

# Consumer Comment

FEB—MAR 2011

## From the President

Welcome to the first issue of Consumer Comment for 2011. Since the last edition, CAWA's been busy with submissions to the Minister for Agriculture, Terry Redman on *Genetically Modified Crops in WA* and to the Minister for Commerce, Simon O'Brien on the *Building Services (Complaint Resolution and Administration) Bill 2010* and to Max Trenorden MLC, Chairman of Parliament's Public Administration Committee on *Strata Title Managers*. Two of our members are having ongoing issues with the retirement villages they call home. You will find more on these later in Consumer Comment. Also in this issue, thanks go to Anne Driscoll, the Commissioner for Consumer Protection for providing her profile.



As usual the newsletter contains a couple of my *rants*. I think I'm a fairly astute consumer, so why do I always have glitches with simple things with which I don't expect to have glitches?

Earlier this month I rang the Department of Transport wondering about the whereabouts of my car rego renewal invoice, only to be told I'd been driving an unlicensed vehicle for more than a year. This resulted when, having purchased my car in mid December 2009 with the licence about to expire, I paid the transfer fees (Transfer Fee and Vehicle Licence Duty of \$659.50) thinking this included the Licence fee. There was nothing to alert me that the Licence fee was not included because I wasn't expecting a window sticker and no further correspondence was received from the DOT, for example an invoice for the Licence or a request to hand in the plates.

I was very lucky that I didn't receive a speeding infringement during that time (unlike the former Minister for Commerce and now Minister for Transport, Mr Buswell) and particularly lucky that no one driving my car was involved in an accident. The Third Party implications could have been horrendous. Anyway the full

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## **Profile - Anne Driscoll**

**Anne Driscoll was appointed as Western Australia's Commissioner for Consumer Protection in 2008. She kindly contributed the following profile to our newsletter.**

I consider myself to be one of the most boring people around.

I am single, 51 years of age, have lived my entire life in Perth (except for stints in Canberra) and love work (on most days) – you've got to admit this is going to be a lacklustre read!.

I absolutely loved school – made great friends that I still see regularly – even two very good friends from Grade 1. Most of all I was excited by learning – I have always been the one to ask incessant questions. I was/am also somewhat of a perfectionist – so that I had a tendency to get all worked up over exams – think I had failed - and then to my surprise – had done OK.



This approach to exams meant that I deferred study and decided to work in a bank at 17. This lasted a month. I noticed that the boys who started on the same day as me (junior in age by two years and in educational achievement) were all given jobs that were years ahead of my career trajectory. Out of the blue I got advice of an appointment to the Australian Public Service so I decided it was time for a move.

I loved the work. Especially when, after three years, I moved from Social Security to the Commonwealth Employment Service – where I could assist people in job placement and skills training. I worked in a variety of roles including Regional Manager of several offices and State Manager Student Assistance.

Of course once you're working it's hard to go back to full time study so I decided to do a degree part-time. This is tough when you're in your early 20s and social opportunities are high – but I managed to fit everything in. I eventually attained a Bachelor of Arts (psych) – and by the end was pretty much cured of ever again doing part-time study.

My true love is work in the public service – I am so fortunate to have a job that is a good fit with my skills and values and most importantly doing something in which it is possible to make a difference. I worked with the Commonwealth Department of Employment and Training for 20years – and then decided a change was in order.

I could not believe my luck to join a place like Consumer Protection (or Fair Trading as it was then). The work is mentally challenging – I find the law a delight – but

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*(Continued from page 1)*

story is later in the newsletter but please check your car's registration paperwork (if you can find it), particularly if you have moved house.

I've noticed that the DOT appears to be offering a 3 month grace period on licence renewals, probably as a result of the withdrawal of window stickers but currently there could be any number of unlicensed vehicles currently on our roads. I've driven 20,000 kms in the last year and seen many police cars but apparently never had my plates checked.

I have also been suffering this month from the results of a computer virus involving unauthorised access to my internet banking and the subsequent loss of over \$2000. While I am confident (for now) that the bank will eventually restore the money to my account, the process of dealing with the bank's fraud department has been time consuming and tedious to say the least. The message here is to remain vigilant, make sure antivirus and firewall programmes are up to date and don't trust that little padlock icon at the bottom of the screen to protect you.

CAWA is dismayed at the ERA's decision not to reappoint our organisation to the ERA (Consumer) Consultative Committee. The ERA is responsible for the regulations associated with our power, water and gas utilities and the country rail network. We have been represented on the ERACCC since 2005 with two yearly reappointments since then. Our nomination for 2011-14 has been declined due to the "absence of a sufficiently broad membership base". Given the forecast massive increase in energy costs which are "set to rise at above inflation levels for at least a decade if the State Budget is to avoid a multi-billion-dollar black hole" (The Weekend West, February 19-20, 2011), together with the recent oversight with concessions not being paid together with CAWA's "membership base" being essentially unchanged, we question the motives for CAWA's non reappointment.

No other member of the ERACCC represents the interests of ordinary, everyday consumers, the vast majority. Although CAWA supports the reappointment of WACOSS and Consumer Credit Legal Service, both represent a very small proportion of disadvantaged or struggling WA consumers, as does the Financial Counsellors Association of WA. All other currently appointed ERACCC members represent small business or Government. We have requested the ERA reconsider. Our letter to Mr Lyndon Rowe, Chairman of the ERA Consumer Consultative Committee can be found on page 14.

If anyone wants to add to the issues mentioned in this Newsletter please email me at [info@consumers.asn.au](mailto:info@consumers.asn.au)

Genette Keating

## **Profile - Anne Driscoll continued . . .**

*(Continued from page 2)*

most of all to join a group of people who are so committed, respectful and valuing of others was a true jackpot. I consider myself so lucky that first I was able to work with people, find jobs and get work training and now am able to improve consumer rights.

I have now been in consumer protection for almost 12 years – 9 as Director Business Services and almost 3 in the role of Commissioner for Consumer Protection. This most recent appointment is very humbling. How does one do justice to such a responsibility? I guess my answer is to give it everything I have and to draw on and value the wisdom of those around me.

Some of the big issues for Consumer Protection at present include:

- ◇ the increasing sophistication and diversity of scams,
- ◇ the challenges in legal remedies for internet buying,
- ◇ information overload in product disclosures, and
- ◇ mechanisms to protect yourself from insolvencies of business.

Recent work to harmonise consumer laws across Australia is an important step in getting a common base of understanding of rights for consumers and business alike

Finally, work is not everything – my extended family is very important to me – and I live close to my brother and his family. We regularly holiday together. All of us have a particularly close affinity to Rottnest and will generally get there several times a year. Our parents met on Rottnest and many special occasions have been celebrated there. I also spend many fabulous times with very close friends each week – enjoying the odd (and even) wine and bite to eat.

Anne Driscoll

### **Receive your Newsletter by email**

People and organisations who currently receive *Consumer Comment* in the mail, and wish in future to receive an electronic PDF copy of the newsletter should email the Editor, Valdene Buckley on [valdeneb@tpg.com.au](mailto:valdeneb@tpg.com.au)

CAWA is also interested in receiving articles from other WA consumer groups who would like material published in our Newsletter. Requests and articles should be forwarded to the Editor, Valdene Buckley by emailing: [valdeneb@tpg.com.au](mailto:valdeneb@tpg.com.au)

***Like me, I'm sure you usually remember to take your reusable shopping bags to the supermarket, but there are probably times when you leave with your shopping in single use plastic bags. Suzie Brown's article, 'Bagging a green solution: biodegradable, paper or reusable—which shopping bag is truly the most sustainable? (SUSTAINABILITY: SHOPPING BAGS)' which appeared in the December issue of Choice Magazine contained some interesting facts about shopping bags. Some of these facts have been reproduced here and supplemented with info taken from the Internet.***

- ◇ A recent CHOICE online reader survey found 62% of respondents use green bags or other reusable bags as their main shopping bag. (However, this figure may well be higher than the norm given that Choice subscribers and respondents are likely to be more consumer conscious.)
- ◇ John Dee, director of advocacy group, 'Do Something', claims Australians are still using more than six billion bags per year.
- ◇ The Australian Federal and some State Governments have been reluctant to introduce a levy, or an outright ban.
- ◇ In May 2009, the **South Australian** (SA) Government introduced a ban on the use of single-use plastic bags. Retailers in SA are now only allowed to offer biodegradable plastic bags, paper bags or heavy-duty reusable bags, either free or for a charge. (Produce and meat container bags, and purchased bin liners are exempt from the ban.) In 2009 a survey found only one percent of shoppers were relying entirely on shop-provided bags.
- ◇ Both the **Northern Territory** and **Australian Capital Territory (ACT)** governments will ban lightweight plastic bags from mid-2011. It is also likely that Tasmania will introduce a ban in 2011.
- ◇ The **Western Australian, Victoria, Queensland** and **New South Wales** governments **have not shown any interest in introducing a ban.** (This may well be an advocacy issue for CAWA in 2011.)
- ◇ Plastic bags are either restricted or completely banned in more than 25 percent of the world. In Bangladesh, South Africa and Thailand, plastic bags are banned. Bangladesh banned plastic bags in response to massive litter problems, such as blocked drains, which caused havoc during their regular flooding. Since January 1, 2011, Belgium and Italy have total bans. In the United States bans were imposed on local levels, starting with San Francisco in 2007, followed by other jurisdictions including Los Angeles County in 2010. Similar bans on municipality level were imposed in India, Mexico and the UK.
- ◇ Levies appear to make a significant difference to plastic bag consumption. The plastic bag levy introduced in Ireland in 2002, resulted in a reduction of over 90%

## **Shopping bags continued ...**

in the issuing of plastic shopping bags. However the total reduction in plastic bag use was less than that figures indicate due to increased use of commercial trash bin-liners in place of the free shopping bags previously used by many consumers. Sales of bin-liners in Ireland have increased by 400% according to one industry source. In China, the "ban on free plastic bags" introduced in 2008, resulted in a reduction by two thirds. This move is estimated to have saved the equivalent of three million metric tonnes of oil each year. In the United States, the five-cent tax levied on plastic bags in Washington, DC in 2010 resulted in a decrease in consumption from 22.5 million to 3 million bags in the first month alone.

- ◇ In Australia some retailers have banned plastic bags in their outlets. In 2003, the hardware chain, Bunnings introduced a 10c charge per plastic bag, which resulted in a 99% reduction in usage over five years. In 2008, it removed plastic bags from its outlets altogether. Target also phased out plastic bags in 2009, charging customers for biodegradable or reusable bags instead and saving 100 million plastic bags per year. Most plastic bags, are however, consumed in shopping at supermarkets. Despite this fact Coles and Woolworths, (outside of South Australia), have no plans to place a levy on them or ban them outright. Some Western Australian IGA stores have banned plastic bags, but this appears to be an initiative of local owners rather than a chain decision.

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## **Take away foods**

***Our secretary, Verity Cripps received the following reply from Choice Magazine early in January, in response to a letter sent in December re take away food.***

Dear Ms Cripps

### **Re: GM content and nutritional values of take away food**

Thank you for your letter of 10 December 2010. Our Chief Executive, Nick Stace has asked me to respond on behalf of CHOICE.

As you may well know CHOICE has called for better labelling of GM foods for many years and has highlighted how unhealthy most fast foods can be. Unfortunately, the labelling laws that apply to packaged foods don't apply to foods sold for immediate consumption, in part because of the difficulty in conveying this information in a consistent way at the point of sale.

A review of Australia's food labelling laws is currently underway. CHOICE has made a number of submissions on this review. These submissions can be found at [www.choice.com.au/foodlabellingreview](http://www.choice.com.au/foodlabellingreview). The draft recommendation of the

independent panel will be released later this month. We expect there will be recommendations regarding GM labelling and the disclosure of nutritional information about take away foods and other unpackaged foods. CHOICE is eagerly awaiting the publication of this report and will consider how best to campaign for better food labelling in light of the panel's recommendations.

You might also be interested to know that the NSW Government will be introducing kilojoule labelling at the point of sale for fast food restaurants and other take away food chains such as juice bars, cafes and bakeries. Further information about this can be found at [www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au). The former Victorian Premier John Brumby had previously announced plans to introduce kilojoule labelling in Victorian fast food outlets. At its December 2010 meeting the Australian New Zealand Food Regulation Ministerial Council, food and health ministers from across Australia agreed to consider a national approach to the provision of nutrition information in fast food outlets.

CHOICE was a member of a reference committee advising the NSW Food Authority on the development of nutritional information scheme for fast food outlets. We think this scheme will better assist consumers to make healthier and informed choices when choosing meals and snacks away from home, and would like to see it rolled out nationally.

With respect to the GM content of take away foods , we are aware that Greenpeace has made enquires to a number of fast food chains in the development of their True Food Guide. According the attached information provided on the True Food Guide at website ([www.truefood.org.au](http://www.truefood.org.au)) all of the outlets surveyed fall into the 'red' category which means that the company did not have a policy on GM ingredients, the products containing GM ingredients or the company failed to respond to their enquiries.

Although we do not have any specific GM investigations scheduled at this point we will be reviewing our food labelling campaign in light of the food labelling review recommendations, so we will give further thought to your suggestions.

Thank you once again for taking the time to write to CHOICE to share your concerns about nutrition and GM information at take away food outlets. We will continue to campaign for food labelling for Australian consumers and welcome the support and feedback from other consumer organisations throughout Australia. If you would like to discuss these issues further, please feel free to contact me directly on (02) 9577 3375 or at [chughes@choice.com.au](mailto:chughes@choice.com.au)

Yours sincerely

Clare Hughes  
Senior Food Policy Advisor

## **Licence stickers**

We knew it would happen but I didn't think it would happen to me. On Friday I found out I've been driving an unlicensed vehicle for just over a year. So 7.30 this morning I was taking my Honda Civic (41,000kms) over the pits. OK so it's Valentines Day, my 30<sup>th</sup> wedding anniversary, mum's birthday - there were more interesting things I could be doing today (working even).

I'm a reasonably astute middle aged parent (where my licensing experiences have been broadest), UWA educated (Horticultural Science), a company director and also President of the Consumers Association of WA (unbelievable breadth of experience) amongst other things. I deal daily with accounts and I'm responsible for licensing the half dozen vehicles my family and staff use for their various peregrinations.

Having bought my car in mid December 2009, the Licence was due to expire on the 28<sup>th</sup> January 2010. I received a letter dated 23<sup>rd</sup> December 2009 (Dear Sir/Madam, Yours faithfully etc) entitled "Vehicle Licence Renewal Where Transfer Fees Have Not Been Paid". Although the letter listed various fees ("The fees for renewal are listed below for your information"), the word "Invoice" did not appear. Then I received an Invoice issued on 27<sup>th</sup> December 2009 for the Transfer Fee and Vehicle Licence Duty (\$659.50). I paid it on 15<sup>th</sup> January still well before the Licence expiry. I assumed it included the licence fee and not expecting a new sticker (stickers ceased 1<sup>st</sup> January 2010), removed the old one from the windscreen.

I rang the Department of Transport last Friday enquiring into the whereabouts of my Licence and Third Party invoice, being about a year since (I thought) I had renewed it. Apparently I only paid the transfer fee.

I never received an invoice for the Licence - or any other reminder. DOT say they don't send one - the letter is it. I never received a request to hand in the plates. This is apparently normal too. The Department of Transport had my correct address the whole time.

The Third Party implications could have been horrendous. Thanks to cruise control, I haven't had a speeding infringement during the year or I probably would have also been prosecuted for driving an unlicensed vehicle. At least this might have picked up the problem earlier. I can't imagine the consequences if a family member or a mechanic (not to mention my passengers and I) had been involved in a serious collision.

The circumstances which produced my problem are probably a bit unusual but many people have changed address during the year and if they've overlooked informing the DOT (which isn't hard), there is nothing to remind them of licence expiry. The guys at the Licensing Centre assured me I wasn't alone.

I'm told that someone has found a commercial opportunity in producing generic reminder stickers. You peel off the relevant month - I haven't seen them. If I have to pay a dollar or two (sigh) to the Department of Transport to see stickers return, I think I can justify it.

Genette Keating

**CONSUMER COMMENT**

**Ian Jarratt of the Queensland Consumers Association sent the following information re NO NOT KNOCK Stickers available in Queensland. After discussion at a CAWA meeting our secretary was prompted to write to DOCEP requesting a similar Western Australian sticker.**

The Queensland State Government has a free door/window sticker consumers can use to deter door-to-door traders or marketers (which the Queensland Consumers' Association is publicising). The main concern in Queensland is door-to-door marketing of energy contracts which Western Australia does not have. CAWA is hoping that our minister may take up our idea that there be a national DO NOT KNOCK register similar to the Federal Governments DO NOT CALL register.

*The stickers can be ordered from:*

<https://www.bookshop.qld.gov.au/ProdView.aspx?popup=1&Category=SXXG4530&Product=SSQCON76>

23<sup>rd</sup> February, 2011

Ms Cecilia Broderick  
Education & Research,  
Department of Commerce,

Dear Cecilia,



The attached copy of a sticker "NO door-to-door traders" is distributed by the Queensland Government and the Association thought that a similar sticker would be a useful item for use in Western Australia. It is realised that the format of the sticker belongs to the Queensland Government, but surely a sticker with a similar message could be developed which would be credited to Western Australia, or perhaps to "W.A. Consumer Protection".

Distribution of such a small item would be best through community organisations which have interface with consumers. The Department could promote the sticker on Human Rights Day, at the Community Resource Network Conference, the International Tenancy Day/Week or Have a Go Day, also through Better Trading.

It is realised that development of a sticker would take some time but it is a project which would be favourably accepted by many consumers, particularly the elderly and those in areas which normally attract door to door traders.

We would appreciate your comments on the possibility of developing a sticker which could be used by consumers to discourage door to door salesmen interrupting, usually, the evening meal.

Yours sincerely,  
Verity Cripps

# **Review of Food Labelling Law and Policy**

***In Nov-Dec, Consumer Comment revisited the current legislation on food labels. The review of the current laws, 'Labelling Logic Review of Food Labelling Law and Policy (2011) was released in late January and the Executive Summary and Recommendations are reproduced on the following pages. The full text can be found at:***

***<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/labeling-logic>***

## **Executive Summary**

The executive summary is structured in terms of the Matters for Review outlined in the terms of reference. Numbers in brackets refer to the recommendations in the Report, a full list of which is provided at the end of this summary and in context, within the body of the Report. The food label is the arena in which many of the most intense disputes over food take place, for the label provides the most public face for controversies over food. It is also one of the most highly valued and competitively sought after communication channels in the market place. As the battle for space on the label has intensified, and the often competing interests of consumers, industry and government come to the fore, food labelling policy has evolved in a sporadic fashion to satisfy a range of interests, including protecting consumers. The crux of the Review was therefore to address the tensions between these interests that drive policy and to seek to resolve them. The 61 recommendations contained in this Report are designed to address this ad hoc approach to food labelling and provide a clear path forward.

### ***Examine the policy drivers impacting on demands for food labelling***

The Panel suggests that a consideration of the policy drivers — consumers' needs for information; industry's need for marketing flexibility and minimal regulatory burdens; and government's objectives in the area of individual and population health — provides a framework for deriving principles for regulatory intervention in order to steer the flow of labelling events. Exploration of these demands revealed the ubiquity and breadth of health concerns, particularly the growing acceptance of government's preventative health role in reducing the risk of chronic diet-related disease. A definition of public health in the Food Standards Australia New Zealand Act 1991 would decrease ambiguity regarding the role of the food regulator and would place appropriate focus on broader public health issues [1].

As a consequence of this recognition, the Panel recommends that a comprehensive Nutrition Policy be developed that includes a framework for the roles of the food label [9, 10]. Once established, the comprehensive Nutrition Policy should inform the development or variation of labelling standards. Such an operational base will in part address the requirement for evidence of significant health or behavioural impact and economic assessments for individual food standards, a requirement which at present can act as a barrier to utilising the food label more effectively.

## ***What principles should guide decisions about government regulatory interventions in food labelling?***

The cornerstone of the Panel's approach is an Issues Hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. This classification, which is essentially a risk hierarchy, governs the initiation of regulatory action, the modes of intervention and where rules and oversight should lie [2]. Regulatory actions in relation to food safety, preventative health and new technologies should be initiated primarily by government and referenced in the Code. Regulatory actions in relation to consumer values issues should be initiated generally by industry [37, 38]. These would rely on the 'misleading or deceptive' provisions in consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Code [36]. The most significant consequence of this referencing is that country-of-origin labelling — a consumer values issue — be provided for in a specific consumer information standard for food within consumer protection legislation rather than in the Code [41].

The modes of intervention should be mandatory for food safety, on which point there is little disagreement. For preventative health there would be a mixture of mandatory and co-regulation requirements, the choice dependent on government health priorities and the effectiveness or otherwise of co-regulatory measures. For new technologies there should be, as a general principle, mandated identification on the label of foods or ingredients treated or produced by such technologies for a period of 30 years after their introduction into the human food supply chain, at the end of which time the need for such identification should be reviewed [28]. The modes of intervention for consumer values issues should be self-regulatory but subject to more prescriptive forms of intervention in cases of market failure, as the Panel argues in the case of country-of-origin issues [40, 41] or the ineffectiveness of self-regulatory schemes [39].

## ***Consider what policies and mechanisms are needed to ensure that government plays its optimum role***

In the light of the above principles, government would play its optimum role in food labelling by ensuring labelling to guarantee food safety; by working with industry to use labelling to encourage healthy eating and population health; by taking a prudent approach to the labelling of foods and ingredients produced or processed by new technologies; and by acting to ensure that industry self-regulation in the field of consumer values provides consistent and accurate labelling to enable consumers to make informed choices.

The whole system is envisaged as one of responsive intervention that requires coordination across portfolios [4, 21, 23, 41, 59] and jurisdictions [3, 57, 58]. If softer measures fail there would be opportunity for escalation to more prescriptive modes of regulation. Moreover, where label changes are recommended, the Panel advocates a generous time period to encompass the change, as well as grandfathering for labels on products that have a long shelf life.

There is also a need to broaden the coverage of food labelling laws to reflect the range

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## **Food labelling continued ...**

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of environments within which people now purchase their foods. The significant extent to which Australians and New Zealanders now consume food outside the home has led the Panel to recommend the provision of nutrition information on menus/menu boards in chain food service outlets that have standardised menu items, and on vending machines [18].

### **Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement**

As a general principle of good governance, it is necessary that the members of the community feel confident that the food regulatory system, which is designed to protect its health and safety, operates effectively. As such, once the case for a labelling standard has been established and becomes part of the Code, it must be monitored and enforced by the jurisdictions with as high a priority as any other food standard [3, 6, 7, 57]. A similar high priority should be given by the consumer protection agencies to consumer values issues [4, 59]. Labelling standards should also be written in such a way that they both clearly convey what is required of industry and are capable of being enforced should a prosecution occur [60]. In addition, a more versatile range of enforcement provisions should be introduced [58].

The Panel accepts that for a range of reasons it is desirable to leave responsibilities for the statutory requirements for compliance and prosecution as they are currently. However, if food labelling is to be taken seriously, a Food Labelling Bureau (the Bureau) should be established to advise Australian and New Zealand ministers on all aspects of labelling policy [61]. Resources for this Bureau must reflect the high profile that food labelling has as the most public face of food policies, standards and laws. The Bureau's role would be administrative, advisory and a monitor of compliance and enforcement. It would be user-friendly for consumers and industry and would marshal and support the resources already on the ground.

### **Evaluate existing work on health claims**

The Panel proposes a responsive regime of nutrition, health and related claims covering the use of simple words that may infer health implications [19] and a hierarchy of substantiation of claims and validation through an agreed nutrient profiling system, plus further conditional requirements [20]. In addition, the Panel recognises the need to prevent the subversion of the proposed system by unscrupulous use of trade names and trademarks that could imply claims prohibited in the Code [21]. Governments may also wish to make health claims through mandatory health messages supporting preventative health strategies. These would have to meet the same substantiation requirements as industry health claims. In addition, as they involve taxpayer funds, intervention would have to be justified by reference to both the extent of the health problem and the strength of the causal links between the health problem and the messages, and only be embarked upon as part of a multifaceted social campaign [22, 24]. The introduction of health claims in the food regulatory regime will make urgent the development of a seamless regulatory approach for food, complementary medicines and dietary supplements [23].

### **Evaluate existing work on front-of-pack labelling**

The use of interpretative symbols or endorsements on labels has the potential to convey essential nutrition information when included as one of multiple strategies to facilitate healthy eating choices [50]. As there is now a growing consensus between industry, consumers, health advocacy groups and governments in favour of front-of-pack labelling, the issue before the Panel was what form it should take. The Panel recommends that a multiple traffic lights (MTL) front-of-pack labelling system be introduced. Such a system is to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory [51, 52, 53]. The Panel also recommends that chain food service outlets across Australia and New Zealand be encouraged to display the MTL system on menus/menu boards [54], but that beverages containing alcohol be exempt from any MTL requirements [55].

### **Evaluate current policies, standards and laws relevant to food labelling**

Using this overall framework, the Panel addressed a number of detailed issues raised in the submissions and consultations which are not dealt with elsewhere in this summary.

**Public Health and Food Safety:** In relation to the ingredients list, the Panel recommends work on a number of codes of practice to enable consumers to readily identify additives, colourings and flavourings of agreed medical priority [8, 11], and changes to the declaration of added sugars, added fats and added vegetable oils [12]. The Panel recommends several changes to the Nutrition Information Panel (NIP), including the possible explicit inclusion of trans fatty acids [13]; the inclusion of fibre content [14]; clarification of salt content [15, 16]; and some simplification of presentation [17].

**Alcohol:** While recognising the unique features of alcohol as a food, the Panel sees no prima facie reason for excluding alcohol from the scope of the Review, given alcohol's inclusion in the Code. The Panel is of the view that the requirement for alcohol to display additional labelling information does not automatically exempt it from adhering to other existing requirements. The Panel further believes that there are compelling reasons for applying labelling changes to alcohol in the light of the growing evidence relating to the short- and long-term adverse health effects of alcohol consumption. The Panel therefore recommends that a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale for unpackaged alcoholic beverages [25]; that the energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products [26]; and that drinks that are mixtures of alcohol and other beverages comply with all general nutrition food labelling requirements [27].

**New Technologies:** Given the general principle enunciated in this Review that there should be mandatory labelling of new technologies for 30 years after their introduction into the food supply chain and recognising that irradiated foods have been in the food supply for a generation, the Panel recommends that the necessity for mandatory labelling of irradiated foods be reviewed [34]. While recognising the difficulties, the Panel nevertheless believes it is urgent for the credibility of the regulator that a standard be established for regulating the presence of nanotechnology in the food production chain [35]. On the vexed question of genetically modified foods, the Panel assessed the various exemptions from genetic modification labelling in line with its principles and the

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## **Food labelling continued ...**

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relevant scientific evidence. The Panel endorses the exemption of foods or ingredients that have no altered characteristics or no detectable novel deoxyribonucleic acid (DNA) or protein [29]; endorses the present exemption for adventitious presence but recommends follow-up and monitoring of any adventitious event [30], and the provision of adequate laboratories, resources and skills for this and other tasks [33]; does not support the present exemption for flavours [31]; and, given the general position the Panel has taken on foods from chain food service outlets and vending machines, does not support their exclusion from the requirement to declare genetically modified foods or ingredients [32].

**Consumer Values Issues:** The remaining issues in the consumer values field relate to the one presently mandated intervention — country-of-origin labelling (CoOL). While CoOL is comprehensive in Australia, there are a few inexplicable primary product exceptions, and the Panel believes the loophole should be closed and that CoOL should be extended to cover all primary products for retail sale [40]. There is extraordinary public confusion over the 'Made in Australia' claim and the Panel favours the development of an unambiguous and consumer-friendly Australian-origin claim based on the ingoing weight of the various components of the food, excluding water [42].

**Presentation:** The effectiveness of the recommendations in practice will depend on the consumer's ability to notice, read and comprehend the information provided. It is a fundamental principle that food labels be presented in a clear and comprehensible manner to enhance understanding across all levels of the population [5, 43]. The Panel recommends a prescriptive minimum font style [44] and a minimum contrast level [46] for all mandatory information, and the boldening of warning and advisory statements and of allergens [47]. The Panel would encourage government and industry to work together to establish guidelines for other presentational factors [45] and to work towards a co-location of mandatory health information presented in a standardised fashion [48]. New information technologies should be investigated both for automated label assessments [49] and for forms of extended product labelling [56].

### **Conclusion**

This Report provides a comprehensive framework within which future food labelling law and policy can be determined. As well, using this framework, the Panel has made a wide range of specific recommendations to improve food labelling law and policy. Consequentially and appropriately, given the wide-ranging scope of the Review and its terms of reference, adoption of these recommendations will lead to:

- ◇ a clear path to guide government decisions about regulatory intervention;
- ◇ a fundamental shift in thinking about the remit of Food Standards Australia New Zealand (FSANZ) and the broader food regulatory system with regard to public health;
- ◇ an impetus for industry collaboration to achieve self- and co-regulatory mechanisms that ensure a level playing field while meeting the demands of consumers and governments;
- ◇ a more strategic, transparent and informative food

labelling system, which instils confidence in Australian and New Zealand consumers;

- ◇ greater resourcing from governments to support food labelling that is meaningful, consistent and that addresses issues identified in a comprehensive nutrition policy; and
- ◇ a centralised body for, and source of, food labelling information for consumers, industry and government, with roles in administration, advice and monitoring.

### **Recommendations**

#### **Policy Drivers of Food Labelling**

**Recommendation 1:** That the Food Standards Australia New Zealand Act 1991 be amended to include a definition of public health to the effect that: 'Public Health is the organised response by society to protect and promote health, and to prevent illness, injury and disability'.

#### **Principles and Criteria**

**Recommendation 2:** That food labelling policy be guided by an issues hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. Regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government and referenced in the Food Standards Code. Regulatory action in relation to consumer values issues should generally be initiated by industry and referenced to consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Food Standards Code.

The modes of intervention should be mandatory for food safety; a mixture of mandatory and co-regulation for preventative health, the choice dependent on government health priorities and the effectiveness or otherwise of co-regulatory measures; and mandatory with time limits for new technologies. The modes of intervention for consumer values issues should be self-regulatory but subject to more prescriptive forms of intervention in cases of market failure or the ineffectiveness of self-regulatory schemes.

**Recommendation 3:** That once the case for a labelling standard has been established and becomes part of the Food Standards Code, sufficient resources be allocated to ensure that it is effectively monitored and enforced.

**Recommendation 4:** That consumer protection concerns be accorded a high priority by the relevant government agencies and complaints be properly processed and resolved.

**Recommendation 5:** That information on food labels be presented in a clear and comprehensible manner to enhance understanding across all levels of the population.

Public Health and Food Safety

**Recommendation 6:** That the food safety elements on the food label be reviewed with the aim to maximise the effectiveness of food safety communication.

*(Continued on page 14)*

## **Food labelling continued ...**

*(Continued from page 15)*

**Recommendation 7:** That there be more effective monitoring and enforcement of the existing requirements in the Food Standards Code to provide mandatory warning and advisory statements and allergen declarations on packages of food not for retail sale, foods for sale at restaurants and other food outlets, foods from mobile food vendors and vending machines, and foods for catering purposes.

**Recommendation 8:** That the Voluntary Incidental Trace Allergen Labelling system be explored as a possible supplementary model to manage food label declarations relating to the adventitious presence of allergens in foods.

**Recommendation 9:** That a comprehensive Nutrition Policy be developed that includes a framework for the roles of the food label. Key aspects of the framework to be:

- a. the provision of food safety and nutrition information and education strategies to protect and promote the health of the population, including articulated roles for food label elements;
- b. the encouragement of the provision of healthy foods within the food supply to facilitate healthy diets;
- c. the setting and application of nutrient criteria and dietary guidance;
- d. the facilitation of social and other research to improve understanding of how label information is used and its impact on food selection, eating behaviours and the food supply;
- e. the establishment of monitoring and surveillance systems for dietary/nutrition practices that include the use and understanding of food labels.

Such a policy should be developed as a priority, within the framework of the governments' preventative health agendas and cognisant of the present Australian initiatives on food security and a national food plan.

**Recommendation 10:** That the Food Standards Australia New Zealand Act 1991 be amended to require Food Standards Australia New Zealand to 'have regard' to the comprehensive Nutrition Policy when developing or reviewing labelling standards.

**Recommendation 11:** That industry develop in consultation with government, medical authorities and relevant consumer organisations a voluntary code of practice and education initiatives to enable consumers to quickly identify label information relating to additives, colourings and flavourings that are of agreed medical priority for sensitive consumers.

**Recommendation 12:** That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms 'added sugars' and 'added fats' and/or 'added vegetable oils' be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil)).

**Recommendation 13:** That mandatory declaration of all trans fatty acids above an agreed threshold be introduced in the Nutrition Information Panel if manufactured trans

fatty acids have not been phased out of the food supply by January 2013.

**Recommendation 14:** That declaration of total and naturally occurring fibre content be considered as a mandatory requirement in the Nutrition Information Panel.

**Recommendation 15:** That voluntary declaration of potassium content in the Nutrition Information Panel be actively considered by industry. If nutritional policy guidance recommends the reduction in consumption of potassium for at-risk population groups in the future, disclosure of potassium in the Nutrition Information Panel should become mandatory.

**Recommendation 16:** That social research be undertaken to determine effective mechanisms to present sodium/salt information on food labels to facilitate consumers' understanding and use of this information.

**Recommendation 17:** That the declaration in the Nutrition Information Panel of amount of nutrients per serve be no longer mandatory unless a daily intake claim is made.

**Recommendation 18:** That declaration of energy content of standardised food items on the menu/menu boards or in close proximity to the food display or menu be mandatory in chain food service outlets and on vending machines. Further, information equivalent to that provided by the Nutrition Information Panel should be available in a readily accessible form in chain food service outlets.

**Recommendation 19:** That a responsive regulatory approach to the use of simple words and terms that may infer health implications be commenced, with the food industry working with Food Standards Australia New Zealand to develop a Code of Practice covering consistent use of definitions for such words and terms, with a view to their use being restricted if appropriate constraint is not implemented.

**Recommendation 20:** That the Standard for nutrition, health and related claims on food labels which reflects agreed public health goals be finalised and that it include the following:

- a. a hierarchy of substantiation of claims at the various levels, that would encompass use of defined nutrition words and terms, pre-approved relationships, authoritative sources, systematic review and pre-market assessment and approval;
- b. a requirement that all foods that carry a nutrition, health and related claim comply with an agreed nutrient profiling system;
- c. a requirement that the presence of a nutrition, health and related claim triggers relevant information disclosures in the Nutrition Information Panel or ingredients list; and
- d. a requirement that the presence of a general or high level claim triggers display of standardised front-of-pack label information.

**Recommendation 21:** That applications for trade names and trademarks be scrutinised by the relevant agencies to identify and reject words and devices that have the effect of inferring health implications that are otherwise prohibited under the Food Standards Code.

*(Continued on page 16)*

## **Food labelling continued ...**

*(Continued from page 17)*

**Recommendation 22:** That mandatory messages supporting preventative health strategies may be instigated by governments, provided the following conditions are met:

- a. substantiation requirements are fulfilled — the epidemiological evidence is strong;
- b. the message is consistent with the comprehensive Nutrition Policy;
- c. food labelling is an appropriate response to the problem; and
- d. the label is one part of a multifaceted campaign.

**Recommendation 23:** That a consistent, seamless regulatory approach for nutrition, health and related claims be adopted for food, complementary medicines and dietary supplements.

**Recommendation 24:** That generic alcohol warning messages be placed on alcohol labels but only as an element of a comprehensive multifaceted national campaign targeting the public health problems of alcohol in society.

**Recommendation 25:** That a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale for unpackaged alcoholic beverages, as support for ongoing broader community education.

**Recommendation 26:** That energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products.

**Recommendation 27:** That drinks that are mixtures of alcohol and other beverages comply with all general nutrition labelling requirements, including disclosure of a mandatory Nutrition Information Panel.

### **New Technologies**

**Recommendation 28:** That as a general principle all foods or ingredients that have been processed by new technologies (i.e., all technologies that trigger pre-market food safety assessments) be required to be labelled for 30 years from the time of their introduction into the human food chain; the application of this principle to be based on scientific evidence of direct impact on, or modification of, the food/ingredient to be consumed. At the expiry of that period the mandatory labelling should be reviewed.

**Recommendation 29:** That only foods or ingredients that have altered characteristics or contain detectable novel DNA or protein be required to declare the presence of genetically modified material on the label.

**Recommendation 30:** That any detection of an adventitious genetically modified event be followed by a period of monitoring and testing of that food or ingredient.

**Recommendation 31:** That foods or ingredients with flavours containing detectable novel DNA or protein not be exempt from the requirements to declare the presence of genetically modified material on the label.

**Recommendation 32:** That foods or ingredients that have been genetically modified and would require declaration if labelled be declared on menu/menu boards or in close proximity to the food display or menu in chain food service outlets and on vending machines.

**Recommendation 33:** That governments ensure effective monitoring of labelling requirements in the Food Standards Code relating to genetically modified foods or ingredients through support for sufficient Australian and New Zealand laboratories, observing world best practice protocols, and with the necessary resources and analytical skills.

**Recommendation 34:** That the requirement for mandatory labelling of irradiated food be reviewed.

**Recommendation 35:** That Food Standards Australia New Zealand and other relevant bodies develop as a matter of urgency a standard for regulating the presence of nanotechnology in the food production chain, consistent with the recommendations in this Report relating to new technologies.

### Consumer Values Issues

**Recommendation 36:** That Food Standards Australia New Zealand consider adopting, by reference in the Food Standards Code, values-based definitions and/or standards relating to specific food production methods and processes, if requested by industry, to achieve consistency of definitions.

**Recommendation 37:** That the relevant livestock industries consider the benefit of establishing agreed standards under the auspices of Standards Australia or Standards New Zealand for terms related to animal husbandry (e.g., 'free range', 'barn laid' and 'caged' in the case of poultry).

**Recommendation 38:** That the value of industry-initiated self-regulatory intervention be recognised and that industry in collaboration with special interest groups further develop and apply a responsive and more structured self-regulatory approach to consumer values issues that incorporates:

- a. the role that voluntary codes of practice can play in relation to the evolution of standard definitions for values-based claims;
- b. the role that certification schemes can play in effectively communicating values-based messages; and
- c. the development of agreed standards through existing frameworks such as International Organization for Standardization, Standards Australia or Standards New Zealand.

**Recommendation 39:** That a monitoring regime for self-regulatory measures be established and when evidence of systemic failure to provide accurate and consistent values-based information to enable consumers to make informed choices is found, a more prescriptive mode of regulation is triggered.

*(Continued on page 18)*

## ***Food labelling continued ...***

*(Continued from page 19)*

**Recommendation 40:** That Australia's existing mandatory country-of-origin labelling requirements for food be maintained and be extended to cover all primary food products for retail sale.

**Recommendation 41:** That mandatory requirements for country-of-origin labelling on all food products be provided for in a specific consumer product information standard for food under the Competition and Consumer Act 2010 rather than in the Food Standards Code.

**Recommendation 42:** That for foods bearing some form of Australian claim, a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed.

### **Presentation**

**Recommendation 43:** That the Perceptible Information Principle be used as a guide for labelling presentation to maximise label comprehension among a wide range of consumers.

**Recommendation 44:** That a minimum font size of 3.5mm in an open font style in mixed case be applied for mandated information, with the exception of small package sizes where the minimum font size should be 1.5mm.

**Recommendation 45:** That a set of guidelines be developed in consultation with industry that includes reference to other presentation factors such as letter and line spacing, text justification and stroke width.

**Recommendation 46:** That a minimum contrast level of 70% for mandated information be stipulated in the Food Standards Code.

**Recommendation 47:** That warning and advisory statements be emboldened and allergens emboldened both in the ingredients list and in a separate list.

**Recommendation 48:** That industry be encouraged to develop a set of guidelines relating to the co-location of mandatory health information presented in a standardised manner on the label. Government should facilitate this process through the provision of appropriate resources and expertise.

**Recommendation 49:** That the development of an automated label assessment tool be investigated that can gauge a label's compliance with mandated legibility requirements and those stipulated in relevant voluntary codes.

**Recommendation 50:** That an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities.

**Recommendation 51:** That a multiple traffic lights front-of-pack labelling system be introduced. Such a system to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory.

**Recommendation 52:** That government advice and support be provided to producers adopting the multiple traffic lights system and that its introduction be accompanied by comprehensive consumer education to explain and support the system.

**Recommendation 53:** That ongoing monitoring and evaluation of the multiple traffic lights system be undertaken to assess industry compliance and the effectiveness of the system in improving the food supply and influencing consumers' food choices.

**Recommendation 54:** That chain food service outlets across Australia and New Zealand be encouraged to display the multiple traffic lights system on menus/menu boards. Such a system be mandatory where general or high level health claims are made or equivalent endorsements/trade names/marks are used.

**Recommendation 55:** That any beverages containing alcohol be exempt from nutrition-related front-of-pack labelling requirements.

**Recommendation 56:** That the potential of new information technologies be considered by consumer organisations, industry and government to provide extended product labelling for non-mandatory information.

### **Compliance and Enforcement**

**Recommendation 57:** That monitoring and enforcement of food labelling requirements of the Food Standards Code (accuracy as well as the presence of labelling information) be considered equally important as other aspects of the Food Standards Code and the responsible agencies be given the appropriate level of resources to meet their obligations.

**Recommendation 58:** That the Model Food Provisions and the food acts of the jurisdictions be amended to allow a more versatile range of enforcement provisions, such as the power to make orders or require user-paid compliance testing consequent on a breach or impose enforceable undertakings in relation to non-compliant labelling.

**Recommendation 59:** That consumer protection concerns related to food labelling be accorded a high priority by the relevant consumer protection agencies (Australian Competition and Consumer Commission, New Zealand Commerce Commission, and State and Territory consumer protection agencies) and complaints be processed and resolved in a timely and transparent manner.

**Recommendation 60:** That food standards always be drafted with the understanding that they are intended to be enforceable legal documents. Where current deficiencies in the labelling requirements have been identified, standards should be re-drafted to make the obligations clear.

## **Food labelling continued ...**

*(Continued from page 21)*

**Recommendation 61:** That a new and effectively resourced entity in the form of a trans-Tasman Food Labelling Bureau be established under the Food Standards Australia New Zealand Act 1991 to undertake the functions as specified in this Report and more generally to:

- a. be the primary contact for, and source of, food labelling information and advice;
- b. undertake research into food labelling issues;
- c. undertake a general educational role in relation to food labelling issues and requirements;
- d. assist industry to comply with labelling requirements;
- e. act as a clearinghouse for complaints and facilitate compliance and the resolution of complaints;
- f. monitor and report on food labelling compliance; and
- g. monitor consumer values issues claims on labels and liaise with consumer protection agencies in relation to confusing, misleading or deceptive food labelling.

### **Response to the Review**

There has been negative response to the Review on a number of fronts:

- ◇ **Greenpeace's media release** on January 28, 2011, '**Food labelling review fails to protect Aussie kids**' found at [http://www.greenpeace.org/australia/news-and-events/media/releases/genetic-engineering/food-labelling-review-fails-to-stated-that,-Neal-Blewett-has-failed-to-close-the-loopholes-in-Australia's-GM-labelling-laws-that-leave-Australians-eating-in-the-dark-when-it-comes-to-genetically-modified-food-\(GM\)](http://www.greenpeace.org/australia/news-and-events/media/releases/genetic-engineering/food-labelling-review-fails-to-stated-that,-Neal-Blewett-has-failed-to-close-the-loopholes-in-Australia's-GM-labelling-laws-that-leave-Australians-eating-in-the-dark-when-it-comes-to-genetically-modified-food-(GM))".

Apparently, "last year, independent testing commissioned by Greenpeace discovered unlabelled GM in infant formula. Pfizer, the makers of the formula, claimed that they didn't need to let Australian mums know they were feeding their babies GM, because 'it was an accident' that GM got into their formula."

Greenpeace claims that an "independent news polls show 90% of Australian consumers want all GM in food labelled. Greenpeace co-ordinated a 'Parent's Right to Know' pledge in support of GM labelling endorsed by celebrity chefs, public health groups, community groups and politicians from all major parties. Signatories include Senator Nick Xenophon, the Public Health Association of Australia, Unions NSW and leading Australian chef, Peter Gilmore, of Quay restaurant."

- ◇ The **Independent senator, Nick Xenophon's press release** from the same day, [reference: <http://www.news.com.au/breaking-news/national/xenophon-cans-food-labelling-review/story-e6frfku9-1225996196140>] alleges "the review of food labelling and policy won't help consumers at the supermarket when it comes to knowing if a product is really made in Australia".

He believes "'Made in Australia' shouldn't mean anything but 100 per cent Made in Australia".

Currently, for example, "this means a meat pie could be labelled made in Australia when none of the meat came from Australia.

Senator Xenophon states, "All the report recommends when it comes to Country of Origin labelling is that a framework be developed,"

Furthermore, Senator Xenophon says the review fails to close a loophole for the labelling of foods containing genetically modified organisms. "Currently, manufacturers can claim 'accident' if traces of GM are found in their products," he said.

◇ On a positive note, **CONSUMER group Choice has backed a proposed "traffic light" labelling system for food, but says it needs to be mandatory for all products.** The following info was taken from the <http://www.couriermail.com.au/ipad/review-recommends-voluntary-traffic-light-food-labelling-system/story-fn6ck4a4-1225996362083>

'Under the "traffic light" food-label system, which has already been adopted in Britain, foods that are high in fat and sugar, for example, are marked in the red category. Dr Blewett, said he believed a range of companies would voluntarily use traffic light labelling on their products, not just those that could display a green mark.

Choice spokeswoman Clare Hughes said the group supported the report's recommendation of a labelling system where a green, yellow or red mark would indicate a product's nutritional content. "The labelling review report released today provides a number of wins for consumers who want to make healthy choices," she said. "Particularly by rewarding the traffic light concept, which would show consumers how healthy or unhealthy foods are."

But Ms Hughes said while Choice welcomed the panel's findings, it did not go far enough. "We're calling on the government to enact the recommendations without delay and address some of the weaknesses for the traffic light system," she said. "If this is this going to be useful to consumers, we need to make this mandatory so it's on all foods for all consumers."

Ms Hughes also said the panel failed to address concerns over the labelling of genetically modified and organic foods. "Unfortunately it fails to address loopholes around concerns over genetically modified food ... highly refined ingredients don't (currently) need to be listed they are genetically modified on the food label," she said.

"It also fails to address concerns around organic and free range production ... making those claims won't necessarily be regulated under food standards."

Under the proposed changes, alcohol packaging would also have to carry health warnings for pregnant women. Dr Blewett said alcohol should be labelled to warn pregnant women of the risks of drinking. The National Health and Medical Research Council recommends pregnant women not drink any alcohol, he said.

# **Economic Regulation Authority Consumer Consultative Committee (ERACCC)**



Locked Bag 14  
Cloisters Square  
WA 6850

Mr Lyndon Rowe  
Chairman  
ERA Consumer Consultative Committee  
PO Box 8469  
PERTH BUSINESS CENTRE WA 6000

22<sup>nd</sup> February 2011

## **ERA (CONSUMER) CONSULTATIVE COMMITTEE APPOINTMENTS**

Dear Lyndon

With regards your phone call and your letter of 21<sup>st</sup> February, I would like to begin this submission by giving you some background information on our organisation before proceeding to discuss our concerns about (Consumer) Consultative Committee Appointments.

The Consumers' Association of Western Australia (Inc) (CAWA) was established in 1974 to provide consumer representation to business and government. We are a voluntary, non-profit, non-political organisation. Our main objectives are to:

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

Traditionally a peak body, CAWA's membership includes representatives of the Health Consumers Council, Citizen's Advice Bureau, National Council of Women and the UWA Centre for Consumer Research. Other attendees at meetings include lawyers, teachers, environmentalists and health professionals who have a wealth of experience in representing domestic consumers whether disabled, poor, wealthy, currently employed or retired, family members or single, old or young. Some special people have been committed members for twenty years or more.

We are given some limited support by the Department of Commerce which has always included CAWA as a stakeholder. With support, CAWA through its quarterly newsletter and its website can reach a far greater number of domestic/small use consumers than any other consumer organisation in WA. Without support most consumers in WA will be without any representation.

We currently provide representation to the Building Disputes Tribunal, the Water Authority Customer Advisory Council, the Keep Australia Beautiful Council, the Holiday Accommodation Managers Dispute Resolution Committee, the UWA Centre for Consumer Research and we are members of the Consumers Federation of Australia. In our own areas of interest and by request we are happy to advocate for individual consumer's rights.

In the last 12 months our major submissions have included: the Building Services Bill, Genetically Modified Crop Trials, Retirement Villages Review, Dental Services/Preferred Providers, Strata Title Managers, Unit Pricing and the Right to Education in Remote Areas.

There has been little change in CAWA's membership, activities or capacity over the period from our initial appointment to the ERACCC in 2005 through subsequent reappointments in 2007 and 2009. To my recollection, we have never failed to provide representation at a meeting of the ERACCC.

CAWA is dismayed at the ERA's decision not to reappoint our organisation to the ERA (Consumer) Consultative Committee. Whilst most of the information presented at ERACCC meetings uses economic jargon and requires knowledge which is beyond the scope of most domestic consumers, the forum provides an opportunity to keep up to date with recent issues and to network with and canvass the views of consumers and consumer representatives. While most information would be better disseminated through, as we strongly advocate, the use of plain language, the Ombudsman's Report is always enlightening.

You will recall the objectives of the ERACCC (2005) were to provide

- a source of advice to the Authority from consumer representatives in relation to its decision-making and policy development on regulatory issues affecting small use customers
- a means for the Authority to keep consumer representatives informed on regulatory issues
- consumer representatives with the opportunity to present their views on specific issues to the Authority and
- an avenue for broader consumer consultation on utility regulation issues.

With the resignation of the Country Women's Association in 2007 and now the non reappointment of CAWA, we fail to comprehend how these objectives can be met when possibly more than 90% of small use customers are not represented.

No other member organisation of ERACCC can represent the interests of ordinary,

*(Continued on page 26)*

## **ERACCC continued ...**

*(Continued from page 25)*

everyday consumers, the vast majority. Although I note and fully support the reappointment of WACOSS and Consumer Credit Legal Service (WA) Inc (both traditionally members of CAWA) to the committee, both represent a very small proportion of disadvantaged or struggling WA consumers, as does the Financial Counsellors Association of WA. All other currently appointed ERACCC members represent small business or Government.

We also note that the decision coincides with a forecast massive increase in energy costs which are "set to rise at above inflation levels for at least a decade if the State Budget is to avoid a multi-billion-dollar black hole" (The Weekend West, February 19-20, 2011). Again we question the motives for CAWA's non reappointment.

At a maximum cost of perhaps \$500 annually to the people of WA for CAWA's representation on the ERACCC (being one of the rare committees where sitting fees are paid), it is ridiculous that the ERA cannot find the resources to support our organisation.

We hope you will reconsider.

I can be contacted on 0419 943 707 or at [genettekeating@bigpond.com](mailto:genettekeating@bigpond.com) should you wish to discuss this further.

Yours sincerely

Genette Keating President

**You can direct credit your membership fees into the CAWA account. Full membership is \$20 and concessional membership is \$15.**

**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**

## MEDIA RELEASE

30 January 2011

**Media contact:**

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ijarratt@australiainmail.com



ACCC SHOULD FOLLOW EXAMPLE SET BY  
FOOD LABELLING REVIEW

The Queensland Consumers Association (QCA) says that the Australian Competition and Consumer Commission (ACCC) should follow the example of the recommendations of the Review of Food Labelling released recently and ensure that consumers can easily notice, read, and use the unit prices on all shelf labels in supermarkets.

The Review said the effectiveness of the recommendations "will depend on the consumer's ability to notice, read and comprehend the information provided".

To achieve this, the Review recommends a minimum print size of 3.5mm for mandatory information on the labels on food packages.

QCA spokesperson Ian Jarratt welcomed this recommendation but says it highlights the need for improvements to the presentation of unit prices on the shelf labels in most supermarkets.

Mr Jarratt says that the minimum 3.5mm print size recommended by the Review is only for food labels which normally will be read only at arms length or less. Yet, the size of print showing the unit prices on many supermarket shelf labels is less than 3.5mm and they have to be read at much greater distances, for example on bottom shelves often 1.6metres from eye level.

Mr Jarratt says far too many unit prices are difficult or impossible to read even for consumers with normal sight let alone the many with less than perfect sight.

This is greatly reducing consumer awareness of unit pricing and use of it to make major savings.

QCA and other consumer groups have called for the ACCC (which is responsible for administering the mandatory Unit Pricing Code) to ensure that all supermarkets comply with the Code's requirements that unit prices be displayed prominently and legibly.

*(Continued on page 28)*

## **Unit pricing continued ...**

*(Continued from page 27)*

Mr Jarratt says supermarkets have no difficulty ensuring that consumers can easily notice and read every selling price in the store and they can, and should, do the same for unit prices. To do so many supermarkets must increase the print size substantially.

## **Submission on Strata Managers**

***The following submission was prepared by Ms Rhonda Algaba, Vice- President of the Consumers Association of WA and sent to Hon Max Trenorden MLC, Chairman of the Public Administration Committee in the Legislative Council 12th January 2011. The body of the letter is reproduced below and continues onto the next two pages***

Consumers of strata managed units should be able to have confidence that Strata Managers are fit and proper persons, with consumer's interests as a priority who are available to facilitate harmony between owners and tenants of strata titled homes.

Strata Managers are an extremely important contact for tenants and owners and with increasing demand for smaller and retirement homes, their role should be considered in the forward planning of the State.

Strata Managers are often the intermediary when someone unfamiliar with the system of strata living, takes on a unit for the first time after leaving the family home or arriving from overseas. It is imperative that Strata Managers can adequately fulfil the role, providing correct and up to date information as required.

The Stamford Report (2007) included only industry bodies (and not consumers) amongst the stakeholders consulted. Nevertheless the report identified several risk areas of particular concern to consumers including "misappropriation of funds, mismanagement of funds, poor advice and lack of accountability and/or recourse" by Strata Managers.

In consequence, we submit that Strata Managers should be licensed or registered to practise in this modern and complex area of housing. The standards for obtaining a Licence should be high and emphasise the protection of the owner/tenant. Obtaining a license should involve education in the provisions of the act and familiarity with accounting and management procedures. Applicants should provide background information and police clearance. Once licensed, Strata Managers should have ongoing supervision by a Government and/or industry body (eg. Landgate, Strata Titles Institute of Western Australia (STIWA), Department of Commerce/Consumer Protection). A register of licensed Strata Managers should be easily accessible to consumers.

Penalty or at least equitable redress should apply for a Strata Manager's non compliance with the Strata Titles Act. Consumers should have access to a low cost jurisdiction where their claims can be heard. We are not convinced that the current procedure, through the SAT, provides consumers, many of whom are elderly, with convenient accessible redress. Consideration should be given to reinstating the Strata Titles Referee or providing a Strata Titles Ombudsman.

As for other relevant matters - this is a "can of worms"!

New owners/ tenants of strata titled properties may not understand the 'strata' system. A publication explaining rights and responsibilities under the act should be available both online and in hard copy. We envisage something similar to the "Landlord's Handbook" or the "Tenants Guide to Renting a home in Western Australia" would be most helpful. Topics such as "your contract", "limits of use", "common property", setting up a Strata Council, AGMs, insurance, painting, access, privacy etc. together with issues which may differ between small and large complexes could be simply explained.

This publication should also be provided by Real Estate Agents to prospective purchasers/tenants of Strata Titled property.

Increasingly there are people of non-English speaking background who are becoming both owners and tenants of strata titled units and hence the publication should be available in several languages.

Many strata companies/councils barely manage to conduct AGMs, let alone understand what their Strata Manager should be doing for them in return for payment of ever-increasing fees. Many owners are too scared to change an underperforming manager or don't know how to go about it. One person, known to me, paid his strata maintenance fee yet was sent another bill, maybe a reminder, and he paid the second fee as well. He is well over 80. Others have been billed \$100 for the manager/agent to conduct the AGM! It is not generally understood what the quarterly fees cover or what is a reasonable charge.

Many do not understand financial statements handed out at AGMs. Bank statements are infrequently seen at AGMs and often there is no audit of the accounts, as it is not required by the present Act.

Extra levies can be requested for major works of maintenance. This can lead to conflict when one unit has to have work done yet all owners are asked to pay. Obviously, understanding of the particular strata title and how much of the unit/ complex is owned by each owner needs to be clear.

*(Continued on page 30)*

## ***Submission on Strata Managers continued ...***

*(Continued from page 29)*

Understanding to what extent internal renovations can be performed may also cause conflict. Drastic internal changes could affect the roof supports however some owners believe that inside their unit they can do as they please.

Issues such as responsibilities with gardens, painting, letterboxes, parking and noise complaints etc are too numerous to place here. It would be interesting to know how many complaints are received by Consumer Protection and the Tenants Advice Service.

Often the main power meter belongs to Western Power but not the sub-meters that are read and on which individual owner's accounts are based. Most owners are not aware that if a replacement meter is required, they have to pay for it.

Many complexes do not have individual water meters. Excess water bills are divided equally between the residents. This arrangement offers no financial incentive to conserve water, upsets consumers who do conserve but must still pay and is confusing for residents.

Many thanks for accepting this submission. We apologise for its late arrival but as stakeholders we were not aware of the 2010 review.

Genette Keating

President

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

***Anne Driscoll, Genette Keating, Rhonda Algaba, Ian Jarratt and  
Verity Cripps.***

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

*(Continued from page 6)*

### **What bags are best for the environment?**

Peter Allan, principal consultant at Hyder Consulting, has authored numerous studies for the government on the impacts of plastic bags, including reports about which shopping bag would be kindest to the environment. This research involved a life-cycle assessment of bag options, including energy and water use, materials consumption and litter and marine impacts across the life of a bag.

The analysis found that, overall, a reusable bag is a better option for the environment. "Given the popularity of the green bags, we needed to test whether reusable was better for the environment and this was comprehensively proven — but only so long as you use it repeatedly over a long period," says Allan. The company's research shows that a green bag has to be used more than 23 times before it becomes a better option for the environment than single-use bags.

Of the range of reusable bag types tested, the most environmentally friendly option was the 100% recycled-content PET reusable bag, closely followed by the reusable green bag. Calico bags were not recommended, due to the amount of water used in their production. An assessment of single-use bags was also undertaken and the recycled HDPE bags came out best, with paper and biodegradable starch bags the least preferable for the environment. "Both biodegradable and paper bags use more energy and materials to make than thin plastic bags," says Allan. "And there is little advantage in biodegradable and degradable bags because most end up in landfill where there is no benefit to breaking down — they just create more methane and a less-stable landfill site."

### **Terminology**

- ◇ **Biodegradable Plastic** that meets the Australian Standard for biodegradability, which means it breaks down or composts into carbon dioxide, methane, biomass and water. Generally made of corn starch or other plant material.
- ◇ **Degradable Petroleum-based plastic** that breaks down into small pieces when exposed to oxygen or sunlight.
- ◇ **HDPE** — high-density polyethylene. A lightweight plastic from which most single-use plastic bags are made.
- ◇ **LDPE** — low-density polyethylene. Thicker plastic, from which boutique bags are made.

### **Facts of concern**

- ◇ Australians throw away 7,000 every minute.
- ◇ 429,000 supermarket bags are dumped into landfill every hour.
- ◇ 75% of the 3.9 billion bags used in Australia in 2007 that came from supermarkets.

### **What can West Australians do?**

- ◇ Lobby their local supermarket chains to take the initiative and ban plastic bags.
- ◇ Lobby the Western Australian and Federal Governments to institute state and Australia wide bans.

## **Funding cuts to schools**

**CAWA received the following letter , written on behalf of the Minister for Education, the Hon Liz Constable outlining the Education Department's response to the Standing Committee on Estimates and Financial Operations Report released in July 2010.**

11 January 2011

Dear Ms Keating

Thank you for your letter to the Minister of Education regarding the Government's response to the Standing Committee on Estimates and Financial Operations Report allowing the inquiry into *The Removal of Senior School Allocation Funding for Year 11 and 12 Courses as 21 District High Schools*. In the Minister's absence, I am able to provide the following information on her behalf.

The Government's response to the report was approved by the Premier and submitted to the Estimates and Financial Operations Standing Committee on 9 November 2010. In preparing this response, a number of considerations were taken into account after having the opportunity to listen to a range of stakeholders including School Council Chairs, Parents and Citizens' Associations, local government and community organisations.

Schools in regional and remote areas in Western Australia require additional support to ensure students have access to high quality educational programs. The Department of Education constantly reviews the provision of funding to ensure that the limited resources available are allocated so that students gain the maximum educational benefit. The Department acknowledges the challenges faced by these schools, such as isolation and small class sizes, by providing additional funding including Curriculum Access and the Schools Supports Programs Resource Allocation. This funding is allocated based on the school's context so that the principal can use these resources flexibly to deliver educational and support programs that suit the needs of their students.

During 2010, the Minister had the opportunity to visit district high schools throughout Western Australia to hear the views of staff and parents. She also engaged in discussions with other stakeholders through correspondence and meetings held in this office. In light of concerns raised, particularly the hardship experienced as a result of the drought, the Minister has recognised that, for some students, it is necessary to remain at their district high school.

During these visits, The Minister was also impressed with the innovative programs run in these schools, particularly vocational educational and training programs that

support senior student's transition to employment, and delivered in partnership with industry.

Subsequently, the Minister requested the Department investigate ways of supporting initiatives such as these.

After much consultation, and in keeping with the Department's objective to ensure that its resources are directed to where they will be of most educational benefit, the Minister announced in the Legislative Assembly on 9 November 2010 the Department's new funding arrangements for selected district high schools. From 2011, these 19 schools\* will be provided with additional resources to design and deliver senior secondary programs that optimise opportunities for students to develop their readiness for employment or further study. These schools will have their Curriculum Access allocation extended in order to provide improved training programs for Year 10, 11 and 12 students, in partnership with local industry and community organisations.

The additional funding provided to these schools will ensure that students, parents and their communities benefit from strengthened senior school programs. This initiative has been well received by principals and organisations such as the Isolated and Children's Parents' Association.

Thank you for your support of regional and remote schools in Western Australia.

Yours sincerely

Tony Rutherford  
Policy Coordinator  
Office of the Hon Dr E Constable MLA  
Minister for Education

\*The 19 schools identified for this enrolment-based funding in 2011 are:

- |                   |                |
|-------------------|----------------|
| ◇ Kojonup         | ◇ Mullewa      |
| ◇ Gnowangerup,    | ◇ Wyndham      |
| ◇ Southern Cross, | ◇ Dalwallinu   |
| ◇ Wyalkatchem     | ◇ Mukinbudin   |
| ◇ Carnamah        | ◇ Narembeen    |
| ◇ Dongara         | ◇ Quairading   |
| ◇ Boddington      | ◇ Brookton     |
| ◇ Gingin          | ◇ Corrigin     |
| ◇ Jurien Bay      | ◇ Wongan Hills |
|                   | ◇ Wagin.       |

## **Australian Consumer Law**

**Anne Driscoll, Commissioner for Consumer Protection, Department of Commerce, Western Australia emailed the following information about the new Australian Consumer Law that became operational at the beginning of 2011.**

On 1 January 2011, the new, uniform Australian Consumer Law came into operation at the Commonwealth level and in every State and Territory in Australia.

For the first time in over 20 years, the basic consumer laws are the same throughout Australia.

While the Australian Consumer Law is heavily based on provisions in the Commonwealth *Trade Practices Act 1974* (as from 1 January 2011 this Act is called the *Competition and Consumer Act 2010*) and the *Fair Trading Act 1987 (WA)*, there are many new provisions that impact on consumers and businesses, and Consumer Protection as the regulator.

The *Fair Trading Act 2010 (WA)* applies the Australian Consumer Law as set out on 1 January 2011 in Schedule 2 to the Commonwealth's *Competition and Consumer Act 2010* (the former *Trade Practices Act 1974*) as the Australian Consumer Law (WA).

Future amendments to Schedule 2 to the Commonwealth's *Competition and Consumer Act 2010* made by the Commonwealth, will not apply in Western Australia unless and until separate amendments are made to the *Fair Trading Act 2010 (WA)* to apply those Commonwealth amendments as a law of Western Australia.

Regulations relevant to the Commonwealth's Australian Consumer Law will automatically apply in Western Australia but they will be subject to disallowance by the Western Australian Parliament as if they were regulations made in Western Australia.

The Australian Competition and Consumer Commission will administer the Commonwealth's version of the Australian Consumer Law and Consumer Protection in Western Australia will administer the Australian Consumer Law (WA).

The *Fair Trading Act 2010 (WA)* also has a number of other provisions, in addition to applying the Australian Consumer Law. This Act sets out the functions of the Commissioner for Consumer Protection, the means for appointing investigators, the powers of investigators and the means for making and enforcing codes of practice.

You can access the *Fair Trading Act 2010 (WA)* for free from the WA State Law Publisher site — [http://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_12149\\_homepage.html](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_12149_homepage.html).

Because the *Fair Trading Act 2010 (WA)* applies the Commonwealth's version of the Australian Consumer Law as the Australian Consumer Law (WA), the text of the Australian Consumer Law is not set out in the *Fair Trading Act 2010 (WA)* and it is not available from the State Law Publisher.

For more information on the Australian Consumer Law, go to Consumer Protection's web site — <http://www.commerce.wa.gov.au/ConsumerProtection/> and follow the links to a range of information for consumers and businesses.

To obtain a copy of the Australian Consumer Law, go to the CommLaw web site - <http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/all/whatsnew/88DDB3C4250F14BDCA25776200086CA7?OpenDocument> where you can download versions of the Australian Consumer Law in a variety of formats.

While the Australian Consumer Law is now in operation, it is important to note that transactions that took place before 1 January 2011 remain covered by the former laws.

We realise that changes to consumer laws, particularly at this time of year, bring special challenges to business trying to do their best to comply with these laws.

While we always reserve the right to take prompt action against those that deliberately flout the law, our focus in 2011 will be on assisting businesses and consumers in understanding their new rights and responsibilities under the Australian Consumer Law.

Regards

**Anne Driscoll**

Commissioner for Consumer Protection, Department of Commerce, Western Australia

## **Building legislation**

**Following the information that featured in the last Newsletter regarding the four new Building Bills currently before the WA Parliament, CAWA wrote to Simon O'Brien, Minister for Commerce, expressing its concerns about The Building Services (Complaint Resolution and Administration) Bill 2010. This letter and a covering letter was also sent to the Master Builders' Association, the Housing Industry Association, and other Members of Parliament.**

**To date, CAWA has had responses from Mark McGowan, Manager of Opposition Business, Shadow Minister for State Development, Regional Development, Housing and Works and Trade and Lisa Baker, MLA, Labor Spokesperson for Community Mental Health. Our concerns were raised in Parliament by both members in the second reading speech re these bills. We have also been invited to meet with Alison Xamon (Greens).**

**Both the letter and the explanatory note are reproduced on the next pages. Reference is also made to a further letter, sent to Troy Buswell, the then Minister for Commerce, in 2009. This letter appeared in our Jan-Feb 2010 Newsletter.**



Locked Bag 14  
Cloisters Square  
WA 6850

Accompanying this cover letter please find two letters written by Consumers' Association of WA (CAWA) detailing our opposition to *The Building Services (Complaint Resolution and Administration) Bill 2010*, currently before the Western Australian Parliament. The latter letter, dated 17 Feb 2011, is addressed to the Hon Simon O'Brien, Minister for Commerce, and the former was sent at the invitation of Peter Gow, Executive Director of the Building Commission at the time the Hon Troy Buswell was Minister for Commerce. CAWA representatives later met with the Minister for Commerce to discuss the concerns raised in the former letter, only to be told that the Minister had already made his decision, and that he had not seen the letter prior to the meeting or been briefed as to its contents.

These letters are the culmination of ongoing dialogue that the CAWA has been having re the BDT and current building legislation since 2003 when we worked initially in collaboration with the Master Builders' Association (MBA), the Housing Industry Association (HIA) and the Architects' Board of WA. Over this time, CAWA has made numerous submissions and followed these up with face-to-face meetings where it has been apparent that decision making re the State Administrative model is a result of Ministerial decisions, based on assertions rather than a factual analysis of the benefits and weaknesses of the current system. These decisions were in direct opposition to the proposals put forward by both CAWA and building industry representative groups.

At this juncture, we are asking your support to ensure that the legislation is reviewed by a parliamentary committee in order that the allegations we raise in our current letter are investigated thoroughly. We allege that the new legislation will overturn a low cost, high turnover, no frills, non legalistic, highly democratic process based on equity, and good conscience. And, as currently mooted, the new building dispute process will be less equitable, more costly, more drawn out and in the end, far more frustrating for WA consumers. Based on past experience we know it is far better to get legislation 'right' in the first place, rather than 'patch it' once it has been passed. In this case it is especially important given the legislation involves a judicial system that relates to the most significant financial decisions WA consumers make in their lifetimes.

We appreciate you taking the time to read our letters and we would welcome the opportunity to meet with you in order to discuss these issues in more depth. I will contact you shortly in the hope that we can organise a time to discuss this important legislation in greater detail.



The Hon Simon O'Brien  
Minister for Commerce  
Parliament House  
PERTH WA 6000

2<sup>nd</sup> February 2011

**Re: *The Building Services (Complaint Resolution and Administration) Bill 2010***

I would like to begin our submission by giving you some background into our organisation before proceeding to discussion about *The Building Services (Complaint Resolution and Administration) Bill 2010*.

The Consumers' Association of Western Australia Inc. (CAWA) was established in 1974 to provide consumer representation to business and government. We are a voluntary, non-profit, non-political organisation. Our main objectives are to:

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

I am writing on behalf of CAWA to express our deep concern with *The Building Services (Complaint Resolution and Administration) Bill 2010*, currently before the WA Parliament.

## **Building legislation continued ...**

*(Continued from page 37)*

CAWA has had a close and constructive working relationship with the Building Disputes Tribunal (BDT) since its establishment in 1992 as the Building Disputes Committee. Many members of CAWA have served as Consumer Members of the Tribunal, and indeed three continue to serve in that capacity.

We are concerned that the dispute resolution model proposed under *The Building Services (Complaint Resolution and Administration) Bill 2010* which will split the BDT's role and functions between the proposed Building Commission (the Commission) and the State Administrative Tribunal (the SAT) will disadvantage consumers in a number of ways.

First, the **new system will be more costly**. In September, members of the BDT attended an information session conducted by Peter Gow, Executive Director of the Building Commission at which information was given regarding the new cost structure to support dispute resolution. Currently there is a flat fee of \$70 on all building licences, including commercial properties, but under the new Act it will be set at .125% of domestic licence fees. The fee is thus effectively indexed according to the cost of the home – a \$300,000 home equates to paying a \$375 fee towards the dispute resolution process.

While this increased fee will be somewhat offset by a reduction in the Local Government Permit Fee which will be reduced to between a half to two thirds, the levy still effectively becomes a tax on the wealthier home builders who will subsidise consumers who are building at the lower end of the market where most disputes arise. This represents a very significant increase on the current levy. Furthermore, under current legislation more expensive homes are excluded from the provisions of the *Home Building Contracts Act*.

Owners will still have to pay an additional fee when lodging a complaint which we understand will be considerably higher than the current fee of \$32.00. We also understand that there will be additional fees if a litigant proceeds to the State Administrative Tribunal (SAT).

We also note that the reduction in the Local Government Permit Fee coincides with reduced inspections. Under the new legislation there will four types of inspection:

- ◇ Mandatory inspections as set by the building regulations. A registered practitioner will need to do these. A registered builder will be able to sign off on his own inspections while an owner builder will need to employ a registered person to complete their sign offs.
- ◇ Local Government **may** conduct sample inspections to check general compliance with building permits rather than regular inspections to check compliance with the building licence.
- ◇ The Building Commission's compliance section will carry out **random** audits for compliance to the building legislation and the building code.
- ◇ Inspections that take place because of a complaint.

In reality and from our very considerable experience in this field, at the end of the building process, when a Notice of Completion is sent to the Local Government Authority, in many cases the only inspections carried out on a building may well be the builders own site inspections. It seems consumers will not have any way of knowing what inspections are carried out during the construction process. Independent inspections carried out at timely intervals during the building process increase confidence and are welcomed by consumers. Inspections can bring immediate structural concerns to light, thus reducing the possibility of destructive testing or demolition if building issues become apparent later on.

Secondly, the new system **will be less just**. The proposed model is in breach of both the common law right of parties to be heard and the duty of decision makers to provide a fair hearing in accordance with the rules of natural justice and procedural fairness. The Building Commission decisions will simply be administrative decisions. When complaints are made to the Building Commissioner, they will be determined by Building Commission staff on the basis of the written information presented by the parties without the opportunity of a face to face hearing before an experienced and properly constituted panel as has been the practice with the BDT. Parties to disputes are denied natural justice in the proposed model as they will not be given an opportunity to fairly present their case and reply to the other party's submissions.

The BDT currently provides an efficient, informal forum for parties to attend in person to outline the circumstances of the dispute. This is a fair and equitable process which often results in the parties achieving a greater understanding and reaching an acceptable compromise. Certainly the members of the BDT benefit from hearing the parties and having the opportunity to clarify the issues in dispute, which are often technical construction matters.

Many people, both consumers and builders, will face disadvantage through their inability to adequately detail all relevant issues in a written format. The experience of the BDT is that parties often don't fully appreciate the significance of aspects of the dispute until they are given the opportunity to hear and respond to the evidence of the other party. The suggestion of Mr Gow that staff of the Building Commission will assist parties to prepare their submissions to the Building Commissioner is fraught with potential conflicts and difficulties.

Parties will be able to appeal the Building Commissioner's decision to the SAT and it is our expectation that a very high proportion of matters will go on to the SAT. This will involve not only an added cost, but will add considerably to the length of time it will take to have matters resolved. An inefficient model will inevitably add to the burden of stress endured by the parties in dispute and is likely to result in elderly homeowners (for example) not pursuing valid complaints.

A further concern is that once a case proceeds to a SAT hearing, it will not necessarily be heard by a three person Tribunal, but rather a single legal practitioner or at best a two member Tribunal with an additional sessional member who has some building

*(Continued on page 40)*

## **Building legislation continued ...**

*(Continued from page 39)*

expertise. Currently at the BDT, matters are heard by three person Tribunals comprising a legal chair, and both building and consumer representatives thus ensuring balanced judgements. There is no provision in the SAT for the three person Tribunals to continue. The consumer representation in the resolution process will fall away and there will be no one to ensure that the interests of consumers are considered equitably. The experience of the BDT has demonstrated that technical and complex construction issues are better resolved with a three member Tribunal, with the third member providing balance in discussions and a 'casting vote' in the event of the two other sitting members being unable to reach agreement.

Thirdly, the new system **will be more legalistic**. We understand from Mr Gow that under the new procedures Consumers will be required to fill in a Scott Schedule when lodging a complaint and while Mr Gow believes this can be done with the help of Departmental customer service staff, the experience of the BDT Members and staff is that consumers are frequently required to employ lawyers when this type of documentation is required in hearings. Further, in our experience the SAT hearings and procedures are far more legalistic than the current informal BDT hearings where consumers and builders generally present their cases without legal representation. We believe that consumers will be significantly disadvantaged in having to seek a review of decisions of the Building Commissioner through the SAT and that many Builders will use the cost and complexity of such reviews as a lever to dissuade consumers from lodging complaints.

Finally, **dispute resolution will take inevitably longer** under the new system. The dispute resolution process will effectively involve two separate organisations each with their own built in time frames, backlogs and priorities. It is not unreasonable to assume that a matter may spend many months in the Building Commission have investigations, reports, conciliation and not reach a resolution then to have to move on to the SAT only to have to start at the bottom of a queue to have the matter reheard.

CAWA does not support *The Building Services (Complaint Resolution and Administration) Bill 2010*. It believes that the new legislation will disadvantage consumers by making the dispute process less equitable, more costly and more drawn out and in the end far more frustrating than the current system which is a low cost, high turnover, no frills, non legalistic, highly democratic process based on equity, good conscience, and a lack of legal forms. We have seen no data or other information which suggests otherwise.

CAWA is particularly concerned that there has been no real consultation with stakeholders during the development of this legislative scheme – in particular with consumers – and concerns regarding the cost and effectiveness of the proposed scheme which CAWA expressed to Minister Buswell and to Mr Gow have not been adequately answered. A copy of our previous submission is attached for your information.

*(Continued on page 45)*

***A comprehensive review of the legislation relating to retirement villages has been carried out over a number of years and the final report was released in November 2010.***

## **EXECUTIVE SUMMARY**

The ageing of Australia's population is well documented. According to the Australian Bureau of Statistics (ABS), ageing is the most noteworthy population change projected to occur internationally and in Australia over the next 50 years. Population ageing is the change in age structure where the population has an increasing proportion of older people (those aged 65 years and older) in comparison to the proportion of children (those aged 15 years and younger). (1 ABS, 1301.0 – *Year Book Australia*, 2008; <http://www.abs.gov.au>)

The ABS forecasts that in 2051, 22.2 per cent (nearly a quarter) of Western Australia's population will be aged over 65. This means that the proportion of the aged population in the State will effectively double in less than half a century. The retirement village industry appears to be a growth industry and, with the ageing population, it is likely to continue to expand in the future.

An ageing population has significant policy implications for Government. The growth in demand for accommodation for older people is one such implication. The review of retirement villages legislation acknowledges the increasing popularity of retirement village living at both a state and national level.

The review has been undertaken in the knowledge that since the Retirement Villages Act was introduced in Western Australian in 1992, the legislation has not been altered significantly. Over the past few decades, the nature of the industry has changed considerably. Historically, retirement villages were owned and operated by churches and charitable institutions. Private sector for-profit involvement in the industry can be traced back more than thirty years. More recently, in light of Australia's ageing population, many institutional players have taken advantage of opportunities within the sector which has led to significant growth and investment in the industry. Section 83 of the *Retirement Villages Act 1992* (the Act) requires a review of the operation and effectiveness of the Act to be conducted every five years.

Section 43 of the *Fair Trading Act 1987* requires that a code of practice prescribed by regulations under this Act, be reviewed within three years of the date it first takes effect. In February 2006 the then Minister for Consumer Protection, the Hon Michelle Roberts MLA, approved a review of both the *Retirement Villages Act 1992* and the *Fair Trading (Retirement Villages Code) Regulations 2003* to be undertaken concurrently.

*(Continued on page 42)*

## **Statutory Review of Retirement Villages Legislation continued ...**

*(Continued from page 41)*

In conducting the review, Consumer Protection, a division of the Department of Commerce (formerly the Department of Consumer and Employment Protection), convened a series of public meetings in both metropolitan and regional Western Australia from July to September 2006. Over 900 people attended these meetings and a large number of issues relating to retirement villages were raised in this first stage of the review.

The Department also called for written submissions on issues relating to retirement villages in August 2006. Over 150 written submissions were received. In June 2007 the Department released an issues paper bringing together all of the issues raised through the consultation process. A four month period was allowed for public responses to the issues paper and a total of 131 written submissions were received in this second stage of the review.

The final stage of the review was a third round of consultation which commenced after the then Minister for Commerce Hon Troy Buswell, MLA, approved the release of a draft report on 29 July 2009. A six week period was allowed for further comment by interested stakeholders with a two week extension upon request. Fifty submissions from residents (individual and associations), industry and Government were received in this final round of consultation. The Department also held a final round of meetings with key stakeholders representing retirement village residents and industry.

During the drafting of this report, the Legislative Assembly of Western Australia referred an inquiry into the Karrinyup Lakes Lifestyle Village to the Economics and Industry Standing Committee. The terms of reference of this inquiry required the Committee to inquire into the actions of Moss Glades Pty Ltd and its individual directors in relation to the development of Karrinyup Lakes Lifestyle Village. In particular the Committee examined the extent to which state and local government legislation had been complied with. The findings and recommendations of this inquiry have been taken into account in this report.

It is essential that Western Australia has legislation in place to adequately protect the interests of senior consumers, in particular, retirement village residents. Senior consumers need to be confident that they will get a "fair deal" when moving into, living in, and exiting, a retirement village. It is also important that the industry is able to operate in a dynamic and competitive environment. Continued interest and investment in the retirement village industry is critical if retirement villages are to be developed and available to seniors as a housing option in the future.

In conducting the review, the Department found that while it has an important role to play in the administration of the legislation, consumers cannot devolve their decision-making responsibilities to the Department. Ultimately, consumers must take responsibility for any contractual arrangement entered into. Entering into a

retirement village involves making critical financial and lifestyle decisions. Purchasing a right to reside in a village is a significant financial transaction, similar to buying a property in the general real estate market. The Department cannot emphasise strongly enough the importance of researching the industry and its alternatives, reading disclosure information, village contracts and any other relevant documents, and obtaining legal and financial advice, prior to entering into a retirement village.

The **key recommendations** include:

- ◇ *Seniors housing Information service*: the establishment of a seniors housing information service to provide prospective residents and residents with independent information and support on housing matters relevant to seniors;
- ◇ *Management of retirement villages*: the introduction of a power to remove "non-performing" managers of retirement villages and a power to appoint an administrator to manage a village where the well being or financial security of residents is at risk;
- ◇ *Disclosure and cooling off*: more time for prospective residents to consider information and a longer time for "cooling off" from contracts;
- ◇ *Reserve funds*: mandatory reserve funds to enable retirement villages to be maintained in a reasonable condition;
- ◇ *Auditing of accounts*: mandatory auditing of retirement village operating accounts and special funds unless residents vote each year not to require an audit;
- ◇ *Recurrent charges*: provisions to enable residents to appeal at the State Administrative Tribunal against excessive and unwarranted increases in recurrent charges payable by residents;
- ◇ *Ongoing charges after a resident leaves*: provisions requiring that outgoing non-owner residents only pay ongoing charges for a prescribed period (a maximum of 6 months) from the time that the resident or residents' estate delivers up vacant possession of the premises and the lease can be on-sold;
- ◇ *Residents' committees*: strengthening the effectiveness of residents' committees; and
- ◇ *Power of the Commissioner*: strengthening the powers of the Commissioner for Consumer Protection, including a power to seek enforceable undertakings. Although the review process has been extensive and detailed, retirement villages legislation remains highly complex and evolving. Residents and industry groups continue to raise new issues or variations on existing issues. It is apparent that the Department

*Continued on page 44)*

## **Statutory Review of Retirement Villages Legislation continued ...**

*(Continued from page 43)*

will need to continue to consult with key stakeholders to address such issues and where possible attempt to devise practical solutions and recommendations for amendment of legislation where required.

This report also makes 100 more specific, detailed recommendations for change in the extensive 226 page report and cover issues such as:

- ◇ Marketing information
- ◇ Aged care facilities
- ◇ Disclosure review period
- ◇ Waiting list fees
- ◇ Other pre-entry costs
- ◇ Disclosure to prospective residents
- ◇ Village management
- ◇ Recurrent charges
- ◇ Village budgets
- ◇ Capital maintenance and replacement
- ◇ Alterations to premises
- ◇ Residents' committees
- ◇ Voting procedures
- ◇ Dispute resolution
- ◇ Relocating within a village
- ◇ Selling premises within a retirement village
- ◇ Ongoing charges after a resident leaves
- ◇ Refurbishment costs
- ◇ Exit fees
- ◇ Estate matters
- ◇ Title matters
- ◇ Structure of the legislation
- ◇ Application of the legislation
- ◇ Limitation period
- ◇ Definitional matters
- ◇ Monitoring and compliance

- ◇ Penalties
- ◇ Retirement villages established on crown land
- ◇ Register of retirement villages
- ◇ Accreditation of retirement villages
- ◇ Previous Federal regulations
- ◇ 2002 Statutory review

The full report can be found at:

[http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Publications/Statutory\\_Review\\_of\\_Retirement\\_Villages\\_Legislation\\_Final\\_Re.pdf](http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Publications/Statutory_Review_of_Retirement_Villages_Legislation_Final_Re.pdf)

## **Building legislation continued ...**

*(Continued from page 40)*

CAWA believes that the Bill should be referred to a Parliamentary Committee for a thorough investigation of the legislation before it is passed by Parliament, during which time experienced practitioners currently working in building dispute resolution can be given the opportunity to provide comment and input so that the rationale of the new disputes resolution process can be clearly articulated and its principles of providing a timely, low cost, simple, non-legalistic and just dispute resolution mechanism can be ensured.

The Executive of CAWA would welcome the opportunity to meet with you and discuss any issues set out above. I can be contacted on 0419 943 707. In the interim please note that copies of these letters have also been sent to Master Builders' Association, the Housing Industry Association as well as other WA parliamentarians so that our views can be widely considered.

Yours sincerely

Genette Keating  
President

Submission prepared by:  
Valdene Buckley

# **Genetically modified foods**

The Hon Terry Redman  
Minister for Agriculture  
Parliament House  
PERTH WA 6000

27<sup>th</sup> January 2011

## **Re Genetically modified crops in WA**

I would like to begin our submission by giving you some background into our organisation before proceeding to discuss our concerns about the future of genetically modified crops in Western Australia.

The Consumers' Association of Western Australia Inc. (CAWA) was established in 1974 to provide consumer representation to business and government. We are a voluntary, non-profit, non-political organisation. 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
- ◇ encourage consumer education.

Currently, CAWA is deeply concerned about health, economic and environmental ramifications arising from the WA Liberal Government's decision to allow commercial crops of GM canola to be grown in WA. This decision may well result in three of the United Nations basic consumer rights being contravened, namely the:

- ◇ right to safety
- ◇ right to be informed
- ◇ right to choose.

This letter addresses our concerns for WA consumers on these three issues.

### **The right to safety**

While genetically modified crops have been grown overseas for a number of years, there appears to be a lack of independent research to verify GM crops are completely safe. Research results generated by companies who wish to make money from their products do not necessarily provide valid, reliable data. In the past damaging test results have been withheld by tobacco, asbestos and pharmaceutical companies. WA consumers need reassurance that GM crops grown

in WA are safe for consumption. We note that a \$9 million project announced in the 2010 State Budget, the "New Genes for New Environments" facility will provide a controlled testing environment to evaluate growth and yield characteristics of GM canola, wheat, barley and lupins. However, this research appears to be premised on GM being safe for long term human consumption despite some anecdotal evidence that there are possible links to toxins associated with growth disorders, infertility and gut problems.

We also note that the previous Minister for Agriculture, Kim Chance commissioned a long term animal feed study, with an allocation of \$92,000 in 2005. However, we understand that this study involving Dr Judy Carman and The Institute of Health and Environmental Research (IHER) in Adelaide has encountered problems since the change in WA Government. CAWA would like to know more about the WA grant. Namely, is the research proceeding, when will the project be complete, how will the results – be they positive or negative – be disseminated widely to WA consumers. Should the results identify health concerns, CAWA would ask that the Minister allocate further research money to additional long term independent intergenerational animal studies. If however the research is no longer being conducted, CAWA believes that some of the current research monies should be allocated to such a research project with sound methodology to reassure WA consumers that the GM food grown in WA is safe for consumption.

### **The right to be informed**

There is a huge amount of contradictory information about the benefits and possible problems associated with GM foods in published research journals and on the internet. WA consumers are confused and are deeply sceptical of information that is provided by multi-nationals with vested interests. It is important that WA makes sound decisions about GM and that WA consumers receive credible information to enable them to make informed decisions. The WA public needs to believe that the WA Liberal Government is making decisions re GM that are not necessarily just based on purported increased crop yields and greater profit but also take into account the concerns of the end users of agricultural products.

CAWA would like a reassurance that the research conducted at "New Genes for New Environments" facility will be freely available and widely disseminated regardless of the results. It is important that WA tax payer research grant money is not used a vehicle to boost the position of huge multinational seed companies that have a history of less than ethical behaviour in overseas markets. CAWA believes that the research will only be credible if the WA Government makes any agreements negotiated with GM seed companies clear and transparent to WA consumers.

### **The right to choose**

CAWA believes that grain producers, as consumers of seed products, have a right to choose whether or not to grow GM crops. Our organisation was deeply disturbed by the report late in 2010 that an organic grower, Steve Marsh's farm had been contaminated by GM canola grown on a neighbouring property and that the affected portion of his farm (325 ha's) has been decertified. More worrying is the assertion that the GM grower would be backed by Monsanto, given its history of unethical behaviour in its bid to achieve market dominance. CAWA would like to know what steps the WA Government is

## **Genetically modified foods continued ...**

(Continued from page 47)

taking to assist Mr Marsh to ensure that the GM plants are removed from his property so that he may have his certification status reassessed.

CAWA is also keen to know what additional steps the WA Government may be taking to ensure there is no other contamination in both growing and grain handling. CAWA notes that the 2009 GM Canola Trials Program in WA, 11 minor incidents were reported, at least two of which involved contamination that required weeding paddocks by hand. It is difficult to see this as a viable solution with large scale cropping programs. Commercial crops of GM were allowed into WA, premised on the idea that GM and non-GM crops could be grown side by side without the integrity of the non-GM being compromised. CAWA is keen to know if the WA Government still believes this is possible especially given the history of GM canola in countries like Canada.

WA consumers should have ability to make clear choices about GM foods when they shop. Labelling on products containing genetically modified food is currently problematic. CAWA believes it is a basic right of WA consumers know whether or not the food they buy is GM produce. Currently, there are loopholes that permit GM products (such as oils, sugars and starch sourced from GM crops and animals raised on GM feeds) to be used in food production without the end product being labelled as GM.

However, CAWA hopes that the Council of Australian Governments (COAG), the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) review of Food Labelling Law and Policy that was released early in 2011 and *Food Standards Amendment (Truth in Labelling - Genetically Modified Material) Bill 2010* (GM Bill) introduced by the Greens and independent Senator Nick Xenophon in November 2010 will address the labelling shortfalls re GM. We understand latter Bill proposes amendments to the *Food Standards Australia New Zealand Act 1991* to provide for the accurate labelling of genetically modified material in food and is due to be voted on in June this year. CAWA would like an assurance that the WA Government will support future labelling frameworks that allow WA consumers to make clear choices regarding GM food products.

In this letter CAWA has raised a significant number of issues relating to GM technology which it hopes you will be able to address. Given that there are an important number of complex questions, we believe that the best way to clarify these issues would be in a face-to-face meeting. We would therefore be very grateful if you could make the time to meet with us to address our concerns re GM technology and its impact on WA consumers. I can be contacted on 0419 943 707 should you have time to meet with representatives of our Association.

Yours sincerely

Genette Keating President  
Submission prepared by: Valdene Buckley

*(Continued from page 23)*

"The medical evidence is pretty strong and we did think it was rather odd that you have all this information, all this advice, yet at the point of sale there is no indication at all," he said. "That tends to undervalue, therefore, all this other effort to encourage women who are pregnant not to drink." The panel recommended a general warning, such as "Alcohol is not good for your health", be placed on labels as part of a wider national public health campaign.

The independent panel, commissioned by the Australia and New Zealand Food Regulation Ministerial Council, came out in favour of current rules for labelling genetically modified (GM) food. The panel said it saw no reason to alter the rule that only foods or ingredients that have altered characteristics or contain detectable novel DNA be required to display a GM label. Gene Ethics executive director Bob Phelps said the recommendations meant shoppers remained in the dark about which products contained GM ingredients. "There will be no effective labelling of genetically manipulated foods and that's not fair to shoppers," he told reporters. The ministerial council will deliver its response to the report to the Council of Australian Governments by the end of this year.

The federal government says it will carefully assess the panel's 61 recommendations. "This is an important review of what are matters of widespread interest to consumers, regulators and the wider food and health sectors," Parliamentary Secretary for Health and Ageing Catherine King said in a statement. "This report seeks to address many food labelling issues that have challenged governments here and abroad for many years".

### **Key recommendations from the Review of Food Labelling Law and Policy (2011):**

- ◇ VOLUNTARY use of front-of-pack traffic light system
- ◇ FAST food outlets be encouraged to display traffic light system and it be mandatory where health claims are made
- ◇ A GENERIC alcohol warning message be placed on alcohol labels as part of a national campaign targeting the public health problems association with alcohol
- ◇ SPECIFIC alcohol consumption warning for pregnant women be mandated on individual containers of alcohol and at point of sale for unpackaged alcoholic beverages
- ◇ ONLY foods or ingredients that have altered characteristics or contain detectable novel DNA or protein be required to declare the presence of genetically modified material on the label
- ◇ ALL foods or ingredients that have been processed by new technologies be required to be labelled for 30 years time from their introduction into the human food chain.

**Consumers' Association of WA (Inc)**  
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### **Membership and Fee Payment Form**

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

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- ◇ 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 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**A reminder that annual subscriptions are now overdue for 2010-11, 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 2011.

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* in 2011.

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**CONSUMER COMMENT**