expectations and to avoid product service failure
- Barriers to redress reduce consumer confidence when entering transactions and in the marketplace overall

Potential problem

Consumers face barriers to effective and affordable redress, leaving them without remedy in the event that a transaction "goes wrong"



Appendix D: Staff Reference group and staff comments not included in the Report

Part A: Issues raised by the Staff Reference Group.

(The Review Team's comments are in italics.)

1. One person commented that overall the Review Report made sense, noted that it all hangs on the identification of the correct high-level outcome. From the ESS perspective it was thought that the high-level outcome is a bit narrower than it could be. Transactions are not the only issue. It isn't always a transaction which causes a problem in which the Ministry intervenes. And confidence isn't always enough.

Response

See comment made to issue 2 in Part B

2. General comment was that the paper needs ... (to) focus tightly on the Terms of Reference. For example, less about what we're doing now (but balance with need to provide context), less about globalisation – be careful not to be too focussed on policy programme. The recommendations need to be expressed more plainly. The SRG also recommended that the section on the Ministry's existing core functions needs to be described by function not by section, which reinforces silos.

The staff PSA representative raised the issue of the timing of the consultation with the SRG, and the fact that they are, in fact, not being consulted until the Report has been through several drafts. The expectation was that they would be consulted during the development. She saw this as a failure of the process and advised that in Phase 2 this kind of process would be quite unacceptable to the PSA. Another SRG member said that she felt that they had not been a Reference Group, hadn't been involved to the extent that they had hoped for.

Response

See the comment made to issue 1 in Part B.

3. "Transacting with confidence" – Is our focus too much on consumer rights rather than on responsibilities. There was discussion about what 'confidence' means in the context of the outcome. The question was raised whether consumers are naturally confident. Or is confidence something they need to learn? Also, do consumers know how to behave in the market? It's not about knowledge, it's about behaviour.

Should sustainability be identified as a future trend. The Review Team suggested that sustainability issues could be addressed as they arose by applying the guidelines for involvement.

Response

See comments made to issue 5 in Part B

4. We also need to cover people where they need protection against risk but maybe this is too paternalistic. For example protecting people against themselves e.g. seat-belts.

Do we care if consumers are not responsible? For example, scams, do we care if they continue to send money?

We also need to look at what impacts on consumer behaviour.

Response

Some of these issues are dealt with in the background paper on analytical frameworks.

5. The area on enforcement is not transparent. Staff need to have clarity about whether there will be further change beyond the forthcoming review of consumer law and its enforcement. Discussion and recommendations around enforcement need amending.

Response

The Review Team cannot pre-empt the process or findings of the proposed review of consumer law and its enforcement.

6. Globalisation – should it extend to the issue of sustainability?
 – should it include the use of consumers' own information and privacy?

Response

See comment made to issue 5 in Part B.

7. The Report has not examined the effect of the presence of target groups and the effects of targeting on policy and where that may go.

Response

The Review Team acknowledged that research has not yet been done but needs to be done in the future.

Other points made

Need to refocus the mention of longevity of service to a discussion about the real issue which is loss of skills and expertise, in addition to institutional memory.

In reference to consumers demanding 'high quality' goods the Review Team needs to be aware that many consumers don't demand high quality, they take what they can afford.

A comment was made asking whether the current position of MCA can be described as 'stable'.

The point was made that priority issues in other agencies may impact on the achievement of our outcomes. What effort should we put into working with those other agencies.

Part B: Feedback from staff.

Process to be followed

It was agreed that the Review Team would discuss all of the matters raised and respond to the points.

(The Review Team's comments are in italics.)

Issues

1. Role of the Staff Reference Group

A general concern was expressed that there is a mismatch between the role of the Staff Reference Group as it was explained at the beginning of the Review and how it has transpired. There have been two meetings and each occurred after decisions had been made. The first at the time when the Terms of Reference had been set after the Review Team's induction, and the second after the Report was drafted. There were no meetings while the Report was being developed. It was the view of the staff that the Staff Reference Group needed to be involved before things were set in concrete.

It was also noted that the Review Team does not include MCA staff from the regions but the Reference Group does. This is an important consideration.

It was the staff view that this inadequate process had not laid a particularly good foundation for moving into Phase 2.

It was also brought to the Review Team's attention that the process followed for the review of ESS in 1999 was recommended at that time as an appropriate process to follow.

Response

The Review Team noted the concerns expressed by staff and these have been conveyed to the General Manager for future reference.

2. The Report does address certain important aspects of consumer participation in the marketplace and it does to a certain extent represent the functions and roles MCA plays. But it does not cover them all, particularly some of the broader public safety functions of ESS and Consumer Safety.

Response

The Review Team considers that the proposed outcomes framework encompasses the primary drivers of the Ministry's work. We accept that the public safety aspects of the work done by Consumer Safety and ESS sit outside this framework to some extent, although we think there are synergies to be gained by avoiding unnecessary fragmentation of safety operations and policy between different agencies. We agree that this work is important, and that the Ministry is well-placed to carry out these functions. We have added a note to clarify this.

3. The Report reads academically and is not well-grounded in MCA reality. Many staff commented that they cannot see themselves in the document. The document is too conceptual. Some operations staff said that the Report doesn't address service delivery concerns.

A good Executive Summary would help a lot.

Response

The Review Team has deliberately addressed the issues at the conceptual and strategic level. This is what the Terms of Reference directed us to do. It is Phase 2 which will supply the specific detail about how such a strategy is implemented.

4. Has the Report addressed events which have happened since the inception of the Review?

Response

Yes it has. Specifically there was considerable discussion about the weathertightness of buildings and about the impact of Government decision-making.

5. The examples used in the Report tend to be the ones known by Review Team members. This is too narrow. There may be other examples, other trends and other issues which have not been picked up.

Response

The Review Team considered a wide range of issues. The issues included in the Trends background paper were given priority over other issues for a variety of reasons. The Team used the information-based analytical framework and the guidelines for involvement to make a preliminary choice between issues. We decided not to include some issues such as sustainability, because they are multi-dimensional issues that will likely require a whole of Government response. The decision to pick up such issues has potentially significant resource and alignment implications and would require careful consideration and consultation across Government agencies. The Review Team anticipates that, using the guidelines for involvement, the Ministry would likely play a part in addressing these issues, but would not take on a lead role.

6. The terms confidence, experience, and behaviour need to be defined.

Response

The meaning of these words is the normal dictionary meaning. They are not used in the Report in any technical way.

7. ESS were not included in this Report. How will they now be brought back into the exercise.

Response

This is a matter for the General Manager in Phase 2.

8. Changing market practices

The internet auctions example needs to be pruned, it is too long.

Response

The Review Team examined the section and comments that the length does not reflect the importance or the priority to be given to this issue. The decision was to leave it as is.

9. Recommendation 11. This does not emerge from the paper. It is a quite specific issue and unless it comes through the paper, it should be deleted.

Response

Reviewed and recommendation remains but is now better tied to the Report.

10. Study quoted under "changing consumer characteristics" should be removed from the paper because it is a marketing study and as such it is inappropriate.

Response

The Team considers that it is essential for the Ministry's policy development to be based on information, and we note that this information is not always available from Government sources (e.g. Statistics NZ). We acknowledge that some staff may consider it inappropriate to use marketing information to inform our understanding of consumer behaviour, given the reasons why this information may be generated. However, we think that this information can be a valuable source of information, given the incentives of marketing researchers to understand how consumers behave. As with all research, there may be flaws with this information, which means the Ministry needs to be careful about how it is used and the reliance that is placed on it. However, we think it would be short-sighted to preclude ourselves from using a potentially valuable source of information.

The section has been reworded to make it clear that this is simply a "model" and should be used as such.

The information which has been cited in the Report has some value, in that it challenges some of our assumptions. We do not necessarily recommend being bound by the terms used in the research. We also note that the information was presented at a conference on consumer strategy, which was run by a government agency in Australia, and we understand that it is likely to inform the development of a consumer policy strategy in Queensland. Therefore, we are not alone in seeing some value in this research.

11. Is “Consumers transact with confidence” the answer to a problem?

Response

Yes it is. The Review Team have made revisions which they believe make this clear.

12. It was suggested that all of the evidence is that dissatisfied customers tell everyone and have impact not the other way around.

Response

The Report is not referring to individuals but to the market. The paragraph has been revised to make this clear.

13. Some staff indicated that they do not believe that markets can and will collapse.

Response

It is true that markets rarely collapse, in the way the stock market has collapsed twice, because action is usually taken before that occurs. This does not make it impossible.

14. Some staff took strong exception to the phrasing of the ideas on the role of information in creating consumer preferences and expectations. It was seen as victim blaming.

Response

The opinion is noted. Our approach is consistent with international literature.

15. The Team should have looked at a hybrid framework for New Zealand, not accepted the information framework just because it was the most suitable.

Response

The Review Team did analyse the frameworks and in the main, the information framework is the most applicable to the current work of MCA and the work proposed. This does not preclude other analytical frameworks being used in appropriate instances and the Report now reflects this.

16. Some staff considered that MCA does not fit comfortably within MED's strategic framework. There was a feeling that despite this the Review Team had just accepted that it had to, and gone ahead. The preference was for MCA to press MED to fit with MCA not vice versa.

There was also criticism of the MED approach to the development of their strategic direction.

Response

The first question we asked ourselves at a general level, was there a good strategic fit within MED. We considered that there was in the same way that the original review setting up the Ministry concluded that Consumer Policy is economic in character and relates to the position of consumers in the marketplace.

Following this we worked on the outcomes framework and this work confirmed our earlier opinion.