

Consumer Comment

SEPT-OCT 2007

VOLUME 9 - ISSUE 2

From the President

Four of us met with the Minister for Consumer Protection, Sheila McHale on a very cold afternoon in June. The Minister wanted to know on what authority our opinions are based. I think that CAWA collectively has more breadth and depth of personal and specialised consumer involvement than most of us care to admit although we don't claim to be experts, preferring to look at issues through consumer eyes. We lend a keen ear to the consumer gripes of our parents, children, colleagues, friends and other consumer advocates. We come from varying backgrounds and bring to the group a depth of knowledge in many disciplines and a plethora of personal interests. Nevertheless, the whole being greater than the sum of the parts, we could always use more input.



As consumers continue to be tossed around in the price ocean, now with interest up, petrol down and election predictions rife, **product safety** has also been a big issue. Imported products including fish and toys have been declared unsafe. While we appreciate warnings, recalls and bans, these perhaps give consumers too much confidence in product safety. We assume that everything is tested and that Australian Standards will protect us. Through lack of resources, many products are apparently not being scrutinised at all and consumers are only informed through the international consumer grapevine. I'm sure that a significant proportion of local produce also passes through safety nets untested, particularly fresh produce. Of course, increased testing or labelling requirements would put up prices. At what price safety?

Gordon Renouf (ACA) has been chasing up the **WA Consumer Advocacy Centre** and he reports that the WA Government has a strong interest but funding was NOT allocated in the last State budget. The WA Treasury intend to progress this over the next

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Member profile - Sandra Brown



Sandra is from a farming family near Bindi Bindi in the Central Midlands of WA and went to boarding school in Perth for most of her education. She started her working career in 1959, directly after leaving school, at Royal Perth Hospital and graduated as a Registered Nurse in 1961. Subsequently she worked at various hospitals including the Moora District Hospital until her marriage in 1963.

After returning to Perth with her children in 1970 she had various positions as nurse receptionist with general practitioners and in 1974 made a significant career change to work in public relations first with the Slow Learning Children's Group and then with the Spastic Welfare Association. Since that time Sandra returned to university part-time and gained a Bachelor of Social Science with a double major in Public Relations and Politics. She held the position of Executive Officer for Diabetes WA from 1980 to 1986 and was the Public Relations Manager for the Red Cross Blood Transfusion Service from 1986 until 1994.

Sandra has been a single parent since 1970 and is the proud mother of two sons and grandmother of five grandsons and one granddaughter all of whom still live in country WA. Her favourite pursuits are gardening, reading, politics and entertaining at home with friends and family.

Sandra is currently Chief Executive Officer of the Citizens Advice Bureau a position she has held since 1994. The Citizens Advice Bureau of WA Inc. was founded in Western Australia in March 1963 and its core business is information and referral. The Bureau believes that information is only as good as the access to it and aims to ensure people are not disadvantaged by ignorance of their rights and responsibilities or an inability to express their needs effectively. Founded as a voluntary organization the Bureau still depends chiefly on voluntary staff to deliver services to the people of Western Australia. The Bureau also has a community legal service staffed by fully qualified lawyers who can provide initial legal advice on any matters of law. A significant part of the Bureau's services deal with consumer law and last year 5,600 people sought advice in this area. The Bureau's Mediation and Dispute Resolution Service, started in 1990, deals with all types of dispute resolution including neighbourhood disputes, family and relationship breakdown, workplace disputes and interfamily disputes. The Bureau is also a member of the consortium managing the Family Relationships Centres in Joondalup and Mandurah and a member of the National Association of Community Legal Centres, WACOSS and Volunteering WA.

Commitment to the community has been an important aspect of Sandra's life and she is currently Chairman of the Board of the Harold Hawthorne Community Centre, Vice President of the Carlisle Residents and Ratepayer's Association, on the executive of Victoria Park and Districts Kiwanis Club and a State Executive member

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few months with one option being to commit to the Centre sometime later this year with the funds being included in the next budget. The Centre could significantly increase the consumer voice of Western Australians and we await progress. This issue has been around for some time now.

I am venturing to the Midwest next week for my first stint as a Tidy Towns Judge for the **Keep Australia Beautiful Council**. It will be great get away from the city for a few days and meet some of the committed regional people who involve themselves in the Tidy Towns, Sustainable Communities programme and awards process. I have also been invited to do some judging for the WA Environment Awards in the Litter Prevention category.

The Review of **Retirement Villages Legislation** issues paper was released for comment in June. Unfortunately we only have until the end of August to formulate a submission. This is an issue where we are most interested to have our views heard. Western Australia's aging population continues to increase and locating and securing supported accommodation is currently a vexatious process. The transition from complete independence through the various levels of aged care needs to improve exponentially by the time I need looking after.

Thankyou to John Robertson for the effort put into formulating a submission to the Review of the **Associations Incorporations Act**. We look forward to seeing what changes are implemented.

The **Website** is looking good now, though as tends to happen, there are still a couple of wrinkles to iron out. We'd love a volunteer to take on the update responsibilities because Valdene might burn out if we push her much further and she does such a supreme effort with the newsletter which is also largely her responsibility. Our email address info@consumers.asn.au continues to receive a mountain of spam. Spammers don't bother checking who they are trying to scam. We have apparently won a couple of lotteries and just what we'd do with all those pharmaceuticals who knows. CAWA could also earn a lot of money working from home apparently.

We have received an email from a consumer enquiring whether an International Lottery she was told she had won (by email) might be a scam. This is almost certainly the case. Unfortunately consumers are still prepared to entertain the possibility of unexpected windfalls. The **Scamnet** website should be more widely publicised. We wrote to the Department of Racing, Gaming and Liquor regarding a similar promotion. Their reply advised that it is illegal to conduct or promote an offshore based lottery in Western Australia. The website is easily 'Googled' but it's address is www.docep.wa.gov.au/ConsumerProtection/scamnet/Scams

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From the President continued . . .

(Continued from page 3)

We have written to the **Australia Post** Ombudsman (thanks Rhonda) regarding an increasing number of complaints and AP's complaints process, with many consumers finding the forms difficult to fill in. I have a PO Box and about once a month I stand in the AP queue simply to return other people's mail put in my box in error. I wonder how much of my mail goes through someone else's box before I see it. We also recommend all online/phone purchases be sent by registered mail which should be considered when calculating the total cost of a purchase.

The **Consumers International World Congress** is scheduled from 29th October to 1st November in Sydney. At this stage we will not be represented but are hoping for some sponsorship. The Congress program will address sustainable consumption, the obesity pandemic, unethical pharmaceutical marketing and credit and debt. Side events include seminars on how consumers and government work together, consumers and intellectual property rights and consumers and competition policy.

DOCEP has release a broadsheet newsletter called "**Better Trading**". Keep an eye out for it.

The Economic Regulation Authority Consumer Consultative Committee, the Department of Consumer & Employment Protection, and the Energy Ombudsman have organised an invitation-only complimentary on **utility consumer dispute resolution** seminar to be held on Friday 2 November 2007. The seminar aims to "raise awareness among those responsible for customer service and regulatory compliance of best practice internal and external dispute resolution of utility consumer disputes".

Genette Keating

Member profile - Sandra Brown continued . . .

(Continued from page 2)

of the Liberal Party. Sandra has also served in local government and was an inaugural councillor on the Town of Victoria Park. Her community involvement earned her a Centenary Medal for Community Service in 2001.

Sandra joined the Consumers Association of WA to represent the State Women's Council of the Liberal Party of Australia and has a keen interest in consumer affairs and consumer rights in our society.

Annual General Meeting

WEDNESDAY, 10TH OCTOBER, 2007

1pm

Reports

Election of Executive

1.30pm SPEAKER:

Dr. Debbie Hindley

**Research Fellow responsible for the UWA Centre for
Advanced Consumer Research.**

Potential impact of deregulation of shopping hours in W.A.

**A meeting to deal with General Business of the
Association
will follow.**

**VENUE: Ruby Hutchinson B room
4th floor**

221 St. Georges Terrace, Perth.

(221 is building which faces on to St. Georges Terrace.)

Regulation of Holiday Accommodation

We do make a difference! Genette Keating received this email relating to the submission we made about the Regulation of Holiday Accommodation Managers in June 2004. Whilst the outcomes are not exactly as per our submission we did call for change that would eliminate the potential prosecution of accommodation managers. We also identified the need for a code of conduct that clearly identified the responsibilities of owners and managers but we were keen that the 'regulation could be administered without complex legislation and without a large bureaucracy'.

Hi Everyone

I am pleased to advise that as of 25 July 2007 the legal requirement for holiday accommodation managers to be licensed real estate agents has been removed. The Real Estate and Business Agents Act 1978 (REBA Act) has been amended to remove the need for holiday accommodation managers to be licensed real estate agents.

The amending of the REBA Act is the second and final policy outcome following a review by the Department of Consumer and Employment Protection (Consumer Protection) of the regulatory regime governing holiday accommodation managers. The first policy outcome was the establishment of the voluntary accreditation program that is being administered by Tourism Council WA.

On behalf of Consumer Protection, I would like to thank each of you and the organisations that each of you represent for your contributions to the abovementioned outcomes. The outcomes would not have been possible without your involvement.

Regards

Alistair Conwell

A/Senior Policy Officer
Department of Consumer and Employment Protection
01 August 07

Thanks to all the people who have contributed to this Newsletter: Sandra Brown, Genette Keating, Verity Cripps, Joan Milne and Rhonda Algaba.

A Building Industry Forum was held on the 12th September to discuss proposed changes to building legislation and its administration. Five CAWA members attended.

It is proposed to form a new Building Commission which will combine the functions of a variety of agencies and Boards including the Building Industry Development Directorate of the Department of Housing and Works (DHW), the building industry functions of DOCEP, the Builders and Painters Registration Boards and the Architects Board. A new Building Act will combine current legislation embodied in the BRA, PRA, HBCA and the Local Government Miscellaneous Provisions Act.

Minister Michelle Roberts said the current legislation is outdated, fragmented, inefficient, multilayered and has red tape issues. Ms Roberts foresaw improvements for industry, consumers and the wider community. Draft instructions are underway with Bills to be presented to Parliament and enacted in 2008 and the changes to be effected on 1 July 2009.

Peter Gow (DHW) explained that the new Building Commission is to provide a one-stop shop for:

- ◇ Research and development
- ◇ Policy and legislation
- ◇ Administration and development of standards, fair contracts and codes of practice
- ◇ Registration of practitioners including Builders, Painters, Plumbers, Architects, Engineers and Certifiers
- ◇ Establishment and regulation of insurance and fidelity funds
- ◇ Providing information about standards, registration, codes and consumer protection
- ◇ Auditing of legislated processes
- ◇ Complaints investigation
- ◇ Alternate dispute resolution processes

While the inspectorate will be with the Building Commission, the Building Disputes Tribunal will be a separate entity with its own legislation (the BDT Act) and will go to DOCEP. Gary Newcombe (Policy and Strategic Development, DOCEP) said that there was currently no direct relationship between The BDT and DOCEP although he suggested that it is wise to have separation between licensing functions and a consumer agency.

Consumers will continue to be involved through membership of licensing Boards, the new Consumer Advisory Council and that there will be consultation between DOCEP and the Building Commission with regard consumer appointments to these. Funding of the BDT will continue to be through levies paid by consumers.

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Building Industry Forum continued . . .

A CEO is to be appointed. A Building and Construction Industry Council and a Community and Consumer Advisory Council will also report to the minister.

Changes are to be based on Victorian and Queensland models, with government and industry support in WA for a more streamlined organisation. Speakers could not provide any evidence to suggest where these changes have provided improved outcomes for consumers in those states. To date, little, if any consultation has taken place with WA consumers although a Stakeholder Reference Group has been formed including members of industry, the HIA, MBA, surveyors and local government.

Gavan Forster (HIA) had concerns with tiered registration, licensing of contractors and supervisors and the state wide nature of the new legislation. He also concurred with CAWA's previously aired suggestion that the name Builders "Registration" Board is preferable to Builder's "Licensing" Board. He iterated that disputes in Victoria are problematic particularly where one agency provides information about technical issues and the other about contractual issues.

The BRB's assets (more than \$4 million) will be incorporated in the Commission's funds.

Questions raised by the Forum include:

- ◇ What powers will inspectors have to mediate disputes?
- ◇ What powers will the Commissioner (CEO?) have?
- ◇ How will the changes affect Owner Builders?
- ◇ Will patio erection companies be covered by tiered legislation?
- ◇ Will consumers in rural areas not currently covered by legislation be adversely affected?
- ◇ How will the changes effect the cost of building for consumers?
- ◇ Will the location of the Commission and the BDT be accessible to consumers?

Paul Marsh suggested that a website be provided for contributions from stakeholders.

More information is available at bid@dhw.wa.gov.au

Genette Keating

The following information comes from the Australian Consumers' Association and appeared in Choice Magazine.

The Do Not Call Register came into effect on 31 May 2007. It is now unlawful to make many types of telemarketing calls to numbers placed on the Register. Since it was launched on 2 May, over 1 million telephone numbers have been included in the Register. If you haven't already done so, you can still sign up at www.donotcall.gov.au - it's free. But don't think this will protect you from all calls - political parties, charities and some other organisations are exempt from the ban.

Join Choice's call to action by emailing the Minister for Communications Helen Coonan and Federal Opposition Leader Kevin Rudd to ask them to scrap these exemptions. Unsolicited calls from political parties and charities are still nuisance calls for those who do not want to receive them! For more information see www.choice.com.au/donotcall

Retail Trading Hour extensions during the 2007 Christmas period

The Minister for Consumer Protection has advised that in accordance with a recommendation made by the Department of Consumer Protection following consultation with retail industry stakeholders the approved variations will apply to metropolitan general retail shops, including those in the Perth and Fremantle Tourism Precincts:

SUNDAY 9 DECEMBER, 2007	10.00am to 5.00pm.
SUNDAY 16 DECEMBER, 2007	10.00am to 5.00pm
WEDNESDAY 19 DECEMBER, 2007	8.00am to 9.00pm
THURSDAY 20 DECEMBER, 2007	8.00am to 9.00pm
FRIDAY 21 DECEMBER, 2007	8.00am to 9.00pm
SUNDAY 23 DECEMBER, 2007	10.00am to 5.00pm
THURSDAY 27 DECEMBER 2007	8.00am to 9.00pm

Shops will be closed on Tuesday 1 January, New Year's Day, 2008.

Associations Incorporations Bill 2006

In November last year, DOCEP released a Consultation Guide seeking comments on the Draft Associations Incorporations Bill 2006. Thanks go to Vice-president, John Robertson for his hard work compiling CAWA's submission.

5 June 2007

The Project Manager
Associations Incorporation Green Bill
Consumer Protection
Locked Back 14
CLOISTERS SQUARE WA 6850

SUBMISSION TO THE ASSOCIATIONS INCORPORATIONS ACT REVIEW

Thank you for the opportunity to respond to the Associations Incorporation Green Bill. Herewith is our submission.

The Consumers Association of WA (Inc) is a small but active non-political association which has been devoted to the interests of Western Australian consumers for more than twenty years.

Building capacity in special interest groups is becoming increasingly difficult and we would not like to see unwieldy legislation or onerous responsibilities placed on our executive or members, all of whom are unpaid volunteers.

As consumers of the services of other larger associations however, we fully support any changes to legislation which will protect the interests of members and would conditionally support a system of Tiers.

On winding up, we would like to see any remaining funds distributed as closely as possible in the interests of the "cause" of the association, for which purpose contributions and membership fees have been received,

We hope that our submission is of some benefit and look forward to ongoing opportunities to contribute to the legislative process.

Yours faithfully

John Robertson
Vice President

Genette Keating
President

CONSUMER COMMENT

Submission prepared by John Robertson.

3. Proposed reforms to the Act

3.1.1 Eligibility criteria

Question 1: Do you think it is appropriate for the Commissioner for Consumer Protection to have the power to decline the incorporation of an association on the basis of:

- a) its scale;
- b) the nature of its activities;
- c) the value of its property; and/or
- d) the nature of its dealings with the public?

As to 1 – a) to d) –Yes, but there is no indication as to the nature or extent of the discretion of the Commissioner in S.20 of the Bill and S.21 leaves a barn door open for a free reign in the future. This is unsatisfactory, some idea of the possible grounds should be given. The public indeed Parliament must have something on which to base it's consent or opposition. This might be contained in a ministers first reading speech. This could help SAT interpret the scope and meaning of the legislation.

3.1.2 Advertising

Question 2: In your view, should the Act be amended to:

- a) remove the requirement for an association to advertise an intention to apply for incorporation; and
- b) give the Commissioner the discretionary authority to request further information to support an application to incorporate or require advertising if it is considered appropriate?

As to 2 a) & b), CAWA are in agreement. It seems to CAWA that 2 a) is a reference to S.11 of the Bill, but note that S15 (1) (a) makes advertising discretionary. S. 11 (4) of the Bill is again like a barn door wide open; there should be some restraint , some guidelines by regulation the nature of which is open to public scrutiny – rather than improperly hidden from the public.

3.1.3 Number of members and voting rights. The discretion in 2 b) above should not be used as a method barring incorporation.

Question 3: In your view, should the Act be amended to:

- a) require that an association have at least six standard members to be eligible for incorporation;
- b) require the application for incorporation to include the full names, addresses and signatures of at least six standard members of the association to evidence their membership; and
- c) require that at least all standard members of an association have full and equal voting rights?

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As to 3 a), b) & c) CAWA agrees. The discussion in paragraph 3. 1. 3. above and the terms of S.13 (a) imply that the applicant association already has adequate rules relating to membership – it seems convenient that those rules and membership details be produced to confirm details as requested by S.13 (a).

3.2 Rules of Association or Constitution

3.2.1 Model Rules

Question 5: In your view, should the Act be amended to:

- a) establish a model set of prescribed core rules;

CAWA agrees but it seems to CAWA that there is no reason why adoption of the model (core) Rules should not be a prerequisite to an application for incorporation which might assist in relation to the problems in Question 3 above.

- b) have those model rules apply automatically to each newly incorporated association, unless expressly varied by the passing of a special resolution by members after incorporation;

CAWA agrees subject to the comment at 4 (a) above.

- c) provide special authority for management committees to make it easier for incorporated associations to update their Rules of Association for a period 18 months after the Bill is introduced; and

CAWA agrees.

- d) include a provision making the terms and conditions of any payment to office bearers transparent?

CAWA agrees.

3.2.2 Special resolutions

Question 5: In your view:

- a) will clarifying the voting requirements and quorum and procedure at general meetings assist incorporated associations?

CAWA agrees but questions how do you get people to understand and actually habitually follow proper procedure. There may need to be provision of easy means of rectifying resultant problems. See also note 1 after 22 below.

- b) would specifying the minimum number of members of an incorporated association required to direct the management committee call a 'special' meeting to discuss association affairs be useful?

- c) what percentage of members do you think is appropriate to call such a meeting?

As to 5 b) and c) CAWA feels that a minimum number or percentage makes it too easy to call a special meeting in a small association and perhaps too difficult in a large one – conceivably some sort of sliding scale modified might be adequate. Should notice of a special resolution be notifiable to the Commissioner? This might allow intervention to stop silly or onerous rule changes.

3.2.3 Rules forming a contract between members

Question 6: In your view, will making the rules of an association a contract between members and enforceable by the members of an association be useful?

CAWA agrees

3.2.4 Dispute Resolution

CAWA questions; what is a dispute? Can one member raise a dispute? Is a dispute only where rules have not been followed or where eg. one person disputes the choice of club uniform colours? This has serious capacity for nuisance claims clogging the Associations administration – where there are multiple or serial disputes. This may be a serious time difficulty for small associations. Is this a Pandora's Box?

Question 7: In your view, should the Act be amended to:

- a) require that a dispute resolution process be prescribed in the rules of each association;
- b) provide for a standard provision, included in the model rules prescribed by regulation to apply to an association where a dispute resolution procedure is not included in its rules;
- c) provide for the resolution of disputes between members of an association to be determined by the State Administrative Tribunal; and
- d) include a role for accredited mediators, at the mover's expense, in resolving a matter before it can be heard by the State Administrative Tribunal (SAT).

As to 7 a) to d) inclusive CAWA agrees subject to the commentary above. CAWA feels that 7 d) could be made as a step prior to any involvement of the State Administrative Tribunal. There must be some method of winnowing out petty matters not worthy of SAT consideration – perhaps as with the High Court a right for SAT to refuse leave to apply to it. Such matters to be settled by mediation alone, or power to an association to end a matter by effective dismissal of the concern?

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3.3 Management of Associations

3.3.1 Public officer and annual return (see Division 3, Part 6)

Question 8: In your view, should the Act be amended to require:

- a) all incorporated associations to have an adult member as their public officer at all times?

CAWA feels that the term adult member be amended to read "capable adult member" – subject to this – CAWA agrees

- b) the Commissioner for Consumer Protection to be provided with both the contact address details of the association and the current public officer's name at the time of making an application for incorporation and, thereafter, through an annual return?

CAWA agrees but should there not be a return at the time of any change?

- c) the annual return to include financial information that the Commissioner requires for the sound administration of the Act?

CAWA agrees with great reservation. In CAWA'S view this requirement has a great capacity for practical problems of compliance - especially for small associations. This is likely to be allied to difficulties with the Public Officer [see also 8 d) below]. If this provision is to be enforced it might be made easier by the provision of a simple pro-forma, which could help also to standardise documentation.

- d) a fine of up to \$1,000 if the public officer does not lodge an association's documents with the Commissioner in a timely way?

CAWA feels that a fine of this possible magnitude for a voluntary officer of a small (tier 1 or tier 2) association is likely to result in it being difficult if not impossible to fill the Public Officer position. These people often have other lives to live – they cannot always find time precisely when the association or the Commissioner want them to. The difficulty is all the more so if the Public Officer is not the person responsible for creating and collating the information i.e. The Public Officer may be fined through no fault of his own.

3.3.2 Register of members

Question 9: In your view, should the Act be amended to:

- a) provide that an association's register of members must contain prescribed particulars (initially name and residential or postal address);

CAWA notes the use of the term "prescribed" and "initially". Those two terms imply use of regulations to extend the particulars required in addition to those noted in 9 a) above. Part 6 division 6 does not appear to make provision for use of regulations to extend the requirements.

- b) permit an association to include in its rules a requirement that a member seeking access to the register must produce a statutory declaration to the effect that the access is for association business only.

CAWA agrees however an adequate pro-forma should be supplied by regulation sufficient to allow it to be clearly binding.

- c) apply a penalty of a fine of up to \$10,000 for the improper use of the information in the member's register?

CAWA questions the sufficiency of the fine versus possible profit from the breach of it . There should be capacity not only to fine but a requirement to account for any profit and for the fine to be equal to or greater than the profit.

3.3.3 Amalgamation

Question 10: In your view, should the Act be amended to allow two or more incorporated associations to amalgamate if:

- a) the amalgamated association would be eligible to be incorporated under the Act;

CAWA agrees

- b) there is no prohibition for amalgamation in the rules of the associations concerned;

CAWA agrees

- c) members of each association concerned have passed a special resolution supporting the amalgamation at a general meeting;

CAWA agrees

- d) the Commissioner has approved the amalgamation;

CAWA feels that the terminology in 10d) implies discretion in the Commissioner outside of that allowed for compliance with strict technical matters. In CAWA'S view there should be no discretion unless there is some illegality arising outside of the Association Incorporation Bill

- e) provision is made for any debts and liabilities of each association concerned to be carried over to the newly formed incorporated association?

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3.3.4 Audit of financial statements

Question 11: In your view, should the Act be amended to:

- a) provide for the establishment of a three-tiered system of financial accountability whereby all associations would be responsible for having their financial records audited annually according to different levels of scrutiny;

CAWA agrees with clear reservations. Tier 1 and perhaps even lower Tier 2 organisations may well be struggling to comply by reason of cost, alternatively the difficulty of finding a person (within the time constraints) adequate and prepared to sign off on the audit. There are many associations in CAWA'S view that have trouble with the simplest of accounting procedures and an audit to be in any way adequate must have clear and reliable accounts on which to base an audit. If this is to be done, there should be some means of providing any struggling association – perhaps all Tier 1 & Tier 2 with access to standard and simple accounting methods eg. Kalamazoo or Microsoft systems which might simplify accounting to allow a sensible and meaningful audit. All associations should be provided with a standardised time line so that they will know clearly when accounts, audits, certificate of solvency etc have to be completed and filed. They might have to be advised even as to when to start to get to get things together. This illustrates the likely difficulty of dealing with associations which are volunteer and not for profit and where relevant personnel might say “this is all too hard – I joined the association for my enjoyment not for all of this grief”. The saying – “is the game (the legislation) worth the candle (the result) comes to mind.

- b) require all associations to present a statement from an appropriate auditor (depending on the relevant tier) to their Annual General Meeting;

CAWA agrees subject to the reservations expressed at 11 a) above.

- c) require the committee to present a solvency statement to their members at the Annual General Meeting;

CAWA agrees –subject to a standard form being required

- d) require all associations to submit an annual return;

See response to 11 e) below.

- e) require only Tier 3 associations to submit an auditor's report and financial statements to the Commissioner with their annual return;

CAWA has very mixed feelings about the requirements represented in 11 d) & e). 11 d) appears to refer to the Bill new section 105 – a new concept. The Consultation Guide places this amendment, the audit, audit statement and solvency statement together – these requirements are together an

onerous load for tier 1 & perhaps tier 2 associations. There is no information in the Consultation Guide or the Explanatory Memorandum to warrant such an imposition. The introductory CD did make some reference to the problems sought to be resolved but not in a meaningful way. There should be something in the way of a cost benefit analysis to illustrate the cost effectiveness or benefit to the community to be gained from the further expansion of the Public Service (DOCEP). How many employees will be required to process this small mountain of returns in a meaningful way?

If the intention (and intention is difficult to decipher) is to intervene so as to prevent as many of the associations as possible from falling into insolvency; then those means generally used in commerce should be utilised; being cost effective. There are a number of indicia of financial difficulty well known to Company Liquidators and Bankruptcy Trustees which the Treasurer of an association could be forced to report to the Commissioner and trigger use of Section 183. This would dispense with part of the small mountain of paperwork. CAWA notes that there appears to be no similar provisions in other states- therefore caution should be the watchword.

- f) require all associations to keep financial records for a minimum of seven years; and

CAWA agrees with some reluctance. To make any sense, there will have to be a law to enforce passing of records to a new treasurer for obvious reasons (and so they are kept in one place) and probably as to proper security of them. One thing just keeps leading to another!

- g) provide the Commissioner with the authority to direct a full financial audit of any association in certain circumstances?

CAWA again agrees but this should only be ordered when there are clearly apparent indicia of insolvency as noted above in 11 d) & e). Criminal matters – theft, fraud etc. are matters for the Police. The Commissioner would be able to keep his eye on at least one public indicia of insolvency through the Dunn & Bradstreet publication which records writs, summonses etc. against any individual, partnership, company or association.

3.4 Powers of the Commissioner for Consumer Protection

3.4.1 Direct an association to convene a general meeting (Part 10)

Question 12a: In your view, should the Commissioner for Consumer Protection have the authority to direct an association to call a general meeting to discuss a dispute or matter that he thinks may be resolved in this way, and to attend the meeting?

CAWA agrees – but what of cost? Should the Commissioner charge for the costs of an officer to fully acquaint himself with the facts and circumstances

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and charge for the time for the meeting? This also raises questions of adequacy of the notice given for the meeting and its timing. What of the possible costs for a tier one association?

3.4.2 Appointment of a statutory manager

Question 12b: In your view, should the Act be amended to provide the Commissioner with the discretionary authority to appoint a statutory manager to an incorporated association:

- a) if the association has failed to rectify a breach of the Act or Regulations within 60 days of receiving written notice from the Commissioner;

CAWA has difficulty with such draconian action. Should there not be a warning followed by some monetary penalty based on severity of the breach followed only by such action in 12 b) above perhaps less than 60 days from the written notice. There should be some distinction between minor defalcations which do not or should not trigger such action and those which clearly do. That is, if the ability to appoint a statutory manager in minor matters is not acted on (but is only on major matters) – there is a lack of consistency leading to associations testing what is the real trigger. A bad law is one that can be ignored with impunity.

- b) where the appointment of a supervisor is required in the interests of members, the association's creditors or is otherwise required in the public interest; and/or

CAWA disagrees, see answer to 12 c) below

- c) when the members have, by special resolution, requested such an appointment; and

CAWA feels that all means practicable should be utilised in an effort to prevent appointment of a statutory manager – mediation, education etc.

- d) with the Commissioner having the power to recoup reasonable costs from the association.

CAWA agrees but there should be the ability to allow payment by instalments and non – payment of the instalment to trigger installation of a statutory manager if necessary.

3.4.3 Transfer of an incorporated association to other legislation

Question 13: In your view, should the Act be amended to provide the Commissioner with the discretionary authority to require an association's incorporation to be transferred to other legislation if the Commissioner is of the view that it is appropriate to do so having regard to:

- a) the scale and nature of the association's activities;

- b) the value and nature of the property of the association; and
- c) the extent or nature of dealings of the association with the public; or
- d) any other reason deemed sufficient by the Commissioner?

As to 13 a), b), c) and d) above CAWA agrees especially in view of Section 51 of the Bill as to giving Notice of Intention. Section 51 (2) should make time allowance for the association to obtain legal advice in the event that the Commissioner's intention is opposed. The information provided however, gives no real clue as to the philosophic basis – this should be apparent by some means eg. ministers first or second reading speech. CAWA agrees on the understanding that the intention is towards obviously commercial profit situations.

Should the Act allow incorporated associations to voluntarily transfer their incorporation and/or their undertakings to another regulatory jurisdiction?

CAWA agrees

Should the decision of the Commissioner to transfer an association's incorporation be reviewable by the State Administrative Tribunal?

CAWA agrees

3.4.4 Investigatory powers

Question 14: In your view, should the Act be amended to give the Commissioner the power to:

- a) require a person to provide requested information or answer any question relating to an investigation;

CAWA agrees particularly if "an investigation" is altered to read any "properly authorised investigation", and subject as below noted *

- b) enter association premises with a search warrant to obtain or copy relevant information;

CAWA agrees – subject as below noted*.

- c) investigate possible contraventions or breaches of the Act; and

CAWA agrees but only on grounds reasonably held i.e. some clear evidence and subject as below noted*.

- d) request the Police or other relevant law enforcement agencies to investigate and report on an alleged offence against the Act?

CAWA agrees - subject as noted on the following page*.

(Continued on page 20)

* These powers appear extreme and their use should preferably be hedged with requirements that they are used only in clearly appropriate circumstances. Powers of this nature, applied to persons volunteering their time, so as to be able to enjoy their association, appear frightening.

3.5 Winding up and cancellation (see Part 9)

3.5.1 Court winding up (Part 9, Division 4)

Question 15: In your view, should the Act be amended to provide for the court winding up of an association to proceed in accordance with the relevant provisions of the *Corporations Act 2001*?

CAWA agrees –however this is not without its difficulties - CAWA notes that no person other than a person qualified can carry out duties of a liquidator where there is insolvency. Liquidators are notoriously expensive and it is quite usual for all monies arising out of a company liquidation to be absorbed by the liquidator. The liquidator will be replicating duties of the management committee mentioned above by having a duty to investigate the books of account and ascertain the location and value of all assets. Under the circumstances it is likely that once the liquidator has finished there will then be no assets to distribute to creditors. The rules relating to liquidations may have to be simplified for tier 1 associations lest the winding up of associations becomes the happy feeding ground for liquidators. Changing laws relating to insolvency is a Commonwealth matter.

3.5.2 Voluntary winding up and distribution of surplus property

Should the Act require a person or a group to be appointed to carry out the duties of a liquidator, and that winding up be completed within a reasonable time.

CAWA is of the opinion that there may easily be difficulties in obtaining persons to act as liquidator. This problem if not resolved could lead to reasonable time running out- also if court proceedings have to be undertaken to retrieve assets time can again be blown out. A mechanism for extension of time needs to be in place.

Should the Act maintain the prohibition on direct or indirect distribution of an association's surplus property to commercial bodies or association members and retain a provision allowing surplus property to be distributed only to other incorporated associations or for charitable purposes;

CAWA notes that there is a prohibition on distribution of surplus property to the association's members. This in CAWA'S view brings up an interesting association between the said prohibition and the powers of the Commissioner and an association viewed partly at #13 above and more particularly S.49 of the Bill. It appears to CAWA that all an association might need to do to allow distribution of perhaps millions of dollars worth

of surplus to its members is to transfer to become a body corporate within the meaning of the Corporations Act 2001. Therefore is the Commissioner going to try to stop this manoeuvre so that a charity rather than members (who may well have paid for all of the associations assets and deserve them returned) obtain the surplus? S.49 of the Bill cannot stop any group seeking to incorporate pursuant to the Corporations law 2001- a commonwealth law.

A distribution plan would be approved by the Commissioner for Consumer Protection and it would be an offence to distribute surplus property in a way contrary to provisions set out in the Act.

CAWA feels that in view of comments made above; there is unlikely to be any surplus left for the Commissioner to have a distribution plan. If there is any surplus why must the Commissioner have the power to decide which or what charities might benefit? Is this not best left to those who regularly decide the distribution of charitable monies e.g. Lotteries Commission?

Question 16: In your view should the Act be amended to:

a) simplify the procedures for voluntary winding up of an association;

CAWA agrees subject to the comments above; that there should be simplified voluntary winding up but measures should be in place to avoid the possible heavy financial effect of registered liquidators.

b) require a person or a group of people to take on the duties of a liquidator and carry out these duties in a reasonable time;

CAWA agrees subject to the relevant comments made above.

c) provide that the members of an association are, by special resolution, to determine a surplus property distribution plan on the voluntary winding up of the association, with the distribution plan to be approved by the Commissioner;

CAWA has no opposition but the distribution plan should only be disapproved by the Commissioner if it is somehow unfair or otherwise legally improper (no distribution to a terrorist organisation). There should be some means of knowing the types of bases of disapproval so as to allow a democratic vote and not some hidden agenda- otherwise there might have to be 2-3 attempts to get approval.

d) introduce a provision to allow local government authorities to receive the surplus property of an incorporated association;

CAWA agrees but this should be restricted to where the Local Government has made an equal or greater contribution to the association.

(Continued on page 22)

- e) require the return to funding bodies of any unexpended public monies that may have been allocated to the association to assist in its establishment or the running of its activities;

CAWA agrees

- f) provide that any distribution of surplus property in a way other than that provided for by the Act be an offence; and

CAWA disagrees. This is a clear invitation for an association to transfer and become a corporation pursuant to the Corporations Act.

- g) empower the Commissioner to determine the way in which surplus property is to be distributed in certain circumstances?

CAWA disagrees. These questions should be resolved by those already dealing with charitable monies as a day to day duty, e.g. the Lotteries Commission.

3.5.3 Voluntary cancellation of incorporation

Question 17: In your view, should the Act be amended to:

- a) permit a solvent association with no surplus property to distribute to apply for voluntary cancellation of incorporation?

CAWA agrees

- b) allow incorporated associations with less surplus property than the prescribed amount to apply for a voluntary cancellation of incorporation?

CAWA agrees

If so, how much should the amount prescribed in the regulations be?

How much? As a guess CAWA feels \$1000 but it should be an amount such as might discourage unwarranted profiteering.

3.5.4 Cancellation of incorporation by the Commissioner

Question 18: In your view, should the Act be amended to provide the Commissioner with the discretionary authority to cancel the incorporation of an association if:

- a) it was not eligible for incorporation at the time it was incorporated;

CAWA agrees

- b) has suspended its operations or been dormant for a whole year;

CAWA agrees

- c) has no property and the members have resolved to discontinue the activities of the association;

CAWA agrees

- d) has resolved to wind up, but no one is prepared to act as liquidator;

CAWA agrees but does this not possibly mean that an unincorporated association then has to deal with the liquidation- what then are the limits if any on distribution? Does this mean that another method of avoiding the Commissioners views on distribution has been created?

Or

- e) it fails or refuses to remedy a contravention of the Act or Regulations within 60 days of being given notice in writing by the Commissioner to do so?

CAWA agrees (but notes that failure to comply is adequately dealt with under 12 b) above) - more particularly if CAWA'S recommendations at 12 b) are incorporated.

3.6 Miscellaneous Changes

3.6.1 Doctrine of constructive notice

Question 19: In your view, should the Act be amended to ensure the doctrine of constructive notice does not apply in relation to the public documents of incorporated associations?

CAWA does not feel that the Commissioner or DOCEP should be able to avoid the doctrine of constructive notice. The thrust of the Associations Incorporations Bill 2006 at least in part is for the Commissioner to be provided with an enormous amount of information at his request. Effectively the Commissioner now seeks to say I will not be responsible for reading the information and taking appropriate action. This is tantamount to avoiding responsibility for not taking appropriate action pursuant to information provided at his request. What is the problem or problems sought to be resolved by this amendment? Surely there is some other means to resolve the problem. The present amendment means "all care but no responsibility". This is unacceptable

3.6.2 Proceedings for an offence

Question 20: In your view, should the Act be amended to allow proceedings for an alleged offence against the Act to commence within three years after the offence was committed?

CAWA agrees but only for the clearly more serious offences. Caution should be exercised as it appears other States do not have similar provision. Again CAWA puts that you are dealing with more often than not; volunteers. No volunteer in CAWA'S view would wish to suffer the possibility of prosecution for a period

(Continued on page 24)

of three long years. There is a major difference in CAWA'S view between those who volunteer their time free and those who are paid for it. This difference pervades the Associations Incorporation Bill 2006. Volunteers should not be dealt with as harshly as paid employees where a defalcation not being a crime in the recognised sense of e.g. stealing, fraud – is concerned. Volunteers are to be valued and encouraged as much as possible.

3.6.3 Authority to register as a body under Part 5B of the Corporations Act

Question 21: In your view, is the application of the *Corporations Act 2001* as an excluded matter adequate for the purposes of allowing an incorporated association to register as a body under Part 5B and retain its legal identity?

CAWA views this question as appearing to be obfuscatory. CAWA prefers to simply agree with the second paragraph of 3.6.3 above.

3.6.4 Penalties and infringement notices

Increased penalties for offences under the Act are proposed to better protect the interests of members and associations. A member of a committee that fails to take all reasonable steps⁴⁻⁶ to secure compliance by the association with the Act is currently liable to a fine of up to \$500. Today, this means that an association that refuses to hold annual general meetings may attract a fine of a few hundred dollars after an expensive court hearing. It is proposed that this penalty be increased to a fine of up to \$5,000. Please note that first offences rarely, if ever, attract the full amount of the penalty.

In CAWA'S view; any court proceedings where an association is represented legally there are usually considerable costs to be paid for such representation. Why shouldn't those costs be considered effectively as part of the fine from the Commissioners point of view without the necessity to increase the fine itself excessively? The problem of adequacy of fines for Tier 1 associations versus the adequacy for Tier 3 associations is a problem pervading the legislation. There must be some method of allowing fines to be tiered as well.

It is proposed that if an association has taken reasonable steps to comply with the Act, but the public officer fails to lodge the relevant documents with the Commissioner then the public officer may be liable for a fine of up to \$1,000.

CAWA feels that this involves the problems of a volunteer Public Officer adverted to previously. The legislation generally should take great care to avoid a boycott by those who volunteer.

Question 22: In your view, is it appropriate to increase the penalties associated with a breach of the responsibilities of management committees or compliance with the Act?

CAWA agrees subject to the notations made above.

In your view, would the introduction of higher penalties and infringement notices help to ensure compliance with the Act by your association?

CAWA repeats its view in relation to tiered fines and warning that “overdoing it” may result in an effective boycott by volunteers to the detriment of all West Australians.

NOTES

- 1. CAWA’s general agreement to individual items of legislation is not intended to be an agreement to wide and unseen regulations.**
- 2. In an effort to make the impact of the far reaching changes acceptable, smooth and easy would it not be an idea to have (created by DOCEP) an Incorporated Association’s handbook to show good practice, good method & how to do or carry out various functions? DOCEP should do its best to ensure Incorporated Associations are well run if only to reduce DOCEP’s workload and consequent cost to the public. Make it easy for Associated Incorporations to comply! - especially tier 1!**
- 3. CAWA feels that the cumulative workload on the Commissioner requires consideration. This workload is considerable even with delegation - he cannot delegate everything; he must be active and be able to properly understand and control his subordinates in wide ranging portfolios.**

Fair go on fees

The following is an initiative from the Australian Consumers’ Association.

In June Choice launched their ‘[Fair go on Fees](#)’ campaign targeting unfair bank penalty fees. Since then more than 14,000 consumers have downloaded their template letter to reclaim penalty fees from their bank. Two banks have removed their inward cheque dishonour fee and ANZ CEO John MacFarlane has spoken out against the fees, labelling them ‘unsustainable’. Choice are calling on the Commonwealth government to give ASIC the power to rule out unfair fees, consistent with the approach taken in “unfair contracts” legislation.

If you are interested in a two monthly email update on CHOICE campaigns go to:
www.choice.com.au/ccu

Motor Vehicle Industry Board

Rhonda Algaba, Deputy Member of the Motor Vehicle Industry Board highlighted the following excerpts from the Annual Report that she thought would be of interest to CAWA members.



Executive Summary

The Motor Vehicle Industry Board's mission is to administer licensing, registration and other functions in respect of business operating in and persons working in motor vehicle dealing and motor vehicle repair industries.

This reporting year has seen the role of the Board extended with the proclamation of Part 3 of the Motor Vehicle Repairers Act 2003. Under this new legislation the motor vehicle repair industry will be regulated by means of a licensing system for repair businesses and a certification system for individual repairers who do repair work unsupervised or who supervises repair work. Part 3 became operational on 19 March 2007.

3. About the Board

3.1 Legislative charter

The Motor Vehicle Industry Board is established under the *Motor Vehicle Dealers Act 1973* (as amended by the *Motor Vehicle Dealers Amendment Act 2003 – 73 of 2004*).

3.2 Mission

The Board has defined its mission as:

- ◇ To administer licensing, registration and other functions in respect of business operating in and persons working in motor vehicle dealing and motor vehicle repair industries.
- ◇ To regulate dealing in second hand motor vehicles.

3.3 Functions of the Board

The Board's key functions in relation to the motor vehicle dealing industry are to:

- ◇ license appropriate entities to carry on business in the motor vehicle dealing industry;
- ◇ license yard managers and salespersons to work in the motor vehicle dealing industry;
- ◇ deny unfit entities and persons access to the motor vehicle dealing industry;

- ◇ investigate the conduct of licensed entities and individuals from the motor vehicle dealing industry to determine if that conduct should be reviewed by the State Administrative Tribunal;
- ◇ investigate the conduct of unlicensed entities and individuals and to recommend if prosecution action should be taken;
- ◇ ensure the registration and maintenance of appropriate facilities by licensed entities;
- ◇ approve training courses for persons seeking entry to the motor vehicle dealing industry; and
- ◇ approve persons who provide those training courses.

The Board's functions in relation to the motor vehicle repair industry are to:

- ◇ license appropriate entities to carry on business in the motor vehicle repair industry;
- ◇ certify persons to work in the motor vehicle repair industry;
- ◇ deny unfit entities and persons access to the motor vehicle repair industry;
- ◇ investigate the conduct of licensed entities and individuals from the motor vehicle repair industry to determine if that conduct should be the subject of inquiry by the Board;
- ◇ investigate the conduct of unlicensed entities and individuals and to recommend if prosecution action should be taken;
- ◇ ensure the registration and maintenance of appropriate facilities by licensed entities;
- ◇ make recommendations to the Director General of the Department of Consumer and Employment Protection regarding claims against the Motor Vehicle Repair Industry Compensation Fund;
- ◇ makes recommendations to the Director General of the Department of Consumer and Employment Protection regarding application of the Motor Vehicle Repair Industry Education and Research Fund;
- ◇ approve training courses for persons seeking entry to the motor vehicle repair industry; and
- ◇ approve persons who provide those training courses.

3.4 Membership of the Board

The Board comprises members and deputy members appointed by the Governor in accordance with Section 8 of the *Motor Vehicle Dealers Act 1973*. The Governor will make all appointments to the Board based on nominations made by the Minister for Consumer Protection. In keeping with the State Government policy on gender equity, nominations are sought from industry and consumer bodies and wherever possible, include the nomination of female representatives.

(Continued on page 28)

The Motor Vehicle Industry Board comprises the following persons:

- ◇ A person appointed as Chairperson
- ◇ Two persons nominated by the Minister for Consumer Protection who have knowledge and experience in the motor vehicle dealing industry
- ◇ Two persons nominated by the Minister for Consumer Protection who have knowledge and experience in the motor vehicle repair industry
- ◇ Three persons nominated by the Minister for Consumer Protection who represent the interests of purchasers of motor vehicles or customers of motor vehicle repairers (persons licensed under the *Motor Vehicle Repairers Act 2003*)
- ◇ A nominee of the Royal Automobile Club of WA (Inc.).

4.1 Focussing on the motor vehicle dealing industry

4.1.1 Regional compliance activities

The relatively recent opening of the Department of Consumer and Employment Protection office in Kununurra, in 2006, had seen a rise in the number of complaints about motor vehicle industry. Up until this time, Broome had been under the jurisdiction of the Karratha Office, and whilst trader issues will continue to be dealt with by the Karratha Office, the Kununurra Office will predominantly concentrate on (indigenous) consumer issues.

Inspecting officers also identified concerns within the car hire industry, which were indicative across the industry as a whole. Having no regulated contracts (containing prescribed terms or conditions) potentially leaves businesses *and* consumers vulnerable, and there also appears to be no minimum level of insurance required, which again poses a great risk to consumers.

4.1.2 Dealer inspection program

The Dealer Inspection Program commenced on 1 February 2007, with the Boards approval for officers of the Motor Vehicles Branch to reintroduce two key inspection activities.

The first part of the program is aimed at providing introductory advice and assistance to all new licensed dealers. After commencement of trading (within the first three months), officers will visit the dealership to provide advice on operational issues governed by the *Motor Vehicle Dealers Act 1973* (MVDA) and Regulations to ensure the new dealer does not inadvertently breach the law.

The second part reinstates the program formerly run by the Department for Planning and Infrastructure (DPI), inspecting vehicles and dealer's transaction records. The purpose of the visits is to provide some assurance of quality and roadworthiness of vehicles sold by licensed dealers and is a more 'targeted' approach than that previously conducted by DPI.



The Board's program is focussing on two outcomes: firstly, that all new dealers are better trained and informed about their responsibilities; secondly, that consumers are provided with a reasonable assurance that vehicles they purchase are safe and roadworthy.

Officers carry out both programs jointly when visiting dealerships. The program will endeavour to visit every licensed motor vehicle dealer in the State over a two-year period.

Where a vehicle is found at inspection to be unsafe or unroadworthy, officers have issued an "Order to Remedy Defects" and attached an "Unfit for sale" notice, commonly known as the "green sticker". Vehicles, declared unfit, are required to be reinspected at a DPI licensing centre to have the notice removed. DPI licensing centres fully support this initiative. If a defect is considered to not be of a serious nature, the officers may issue an administrative 'Minor Defect Advice Notice'.

In the first five months of operation a total of **365** dealers have been visited, with officers inspecting a total of **6952** vehicles, issuing **55** Work Orders and **148** Minor Defect Notices.

Currently, there are approximately **963** authorised dealer's premises, of which **729** are located within the metropolitan area. While all dealers, including dealers in regional Western Australia, will be visited in a two year period, some, particularly those with large numbers of unroadworthy vehicles, will be visited more often.

4.1.3 Unlicensed dealing

This year saw eBay come to prominence in the motor industry, not only as a market place where people sell their privately owned vehicles, but also as a place where people carry on the business of selling motor vehicles. Those on-line businesses that attracted attention became the focus of several investigations.

eBay itself proved to be a valuable partner in providing support to investigations,

(Continued on page 30)

Motor Vehicle Industry Board continued . . .



readily supplying all the information necessary to identify and locate these on-line operators, and make them accountable to the requirements of the law. Through its unequivocal assistance, eBay demonstrated a strong commitment to ensuring the integrity of its own operation.

No prosecutions were initiated because all on-line traders contacted accepted the need to comply with requirements of the *Motor Vehicle Dealers Act*.

Periodic checks are now carried out to ensure continued compliance.

4.2 Focussing on the motor vehicle repair industry

4.2.1 Motor vehicle repairers legislation

On the 19 March the Minister for Consumer Protection, Sheila McHale, announced the implementation of the first stage of new regulatory scheme for motor vehicle repairers at Swan TAFE in Carlisle.

In the first stage of the implementation process the Motor Vehicle Industry Board is approving individuals who wish to be certified repairers. While certification is not compulsory for individual repairers, any person who supervises repairers or owns a repair business and personally carries out repair work must be certified. A repair business must employ at least one certified repairer. Logically therefore, the second stage, the licensing of repair businesses, could not commence until March 2008 at which time there should be sufficient certified repairers.

4.2.2 Motor Vehicle Repair Industry Compensation Fund and Motor Vehicle Repair Industry Education and Research Fund

The Motor Vehicle Repair Industry Compensation Fund and Motor Vehicle Repair Industry Education and Research Fund are funds established under the *Motor Vehicle Repairer's Act*. Each of these funds are credited one percent of the application fee for a Motor Vehicle Repairer's Certificate, and one percent of an application fee for, or renewal of, a Motor Vehicle Repair Business Licence.

4.3.1 Motor vehicle repairers policies Points system for certification of motor vehicle repairers

The Board believes that its qualification assessment to obtain a Motor Vehicle Repairer's Certificate is highly innovative, reflecting the Government's desire for a flexible and inclusive system. The system is points-based under which it establishes base line trade qualification for each class of repair work, for which a qualified person receives the 100 points required for a certificate. However, the 100 points can be obtained from a mixture of lesser qualifications, experience on the job, professional association memberships, references from an employer or customer, or a 'certification' test.

New consumer research projects

Genette Keating received the following mails. She replied to Gabby Samuels and Moira Byrne offering CAWA's assistance with their respective projects and requesting more information.

Received 02 August 07

To whom it may concern,

I represent a group of researchers spanning The University of Sydney, The University of Adelaide, Monash University, The University of New South Wales, and Macquarie University. We are carrying out research funded by a Project Grant from the National Health and Medical Research Council (NHMRC), and are investigating perspectives and policy responses to "direct-to-consumer advertising" of prescription medicines. We have been granted ethics approval for our research by the University of Sydney Human Research Ethics Committee.

As part of our work, we are canvassing Australian consumer groups asking for their views and for details about their contact with pharmaceutical companies. We are sending this email to all major health consumer groups in Australia.

I would be very grateful if you could provide me with the contact details of the appropriate person for me to be in touch with, who could represent your consumer group in both deciding if you would like to be involved in our research, and if so, who might be available to respond to our short survey regarding your group's involvement with and views regarding pharmaceutical company sponsorship and advertising.

I look forward to hearing from you soon.

Kind regards

Gabby Samuel

2 August 07

(Continued on page 32)

New consumer research projects continued ...

Received 01 August 07

Good morning,

I am writing to invite the Consumers' Association of Western Australia to participate in a research project being conducted by Treasury on behalf of the Commonwealth Consumer Affairs Advisory Council (CCAAC), on consumer complaint handling and dispute resolution.

We are hopeful that with your cooperation, and the cooperation of some other consumer representative groups, we will be able to incorporate the experience of complaint handling and external dispute resolution as consumers encounter it, into this research.

At this stage we have gathered information about the various consumer complaint handling and dispute resolution procedures from a cross-section of businesses and industries, including complaint handling processes internal to an organisation, and external dispute resolution schemes. In addition, we are awaiting some further specific information from a couple of industry participants.

As a first step, we would welcome you sharing with us any background information and statistics on consumers' experience of both internal and external complaint handling and dispute resolution processes. A little later, we would invite those consumers willing to share their experiences to complete a questionnaire.

Please note that this is not a quantitative research project, as our survey component of the project is qualitative. This reflects the purpose of the research project: to inquire and report on complaint handling and external dispute resolution schemes in a consumer market, articulating the principles underpinning complaint handling, drawing links between market characteristics of schemes, and exploring the practices guiding effective delivery of complaint handling services.

Let me know if you are willing to participate in this project, and if you have any queries.

Thanks in anticipation of your assistance.

Kind regards,

Moira Byrne

Competition and Consumer Policy Division
The Australian Government Treasury
Telephone: (02) 6263 2812
Fax: (02) 6263 3964

1 August 07

The following article was taken from *Better Trading*, Issue 2 - September 2007, the new electronic newsletter produced by DOCEP.



THE PRODUCTIVITY COMMISSION INQUIRY INTO CONSUMER PROTECTION

The Simpsons are the new Brady Bunch. The text message is the new telegram. And ebay is the new home shopping catalogue. A lot has changed in the last 30 years, but not much in the laws that control how we buy and sell.

While retro maybe in, that nostalgia does not extend to Australia's consumer protection framework that was introduced in the 1970s. To many it is out of date and in need of change.

Technological advancement, economic deregulation and competition reform, along with reduced international trade barriers, have offered consumers a world of more sophisticated products and the ability to access them globally via the internet. But technology has changed so fast that some products are superseded before the ink on new regulations has dried, leaving consumers vulnerable and traders burdened by controls which may ultimately be useless and costly.

The Commonwealth's *Trade Practices Act 1974* and State and Territory Fair Trading Acts (which include the Consumer Affairs Act in WA) provide overarching consumer policy. This is supplemented by industry specific regulations and nonregulatory measures including voluntary industry codes of conduct.

The Commission is the principle review body on microeconomic and regulation policy advising the Federal Government on how to achieve a more productive economy.

The system has been tinkered with in an ad hoc way as the Commonwealth and States and Territories tried to keep up with a rapidly shifting market place. Many believe it is overdue for modernisation. The Federal Treasurer has ordered the first major review of the Nation's consumer policy framework by the Productivity Commission.

The Commission is the principle review body on microeconomic and regulation policy advising the Federal Government on how to achieve a more productive economy.

(Continued on page 34)

The Future of Consumer Protection continued ...

It has been charged with investigating:

- ◇ which consumer protection laws should be revised or repealed;
- ◇ the extent to which self regulation, and other options, can replace Government regulation;
- ◇ improving policy to empower consumers; and
- ◇ how State and Federal authorities can better co-ordinate their consumer protection responsibilities.

The Commission called for public submissions following the release of its issues paper in January 2007.

The West Australian Department of Consumer and Employment Protection (DOCEP) has made a detailed submission to this important inquiry suggesting ways to improve the system. DOCEP's submission supports shared responsibility between the Commonwealth and States.

It argues an ideal framework would provide strong uniform general laws with flexibility for the States and Territories to respond to local market issues.

DOCEP believes the ad hoc way in which the Commonwealth Government has loaded responsibility onto the ACCC has led to an increasingly imbalanced focus on structural market regulation.

But for a national system to be effective, DOCEP believes Australian consumers must have a voice at the table.

The DOCEP submission calls for The Australian Competition and Consumer Commission (ACCC) to be split and a new Australian Consumer Commission created, putting a bigger focus on consumer regulation at the national level. DOCEP believes the ad hoc way in which the Commonwealth Government has loaded responsibility onto the ACCC has led to an increasingly imbalanced focus on structural market regulation.

It feels the ACCC's consumer regulation and education functions should be separated and given to a new body with a focus on consumer policy and regulation.

DOCEP also wants consumers to have more input into the system through the creation of an Australian Consumer Council to be modelled on the United Kingdom's National Consumer Council. The Council provides a formal mechanism for UK consumers to have their say.

Like the UK model, the proposed Australian Consumer Council should carry out properly funded research into consumer issues and act as a natural advocate for consumers. There is a strong case to say that many of the current regulations, such as disclosure obligations, are fairly useless to consumers. This is particularly the case in the credit sector where contracts carry fine print of War and Peace proportions which

are not read, or confuse rather than inform. Some submissions to the inquiry say there is an over-reliance on education campaigns despite their limited effectiveness. No matter how much fine print is spelt out some consumers are never going to be able to spot the dangers.

There appears to be broad agreement in submissions from key stake-holders on what is wrong with the system and how it should be fixed. However, as may be expected, there is tension between business and consumer advocates over how far the scales should be tipped towards consumer protection against loosening controls on traders. Business wants fewer restrictions which eat into their bottom line.

In its submission, the Australian New Zealand Bank calls for the States to cede their consumer credit powers to the Commonwealth. It says State laws are often at odds with the existence of a national financial services market. The differences between jurisdictions pushes up the bank's communication and training costs and its risk of noncompliance. This means it has to employ national advisers – a cost which is then passed on to the consumer.

The ANZ supports DOCEP's recommendation for more flexibility in the system and generic laws. Controls which are too specific could cause market havoc with rapidly changing technologies making specific regulations redundant overnight. Industry specific legislation should be a last resort, according to the ANZ.

The Real Estate Institute of Australia, in its submission, says an appropriate balance must be struck between empowering and protecting consumers while maintaining a competitive business environment. This appears to be the challenge for the inquiry.

The Productivity Commission's draft report is imminent and will be followed by more community consultation. To read all the submissions visit:
<http://www.pc.gov.au/inquiry/consumer/subs/sublist.html>



<http://www.docep.wa.gov.au/ConsumerProtection/bettertrading/index.html>



Better Trading, Issue 2 - September 2007
articles:

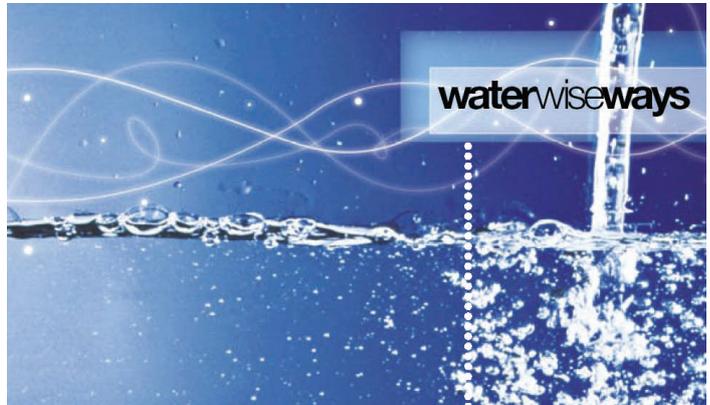
- ◇ [The Commissioner's Column](#)
- ◇ [The Future of Consumer Protection](#)
- ◇ [Shopping for information](#)
- ◇ [Generational change for consumer law](#)
- ◇ [Kimberly consumers on the map](#)
- ◇ [Volunteer feedback shapes bill](#)
- ◇ [Trade measurement goes Commonwealth](#)
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Be waterwise

How waterwise is your household?

Take this simple test to find out.

- Do you take short showers?
- Do you run your dishwasher with full loads?
- Do you mulch your garden?
- Do you regularly check your reticulation system?
- Do you know if your toilet is leaking?
- Do you use a glass of water when you brush your teeth?
- Is your lawn drought tolerant?
- Do you have a rain sensor in your garden?
- Do you catch the warm up water in the shower?
- Do you rinse your dishes in a container?
- Do you turn your sprinklers off during winter?



If you answered 'No' to any of the above questions, the *Water-wise Ways* booklet can help you become more waterwise. This booklet is an easy to read all-in-one Guide for the whole family to use. It tells you how much different water activities use and provides simple yet effective ideas to make our habits, our homes and our gardens just that little bit more water friendly without affecting our lifestyle.

The Water Corporation has lots of suggestions for saving water, starting with the tips inside *Water-wise Ways* brochure. There are also places you can go and people you can talk to, to get further waterwise advice. Simply look for the Waterwise logo, visit www.watercorporation.com.au or call the Waterwise Infoline on 13 10 39.

Nigel Lilley - BRB Registrar retires

The Builder' Registration Board Registrar, Nigel Lilley has retired and has been replaced by Kim Fare. The WA Consumers' Association would like to extend their good wishes to Nigel for a happy, long and healthy retirement.

In his role as Registrar, he supported consumer interests and was proactive and consultative in implementing changes to building legislation that gave rise to better outcomes for both consumers and the building industry.

CAWA received a letter from the Legislative Council Standing Committee on Legislation re Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal inviting written submissions as part of a review of SAT. Submissions should have been lodged by Friday, 31 August 2007.

The Legislative Council Standing Committee on Legislation called for the two year review as part of the 46 recommendations it made in its report about SAT to the WA Parliament. In it's Executive Summary the Committee raised the following concerns.

The Committee's **General Observations on the Legislation** include:

- ◇ 'The basic structure of the proposed State Administrative Tribunal is modelled closely on the Victorian Civil and Administrative Tribunal, although the types of matters dealt with by these two tribunals will vary considerably.'
- ◇ '... it became clear ... that the ability of an administrative tribunal to achieve the aims of timeliness, informality and economy, is almost entirely dependent on the skills and vigour of the Tribunal's President. This suggests that the appointment of a suitable President will be critical in achieving the Government's aims for SAT.'
- ◇ 'The experience of the Victorian Civil and Administrative Tribunal illustrates a general reluctance by parties to certain administrative decisions to genuinely resolve issues at the original decision-making stage. The Committee is of the view that the State Administrative Tribunal should encourage a full consideration of the issues raised by an administrator's decision before lodgement of an application to review the decision.'
- ◇ 'Whilst judges and lawyers have supported the concept of judicial leadership, the Committee is not convinced by the arguments put forward in favour of the contention. ... remains concerned at the risk of excessive legalism and formality in proceedings in an organization where senior lawyers dominate.'
- ◇ 'it is important that both the State Administrative Tribunal Bill 2003 and relevant enabling Acts contain mechanisms to ensure that matters before the State Administrative Tribunal do not escalate into long, drawn-out, formal proceedings with appeals on technical points of law all the way to the High Court of Australia.'

Practical Implementation of the Legislation

- ◇ 'There were two matters of concern ... relating to the practical implementation of the proposed SAT.'
- ◇ 'The Committee has found that the consultation process was unsatisfactory in that it was inadequate, one way and patchy.'
- ◇ '... concerns as to the structural design and location of the building which has led to unsuitable interior areas and inappropriate layout as well as poor access to the premises.'

Despite these concerns the legislation enabling the formation of SAT was passed without amendment. At the time of the Review process, CAWA identified several potential problems with SAT. We cannot comment on whether these issues have been addressed in the first two years of its operation because of a lack of reliable information. Hearsay information, does however, seem to indicate that the matters are often subject to lengthy waiting times, decisions are made without reasons so that clear understandings of the judicial process are not developed and that in some cases, referrals of trade industry discipline cases are not occurring. CAWA continues to be concerned about the operation of SAT.

Membership and Fee Payment Form

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

Our main objectives are to:

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

New Membership

Name _____

Address _____

Phone _____

Fax _____

E-mail _____

Areas of interest _____



A reminder that annual subscriptions are now due for 2007-8, and should be forwarded to the Treasurer.

Once again, I am delighted with the contributions made by CAWA members to the second *Consumer Notes* newsletter for 2007.

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 typing time I would prefer to receive an emailed, electronic copy or be given the information on floppy disk or 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 Notes*.

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