Consumer Comment

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From the President

The New Australian Consumer Law has presented CAWA with new issues to consider. The COAG initiatives to Australian Consumer law will bring enormous changes and CAWA is concerned about the role of the Consumer Protection Division within the Department of Commerce once uniform sets of laws covering many areas of consumer protection come into operation – with particular reference to protecting Western Australian consumers of course.

Although COAG initiatives favour the support of consumer organisations, we note that the peak body Consumers' Federation of Australia (CFA) is unable to obtain funding while CAWA also struggles to find the resources to move forward. With National/ trans-Tasman legislation will there still be a role for small state consumer organisations such as CAWA who have traditionally lobbied the WA Government through the Department of Commerce?

In the past the Department of Commerce maintained a register of concerned consumers and promoted consumer representation at all levels. By what future means will the Consumer Protection Division ensure that the Western Australian consumer voice is heeded in the making and execution of government policy? This is particularly relevant to the new Australian Consumer Law.

As part of proposed changes to WA Building Legislation, the Building Disputes Tribunal (BDT) is due to become part of the State Administrative Tribunal (SAT). Currently, Building Disputes Tribunals are comprised of three persons: a legal chairperson, a builder member and a consumer representative. SAT does not have consumer representatives. Consumer Representatives on the Building Disputes Tribunal frequently influence the decision making process and play a considerable role in ensuring outcomes are fair and reasonable.

Does this mean that consumer representatives will no longer be a

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Profile - Janet Pine

Janet Pine was not a member of CAWA but with her passing we wished to pay tribute to her. Not only did Janet make a significant contribution in WA to consumer affairs, most lately through her role as Chairperson for the Consumer Advisory Council from November 2003—Dec 2006, but she was also a passionate, committed advocate for social justice, particularly for women. The text that follows was edited from a eulogy given by Sue Bennet Ng at the funeral and is used here with the kind permission of Janet's family.

Back row: Judith Davis, Nick Agocs, Aileen O'Rourke, Eileen Webb, Christina Kadmos (Executive Officer.) Ben Wyatt, (Deputy Chair) and Lisa Baker. Front Row: Gwyneth Haywood, Janet Pine (Chairperson) and Rhonda Algaba

Janet Grace Smith was born in Collie – July 12, 1942. As a young woman she married an American and moved to the US for six years before returning to Australia with the huge responsibility of raising a young family of girls as a single parent.

By the 70's, Janet had begun to see her life in a feminist context, the women's movement providing her with excitement, caring and support and importantly, a political focus.

After graduating with a Bachelors Degree and Diploma of Education, Janet worked for Senator Pat Giles as a researcher, progressing the cause of women through the Womens' Electoral lobby and then working as a pioneer in TAFE for Women's Interests and equity through education and training. Janet's whole life experience was the foundation for the New Opportunities for Women courses. Through this legacy Janet changed the lives of thousands of women across the state for the better. Apart from her girls, this was one of Janet's greatest achievements.

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part of the BDT post 2010? How can consumers be confident of similar representation in the new Building Disputes process?

Three of our members met with the Consumer Protection Minister, Mr Buswell on 29th July, 2009 primarily in an attempt to stay the incorporation of the Building Disputes Tribunal into the State Administrative Tribunal but also highlighting some of our other priority concerns, including Trading Hours. Since the meeting we've had no acknowledgement or any correspondence from the Minister's office. Discussion between members suggests that never before has CAWA had such poor treatment from a Minister.

Western Australia has traditionally had a 'Board system' to oversee regulation of various industries. Currently, there is a move to abolish the Motor Vehicle Industry Board. The Hairdressers Board has been abolished. Whilst Boards can be seen to be costly, they provide a forum for industry representatives and concerned parties, such as consumers, to meet and formulate strategies to regulate industry. The Board process required an annual parliamentary report that gave decision making a degree of openness and transparency.

In a previous newsletter we capitulated on an extension of trading hours to 8 pm weeknights, not because we are entirely in favour but we'd like to get this issue off the Government's agenda. Perhaps then they could give greater consideration to more important issues than supermarkets. In light of the current Parliamentary stoush on the subject you'd think CAWA's opinion would have some relevance and I will take yet another opportunity to rant on the subject later in the Newsletter.

The usual lack of time and resources has prevented us making a detailed submission on the Retirement Villages Act although most of us feel strongly about the issues involved. We would like to see an end to lease for life contracts together with the provision of a lot more appropriately-scaled serviced homes in residential communities where consumers can choose to rent or buy in an open, transparent and competitive market.

Other issues in the newsletter include comments on fresh food safety, unit pricing and building legislation. GM and Nanotechnology also rate a mention, being issues where consumers need more education and understanding to make informed choices.

If we only had a Western Australian Consumer Advocacy Centre... It is now many months since the Treasury, through Consumer Voices, recommended increased support to consumer organisations but we haven't heard a whisper. In an effort to garner support and increase awareness amongst WA consumers of how we go in to bat for them, we are distributing this edition of Consumer Comment more widely than usual – if you would like more copies, email us at info@consumers.asn.au

Genette Keating

Trading hours

Mr Barnett and Mr Buswell think they know best about trading hours. Suggesting that consumers have no idea of what they want or what's good for them and unable to get referenda to go their way the WA Government think they'll just take matters into their own hands (ie go with what big business propose). Democracy, I don't think so. I heard Mr Barnett on the radio say that if consumers don't want to shop during extended hours then they should stay home. Consumer issues are a little more complex than that. However, you know I'm all for online shopping – bring it on.

The extended trading hours debate is not just about consumers having access to designer handbags and tinned tomatoes twenty–four hours a day but about the bigger picture and the other issues involved. Unfortunately we still can't point to any relevant research but past referenda together with CAWA's own surveys and experience with the Retail Shops Advisory Committee clearly suggest that Western Australians don't want deregulated shopping hours. The reasons are multiple and complex and include social and financial interests I'm not going to canvass here.

The main pressure for change appears to be from "the big two" supermarkets. It has been suggested that supermarket prices in WA are high due to a lack of competition. "The big two" say they can't be competitive because of the third player. Nonsense! Consumer groups are certainly not demanding any extension and small shops can currently trade whenever they want.

Shopping centres are not cultural hubs and "mall mentality" is not something we would promote. A recent stay in central Sydney suggested that in the shops the lights were on but there was nobody home. A two night search of Sydney's main streets (for research purposes only of course) could not find a tub of ice cream to take back to our hotel room. Daylight revealed an abandoned shopping trolley on the footpath outside.

During the evening the atmosphere in the streets was similar to that of Northbridge or Leederville on a quiet night, with groups of young people hanging out on the corners with public bars doing a fine trade. Maybe it's just me but I'm not the least bit interested in indulging in the delights (or otherwise) of crowded, noisy and poorly lit nightspots or the stresses involved in navigating them. Picture a Greek taverna, a bay or a hillside, a little gentle music, good conversation and tomatoes with flavour - more my thing (dreaming).

Of course should I win Lotto and find myself at a loose end, I might consider getting a taxi (to avoid the parking hassle) and popping into Subi or Mount Lawley at 7pm on a Monday night for a designer handbag or some bling. As consumers go, I'd be in a fairly small minority and of course I probably couldn't rely on the shop being open.

We didn't experience late night shopping in the outer suburbs of Sydney. I imagine something like late night shopping at my local shopping centre and a drive-through

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How to use grocery unit prices

Ian Jarratt from the Queensland Consumers Association, a long time advocate of unit pricing kindly contributed the two articles on unit pricing for the newsletter.

Since 1 December 2009, it has been much easier for consumers to compare the unit price (price per unit of measure) of pre-packaged grocery products and thus make big savings on their grocery bills.

This is because on that date the federal government's industry code of conduct required all large supermarkets (over 1000 sq m food area) to display the unit price of most packaged grocery items.

The unit price must be shown in addition to the selling price and allows consumers to make better-informed decisions between package sizes, brands, packaged and unpackaged products, and between substitutes.

Unit prices are shown in a variety of units of measure depending on the product type. The standard unit of measure for products sold by weight is 100g. But, many are unit priced per kg to facilitate comparisons with other products, for example with unpackaged and some pre-packaged meats and fresh fruit and vegetables, which must already be unit priced per kg.

Smart shoppers willing to change brand and package size can use unit prices to make major financial savings. On a basket of 25 common items, my research has shown that an overall saving of almost 50 percent is possible by buying products with the lowest unit price. The saving per item ranged from 11 to 75 percent. (Of course, consumers can, and should, also take account of quality, ingredients, quantity, type of packaging, country of origin, etc.)

These are very significant potential savings for all consumers, especially for low income or disadvantaged consumers.

Big savings can be made just by switching brand or choosing a substitute product, so even consumers on tight budgets can gain from using unit pricing in these ways.

But sometimes, you may have to buy larger amounts to get low unit prices, for example to stock up on a special or buy a larger size. This may (but not always) require an increase in initial expenditure. But, consumers on tight budgets can still do this by using the savings from switching brand etc. and by being selective about the number and timing of such purchases. Of course, it is essential also to ensure any extra amounts are not wasted.

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How to use grocery unit prices continued ...

As mentioned above, consumers can use unit prices to compare products in numerous ways. Here are some examples:

- ◊ **Sizes within** and **between brands** e.g. corn flakes in cartons (unit prices per 100g) Brand A: 280g - $0.94, 460g - $0.76, 775g - $0.71 **- 25% SAVING**

- ◊ **Packaged and unpackaged products** e.g. sliced Danish salami loose from the deli ($15/kg) and in packets in the chillers ($34.90/kg). **– 57% SAVING**

- ◊ **Types of packaging** e.g. 500g packs of cheddar cheese slices in vacuum packs without resealing mechanism ($11.80/kg) and with resealing ($16/kg). **– 26% SAVING**

- ◊ **Close substitutes** e.g. 2 kg packs of long grain rice ($0.18/100g) and jasmine rice ($0.25/100g). – **28% SAVING**

- ◊ **Product form** e.g. baby peas 420g canned ($3.30/kg) and 500g frozen ($4.50/kg). - **27% SAVING**
  e.g. Smoked cod thawed at the deli ($13.49/kg) and 400g frozen pack ($21.20/kg) **– 26% SAVING**

Clearly, smart consumers can use this type of information to make much better informed choices. But, consumers must remember to keep monitoring unit prices because they can, and do, change rapidly.

Unit pricing also helps consumers to more easily spot sneaky price increases due to manufacturers downsizing content but not price. This is very widespread at the moment.

Complain to the ACCC about non-compliance with the grocery unit pricing code

The Federal Government's compulsory Grocery Unit Pricing Code became enforceable by the Australian Competition and Consumer Commission (ACCC) on 1 December 2009.

The compulsory system for large supermarkets was a great consumer victory achieved only after a long campaign involving many consumer organisations, including CAWA.

But, some retailers may not be complying fully with the Code. (More about this on the next page)

Complain to the ACCC about non-compliance with the grocery unit pricing code continued ...

Members of CAWA concerned about possible retailer non-compliance are encouraged to contact the **ACCC's Unit Pricing Hotline 1300 746 245**. (Or, if you prefer, contact me at unitpricing@australiamail.com and I will try to assist or refer your complaint/query to the ACCC by email).

Complaints to the ACCC will show clearly that consumers are interested in and care about the quality of the unit pricing information provided by retailers and will assist the ACCC's compliance enforcement activities.

The Code covers grocery unit pricing in retail premises (over 1000sq m of food area), print advertising and on line selling.

The main requirements are:

- **Display** – unit prices must be prominent (easy to notice), legible (not difficult to read), unambiguous (including accurate), and in close proximity to the selling price.

- **Units of measurement** – unit prices must be expressed in specified units of measure (the standard units for weight and volume are per 100g and 100mL but per kg is compulsory for all cheese and all forms of meat, seafood, smallgoods, fruit and vegetables – including canned and frozen).

- **Products and prices covered** – most products sold in a supermarket must be unit priced (but there are some exemptions) and most selling prices must be accompanied by a unit price (but there are some exemptions eg multibuys or a single price involving more than 1 product type or package size).

The Queensland Consumers Association has already complained to the ACCC about in-store unit prices which are not prominent, and difficult/impossible to read, and not being provided when they should. Also, about more than one unit of measurement being used to show the unit prices of different sizes and brands of the same product.

We have also complained about newspaper advertisements and catalogues which do not show unit prices and about unit prices which are not prominent, are difficult to read or not close to the selling price.

Generally, it should be clear whether or not a retailer is complying with most of the provisions of the code. However, the requirements that the unit prices be displayed prominently and legibly are open to some interpretation.

But, this should not deter complaints to the ACCC about possible non compliance with these provisions. The ACCC's guidelines for retailers say that "prominent" means – "it must stand out so that it is easily seen", and "legible" means — "it must not be difficult to read"

Continued on next page

Complain to the ACCC about non-compliance with the grocery unit pricing code continued ...

Our research and feedback from consumers shows that most unit prices in stores are not prominent and far too many are difficult or impossible to read, even for normal sighted consumers.

The reasons for this include: the print is too small, the print is not dense enough, the characters are too close together, there is inadequate contrast with the background, the unit price is obscured by label holders, the label holder is badly angled, etc. The problems are often greatest with unit prices on the lower and upper shelves.

Unless consumers can easily **NOTICE, READ and USE** all unit prices, the system will not achieve its considerable potential to save consumers money and time and increase competition between manufacturers and between supermarkets.

More detailed info about the code is in the ACCC's Guide for Retailers available at: http://www.accc.gov.au/content/index.phtml/itemId/879085

And, the ACCC's Unit Pricing Hotline is 1300 746 245.

Ian Jarratt, Queensland Consumers Association

You can direct credit your membership fees into the CAWA account.
The details you need are:
BSB: 306 050
Account No: 4158656

If you have any problems contact the Treasurer through the CAWA website.

Alternatively, the money can be mailed to the treasurer, at:

The Treasurer
Consumers' Association of WA (Inc)
Locked Bag 14
Cloisters Square WA 6850

Notice to the Home Owner—Building Contracts Act 1991

DOCEP asked CAWA to comment on a proposal from the Housing Industry Association to amend the 'Builder's Registration Act Schedule 2—Notice to the Home Owner'. Genette Keating sent the following letter to Anne Driscoll on 20th July 2009 and received the response on 24 December, reproduced at page 12.

Dear Anne

Notice for the Home Owner – *Home Building Contracts Act 1991*

Thank you for the opportunity to comment on the proposal by the HIA to amend the Builders Registration Act Schedule 2 – the Notice to the Home Owner. The Consumers Association agrees in principle with changes which will provide more consistency for Owners.

The term "Rise and fall clause" however is not as well understood by consumers as the term "Contract price must be fixed".

We note that the headings of other sections of the Schedule do not exactly reflect the wording of the HBC Act's headings and hence we question the motives of the HIA in requesting an amendment to only this section of the Schedule. For example:

Regulations	Prime cost/Provisional sum
HBC Act	Understatement of prime cost items etc
Regulations	Provisions that are not allowed
HBC Act	Deposits and progress payments
Regulations	Special rules for cost plus contracts
HBC Act	Cost Plus contracts
Regulations	Home Indemnity Insurance
HBC Act	Home indemnity insurance and corresponding cover

The HIA website offers for sale a document titled "HBCA Lump Sum Contract - Form 16G" and states "All contracts for work between $7500 - $500,000 require a written signed contract to comply with provisions of the Home Building Contracts Act as well as adequately covering essential matters necessary to avoid conflict between parties in home building.".

Continued on next page

Notice to the Home Owner—Building Contracts Act 1991 continued ...

The Master Builders Association website states “Fixed price contracts are the most common form of domestic building agreement. As the name suggests a fixed price agreement is where the builder agrees to perform building work for a fixed sum”.

“Fixed Price” and “Lump Sum” are both easily understandable to consumers. Neither the HIA nor the MBA advertises a “Rise and fall – free” contract.

Considering all of the above we would prefer to retain the existing text. It may be an improvement to amend the text in the Schedule to explain that “the contract price must be fixed” is the primary advice of the section and the only way the fixed price can be changed is by

Increases due to a), b) and c) - as defined in the Schedule

Where approvals are delayed - as defined in the Schedule

Changes to the specifications at the request or agreement of the consumer

It is essential that all changes to a contract result in a signed Variation, including changes to provisional sums. This makes tracking the course of the building work easier for consumers and is very helpful should any dispute arise.

While on the subject of the Schedule, I would like to take the opportunity to point out that builders, consumers and some lawyers have difficulty understanding the difference between Practical Completion and Completion.

It is essential that consumers are aware of the process from Practical Completion (related to the contract), through the Defects Liability Period to eventual Completion (related to the work). Most consumers are not aware of the difference between Practical Completion and Completion and often they are ill advised by building inspectors and legal representatives and are disappointed when their new home is not perfect at Practical Completion.

The Builders Registration Act (BRA 12A(1aa)) regarding orders to remedy faulty workmanship, defines Completion in the following: ”Unless such complaint is made before the expiration of 6 years from the time when the building work was completed and for the purposes of this subsection, building work is completed when the building to which the work relates becomes fit for occupation in a free and uninterrupted manner.”

Practical Completion however is defined in the Home Building Contracts Act (HBCA 11. (2)) as the stage where the "the home building work is completed except for any omissions or defects which do not prevent the home building work from being reasonably used for its intended purpose".

As I understand it Practical Completion is usually concurrent with handover of the keys and the payment of the contract balance. The owners provide the builder with a maintenance list of items to be completed within the "Defects Liability Period" of four months (or greater if provided in the contract). At some point during the "Defects Liability Period" (rarely at Practical Completion) the work should reach completion. If the builder does any work after Practical Completion which prevents the occupation of the building from being free and uninterrupted then the work is not at Completion.

This means that consumers are protected if the builder procrastinates after Practical Completion because the six year period in which to complain to the Building Disputes Tribunal does not begin to run until Completion. I think that only the BDT can determine the actual date of completion - based on what constitutes sufficient interruption to warrant the work incomplete.

A private building inspector (witness for the builder in a recent BDT hearing on which I sat as Consumer Member) defined PC as "the stage where the building is reasonably fit for free and uninterrupted use by the proprietors". The owner's legal representative stated that this was "quite an acceptable definition". I think it is preposterous that neither a building inspector nor a legally qualified person seemed to be aware of the definitions in the act or the process to which they relate. In my experience similar misunderstanding is widespread.

To add to the confusion, consumers can make a workmanship claim to the BDT for 6 years from Completion but have 6 years from Practical Completion to make a Home indemnity Insurance claim and three years from the cause of the action to make a contractual claim.

I request that consideration be given to including the definition of Practical Completion in the Schedule with an explanation of the process. Currently the Schedule only defines Completion.

Kind regards
Genette Keating

President – Consumers' Association of WA (Inc)

24 December 2009

Dear Ms Keating

NOTICE TO THE HOME OWNER—*HOME BUILDING CONTRACTS ACT 1991*

Thank you for your letter dated 20 July 2009 setting out the Consumer Association of WA's (CAWA) comments on the proposed amendment to the Notice to the Home Owner (the Notice). As you will recall, I sought your comment on a proposal to amend the heading in the Notice 'Contract price must be fixed' to instead read 'Rise and fall clauses are prohibited'.

I understand the main rationale for the Housing Industry Association seeking this amendment is to clarify the operation of Section 13 of the *Home Building Contracts Act 1991 (the Act)* for both industry and consumers. While it acknowledged that other headings in the Notice differ to varying degrees to the wording of the Act itself, the Department of Commerce, Consumer Protection Division (Consumer Protection) considers that the 'Contract price must be fixed' heading could be misinterpreted.

It is noted that the other headings in the Act serve to clarify the Act's operation. However the 'Contract price must be fixed' heading does not appear to do so.

I consider that on balance, the heading in the Notice should be amended in order to avoid confusion about the notion of a 'fixed contract'. It is possible that consumers may read the heading believing that in fact, the contract price is not subject to variations, albeit in limited circumstances.

Changes to the specifications at the request or agreement of the consumer results in variation to the contract and it may be argued that this alters the notion of a fixed price agreement. Consumer Protection understands that delays not caused by the builder as well as variations pursued by the consumer, are relatively common scenarios in which variations to the contract can occur.

While Consumer Protection will seek approval from the Minister of Commerce that the heading in the Notice 'Contract price must be fixed' be replaced with the term 'Rise and fall clauses are prohibited', I believe the wider questions you have raised about the current statutory definition of practical completion and whether the Notice should be amended to address other issues, do warrant further consideration. Accordingly, CAWA's comments in relation to these issues have been referred to Mr Peter Gow, Executive Director of the Building Commission Division of the Department of Commerce.

As you may be aware, the Building Commission came into effect as a separate Division of the Department of Commerce from 1 July 2009. The Building Commission provides a 'one-stop shop' for industry and consumers for registration and licensing, building and plumbing regulation and standards, industry development, technical information and disputes. The Act, together with the Painters' and Builders' Registration Acts, are now administrated by the Building Commission.

Notice to the Home Owner—Building Contracts Act 1991 continued ...

I will write to you again advising you about whether the Minister of Commerce endorses the proposed amendment to the Notice. If the proposal is supported by the Minister, it is anticipated that the industry will be granted at least a three month period to allow it to prepare for the change, During this time, the Department of Commerce will conduct an industry targeted education campaign.

I apologise for the delay in responding. I appreciate CAWA taking the time to provide its comment on the proposal.

Yours sincerely

Anne Driscoll

COMMISSIONER FOR CONSUMER PROTECTION

CAWA believes that the building terms - 'Practical completion' and 'Completion' are misleading and need to be addressed with the new building legislation. We await Anne Driscoll's and Peter Gow's responses.

Wastewater—Water Corporation

CAWA have several concerns about a trial Water Corporation is doing in the Ellen Brook catchment - using the product "LaBC® (Lime amended BioClay). The product consists primarily of biosolids from human waste. This product was offered to a business associate who is a commercial strawberry grower and led me to look for more information. I was even more concerned because previous testing suggested high levels of Cadmium in leafy green vegetables available to consumers in Perth.

Often thought to consist of only "human waste", treated sewage sludge or "biosolids" contain any contaminants from sewage that are not broken down in the treatment process, or which do not remain with the water effluent leaving the treatment plant. The most commonly detected trace contaminants of concern are heavy metals (arsenic, cadmium, copper, etc., some of which are also critical plant micronutrients), and toxic chemicals (e.g. plasticizers, PDBEs, and others generated by human activities, including personal care products and medicines)[10]. Synthetic fibers from fabrics persist in biosolids as well as in biosolids-treated soils and may thus serve as an indicator of past biosolids application. [11] Pathogens are not a significant health issue if biosolids are properly treated and site-specific management practices are followed (From Wikipedia)

Wastewater—Water Corporation continued ...

Water Corp's website states "Farmers and other rural landholders in the Ellen Brook catchment are invited to partner with the Water Corporation and Perth Region NRM in a two-year trial of LaBC®.

The following question/response from the WC website ....

Q. "Is there a risk of contamination of waterways through runoff from heavy metals, colloidal materials and/or nutrients?

A. The answer is relevant. LaBC® will not be applied close to waterways, and is cultivated into the soil before seeding or planting. LaBC® improves soil wetting, and binds phosphorus, and trace metals more strongly than most competing products.

However, leaching of nutrients and other substances into the soil profile is not zero; the valuable nutrients and trace elements would not be available to plants if this were so. The key point is that the combination of LaBC® with perennial plants will significantly reduce offsite losses of applied nutrients, and consequently environmental harm. LaBC® will not be applied in drinking water catchments."

The WC website is vague on the subject of heavy metal concentrations. The website suggests the product be used on perennial plants, whatever difference that makes. I still don't want it on my strawberries or other berries, rhubarb, asparagus or herbs. WC make a big offer to indemnify growers against adverse outcomes!!! What about consumers?

Many vegetable growers have limited education and/or literacy skills – how can WC assure consumers that leafy vegetables will not be contaminated?

Really GM sounds like a better option than some of the chemicals listed above.

CAWA Vice President Rhonda Algaba represents consumers on the Water Corp Customer Advisory Panel and we hope to soon obtain some information about the biohazard levels in this product and the likely outcomes for consumers. We need to be confident that our healthy fresh produce is not poisonous.

Genette Keating

Trading hours continued ...

(Continued from page 4)

take away on the way home pretty much covers it – not a cultural heaven I would want to promote to WA consumers.

Being like sheep and copying the Eastern States is not clever or innovative. Thinking laterally, we could consider flexible business hours with the possibility of a Siesta – we have the Mediterranean climate. As a substitute for daylight saving, flexible hours would bring business hours into line with the East with no effect on consumers. Consumers would have more shopping opportunities during the day and instead of Dullsville, Perth might be Relaxedville. Traffic congestion during peak hours would also be reduced.

I've said it before but the sooner online shopping and home delivery offers a realistic and competitive alternative and becomes the norm, the better. Home delivery eg one vehicle delivering to thirty homes instead of thirty vehicles travelling to the shopping centre with associated time, parking, littering, shopping trolley, environmental and safety issues. Consumers would have time to indulge in more fulfilling leisure and cultural activities than spending money at supermarkets.

I also wouldn't mind if it was suggested that banks and the post offices open late - and I'm talking 5.30 here, nothing extreme – I frequent those establishments more often than supermarkets and last week I discovered that yet another bank branch has closed, meaning a further half hour round trip to deposit a piece of paper.

The Centre for Consumer Research's paper on Trading Hours although imminent is unlikely to be published prior to a Government decision. Whilst this paper may or may not support our view we would have preferred it to be given consideration in the decision. We are not aware of any other current research on the subject.

Genette Keating

Price variations—Cost of Panadol Osteo tablets

A member has reported a variation in the price of Panadol Osteo (96) tablets purchased from different Chemists. It was first queried when a Chemist attached to a Doctor's Surgery charged $17.99. Investigation found that the same item cost $5.99 at a Chemist Warehouse, through $7.49, $9.95 and $10.95 from other Chemists.

This is definitely a case of the consumer having to be AWARE, questioning the Chemist if the price of an over the counter item seems high, and shopping around.

Chemists are entitled to some mark-up but such a wide range in the price of the same item seems excessive.

Verity Cripps

Cheap imported products

At her local IGA store, one of our members came across this cheap imported product, made in China and distributed by a New Zealand company.

CONSUMER COMMENT

Joan Susinetti from Consumer Protection in the Department of Commerce kindly supplied this information about the finalists in this year's Consumer Protection Awards. CAWA would like to congratulate the award winners, Denise Brailey and WA No Interest Loans.

The Finalists – Rona Okely Award

Darryl Yeeda and Vikki Kelly

Darryl Yeeda, a Jaru man and traditional owner of Lamboo station, has for over a decade been an active member of the Ngunjiwirri Aboriginal Corporation. He has a passion for the land and his people and as a Money Management worker, is committed to helping his countrymen to be strong about money and family.

This passion is shared by Vikki Kelly, who came to Halls Creek in 2003 on a three month contract to work with the frail aged - and never left. Vicki and Darryl married in 2005 and both live and work on Lamboo Station. Employed by the Jungarni-Jutiya Alcohol Action Council, they work tirelessly to promote financial literacy partnering with a range of local support organisations. They provide training to some of the most financially disadvantaged people in the State, helping them to gain money skills through traditional and non-traditional training methods. The geographic reach of Darryl and Vikki's program is unrivalled in this state and provides a best practice model of service delivery to remote communities.

Both Darryl and Vicki have close links with their community and provide an insight into the cultural practices that can potentially affect people's wellbeing, such as humbugging, internet fraud and community banking practices. Together they have developed culturally appropriate resources to address these important issues.

Denise Brailey

Denise Brailey is a passionate campaigner for consumer interests. She has been a strong advocate for the victims of white-collar crime for a number of years. Following a recent spirited campaign spearheaded by Denise on behalf of a number of consumers, the WA Police Major Fraud Squad is currently investigating the alleged fraudulent activities of a mortgage broker and its principles. Denise is no stranger to supporting the underdog and has prepared a raft of detailed submissions that resulted in four WA based enquiries and four Federal investigations into the finance and real estate industries and their complaint handling procedures.

In past cases Denise has volunteered to act as a guide and mentor for those effected by property and finance broker scams. With her guidance and support victims have been able to obtain relevant records and initiate legal action. Although some recovery actions have yet to be finalised, through her encouragement and leadership, Denise has demonstrated how groups of disparate consumers can work together to form united groups for action.

Denise has recently achieved substantial success in bringing cases to public notice, including a recent case in New South Wales where the courts ruled that the loans were invalid. Her record of consumer advocacy is substantial and has resulted in 23 arrests and more than 500 charges of fraud and stealing being laid against former finance brokers, valuers and solicitors both here and interstate.

Linda Saverimutto

Linda Saverimutto has been the Principal Solicitor of Gosnells Community Legal Centre (CLC) since 1991. The Centre provides a range of legal services to those on low incomes in the South East Metropolitan corridor. The co-location of legal, paralegal, dispute resolution, welfare advocacy and general information services under one roof is unique. Linda oversees the Centre's case work and information provision and provides professional development for the Centre's solicitors, paralegal staff, students and volunteers. She has supported 22 paid staff and 14 volunteers in their quest to provide help and assistance to over 1300 clients in the past 12 months (as well as referring a further 2000 to other service providers).

The high profile and exceptional reputation enjoyed by the Centre is a testament to the dedication and solid leadership that Linda consistently demonstrates. Despite working in a high stress environment with rapid staff turnover (common to the industry), Linda fosters an ongoing thirst for social justice in many of those that work in the positive and supportive team environment Gosnells CLC provides.

Linda has made a strong contribution in the areas of financial counselling and tenancy advocacy, implementing community legal education activities while also developing government and law reform policy submissions. The use of casework examples are encouraged so that barriers are reduced and the difficulties faced by disadvantaged consumers can be recognised and addressed. The Centre also provides a free Family Dispute Resolution Service, despite having no direct funding, yet again demonstrating Linda's capacity to go the extra mile to ensure services are provided to those most in need.

The Finalists – Richard (Dick) Fletcher Award

Advocare

Advocare is committed to providing information and advocacy for clients of aged care services and those who are experiencing abuse by family or friends. As the demographics of Western Australia changes, there is a greater demand placed on Advocare services. Smaller, more dispersed families, the higher likelihood of being single in old age, and the increased frailty of those in aged care services, mean that aged care services are increasingly in demand and this is likely to continue in line with the state's ageing population.

The aged care industry is diverse and its clients vulnerable. To address this, Advocare provides a state-wide service that is accessible by phone, email and face to face. During 2008-09 they provided advocacy services to nearly 1,300 clients, with general information provided to a further 600 by the dedicated Advocare team. In addition to providing advocacy and information, Advocare have also conducted training and education for over 7500 participants during this period.

Advocare works closely with other community and government organisations, including the Office of the Public Advocate, the Older Peoples Rights Service, Chung Wah, Street Doctor and the Department of Indigenous Affairs to ensure that its services meet the needs of people from Indigenous and culturally diverse backgrounds, as well as those who are homeless, have dementia or are adults with a disability.

WA No Interest Loans

WA No Interest Loans (WA NILS) is a not-for-profit, public benevolent institution that provides interest-free loans to those with low incomes. Since opening its doors in 2000, WA NILS has helped those that are homeless, single parents, refugees or needy migrants, aged, ill, disabled and disadvantaged in the Western Australian community to purchase whitegoods, furniture, air conditioners,

hot water systems and gas heaters. Personal items such as computers, motorised scooters and selected medical equipment can also be funded via a NILS loan.

WA NILS believe that social inclusion is vitally important to ensure a robust and equitable society. By working closely with their clients, establishing trust and teaching and emphasising financial literacy, individual responsibility and a commitment to the repayment terms, over 97 percent of WA NILS loans are repaid in full. This is a remarkable achievement considering the recent economic downturn.

Since 2000 WA NILS has provided more than 11,500 loans, valued at over $10 million to support 14,000 Western Australian families (more than 50 percent of these went to Indigenous households) located in areas from Wyndham to Esperance. WA NILS is the largest interest-free loans service operating in Australia and has dispersed more funds to the needy than all the other state NILS combined.

By relieving clients of the need to find extra money to fund the interest on unsecured loans, WA NILS eases the financial burden on those who can least afford it. The flow on effect from this makes a difference to all Western Australians, as improving the quality of life and living standards for those most in need ultimately benefits everyone in the community.

Western Australian Retirement Complexes Residents' Association

The Western Australian Retirement Complexes Residents' Association (WARCRA) is a not for profit incorporated body that looks after the interests of retirement village residents. With more than 7,000 members located in 84 village complexes and growing, WARCRA's membership base is diverse and reflects the changing nature and needs of those who opt for a retirement complex lifestyle.

In recent years the retirement village industry has grown both in size and complexity. Many villages operate under the Retirement Villages Act 1992 but an increasing number of providers also advertise seniors accommodation and operate outside the Act. Working across the sector WARCRA provides residents with a sounding board to voice their concerns and have their questions answered.

WARCRA currently runs half day forums for potential residents using specialist speakers, and encourages retirees to discuss issues prior to moving into a retirement complex.

In 2009 they conducted seminars for both members and non-members on residents' rights, establishing residents' committees, budgeting, accounting and dispute resolution. WARCRA provides information and support via email, over the phone, one-to-one meetings, visits to villages, regular general meetings and newsletters. Support and assistance has also been provided for residents preparing matters for the State Administrative Tribunal.

Retirement village contracts are complex and once signed, govern most aspects of residents' lives by their terms and conditions. Quality information and support is vitally important for the wellbeing of Western Australia's ageing population and the demand for services provided by WARCRA to these vulnerable consumers is likely to increase into the future.

Kidsafe WA Award Special Commendation

Springfree Trampolines

Kidsafe WA is pleased to recognise the exceptional design and development work that has been undertaken by Springfree Trampolines to produce a safer trampoline for home use.

While most trampoline related injuries are the result of falling off, a third of injuries are caused by falls on the springs and frame of the trampoline itself. Although there is a voluntary Australian Standard that requires padding on traditional metal framed trampolines, much of the padding currently being sold still does not meet the standard.

The Springfree Trampoline was developed by Dr Keith Alexander, an engineer at the University of Canterbury (New Zealand). Finding that there were no safe trampolines on the market, he set out to create one that was safe enough for his own children to play on. After 14 years of development, and millions of dollars in research, the Springfree Trampoline was produced for the Australian (and world) market.

Springfree is the only trampoline design that has removed the major injury causing elements, substantially lowering the risk of product induced injury. This unique trampoline design has avoided the four areas that cause the most injury, including:

1. springs
2. frame at the jumping surface
3. risk of falls to the ground
4. risk of falls onto rigid enclosure poles.

Kidsafe WA would like to acknowledge the safety benefits and the reduction in injury risk delivered by the Springfree design, with a special commendation certificate at the 2010 Consumer Protection Awards.

Centre for Consumer Research (UWA) update

I am sure many of you are wondering what has been happening regarding the Centre for Consumer Research (formerly the Centre for Advanced Consumer Research) at the University of Western Australia. This note aims to bring members into the 'loop' and let you know some of the projects we hope to pursue in 2010.

The Centre for Advanced Consumer Research was launched in November 2006. The Centre received funding from the (then) Department of Employment and Consumer Protection (DOCEP), now the Department of Commerce (DOC) and the University of Western Australia. The first 18 months of operation was productive with the publication of several articles in law journals and a major Consumer Protection Law textbook authored by Aviva Freilich and myself. The Centre hosted a successful Consumer Credit Forum with several prominent presenters, including Dr Elizabeth Lanyon. Unfortunately, from 2008 the Centre has not been as proactive as many of us had hoped. The trading hours project (commenced in October 2007), remains incomplete with the departure of Dr Debbie Hindley to a research position at Curtin University (congratulations, Debbie!) and the subsequent appointment of Ms Tracy Atkins in September 2009 to complete the project. It is anticipated that the report will be completed in the next few months. Whether, of course, trading hours will still be an issue by then with the present manoeuvring involving the use of regulation and the tourist precinct classification remains to be seen! We remain hopeful that events will not completely overtake us and that the report will make a useful contribution to this ongoing debate.

2009 saw Centre members try to maintain the centre's profile through publication, presentation and networking. Our 'report card' for the year involved:

Book chapter:

Eileen Webb, 'The Response of the Australian Courts to Real Property Mortgages Involving Predatory Lending Practices', Chapter 6, Edgeworth, Moses & Sherry, *Property and Securities: Selected Essays*, Thomson 2010.

Articles in referred law journals:

Eileen Webb, 'The Productivity Commission Inquiry Report: The market for retail tenancy leases in Australia' (2009) 16 *Australian Property Law Journal* 219.

Aviva Freilich & Eileen Webb, 'The 2009 Review of Australian Consumer Law: An opportunity to clarify the rationale and scope of s 51A *Trade Practices Act 1974* (Cth)' (2009) 17 *Competition and Consumer Law Journal* 1.

Aviva Freilich & Eileen Webb, The Incorporation of Contractual terms in Unsigned Documents: Is it Time for a Realistic, Consumer-Friendly Approach? (2009) 34 *University of Western Australia Law Review* 261.

Eileen Webb, *ACCC v Dukemaster*: A recognition of acoustic segregation in Australian retail leasing? *Australian Property Law Journal* (2010) 18 *Australian Property Law Journal* (forthcoming) 48.

Eileen Webb, Lessons to be Learned: Can Australian authority inform interpretation of the Unfair Commercial Practices Directive? (forthcoming).

Conference papers delivered and published:

Eileen Webb, 'Developments in Australian Consumer Law', presented at the Modernising and Harmonising Consumer Contract Law Conference (University of Manchester, 12 January 2009).

Eileen Webb, 'EU Developments: The Unfair Commercial Practices Directive Presented', presented at the Consumer Law Roundtable (Monash University, 17 February 2009).

Eileen Webb, 'Collateral Damage: The response of the Australian courts to real property mortgages involving predatory lending practices', presented to the Real Property Teachers Conference (University of NSW, 26 April 2009).

Eileen Webb, 'Lessons to be Learned: How Australian authority can influence the interpretation of the Unfair Commercial Practices Directive', presented at Consumer 09 Conference (Queen Margaret University, Edinburgh, 24 June 2009). The extended abstract was published in the conference proceedings.

Aviva Freilich & Eileen Webb, 'The Unfair Commercial Practices Directive and the Australian Consumer Law: A Comparison', presented at the Consumer Law Roundtable (University of Sydney, 4 December 2009).

Eileen Webb, A comparison of Australian and US approaches to responsible lending since the GFC, to be presented at the 'Teaching Consumer Law' Conference, May 21-22 2010, University of Houston, Texas.

We also contributed to submissions by the Consumer Law Roundtable group, consumer law academics from universities in Australia and New Zealand, regarding the 'The New Australian Consumer Law' and 'Consumer Voices'.

The elective unit, Current Issues in Consumer Law and Policy, was offered in September and was well attended. The course received very positive feedback from students.

We are very enthusiastic about 2010. The Centre has changed its name to the 'Centre for Consumer Research' (Indeed, several of us wondered where the 'Advanced' came from in the first place…). We have a new chair of the Advisory Board, Professor Raymond Da Silva Rosa of the Faculty of Business at UWA. Raymond has already injected a new enthusiasm into planning for the Centre in 2010. It seems a full-time Director of the Centre will be appointed in 2010. For what it is worth, I am back on deck after stepping away from the Centre in June 2008 and taking some study leave in semester 1, 2009.

Continued on next page

Centre for Consumer Research (UWA) update continued ...

(Continued from previous page)

After a very productive Advisory Board meeting in November, it is anticipated that members of the Advisory Board and Management Committee will participate in a 'planning day' in April to identify a 'focus' for the Centre in 2010. Aviva and I will be teaching sessions at DOC in April on International Consumer Law and we are negotiating with Dr Christine Reifa of Brunel University, the coordinator of the European masters in Consumer Law, to participate in the 2010 Current Issues in Consumer Law and Policy course. We will continue to keep up our publishing.

Centre members understand the frustration that CAWA members (and others!) have felt with the Centre's progress but we are optimistic that these 'teething difficulties' are behind us and the Centre will make a significant contribution to consumer issues in 2010. By the way, we welcome your feedback and any advice/ contributions you feel would assist us in developing the centre. In this regard, Genette has been a huge asset to the Advisory Board and we thank her for her patience and contributions.

Eileen Webb

The new Australian Consumer Law

What follows is a compilation of information presented by Gary Newcombe at a COAG National Reforms Seminar held at the Department of Commerce on 22 February and text from the Department of Commerce, Consumer Protection 'Better Trading' e-Newsletter for February 2010.

Comments on the proposed legislative changes can be found at page 32 in the paper written by Aviva Freilich and Eileen Webb from the Law Faculty of UWA.

Note: COAG is an acronym for Council of Australian Governments = Prime Minister and all Premiers and Territory Chief Ministers

The Australian Consumer Law – Background

The Australian Consumer Law (ACL) is the largest overhaul of Australia's consumer laws in 25 years. The ACL had its beginnings in the Productivity Commission's 2008 Review of Australia's Consumer Policy Framework report. This report specifically recommended that Australian governments should implement a new national consumer law, based on the consumer provisions in the Trade Practices Act 1974 (Clth).

Background continued

On 2 October 2008, based on the recommendations of the Ministerial Council of Consumer Affairs, the Council of Australian Governments agreed to a new consumer policy framework, comprising of a new, nationally uniform, consumer law with streamlined enforcement arrangements.

[Currently] Australia's general consumer laws presently consist of 13 Acts, including the consumer provisions of two national laws, eight State and Territory Fair Trading Acts as well as – in three jurisdictions, three more laws which deal with generic consumer protections.

[Under the proposed changes] Commonwealth, all States and Territories of Australia and New Zealand will soon see uniform sets of laws covering many areas of consumer protection coming into operation.

Ministers and those in charge of consumer affairs throughout Australia and New Zealand met in Perth on 4 December 2009. The Ministerial Council on Consumer Affairs (MCCA) consists of all Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading, consumer protection, trade measurement and credit laws. This meeting was chaired by WA Minister for Commerce, Troy Buswell. Meeting simultaneously was the Standing Committee of Officials of Consumer Affairs (SCOCA) consisting of all the chief executives of consumer protection agencies. This meeting was chaired by WA Consumer Protection Commissioner, Anne Driscoll.

The go ahead for the Australian Consumer Law was given at the meetings as well as signing of an agreement on uniform product safety laws and a renewed and revised National Indigenous Consumer Strategy for 2010-13.

The meetings also endorsed a new national consumer policy strategy for 2010-12 with the objective: "To improve consumer wellbeing through consumer empowerment and protection fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly."

This main objective is supported by six operational objectives:

- ◊ to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- ◊ to ensure that goods and services are safe and fit for the purpose for which they are sold;
- ◊ to prevent practices that are unfair;
- ◊ to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- ◊ to provide accessible and timely redress where consumer detriment has occurred; and
- ◊ to promote proportionate, risk-based enforcement.

Some of the priorities which were set included:

- ◊ completing the Council of Australian Governments' (COAG) consumer law reforms with particular focus on the Australian Consumer Law;
- ◊ rationalise and harmonise other consumer laws;
- ◊ articulate the benefits of rational, robust and effective consumer policy;
- ◊ develop a consistent approach to gathering and analysing intelligence on issues in consumer product and service markets; and
- ◊ implement a national communications strategy to educate businesses and consumers on Australia's new consumer laws.

Firmly embedded in this strategy were **five key aspirations** which included: both consumers and businesses benefiting from simpler, modernised and more harmonised laws; consumers driving compliance with the law; laws reaching problem traders and protecting vulnerable consumers; consumer issues being identified and responded to quickly and cohesively; and that the impact of this reform has visible effects.

This vision emphasises the importance of consumers being more informed of their rights, better able to act in their own interests to protect those rights and be more aware of their options when seeking advice, assistance or redress. It's also important that businesses are informed about their responsibilities in the marketplace.

Ministers endorsed a reformed range of supporting committees to enhance MCCA's capacity to progress consumer policy and legislative reform and to effectively administer and enforce national consumer laws in keeping with COAG's agenda to deliver a seamless national economy.

Both MCCA and SCOCA will meet again in WA in April this year to further advance the consumer law reform agenda.

Rationale for change

The result will be consumer laws that are consistent between jurisdictions and a simplified system which will make enforcement more effective and improve consumer and business awareness of their rights and obligations.

For the consumer it will mean being better informed which will drive competition and economic wellbeing and improve the range and quality of products and services.

For businesses it will mean operating in a simpler, uniform national economy reducing the compliance burden and therefore their costs and making them more competitive.

[It is envisaged that a] fairer and more competitive marketplace in Australia and New Zealand will allow businesses to serve their customers better, become more efficient and compete more effectively in world markets.

Consumer law reform timetable

The agenda for this law reform was set with key dates being:

2010 - Australian Consumer Law – concept created, changes to enforcement powers and intro UCT.

April 2010

◊ Ministerial Council for Consumer Affairs and Standing Committee of Consumer Affairs to meet again in Western Australia.

July 2010

◊ National credit regime scheduled to begin – State powers will be transferred to Commonwealth. ASIC takes over responsibility for credit and finance broking. Licensees in WA need to register with ASIC between 1 April and 30 June.

◊ The implementation of the Australian National Trade Measurement System – should be no noticeable change from a business perspective.

January 2011

◊ Australian Consumer Law scheduled to commence nationally. The administration and enforcement of the ACL will, as with current consumer law, be a joint Commonwealth, State and Territory responsibility. The Commonwealth will administer the ACL at a national level and the States and Territories will administer the ACL in their jurisdictions.

◊ National 'consumer guarantees' and 'unfair contract terms' laws to be enacted as part of ACL.

◊ National Occupational Licencing Authority established.

March 2011

◊ Business names transfer to ASIC (national name).

July 2011

◊ Consumer Protection Boards functions transfer to Consumer Protection.

May 2011

◊ Target date for commencement of the national Personal Property Securities law and register.

◊ National regulation of business names scheduled to commence – names transfer to ASIC (national name).

July 2012

◊ First wave of National Occupational Licensing - National licensing to commence for electricians, real estate agents and plumbers.

July 2013

◊ Second wave national licensing – National licensing to commence for builders, land valuers and settlement agents

Implementation issues (from Gary Newcombe's presentation)

◊ It's really hard to keep track – COAG initiatives will require amendment to 34 Acts and creation of 4 new Acts.

◊ Consultation has been there – but too much to deal with – and very little time. Several consultation opportunities:

- Productivity Commission Review itself;
- Australian Consumer Law: Fair Markets – Confident Consumers – Feb 09;
- Unfair Contracts Law – May 2009;
- Senate Committee consultation - mid 2009;
- Consumer Rights – Reforming statutory implied conditions and warranties (Commonwealth Consumer Advisory Council) – March – October 2009;
- ACL will go to Senate Committee again – for two months – last chance to influence content.

◊ Opportunity today to drill in a bit to Australian Consumer Law – the centrepiece.

◊ Recap to scene set.

◊ Essentially – program to get greater consistency in consumer regulation around Australia.

◊ Clarity of law – important for consumers and business alike.

◊ One part design of laws – the other is implementation – will be education programs – and working with other jurisdictions to ensure consistency in interpretation.

WA Implementation

◊ In WA the *Consumer Affairs Act 1971* and the *Fair Trading Act 1987* will be repealed and replaced with new Act applying the Australian Consumer Law and including relevant local administration and enforcement provisions.

◊ Bill to be introduced in WA as soon as possible to enable Australian Consumer Law to come fully into operation throughout Australia on 1 January 2011.

◊ WA's unfair contract provisions will commence as part of one Bill on 1 January 2011.

Australian Consumer Law - Key Elements

A. Unfair Contract Terms

A term will be considered unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract and it is not reasonably necessary to protect the legitimate interests of the supplier.

If a contract term is found to be unfair, it may be voided if the there is detriment, or a substantial likelihood of detriment, to the consumer. Detriment is not limited to financial detriment.

These provisions will relate only to standard form, non-negotiated contracts.

The principal areas of business where consumers have identified concerns in regard to unfair terms in standard consumer contracts were telecommunications services (mobiles, landlines, internet), banking/finance/credit/mortgage services, recreation/ leisure services, utilities, insurance, purchase or hire of goods, building, travel and real estate.

- ◊ Single biggest reform arising out of Australian Consumer Law.
- ◊ UCT operates already in Victoria, UK and EU.
- ◊ Will apply to all standard form contracts – only insurance contracts exempt.
- ◊ Will provide for unfair terms in such contracts to be declared void.
- ◊ Will not apply to upfront price.
- ◊ Just a consumer protection – small business will not be able to rely on the provisions.
- ◊ Contract term will be unfair if:
  - would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
- ◊ not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term.
- ◊ In determining if a term is unfair, court is to take into account extent to which it would, or there is a substantial likelihood that it would, cause detriment to a party if relied on.
- ◊ Act will set out examples of terms that are likely to be unfair, such as:
  - term allowing one party to avoid performance of contract;
- ◊ term allowing one party to unilaterally vary terms of the contract;
  - term imposing penalties on only one party for breach of contract.

B. Enforcement Powers

Major new provisions:

- ◊ civil pecuniary penalties;
- ◊ disqualification from carrying on particular business activities;
- ◊ substantiation notices;
- ◊ infringement notices; and
- ◊ public warnings.

C. Product Safety

Businesses that operate in Western Australia currently have to comply with three separate pieces of legislation which regulate product safety. The implementation of the ACL will streamline this regime by having only one piece of legislation to regulate product safety.

- ◊ Will be uniform product safety laws.
- ◊ States will lose capacity to permanently ban or recall products.
- ◊ States will only be able to make interim bans.
- ◊ Commonwealth Minister will have exclusive power to ban products.
- ◊ On-going enforcement of product safety laws will be joint responsibility of ACCC and State/Territory consumer agencies.

A separate project is currently underway to harmonise all existing bans in place in different jurisdictions so that there is one common set of bans throughout Australia.

D. Statutory Guarantees

- ◊ Opportunity being taken to reform implied conditions and warranties provisions of the Trade Practices Act 1974.
- ◊ Productivity Commission report recommended review of implied conditions and warranties provisions.
- ◊ Changes based on reports by SCOCA and CCAAC which found lack of awareness, understanding and effectiveness of existing provisions.
- ◊ Implied conditions and warranties to be replaced with “statutory guarantees”.
- ◊ The national consumer guarantees will be more easily understood by consumers as they will be drafted in plain English.
- ◊ Introduces the concept of “acceptable quality” to replace “merchantable quality” for goods and includes definition.
- ◊

D. Statutory Guarantees continued

- ◊ Guarantees that supplier has right to sell; goods are free from undisclosed security; consumer will have undisturbed possession; goods are fit for purpose; goods comply with description and sample.
- ◊ Where first supplied in Australia, guarantee of reasonable action to ensure facilities for repair and spare parts are available.
- ◊ For services – guarantee they will be carried out with reasonable care and skill; guarantee services are fit for particular purpose; and guarantee services will be completed in a reasonable time.
- ◊ Guarantees to be enforceable against supplier and any intermediary.
- ◊ Commonwealth Minister to have power to prescribe information to be displayed/provided at point of sale.
- ◊ No longer any distinction between "conditions" and "warranties" – both covered by "guarantee". The existing distinction between 'implied terms' and 'warranties' will no longer apply, with both terms being replaced by the single term 'guarantee'.

E. Best Practice Reforms

- ◊ Proposals drawn from best practice in State and Territory laws.
- ◊ Regulation of unsolicited selling – default position will be no contact before 9am, after 6pm on weekdays, 5pm Saturdays, none on Sundays/public holidays.
- ◊ Prohibition on asserting right to payment for unauthorised advertisement on behalf of another.
- ◊ Commonwealth Minister to be able to make information standards for goods or services.
- ◊ No liability for provision of unsolicited services by another person.
- ◊ Any document required to be supplied to consumer under ACL must be clear and legible.
- ◊ Persons must be offered receipt for any transaction in excess of GST threshold (currently $75) and right to request itemised bill for services within 30 days at no cost.
- ◊ Basic requirements for lay-by sales to be prescribed. Where more than one price displayed on a good it must be sold at lowest price or be withdrawn from sale.
- ◊ Offered gifts and prizes must be provided within reasonable time.
- ◊ Once services paid for they must be supplied within reasonable time or as agreed.
- ◊ Specific prohibition against false or misleading testimonials – evidentiary onus on the respondent

Reforms to Australian consumer law: an (unfair) 'bump in the road' and other developments.

Aviva Freilich and Eileen Webb
Associate Professors, Faculty of Law, The University of Western Australia

As members are aware, Australian consumer law is presently undergoing the most sweeping changes since the introduction of the *Trade Practices Act 1974 (Cth).* This note summarises the latest developments.

The 'Australian Consumer Law' – An overview

The proposed amendments

The *Trade Practices Amendment (Australian Consumer Law) Bill 2009* (ACL Bill) is the first of two separate Bills which will combine to transform Australian consumer law. The ACL Bill will amend the *Trade Practices Act 1974 (Cth)* (TPA) by establishing the Australian Consumer Law (ACL) as a schedule to the TPA. The legislation will form the 'groundwork' to establish a single, national consumer law. During this first stage, the focus is on the introduction of a provision regulating unfair contract terms, although the Bill will also introduce new penalties, enforcement powers and consumer redress options. The ACL Bill also has a procedural component which establishes the process by which the Australian Consumer Law will be applied and amended.

The second Bill, which has yet to be introduced into the Commonwealth parliament, will introduce more reforms, in particular, the transfer of existing consumer protection and related TPA provisions, the incorporation of 'best practice' from State and Territory consumer legislation into the ACL and the introduction of a new national product safety framework. Finally, the *Australian Securities and Investments Commission Act 2001 (Cth)* (ASIC Act) will be amended to guarantee consistency with the ACL.

How can the ACL be implemented nationally?

Due to Constitutional limitations on Commonwealth law making power in relation to consumer law, the ACL will be enacted through an application law scheme. Therefore, after the ACL is passed by the Commonwealth parliament, it will be adopted and applied by each State and Territory. Any amendment to this national law will require agreement by all States and Territories through an Intergovernmental Agreement.

Progress through the Commonwealth parliament

The ACL Bill was introduced into the House of Representatives on 24 June 2009 and was

almost immediately referred to the Senate Economics Legislation Committee (SELC) for inquiry. The ensuing report[2], made three recommendations being: the provision of enhanced guidelines to inform parties affected by the new legislation; the need to ensure insurance contracts complied with the new regime (discussed below) and that the legislation should be passed. The Bill was passed by the House of Representatives on its third reading on 20 October 2009[3]. Upon reaching the Senate, the government introduced several proposed amendments to the Bill. Other amendments have also been proposed by an independent senator. It was anticipated that the amendments would be debated when the Senate commenced sitting again on 16 November 2009. Unfortunately, with so much attention being focussed on the ETS, the legislation is yet to be debated. Until then, the final form of the legislation remains uncertain.

What we know so far - a dilution of the proposed unfair contract terms provisions

Even before the introduction of the latest proposed amendments into the Senate, the unfair contract terms provisions of the ACL Bill had been considerably eroded. The Commonwealth government elected not to proceed with an extension of the unfair contract provisions to apply to business to business transactions[4]. A further limitation is that the legislation will not apply to insurance contracts.

The latest amendments propose that a third limb be inserted in the test of unfairness. This will necessitate a plaintiff establishing that the term of the consumer contract has actually *caused* detriment. If adopted, the former requirement of establishing merely a *'substantial likelihood of detriment'* will be removed. Also, the changes moot the removal of the Minister's power to prohibit terms by regulation (a 'black' list) and curtail his or her powers when proposing to add a term to a 'grey list'.

[2]Senate Economics Legislation Committee, 'Trade Practices Amendment (Australian Consumer Law) Bill 2009 [Provisions], viewed 5 November 2009 http://www.aph.gov.au/senate/committee/economics_ctte/tpa_consumer_law_09/report.pdf The report was released on 7 September 2009.

[3]The Bill was introduced and read a first time on 24 June 2009; the second reading was moved on the same day. The second reading debate took place on 19-20 October 2009. The second and third reading were agreed to on 20 October 2009.

[4]As proposed in: The Treasury. 'The Australian Consumer Law: Consultation on draft provisions on unfair contract terms', 11 May 2009, viewed 5 November 2009 http://www.treasury.gov.au/documents/1537/PDF/The_Australian_Consumer_Law_Consultation_Paper.pdf

Finally, due to business concerns about implementation of and compliance with the ACL, commencement will be deferred to 1 July 2010[5].

Pivotal areas of amendment

◊ ***Business to business transactions***

The initial proposal for a prohibition of unfair contract terms in new national consumer law did not extend to business to business contracts. In May 2009, a consultation paper was released by the Commonwealth Government which proposed an extension of the unfair contract terms provisions to business to business transactions under a particular monetary threshold[6]. After a predictably emotive response from business[7], and a change of Minister in a cabinet reshuffle, the extension was not pursued[8].

◊ ***Insurance Contracts***

A matter of some concern to consumer groups is the effective exclusion of insurance contracts from the auspices of the ACL Bill . This results not from a provision of the Bill itself, but a consequence of section 15 of the *Insurance Contracts Act 1984* (ICA) which states that a contract of insurance is not capable of being made the subject of relief under inter alia any other Act. The SELC noted these concerns and recommended that the Commonwealth government address insurance contract legislation to ensure that the ICA provides an equivalent level of protection for consumers to that provided by the Consumer Law Bill[9]. It seems this would be achieved by either amending the ICA to achieve a harmonisation with the ACL Bill or by amending the ACL Bill to apply to insurance contracts. In the recent proposals introduced in the Senate, Independent Senator Nick Xenophon has tabled an amendment to delete the exemption for insurance contracts from the unfair contract terms regime[10].

[5]It was anticipated that the legislation would commence on 1 January 2010. If the Bill is not passed or assented to before 1 January 2010 the legislation will commence on earlier of a date post-20 June 2010 to be proclaimed or six months after royal assent.

[6]Op cit n4. The proposed monetary threshold was $2 million.

[7]See generally Submissions – The Australian Consumer Law: Consultation on draft provision on unfair contract terms, viewed 5 November 2009, **http://www.treasury.gov.au/contentitem.asp?ContentID=1547&NavID=037** In particular, note the comments from the Law Council of Australia, and perhaps predictably, the Shopping Centre Council of Australia.

[8]A.Midalia, 'We've lost contract protection, say small business', Australian Financial Review, 30 June 2009, page 3, viewed 5 November 2009.

[9]p cit n2, see generally Chapter 8, pp 47-55, 68

[10]Trade Practices Amendment (Australian Consumer Law) Bill 2009, Amendments to be moved by Senator Xenophon in committee of the whole, viewed 5 November 2009, **http://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r4154_amend_5f1c6f41-467f-4769-acd3-764821e31fa8/upload_pdf/5898_TPA_Consumer_Law_X.pdf;fileType%3Dapplication%2Fpdf**, Explanatory Notes to amendments to be moved by Senator Xenophon, Sheet 5898 Viewed 5 November 2009 http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4154_ems_23765784-c885-4fa5-887c-871bca470639/upload_pdf/5898%20and%205891%20EM.pdf;fileType=application%2Fpdf

◊ ***The 'test' of unfairness***

Assuming the government's proposals are accepted in the Senate, the 'test' as to whether a term can be regarded as unfair will be comprised of three limbs[11]. A term in a consumer contract will be unfair in circumstances where:

1. The term would cause significant imbalance in the parties rights and obligations arising under the contract;
2. The term is not reasonably necessary in order to protect the legitimate interests of the party advantaged by the term; and (crucially in the writers' view)
3. The term would *cause* detriment to a party if it were to be applied or relied on. (emphasis added)

The necessity to establish that the term has actually *caused* detriment is a significant dilution of the original proposals and will make the task of establishing that a term in a consumer contract is unfair more onerous for consumers.

◊ ***The 'black' and 'grey' lists***

The Minister's power to prohibit terms by regulation; the licence to create a 'black list' of unfair terms has been removed from the Bill by the proposals tabled in the Senate[12]. Also, it is now proposed that when determining whether a term should be placed on the 'grey' list the Minister must consider the detriment the term will cause consumers, the impact on business generally of proscribing such a term and the public interest[13]. Again this is a significant dilution of the original proposals.

◊ ***Pre-commencement contracts***

Finally, the amendments tabled in the Senate propose that where a contract entered into prior to the commencement of the legislation, and the contract is varied after commencement, the unfairness provisions will apply only to the varied term and not the entire contract[14].

[11]Trade Practices Amendment (Australian Consumer Law) Bill 2009, Government, viewed 5 November 2009 ***http://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r4154_amend_367b79b6-d151-4d39-b6c1-b9e5e47148e6/upload_pdf/B09BJ236.pdf;fileType%3Dapplication%2Fpdf,Supplementary*** Explanatory memorandum and corrections to the explanatory memorandum, *viewed 5 November 2009 http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4154_ems_c7954718-05e6-471f-95be-aef97409d9df/upload_pdf/335640sem.pdf;fileType=application%2Fpdf*

[12]Op cit n 11

[13]Op cit n11

[14]Op cit n11

On the more positive note, the proposed amendments will permit individuals, in addition to the powers already directed to the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC), to apply to the court for a declaration that a term of a consumer contract is unfair[15]. Also, Senator Nick Xenophon has proposed a number of amendments which will be considered in the Senate; *inter alia* a proposal for a 'safe harbour' process where business can seek approval by the ACCC or ASIC of term which could potentially be unfair[16].

The new product safety framework

A new product safety policy framework will be a feature of the second stage of the ACL's implementation. At this stage, in summary, it seems individual States and Territories will still be permitted to impose temporary bans on products but only the Commonwealth Minister will be able to impose permanent bans. Enforcement of the product safety laws will remain a joint responsibility of the ACCC and State/Territory consumer agencies.

Consumer Credit – the *National Consumer Credit Protection Bill 2009*

In 2008 the Council of Australian Governments (COAG) decided that the Commonwealth Government should take responsibility for the regulation of consumer credit. The ensuing *National Consumer Credit Protection Bill 2009* will see consumer credit products and services regulated by Commonwealth legislation rather than the former state and territory based system pursuant to the Uniform Consumer Credit Code (UCCC). The legislation will be applicable to *inter alia* home loans, personal loans, credit cards, overdrafts and line of credit accounts. The Australian Securities and Investments Commission (ASIC) will administer the new legislation and become the national regulator for consumer credit and finance broking.

The developments will be implemented in two stages. In the first phase, the Commonwealth will assume responsibility for the UCCC, by enacting the National Credit Code (NCC) as Commonwealth law. The *National Consumer Credit Protection Bill 2009* contains provisions that mandate responsible lending and require finance

[15]Op cit n11
[16]Op cit n10

brokers and lenders to be licensed. All providers and brokers of financial services will be required to be members of an external dispute resolution scheme.

The second stage will address *inter alia* regulation of the provision of credit to small businesses, unsolicited credit card limit extension offers; interest rate caps and reverse mortgages.

Since the previous newsletter the main developments have been:

- ◊ The introduction of the *National Consumer Credit Protection Bill* into the House of Representatives (25 June 2009);
- ◊ The legislation was referred to the Senate Economics Committee (SEC) for consideration (25 June 2009); and
- ◊ The announcement of certain changes to the implementation framework as a result of the SEC recommendations (17 September 2009). The SEC was concerned that the credit industry required more time to make adjust to the requirements of the new regime. In summary, most of the credit reforms will now commence on 1 July 2010 rather than 1 January 2010; and

The Bill was passed by the Senate on 27 October 2009.

Comments

It should be stressed, at the time of writing, while the *National Consumer Credit Protection Bill 2009* has been passed by the Commonwealth parliament and is waiting royal assent; the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* remains before the Senate. The Senate will not sit again to debate the government's proposed changes until 16 November 2009. Although it is almost certain that the Bill will be passed before the end of the 2009 sitting, it is unfortunate that the price of passing the Bill has been additional concessions for industry and business at the expense of consumers.

New developments – Inquiring into the adequacy of the *Trade Practices Act's* implied conditions and warranties provisions.

In July 2009, the Commonwealth Consumer Affairs Advisory Council (CCAAC) released an Issues paper titled 'Consumer Rights – Statutory implied conditions and warranties'[17]. The CCAAC is examining existing laws on implied warranties and conditions in Part V Division 2 and 2A of the *Trade Practices Act 1974* and relevant state and territory laws. The ensuing findings will inform the further developments in Australian consumer law.

The consultation will examine the adequacy of the current laws involving implied conditions and warranties and, if necessary, make recommendations as to possible amendments to the laws themselves and/or to the regulator's powers in this regard. Two issues have been flagged as of particular interest to the CCAAC; first, the desirability of introducing so-called 'lemon laws' to protect consumers where good[s] repeatedly fail and, second, the interaction of extended warranties with the existing implied warranties under the relevant Australian law and the benefit, if any, of extended warranties to Australian consumers. The Issues paper also invites comments on the extension of existing laws to online transactions; an issue somewhat neglected in an Australian context compared to developments abroad.

Concluding remarks

Australian consumer law remains a 'moveable feast'. Progress is steady but has, perhaps predictably, slowed since the announcement of the reforms and the proposals for their rapid introduction. Some of the gloss of the original proposals has been lost through the realities of ensuring the legislation passes through both houses of the Commonwealth parliament. Nevertheless it appears that by the end of 2010 the Australian consumer law landscape will be vastly different with respect to the *Trade Practices Act;* the national credit regime, product liability and, as seems likely, amendments to the *Trade Practices Act* provisions addressing implied conditions and warranties.

[17]Viewed 5 November 2009, http://www.treasury.gov.au/documents/1586/PDF/Issues_paper_20090726.pdf

(Continued from page 2)

Janet continued to keep her social justice agenda alive through her work setting up the Women's Information Referral Exchange (WIRE), her presidency of the Women's Advisory Council to the Premier, her role on a number of national consultative bodies representing women's interests in WA, and latterly her work on the Health Consumers Council of WA, and on Financial Counsellors forums. She was headhunted for the role as Chairperson of the WA Consumer Advisory Council, and was a WA representative at national Consumer forums.

Over the next decade Janet built her career in the public service, travelled extensively to exotic destinations including Russia, Spain, Ireland, Poland, Holland, represented women's issues nationally, and worked with like-minded women in setting up women's resources such as the Equal Opportunity Resource Centre in the 70's and 80's.

Eventually in a more conservative political climate, Janet resigned from the public service and moved to Melbourne to establish a new enterprise – *"The Women's Book Exchange"* – a feminist bookshop. Determined that information and ideas needed to be shared, kept alive and affordable to all women, Janet's bookshop lent, recycled and sold wonderful and unique books by and about women.

She also joined the Performing Older Women's Circus and was active in Melbourne feminist circles. In extending her social justice vocation she also worked for CAA (now Oxfam), Brotherhood of St Laurence, and in the Mental Health field in Victoria.

In the mid- late 90's Janet returned to Perth to be with family. Here she worked in the field of financial counselling for disadvantaged peoples before moving to Albany. Janet became a committed and active citizen of Albany lobbying for bike paths, better planning for the aged and disabled (including women with prams!), more inclusive policies for Indigenous people, and care for the environment. She made new women friends and kept in touch with women from across Australia.

It was during this time Janet served as the chair on the Consumer Advisory Council (2003-2006). Information about the Council's work and reflection can be found on the following page.

CAWA pays tribute to Janet's life long commitment to others, particularly in consumer matters.

In her eulogy summation Sue Bennet Ng said, 'We honour Janet for her courage in death and her courage in life, for her commitment to friends and family – especially her women's circle and those "good blokes'" she cared for – and we will miss her social justice analysis driving her passion, but most of all, we will miss the mischievous "Janny" the little convent girl from Collie'.

Consumer Advisory Council—reflection

It is a timely opportunity to reflect on the achievements of the Consumer Advisory Council. The information below, regarding the Council's role and achievements was taken from the Department of Commerce website, and formed part of Janet Pine's final report. (Note that an update on the Consumer Research Centre at UWA can be found on pages 22 and 23.)

Much of the Council's business was concerned with giving consumers a voice and there was strong advocacy for consumer representation on all advisory Boards and Committees. It appears that this initiative is about to disappear. For example, the Building Disputes Tribunal that has been comprised of a legal chair, with builder and consumer representatives for the last twenty years will become part of the State Administrative Tribunal in 2011. As far as CAWA is aware there is no provision to continue with consumer representatives.

Background

As part of the Consumer Justice Strategy, the Consumer Advisory Council gave advice to the Minister of Consumer Protection, the Hon Michelle Roberts MLA, on consumer protection matters from a consumer perspective.

The purpose of the Council was to strengthen the voice of WA consumers and develop strategies to involve consumers in matters that affected them.

Role of the Council

The initial role of the Council was to:

◊ Advise the Minister and Department on strategic approaches to building capacity in consumer groups so as to increase and improve consumer input in consumer affairs.

◊ Advise the Minister and Department in the review of the Consumer Affairs Act 1971 and Fair Trading Act 1987.

Council Activities

◊ The Council developed two booklets to assist effective consumer representation on boards and committees. One booklet was designed as a guide for consumers, and one as a guide for industry and government.

◊ In June 2004, the Consumer Advisory Council undertook a small survey of consumer representatives on government boards and committees. The survey aimed to assess the use of consumer representatives as one strategy for including consumer perspectives in policy decision making.

◊ In 2004, the Council undertook consultations with non-government and government agencies on a proposal for the establishment of a consumer research and advocacy centre in WA, resulting in an Establishment Proposal for the Consumer Research and Advocacy Centre WA.

◊ On 11 November 2004, the Council held a free public seminar at the University of WA on the relationship between international human rights and consumer rights.

Is our food safe to eat?

I love unit pricing! No longer do I stand in supermarket aisles frantically doing mental maths, to compare different brands or different sized containers working out the best value for money. While some aspect of food shopping are easier now that we can easily compare prices, it is extremely difficult to work out exactly what is in the fresh and processed food we buy.

With fresh foods we are concerned about growth hormones, pesticide residues, and now micro-organisms and heavy metals that may be infiltrating our food from grey water and bio-solids (refer to pages 13 and 14 in the newsletter).

Labelling laws are not keeping up with technological changes in the agricultural and food processing industries. Food Standards Australia New Zealand (FSANZ), our national food regulator allows manufacturers to use a wide number of GM ingredients imported fron overseas in our processed foods. Consumers are informed about GM and Nano technology content on the food labels.

The next pages examine a range of food issues that are of concern to consumers and make suggestions about what we can do to take action.

VINAIGRETTE SAUCE A LA VERDIGRIS

Like lots of us the prospect of cheaper foods from overseas was attractive due to budget constraints. Accordingly we purchased garlic purported to be from China. This was later used in a viniagrette ie olive oil and vinegar mixture. Not all of the sauce was used initially and the bottle of sauce stood with the garlic in it for about 4 - 5 days. We were surprised to find in that time the garlic had turned a clear blue/green colour. Surprised because this had not happened before - ever. This was a possible indicator of copper/verdigris in the mixture.

Not to put too fine a point on it, the dressing was tossed!

Our Websters New Twentieth Century Dictionary (published 1951) correctly states "Verdigris like all compounds into which copper enters is poisonous..." We were advised by an appropiate authority that the verdigris (if it was verdigris) in the garlic was not likely to be a sufficient quantity to cause harm. However, we now buy local garlic and question whether foods from overseas are on all occasions clearly safe for us to eat. Our very compentent authorities responsible for checking imported foods cannot check every single item of imported foods. On the other hand we are not aware of reported (unfortunate) incidents arising from imported foods in the recent past.

Now it has happened again - this time with a purported local product. So it is off to the food laboratory.

Sue and John Robertson

Nano Foods - Is our food 'safe' to eat?

The March 2009 issue of Choice Magazine contains two important articles on nanoparticles, 'Safer sunscreens' and 'Small stuff, but nanofood is a big deal'. Both are informative and alert consumers to how they may be inadvertently be coming into contact with potentially hazardous miniscule substances. A brief summary of some of the information is provided below. CAWA wrote to Choice commending them on the information they provided and their call for action.

What is nanotechnology?

It involves the manipulation of matter at a nanoscale to create new materials. Usually structures range in size from one to 100 nanometres and are about the size of an individual molecule. (One nanometre is a billionth of a metre.) At this scale, materials can have different properties from their collective, larger form and new quantum effects can take over from the normal laws of physics.

Nanofoods refers to all foods to which manufactured nanoscale food components are added or to foods packaged in materials to which nanoparticles have been added.

Potential food applications:

- **Food additives**—ingredients are processed to form nanostructures or nanotextures that enhance taste, texture and consistency. For example, a low fat ice cream would be able to retain the fatty texture and flavour of a full cream variety.
- **Food processing equipment**—knives and chopping boards are already being coated with anti-bacterial silver nanoparticles. There is evidence suggesting that nanosilver may be toxic and an environmental hazard. When washed, the nanosilver is released into waste water and destroys beneficial bacteria.
- **Food quality**—nanosensors integrated with packaging may increase the shelf life of food by detecting spoilage bacteria or loss of nutrients, then possibly release antimicrobials, flavours, colours or nutritional supplements.
- **Food packaging**—nanomaterials are already added to packaging to keep food fresher for longer. They may, for example, be UV blockers or antibacterial films.

While this technology potentially offers consumers real benefits, nothing is really known about its possible long term health and environmental effects.

This is taken from the October 2009 issue of *Choice* magazine

Call to action

Choice is just beginning its advocacy work in this area. Go to **www.choice.com.au/chemicals** to read more about the chemicals project. There is also information on how to email Agriculture Minister Tony Burke , and Innovation Minister Kim Carr, telling them you want Australia to regulate chemicals and nanotechnology using the precautionary principle.

Sunscreens—Choice page 7 (March 2009)

Newer sunscreens contain zinc oxide and titanium dioxide in the form of nanoparticles. Both zinc oxide and titanium dioxide nanoparticles can cause the production of free radicals when exposed to UV light. Free radicals can damage the DNA of cells and some studies suggest that nanoparticles can penetrate the skin through areas affected by acne, eczema, sunburn or nicks from shaving. Visit the Friends of the Earth website for more info http://www.foe.org.au/nano-tech/

19th February, 2010

The Director
CHOICE
57 Carrington Road
MARRICKVILLE 2204

Dear Sir,

In the March, 2009, issue of CHOICE an article was published on nanofood, alerting readers to the possibility of health risks which may occur when manufactured nano particles are included in foods.

Consumers nowadays take much more notice of what foods contain and anything out of the ordinary makes them concerned. Correct labelling of foods is an important factor in alerting consumers as to the contents of the foods they purchase so they can make an informed decision. This Association has always promoted the need for goods, particularly food, to have all contents specified on the label.

The Association congratulates CHOICE on bringing into the public arena problems which could occur with the introduction of some nano particles into foods and highlighting the need for FSANZ to be involved. FSANZ is considered to be the "watch dog" of Australian foods standards and it is hoped that "Choice" will push FSANZ into action, and keep the public informed as to any progress in assessing risks

Thanks to all the people who have contributed to this Newsletter:

Eileen Webb, Genette Keating, Rhonda Algaba, Sue and John Robertson and Verity Cripps.

As always, a special thanks must go to Joan Milne for her work in proof reading the Newsletter.

GM—Is our food 'safe' to eat?

The March 2010 issue of Choice magazine has an article titled, Who's afraid of GM food? Key ideas have been taken from this. The results of WA 2009 GM canola commercial trial have been taken from newspaper articles and the Department of Agriculture website.

What is GM?

Choice gives a very clear explanation: 'Genetic modification (GM) refers to the technology of artificially transferring genetic material from one type to organism to another'.

Proponents believe:

- ◊ GM can be used to overcome famine and starvation
- ◊ GM technology will use less chemical fertilisers and pesticides
- ◊ GM technology will develop crops to survive drought and heatwaves.

Opponents believe:

- ◊ GM is threatening the diversity of our food supply
- ◊ A small number of multi-national corporations will control important food crop production.

History of GM in WA

In 2004 the Labour Government imposed a five year moratorium on commercial cultivation of all GM crops in WA. The aim of the moratorium is to protect export markets. Under the Liberal Government the Genetically Modified Crops Free Areas Act 2003 was reviewed in 2009 and a report tabled in State Parliament on 26 November 2009.

Exemptions under the Act have since been permitted for scientific trials and other purposes. In 2009 an exemption was made to permit commercial trials of up to 1000 hectares of Roundup Ready® canola at no more than 20 sites in agricultural areas. The '2009 GM CANOLA TRIALS PROGRAM' report can be found at the Department of Agriculture website: http://www.agric.wa.gov.au/PC_91982.html?s=1658443747,Topic=PC_91997

Following the 'success' of these commercial trials, in January 2010 Minister for Agriculture and Food Terry Redman announced an exemption to allow cultivation of GM canola approved by the Office of the Gene Technology Regulator (OGTR).

What was the criteria for success? The Executive Summary from the report is reproduced on the following pages.

Executive Summary

Genetic modification involves the introduction of genetic material from another species in a manner that would normally not be achieved through conventional breeding techniques. The benefits sought through the adoption of Genetically Modified (GM) crops generally relate to gains in yield, a decreased use of pesticides or the use of less harmful pesticides, more cost-effective weed and pest management and savings in labour and fuel costs. Future developments may see the introduction of improved consumer acceptance and nutritional values.

The cultivation of GM crops within Western Australia is prohibited by the GM Crops Free Areas Act 2003 (the Act) which seeks to guard against damage to the State's markets and reputation by preventing the introduction of GM crops before adequate segregation and identity preservation systems are in place. The 2009 Trials Program sought to test and demonstrate the grain industry's ability to segregate GM and non-GM canola. It also sought to demonstrate the agronomic viability of GM canola under Western Australian conditions.

The trials program was enabled by exemption orders issued under the Act by the Minister for Agriculture and Food. It was limited to varieties incorporating the Roundup Ready® technology – the only GM canola type currently available in commercial quantities in Australia. The Roundup Ready technology confers partial tolerance to the growing plant against herbicides containing glyphosate – such as the Roundup family of herbicides.

The trials program involved five Roundup Ready varieties, each developed by breeding companies licensed by Monsanto to develop and market canola varieties containing the Roundup Ready technology. The trial was conducted on 18 commercial farms and two DAFWA sites, with most properties involving both commercial and small-scale plantings - the latter being used for a range of demonstration and research purposes.

All sites were planted between 22 April and 26 May 2009. Fifteen growers chose to seed dry while the remainder planted into moisture following rainfall. A total of 19 commercial-scale plantings (7 to 70 hectares each) and 33 small-scale plantings (2250 to 4040 square metres each) represented a total area of 860 hectares.

One site was abandoned as a result of exceptionally dry conditions, with poor germination of both the canola and the weeds which were the subject of the trial. Harvest commenced in late October 2009 and concluded in early January 2010. A total of 1223 tonnes of GM canola was delivered to designated CBH receival points at Mount Kokeby and Forrestfield. Yields from the commercial-scale plantings ranged from 0.7 to 2.0 tonnes per hectare, with oil contents between 41.3 and 47.6 per cent. All GM canola delivered to CBH has been marketed and is due to be exported in February 2010. While noting a number of imposts involved in using Roundup Ready and other GM technologies, growers involved in the trial program considered that such varieties would have a valuable place in their farming systems, and all were enthusiastic about the prospect of growing GM canola in the future.

2009 GM CANOLA TRIALS PROGRAM

The role of the Department of Agriculture and Food Western Australia (DAFWA) in the program was to approve the design and proposed conduct of each planting; ensure the program was conducted in a manner consistent with the exemption order; assist in facilitating the trial; and prepare this report for the Minister of Agriculture and Food as an aid to consideration of the future application of the GM canola technologies in Western Australia.

DAFWA identified and investigated a total of 11 incidents during the program, concluding that each could be managed effectively, and that none threatened the industry's ability to ensure segregation of GM and non GM canola.

DAFWA considers that the trials program was successful in that it demonstrated that:

◊ the Western Australian grains industry has the ability to maintain segregation of GM and non-GM canola throughout the supply chain; and

◊ GM canola incorporating Roundup Ready technology is agronomically viable under Western Australian farming conditions.

DAFWA considers that the industry's ability to confidently demonstrate the integrity of segregation measures for GM and non-GM canola relies on the availability of a simple, sensitive, cheap, and rapid test for the presence of GM material – such as the strip tests used throughout this trials program. Consultation with grains industry stake-holders revealed broad agreement regarding this benefit.

DAFWA also considers that effective stewardship of Roundup Ready varieties is important in minimising the risk of developing glyphosate tolerant weeds.

Consumer comment

The GM debate is flawed on two counts.

o There is the assumption that the GM and non-GM crops can coexist without cross-contamination. The results of the WA commercial crop trial for GM canola indicated that there were eleven counts of contamination during the 2009 growing season. One air-born instance was resolved when the trialling farmer hand weeded his neighbour's paddocks. But how realistic is this if thousands of hectares of GM crops come under cultivation? Who will ultimately be responsible for further air-born contamination or perhaps seed transfer from wild life? Will it be the farmer who is growing the GM seed, having entered into an 'end-user' agreement with the seed supplier? Or the farmer who inadvertently grows GM seed and is placed in a position

that he can be sued by the seed producer as has occurred in Northern America because he is 'growing' seed with no such agreement? On 10 March 2009, in a public forum in Perth: **GM crops: the risks and benefits** Moe Parr (USA) and Ross Murray (Canada) recounted instances of this occurring.

While the Liberal-National parties are keen to open the market to give growers choice, we need to ask if this choice will ultimately lead to Western Australian farmers being locked into canola production that will be 100% GM. At the March 2009 forum we were told that cross-pollination always resulted in a 100% GM plant. Will this decision take away the choice consumers may wish to make about whether or not to eat GM food?

◊ The second assumption is about the advertising claims. An editorial article, *A Seedy Practice*, published in the August 2009 issue of Scientific American[1] is reproduced below.

'Advances in agricultural technology—including, but not limited to, the genetic modification of food crops—have made fields more productive than ever. Farmers grow more crops and feed more people using less land. They are able to use fewer pesticides and reduce the amount of tilling that leads to erosion. And within the next two years, agritech companies plan to introduce advanced crops that are designed to survive heat waves and droughts, resilient characteristics that will become increasingly important in a world marked by changing climate.

Unfortunately, it is impossible to verify that genetically modified crops perform as advertised. That is because agritech companies have given themselves veto power over the work of independent researchers.

To purchase genetically modified seeds, a customer must sign an agreement that limits what can be done with them. (If you have installed software recently, you will recognize the concept of the end-user agreement.) Agreements are considered necessary to protect a company's intellectual property, and they justifiably preclude the replication of the genetic enhancements that make the seeds unique. But agritech companies such as Monsanto, Pioneer and Syngenta go further. For a decade their user agreements have explicitly forbidden the use of the seeds for any independent research. Under the threat of litigation, scientists cannot test a seed to explore the different conditions under which it thrives or fails. They cannot compare seeds from one company against those from another company. And perhaps most important, they cannot examine whether the genetically modified crops lead to unintended environmental side effects.

Research on genetically modified seeds is still published, of course. But only studies that the seed companies have approved ever see the light of a peer-reviewed journal. In a number of cases, experiments that had the implicit go-ahead from the seed company were later blocked from publication because the results were not flattering. "It is

[1]Editors, *A Seedy Practice*, Scientific American, August 2009, p22. Viewed 20 March 2010 ***http://sciencemags.blogspot.com/2009/08/seedy-practice.html***

important to understand that it is not always simply a matter of blanket denial of all research requests, which is bad enough," wrote Elson J. Shields, an entomologist at Cornell University, in a letter to an official at the Environmental Protection Agency (the body tasked with regulating the environmental consequences of genetically modified crops), "but selective denials and permissions based on industry perceptions of how 'friendly' or 'hostile' a particular scientist may be toward [seed-enhancement] technology."

Shields is the spokesperson for a group of 24 corn insect scientists that opposes these practices. Because the scientists rely on the cooperation of the companies for their research—they must, after all, gain access to the seeds for studies—most have chosen to remain anonymous for fear of reprisals. The group has submitted a statement to the EPA protesting that "as a result of restricted access, no truly independent research can be legally conducted on many critical questions regarding the technology."

It would be chilling enough if any other type of company were able to prevent independent researchers from testing its wares and reporting what they find—imagine car companies trying to quash head-to-head model comparisons done by Consumer Reports, for example. But when scientists are prevented from examining the raw ingredients in our nation's food supply or from testing the plant material that covers a large portion of the country's agricultural land, the restrictions on free inquiry become dangerous.

Although we appreciate the need to protect the intellectual property rights that have spurred the investments into research and development that have led to agritech's successes, we also believe food safety and environmental protection depend on making plant products available to regular scientific scrutiny. Agricultural technology companies should therefore immediately remove the restriction on research from their end-user agreements. Going forward, the EPA should also require, as a condition of approving the sale of new seeds, that independent researchers have unfettered access to all products currently on the market. The agricultural revolution is too important to keep locked behind closed doors.

Scientists must ask seed companies for permission before publishing independent research on genetically modified crops. That restriction must end.'

Scepticism about the GM claims appears to be borne out by the results of the 2008 and 2009 Canola trials in Australia. The West Australian, 1 February 2010, in an article, *Canola trial puts GM second* reported,

'An independent nationwide canola trial including the controversial genetically

modified canola variety has found that a non-GM crop yielded better overall than the GM variety.' The full results can be found at: www.nvton.com.au

Despite the findings, a newspaper article, *Minister's stand upsets anti-GM farmers,* (West Australian, 3 March 2010 page 4), quoted the Federal Minister for Agriculture, Tony Burke urging, 'Australian farmers to keep an open mind about GM technology [because] global food security was more important than moral argument against genetically modified food. Mr Burke reiterated his position in support of the State Government's move to allow GM crops to be grown in WA.'

Currently, it is almost impossible for consumers to make informed choices about GM foods because of our labelling laws. Most processed foods contain at least one ingredient derived from soya bean, corn or canola. Cotton seed oil is often used for frying fast food or as an ingredient in foods such as mayonnaise. It is worth reading the full Choice Magazine article in the March 2010. Choice believes consumers have a right to know if food comes from GM crops or animals, either directly or indirectly. It believes Food Standards Australia New Zealand should require manufacturers to fully disclose any use of GM ingredients.

For those who wish to be active against GM in WA you can do the following:

Ring the Minister for Agriculture and Food – Terry Redman and complain to his office:

Hon DT Redman Minister for Agriculture and Food
11th Floor Dumas House
2 Havelock St
West Perth WA 6005

PH: 9213 6700
Fax: 9213 6701
Email: Minister.Redman@dpc.wa.gov.au

Contact Tony Burke MP Federal Minister for Agriculture, Fisheries & Forestry

Phone: (02) 6277 7520
Fax: (02) 6273 4120

Tony.Burke.MP@aph.gov.au

Visit Choice online (March 2010)

An independent review of Australia's food labelling laws is underway. Go to **www.choice.com.au/gm** labelling to advocate for better GM labelling.

Consumers' Association of WA (Inc)
Locked Bag 14
Cloisters Square WA 6850

www.consumers.asn.au

Membership and Fee Payment Form

CAWA was established in 1974 to provide consumer representation to business and government.

Our main objectives are to:

- ◊ represent the views of consumers in Western Australia
- ◊ investigate and act on issues of concern to consumers
- ◊ provide a forum for the discussion of matters of common interest to consumers
- ◊ encourage consumer education.

New Membership

Name _____

Address _____

_____

Phone _____

Fax _____

E-mail _____

Areas of interest _____

_____

_____

Consumers' Association of Western Australia (Incorporated)

A reminder that annual subscriptions are now overdue for 2009-10, and should be forwarded to the Treasurer.

Once again, I am delighted with the contributions made by CAWA members to the first *Consumer Comment* newsletter for 2010.

There are several ways in which you can make a contribution. You can bring a short keyed or hand written report to meetings, or mail your contribution to my home address. However, to save keying time I would prefer to receive an emailed, electronic copy or be given the information on CD. The material should be formatted as a word document.

Please keep up the contributions in the next three months for inclusion in the next issue of *Consumer Comment* for 2010.

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