

# Consumer Notes

January - February 2006

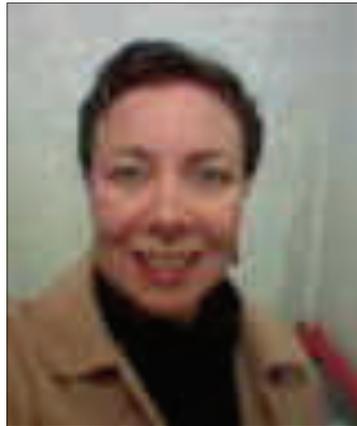
Volume 8, Issue 1

## Meetings

Meetings are held on the last Wednesday of each month excluding December and January, in the Rona Okely meeting room, level 6, DOCEP, 219 St Georges' Terrace, Perth.

Next meetings  
22nd  
February  
starting at 2  
pm

29th March



## From the President

We hope you find our first newsletter for 2006 is bursting with issues of direct interest to you as a consumer.

We are heading into a big year for Building Legislation reviews. The Issues Paper for the Home Building Contracts Act review was released in January and the Builders' Registration (soon to be "Licensing") Act Issues paper should be released over the next few weeks. Submissions close on Tuesday 18<sup>th</sup> April 2006. Copies of the issues paper (106 pages) can be downloaded from [www.docep.wa.gov.au/reviews](http://www.docep.wa.gov.au/reviews)

The CAWA website is soon to be updated so have a look in a couple of weeks (or so) and there should be some timely changes.

Thank you to Rhonda for drafting a CAWA submission to the recent review of the vehicle rental industry, an industry with too much fine print and not enough certainty for consumers, particularly concerning damage liability and insurance.

The biggest local consumer issue in the last weeks has been the Potato Marketing Board. Glenda Lewis was involved with a review of the Potato Marketing Board several years ago and commented that all the 'old chestnuts are back'. She suggested the need to consider the fact that the potatoes being sold aren't general eating ones but processing potatoes that are grown for a different market - not that this means that there is anything wrong with the potatoes. She also suggested we should look at what

deregulation has done to potato supplies in the Eastern States - and maybe get some feedback from consumers in SA, Vic and NSW. And also have a look at what deregulation has done for the milk industry in WA before we develop a position on this issue. Additional 'potato' information can be found on pages 5 and 6 of the newsletter.

Genette Keating

## *Profile on CAWA member, Valerie Moylan*

I was born in an outer suburb of Melbourne and enjoyed a semi-rural childhood. At the age of 15 I left school after attaining my Intermediate Certificate (the Victorian equivalent of the Junior).

For the next five years I worked in the clothing trade in Melbourne before going on to train as a Mothercraft Nurse at the Berry Street Foundling Home in East Melbourne in 1955-6.

After spending a couple of years in Tasmania I came to WA by ship in 1960, on a working holiday. I worked in the nursery at St Anne's Maternity Hospital for some months before being married in November 1960.

My husband and I had met on board the ship as he was bringing a yearling horse that he had brought in Sydney home to WA. Thus began my involvement with horses and the WA Trotting Association that lasted over twenty years until my husband's death in 1983.

I am a member of the Country Women's Association of WA and also belong to the Associated Country Women on the World (ACWW) and have attended world conferences in Ireland and New Zealand as well as here in Australia.

I first became involved with the Consumers' Association when appointed by the CWA as their representative to attend meetings. After that I joined WACA as a fully paid member. For a number of years I was the Consumers' Association representative on the Keep Australia Beautiful Council.

I returned to the workforce in 1990 and retired in 2004. I haven't yet had time to become bored with my retirement, being actively involved in CWA activities and church work. With a son, daughter in law and two grandsons living in the north of the state, a daughter living in Alice Springs, a son in Canberra and my siblings in Victoria I am often not to be found in Perth. I attend WACA meetings as often as I can.



Valerie Moylan

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**Thanks to members who contributed to this issue of  
Consumer Notes - Genette Keating, Valerie Moylan  
Joy Sands, Rhonda Algaba and Joan Milne.**

**Joan needs special thanks because she has once again  
generously proof read the Newsletter.**

## Potato Marketing Board

Some CAWA members have been concerned with the recent situation where potato grower Tony Galati began selling spuds directly to the public for 30c a kilo rather than the usual retail price of \$1.98 to \$2.38. The effectiveness of the Potato Marketing Board in achieving the best price, quality and number of varieties demanded by consumers in WA was called into question. The following excerpt from the National Competition Council's "Assessment of government's progress in implementing the National Competition Policy and related reforms: October 2005" (pp14.5-14.7) may shed some light on the various positions. Feedback from members would be welcomed as this ongoing issue deserves our attention. The full report is available at <http://www.ncc.gov.au/pdf/AST7As-001.pdf>

"The growing and marketing of potatoes in Western Australia are controlled under the Marketing of Potatoes Act 1946 (WA). The Act establishes the Potato Marketing Board with a monopoly right over delivery and marketing of the State's potato crop. The Act prohibits the production of potatoes in Western Australia for fresh domestic sale unless licensed by the Potato Marketing Corporation. These licences restrict land available for growing potatoes for fresh consumption but not for processing or export. The Potato Marketing Corporation sets wholesale prices and pools sale proceeds, paying growers an average return after deducting its own costs. Grower payments reflect grading and volume but not variety. The Department of Agriculture completed a review of the legislation in December 2002. The review recommended that the government maintain the current regulated supply system, given the lack of evidence that any major changes would result in improvement in the public interest.

The government confirmed in 2003 that it would retain the regulation of supply management and price fixing. In July 2004, following advice from an advisory group, the Minister for Agriculture announced that the government would bring to Parliament amendments to:

- ◇ change the basis of supply restrictions from licensed growing areas to quantity
- ◇ introduce incentives for growers to supply varieties preferred by consumers
- ◇ devolve from the minister to the Potato Marketing Corporation the regulatory functions of setting aggregate supply and fixing wholesale prices
- ◇ transfer the commercial functions of marketing, promotion and exporting to a grower owned entity.

The Minister said the changes would 'improve the effectiveness of the Potato Marketing Act without fundamentally altering the regulation of domestic potato supply' and that 'continued statutory marketing for potatoes would maintain industry stability in regional areas' (Chance 2004). The government is yet to bring forwards these legislative amendments. Nevertheless it has already made some changes.

The Potato Producers' Committee has taken over the marketing promotion functions under the Agricultural Produce Commission Act 1988, and the Potato Marketing Corporation no longer competes in the export market. The Council agrees that the changes should reduce the costs to the community of these restrictions, particularly by

*Potato Marketing Board continued*

improving the availability of lower yielding potato varieties preferred by consumers, and by reducing the incentives on growers to maximise area yield through the application of higher fertiliser and other inputs.

The Council has not been convinced, however, that restricting the supply and pricing of table potatoes brings benefits to the community that outweigh the costs, or that the objectives of the legislation can be achieved only by restricting competition. The 2002 NCP review of the Act, in finding that evidence for a net public benefit from deregulation was inconclusive, reversed

the presumption required by the CPA clause 5 (that is, the presumption that legislation should not restrict competition unless in the public interest). Subsequently, the government argued that a retail price survey commissioned by the Potato Marketing Corporation shows that Western Australian consumers enjoy cheaper potatoes than do consumers in other states and, therefore, that the legislative restrictions are in the public interest. The difficulty with such surveys is that they shed little light on what prices consumers would face, or how quality and product choice would change to meet consumer preferences, without the restrictions at issue. The retail price survey reveals nothing about, for example, whether, Perth prices for most desired table potato varieties, without the restrictions, would track Western Australia equivalent prices in Sydney or Melbourne, or the often significantly lower Adelaide prices, or somewhere in between. As acknowledged by the NCP review, the restrictions may increase prices paid by Western Australian consumers.

The PMC [Potato Marketing Corporation] sets its operational objective and performance indicator to meet 95 per cent of domestic demand. The remaining market demand is met by imports not regulated in the Act. The PMC could be seen to be using the supply controls in the Act to achieve as close as possible to import parity prices. (Government of Western Australia 2002, p. 6)

In other words, without the legislative restrictions, the volume (and range) of Western Australian grown potatoes supplied to consumers (in Western Australia and elsewhere) is likely to increase, bringing down wholesale and retail prices, and displacing potatoes from South Australia and, to some extent perhaps, substitute foods. The Council thus continues to find that Western Australia has not met its CPA clause 5 obligations arising from the Marketing of Potatoes Act. To meet these obligations, the government must remove its potato supply and marketing controls. Such reform could include a phased transition to help reduce the adjustment costs that existing growers might face.”

Another perspective comes from the view expressed by an agronomic consultant to vegetable growers, who said “In my experience, good efficient growers are frustrated by regulation, whereas poor growers have come to rely on what has effectively become a subsidy, by avoiding quality and cost of production competition. I can’t believe consumers benefit from this situation”.

Genette Keating

## *The Water Authority Customer Advisory Council (WACAC) Report*

The WACAC was established to assist with strategy and policy development in relation to the Corporation's services and levels of service. It provides a two-way communication avenue that helps the Water Authority to understand and keep pace with changing customer needs and allows the Water Authority to shape their business accordingly. Specifically the Customer Advisory Council's role is to:

- ◇ Advise on desired outcomes and principles to be applied in customer service processes.
- ◇ Review and provide advice in relation to the Customer Charter.
- ◇ Advise on policies relating to pricing and customer service.
- ◇ Regularly review and advise on performance against stated service commitments.
- ◇ Advise on methods for obtaining customer feedback (eg. Customer Surveys)
- ◇ Review and make suggestions on Water Corporation community involvement and education programs (eg. Community consultation, involvement with major projects such as Infill Sewerage).

To this end, monthly meetings have addressed:

- ◇ The delivery of concessions to customers in the 21<sup>st</sup> century. This provided an overview of the functions of the concessions section and the processes they currently employ. Along with the opportunities they have identified how to streamline the process to handle the impact of the aging population and the extension of concessions by Government. Two opportunities are being progressed. One short term being on-line applications and in the long term E-Concessions. The later being a joint agency project which involves automated data exchange between government agencies and concession providers.
- ◇ Call centres and the automated telephone menu. On average the Water Corporation call centre receives 1000 calls per day with up to 2000 calls per day in busy periods. The term given to measure the length of time it takes to answer a call in a call centre is referred to as the service level. The Corporation's licence requires a minimum of 70% of '13' calls be answered within 20 seconds. On average 50% of customers are answered in less than a second.
- ◇ Review of customer correspondence. The aim being to modernise standard Water Authority written communications to make them less formal and to acknowledge the customer as a valued client.
- ◇ Security through diversity. A policy which incorporates a number of strategies including water recycling, catchment management, water trading, and smarter use of water, surface water, ground water and desalination— all of which are being pursued as part of the solution to our water problems.
- ◇ South West Yarragadee and desalination. Both of which are being progressed as major future water sources.
- ◇ Retrospective charging policies. Current practice is to limit changes (debit or credit) to the current owner where any change in ownership of the property has

*The Water Authority Customer Advisory Council  
(WACAC) Report continued*

- occurred and there are limits to retrospective adjustments. Legislation states it is limited to the current financial year plus a back date of the past 5 years.
- ◇ Securing the water services and “Community Watch” program. Similar to the Neighbour Watch program, the Water Corporation wants to create the community village and ownership where the idea is that ‘ Everyone own the water’, to encourage the all hours centralized reporting of security related activities on the Corporation assets.
  - ◇ Customer charter which sets out the commitments the Water Corporation makes to customers in relation to water quality, water pressure, service interruptions, customer communication expectations and accounting policy.
  - ◇ Sprinkler bans /infringement notice process
  - ◇ Subiaco water treatment plant
  - ◇ Water recycling for green space irrigation
  - ◇ Electronic based self-service initiatives. The current initiatives have focused on major business customers including conveyancing agents, property managers and builders. The benefits gained by the Corporation and the customers cover reduced costs, increased efficiency, considerable savings, reduced paper usage and reduced necessary contact with the Water Corporation. The Corporation is also looking at ways to make these initiatives available to the average household customer.

The meetings are informative and allow ample opportunity for customer member input and comment on Water Corporation initiatives.

Joan Milne

**A reminder that annual  
subscriptions were due in  
October 2005, and should be  
forwarded to the Treasurer asap.**

## *Retirement Villages Act 1992*

The following letter was sent to CAWA representative, Joy Sands on August 30th last year.

Dear Joy

I am writing to provide an update on the proposed changes to the *Retirement Villages Act 1992*.

You may be aware that in November 2004 the State Government approved amendments to the *Retirement Villages Act 1992* as a consequence of a decision of the former Retirement Villages Disputes Tribunal in August 2004. which held that some changes to “residents contracts”, agreed to by both residents and retirement village operators, had the effect of making the “resident contract” a ‘service contract’. Unlike “resident contracts”, “service contracts” require the approval of the former Retirement Villages Disputes Tribunal or the State Administrative Tribunal (SAT) to be valid. The decision brought into doubt the validity of every change made to resident contracts since the *Retirement Villages Act 1992* came into operation.

Following release of draft amendments for comment in 2005, Consumer Protection received a number of submissions on a range of issues. Having regard to those submissions and an outstanding appeal in the District Court against the decision of the Retirement Villages Disputes Tribunal, the outcome which is still pending, a decision was taken in July 2005 not to proceed with the amendments at this time. The amendments will be considered further once the analysis of submissions is complete and the outcome of the appeal is known.

By way of clarification, please note that the proposed amendments would have meant that SAT approval would not be required to changes to service contracts that are made with the agreement of the resident and operator. The amendments were intended for the benefit of both residents and operators alike by removing the uncertainty about the legality of past changes which were agreed to by both resident and operator but not approved by the former the Retirement Villages Disputes Tribunal.

Regardless of the proposed amendments, where a resident disputes that he or she agreed to a change, they will still have the right to apply to SAT to have the matter ruled on. If any person believes that unauthorised changes to their retirement villages contract has been made, they should contact DOCEP on 1300 30 40 54.

If you have any queries in relation to this matter, please do not hesitate to contact Ms Christina Eftos on 9282 0972.

Yours sincerely

Patrick Walker

EXECUTIVE DIRECTOR and COMMISSIONER FOR FAIR TRADING

## *Issues and Regulatory Options for the Western Australian Vehicle Rental Industry*

The information that follows is taken from the DOCEP Discussion Paper on *Issues and Regulatory Options for the Western Australian Vehicle Rental Industry*.

### **Executive Summary**

This Discussion Paper is being distributed for the purposes of facilitating community engagement about the possible need to establish reforms within the Western Australian vehicle rental industry. It presents the research findings of the National Car Rental Working Party (Working Party), which was established in July 2000 by the Ministerial Council on Consumer Affairs (MCCA), and outlines the regulatory options currently being considered by the Department of Consumer and Employment Protection (DOCEP).

Vehicle rental services provide immediate access to a private and flexible means of transportation. In Western Australia, vehicle rental operators must be licensed as a special category of motor vehicle dealer under the *Motor Vehicle Dealers Act 1973* (MVD Act) unless certain conditions for an approved exemption prevail. There are an estimated 270 vehicle rental operators in the State. Of these, approximately 54 have successfully applied for an exemption to be licensed as a motor vehicle dealer.

### **Consumer issues**

Using results from a national email survey, submissions in response to the two public reports, and a sample of contract documents used by different vehicle rental operators, the Working Party identified several consumer issues, including:

- ◇ unfair and poorly presented rental contracts;
- ◇ frequent disputes about alleged vehicle damage;
- ◇ inadequate vehicle damage cover;
- ◇ credit card transactions;
- ◇ misleading advertising; and
- ◇ unsatisfactory vehicle condition and safety.

All these issues seem equally pertinent to the Western Australian industry based upon complaints received by DOCEP and stakeholder discussions.

### **Unreasonable Rental Contracts**

Research indicates that contracts are commonly difficult to read and understand. The main problems identified with some vehicle rental contracts include:

- ◇ very small print used;
- ◇ poor format and layout;
- ◇ lack of plain English or too much legal jargon used;

continued on next page

## *Issues and Regulatory Options for the Western Australian Vehicle Rental Industry continued*

- ◇ insufficient identification of important terms and conditions; and
- ◇ use of unfair or misleading provisions.

### **Disputes Regarding Vehicle Damage**

Nationally, customers of both large and small vehicle rental industry operators have complained of being charged for damage which they believe did not occur during the rental period. Other customers, who acknowledged accidental damage as having occurred, complained that the repair costs were grossly inflated and that they did not receive an itemised breakdown of repair costs.

In the absence of accountable verification procedures being established by vehicle rental operators, it is very difficult and costly for consumers to dispute allegations of damage or overstated repair costs from outside Western Australia, and sometimes weeks or months after the rental transaction occurred.

### **Inadequate Vehicle Damage Cover**

Vehicle fleet insurance policies are contracts between the vehicle rental operator and the insurance companies. Such policies do not extend to the hirers of the vehicles. The following common exclusions in rental contracts result in the hirer being held fully liable for vehicle damage:

- ◇ when in single vehicle accidents;
- ◇ when driving on unsealed roads;
- ◇ when reversing;
- ◇ by water;
- ◇ to the underbody or hood of the vehicle; and
- ◇ to tyres or the vehicle windscreen.

### **Credit Card Transactions**

The use of customers' credit card details is another significant issue, specifically in relation to the taking of bonds and the payment of any damage excess charge. The practice of vehicle rental operators deducting money from their customers' credit card accounts for alleged damage without seeking their explicit prior approval disadvantages customers, particularly if the vehicle damage is disputed. Further, most customers are unaware that the rental contract often provides for this practice to be legally permissible.

Most customers are also unaware that a pre-authorisation transaction, through which a bond is most often taken, effectively reduces their available credit for between seven and ten business days or until the transaction is fully processed or cancelled. The seven or ten day period can also simply be extended by the vehicle rental operator over the phone.

*Issues and Regulatory Options for the  
Western Australian Vehicle Rental Industry continued*

**Misleading Advertising**

Particularly at the cheaper end of the vehicle rental market, a number of operators allegedly engage in misleading advertising of hire deals, whether through the media and/or verbally. For example, operators have been known to quote attractive prices that they know to be unrealistic, or to offer late model vehicles that they know will likely to be unavailable.

In addition, although some operators charge an amount for each kilometre travelled beyond a threshold, relevant information is not always clearly communicated to potential customers.

**Unsatisfactory Vehicle Safety and Condition**

Although the larger operators usually have newer well-maintained fleets, some industry participants have raised concerns about the standard of safety of rental vehicles being offered, particularly at the cheaper end of the market. Poorly maintained rental vehicles may be unsafe and place consumers at unnecessary risk. A poorly maintained vehicle also increases the risk of vehicle breakdowns, which can impose significant additional costs on tourists if their holiday schedule is disrupted.

**Regulatory Options**

DOCEP is considering five regulatory options for the vehicle rental industry based upon the Working Party's research findings and the issues identified.

The regulatory options include establishing a:

- (a) voluntary code of conduct;
- (b) mandatory code of conduct;
- (c) full licensing regime;
- (d) negative licensing regime; or
- (e) standard industry contract.

A Product Information Standard is also being considered for the vehicle rental industry. A Product Information Standard could be established regardless of which regulatory model may be implemented.

Submissions to this Discussion Paper will shape the final recommendations for reform that will be forwarded to the Minister for Consumer and Employment Protection.

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## *Issues and Regulatory Options for the Western Australian Vehicle Rental Industry continued*

### **1.0 Introduction**

The purpose of this Discussion Paper is to invite comment from operators within the local vehicle rental industry, as well as from other interested parties, regarding:

- (a) several consumer issues identified at a national level; and
- (b) the regulatory options being considered by the Department of Consumer and Employment Protection (DOCEP) to address these issues.

### **1.1 The Local Industry**

Vehicle rental services provide immediate access to a private and flexible means of transportation. For the purposes of this discussion paper, the definition of a vehicle includes only: passenger cars, motorcycles, campervans/motor homes, four-wheel drive vehicles, and minivans with a seating capacity not exceeding 12 persons. Caravans are principally designed for the purpose of being towed, as opposed to being driven, and are therefore excluded from the definition of a vehicle.

The majority of vehicle rental firms can be classified as small businesses. Firms are located throughout the State. As is the case nationally, in Western Australia clients of vehicle rental firms are largely business people, as well as interstate and international tourists.

In Western Australia, all vehicle rental operators must be licensed as motor vehicle dealers because the *Motor Vehicle Dealers Act 1973* (MVD Act) includes car hire operators as a special category of dealer. The MVD Act is administered by the Motor Vehicle Industry Board (the Board). Importantly, section 31(1) of the MVD Act provides for the Board to make a car rental operator exempt from having to be licensed if two conditions prevail:

- (a) the buying and selling of vehicles undertaken by the car rental operator does not constitute a significant part of the business; and
- (b) the vehicles that are sold are transacted directly with a licensed dealer.

There are an estimated 270 vehicle rental operators in Western Australia. Of these, to-date approximately 54 have successfully applied for an exemption to be licensed as a motor vehicle dealer.

### **1.2 The Consultation Process**

This Discussion Paper is being distributed for the purposes of facilitating community engagement about the possible need to reform the Western Australian vehicle rental industry. By undertaking this consultation process, DOCEP hopes to obtain comment from a wide range of sources.

*Issues and Regulatory Options for the  
Western Australian Vehicle Rental Industry continued*

The key issues outlined in this Discussion Paper are intended to provide a framework for assessing the need for reforms, and the extent and nature of any reforms that may be required. At this time, neither DOCEP nor the Government endorse or favour any particular regulatory approach to address the issues identified.

The review process will consist of the following steps:

- (a) a public invitation for written submissions through this Discussion Paper to obtain the views of stakeholders;
- (b) an analysis of submissions received and of other available information; and
- (c) the development of recommendations for consideration by the Minister for Consumer and Employment Protection regarding reforming the vehicle rental industry.

**Submissions closed on 13 January 2006 at 5:00 pm.**

*CAWA's submission re the  
Western Australian Vehicle Rental Industry*

Rhonda Algaba responded the questions in the Discussion Paper and made the following submission on behalf of CAWA.

**2. 1. Summary of working party findings**

The level of complaints recorded at DOCEP could be misinterpreted as few, as many consumers would not have lodged a complaint and just 'paid the money' for peace and quiet.

There could be an alarming unknown number of people affected that have chosen not to complain or worse still are not aware of where to complain; eg. Overseas visitors, non-English speaking etc.

In the Key Findings, Page 9. no 1. Often Consumers have had an urgent need to hire a car due to illness, death in the family, damage to other vehicle, or other stressful issue and are not in a fit state of mind to absorb all the contract details, especially the use of Credit cards and Insurance arrangements.

It is interesting to read of the Accreditation and requirements in place in Tasmania and note the reduction in complaints. In W.A. the Hire Car Operators come under the M.V.I.B. as to licenses, but have little control put over them at the point of hire to a consumer and there is little coverage in the Act Except 31 (1) exemptions from Compliance.

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*CAWA's submission re the  
Western Australian Vehicle Rental Industry continued*

**Questions**

*1. Should vehicle rental contracts be presented within specific parameters (e.g. minimum font size and layout)?*

Improvements MUST be made to having a Standard Contract Form, in legible, plain English, with good font, printed in black on white or good contrasting paper. This should be designed by DOCEP to ensure that only the full clear details are given to hirers to sign.

*2. Should customers be given an information sheet (in different language where appropriate), separate to the rental contract, containing in large print a dot-point list of simply stated key contract provisions, the details of which would be in the contract itself? There could also be provision for the customer to sign at the bottom of the information sheet thereby acknowledging an understanding of the key contractual clauses.*

Some information sheets in different languages could assist, yet consumers should have someone with them to interpret or use the Telephone Interpreter Service though there is a charge for this. Provision for signing as to the fact that they have needed interpreters could be envisaged.

*3. Should rental contracts be available on request and where possible published on a vehicle rental operator's website?*

Rental Contracts MUST be available on a website for consumers to peruse at leisure before entering an agreement with a rental firm.

*4. Should all vehicle rental operators have a procedure, which would be clearly stated in writing, outlining the process for pre- and post-rental inspections of the vehicle, including the days and times that staff would be available at drop-off locations?*

Pre and Post Rental inspections are urgently needed in the Car Hire Industry and reasonable arrangements for this to be done must be negotiated, with the customer ALSO having responsibilities as to a sensible time and place.

*5. In the event of alleged damage to a vehicle occurring, should the operator promptly provide pertinent information to the customer, like: an itemised assessment of repairs including a breakdown of parts and labour costs; how, if required, to initiate a dispute resolution process with the operator; the procedure for the charge-back of credit card transactions; and the contact details of DOCEP?*

An itemised assessment of repairs in case of damage is imperative, but only one quote would leave the customer concerned that not further quotes were obtained and is far from satisfactory. The customer MUST be given all information on dispute resolution and the charging on Credit Cards.

*CWA's submission re the  
Western Australian Vehicle Rental Industry continued*

6. *Should each customer be given a clear written warning like, for example, Vehicle Inspections: You Should Participate in the Process to Avoid Potential Disputes About Vehicle Damage"? Should such a warning be accompanied by a provision allowing the customer to sign as either accepting or declining to participate in the vehicle inspection process?*

A warning to customers is an excellent idea.

**3.3 Inadequate Vehicle Damage Cover**

*Vehicle rental operators are able to purchase a comprehensive insurance policy for the protection of their fleets, or a third-party policy that covers damage or loss to a third-party's property. These insurance policies are contracts between vehicle rental operators and the insurance companies.*

*Such policies do not extend to the hirers of the vehicles. The cost of an insurance policy purchased by a vehicle rental operator varies according to the fleet size, the number and value of claims previously made, and the required level of excess. Hence, the use of the term "insurance" in the context of a rental vehicle transaction is technically misleading because vehicle rental operators are generally not authorised insurers under the Insurance Act 1973, nor are they usually brokers or agents of an authorised insurer. The rental contract, therefore, is not an insurance policy. Instead, in most cases the vehicle rental company extends the benefits of its insurance policy to its customers under the specific terms and conditions of the rental contract. A few of the larger franchisors effectively have no insurance but instead set their own liability and excess conditions within the vehicle rental contract.*

The Exclusions can be devastating to hirers if they take out a Hire Car, fully expecting;

- ◇ Not to have a single Vehicle accident until it happens.
- ◇ The main sealed road may be under water and they are directed by police or others to take an unsealed road. Do they have to get a signed statement from the Police officer?
- ◇ When reversing due to circumstances beyond their control, eg. Other cars bogged etc.
- ◇ Water, whether rain entering car or being caught in floods? Does this cover Hailstones?
- ◇ Under body or hood, could be a foreign object laying on road or a brick being thrown from a bridge; these are not the fault of the hirer.
- ◇ Vandalism to tyres or a stone cracking the windscreen can occur, no fault of the hirer.

7. *Should all vehicle rental operators have adequate insurance cover to address all liabilities for their fleet of vehicles, as is the case in Tasmania?*

Insurance Cover MUST be investigated. Can the hirer take out THEIR OWN Insurance for the time of hire?

continued on next page

*CAWA's submission re the  
Western Australian Vehicle Rental Industry continued*

8. *Are the current industry practices in relation to insurance acceptable and the issue really one of customers being made sufficiently aware of what their potential liabilities are? If so, should operators be required to provide their customers with written information containing clear and prominent warnings of what responsibilities the customer would have in relation to the loss or damage to the vehicle?*

Written information **MUST** be provided.

**3.4 Credit Card Transactions**

*This can be a nightmare for consumers who end up signing a blank Credit Card slip and this practice **MUST** end !! The bond issue is not always made clear to customers of Hire Cars. An interesting issue is the fact that one can only hire a car, with Credit Card facilities. Few customers would arrive at Hire Firm with a roll of bank notes instead! (One consumer on travels around Australia had to put in their own vehicle for maintenance and was stuck in a large country town all day without transport and as they did not have a Credit Card only an EFTPOS card. There was not a courtesy car available.)*

9. *Should the vehicle rental operator be prohibited from using the customer's credit card details for the purpose of taking a bond for potential vehicle loss or damage? If so, what other means are available to vehicle rental operators for obtaining a bond for their vehicles?*

Some better way must be devised rather than the use and misuse of Credit Cards as at present. This must be discussed with the Car Hire firms, Finance Companies, Banks etc. and Insurance Companies.

10. *Is it sufficient to include a clear and prominent warning statement either separate to or part of the rental contract to the effect that signing it allows vehicle rental operators to deduct relevant charges from the customer's credit card account in the event of vehicle damage or loss?*

Until changes can be made to the contrary, a warning **MUST** be part of the contract.

11. *Should the vehicle rental operator be prohibited from debiting the customer's credit card account (e.g. for alleged damage or loss), other than for the specific necessary costs of vehicle rental, unless with the customer's separate and explicit permission to do so? Yes, **MUST** be prohibited until matter is clarified or amount of damage can be taken from a bond.*

12. *If you think that it is acceptable that vehicle rental operators should continue to have access to customer's credit card accounts for contractual liabilities (e.g. damage excess) for several days, should it be a requirement that the operator clearly disclose to the customer that their available credit is reduced accordingly?*

**NOT ACCEPTABLE**

**3.5 Advertising**

*CAWA's submission re the  
Western Australian Vehicle Rental Industry continued*

*13. Should it be a requirement that vehicle rental operators include in their media advertising material all the standard charges customers would be required and expected to pay to be able to hire the vehicle, as well as any charge per kilometre and the threshold at which it will apply?*

YES.

*14. Should it be a requirement that when providing written or verbal quotes, vehicle rental operators include the following:*

*(i) all standard charges necessary to rent the vehicle, such as the daily rate, any charge per kilometre, threshold at which any kilometre charge would apply, delivery or collection fees;*

*(ii) all excess charges in the event of loss or damage, and the method of payment;*

*(iii) any excess reduction charges and the reduced excess; and*

*(iv) any and all circumstances under which the excess charges would apply?*

YES.

*15. Should it be a requirement that when a pre-booked vehicle is unavailable, the rental operator provide another vehicle of similar age, model and engine capacity under the same terms and conditions as the booked vehicle?*

A pre-booked vehicle SHOULD be available, except in extraordinary or unforeseen circumstances cases where a suitable one MUST be provided.

*16. Should all vehicle rental operators produce up-to-date customer information leaflets (in different languages where appropriate) that disclose all necessary charges and potential liabilities, including those regarding vehicle loss or damage?*

Yes, though in different languages would prove expensive and sometimes does not target the nationality required. SOME form of assistance should be provided to non-English speaking customers or use the Phone Interpreters.

**3.6 Unsatisfactory Vehicle**

*17. Should it be a requirement that all vehicle rental operators regularly service their fleet according to the manufacturers' guidelines?*

This should be the minimum requirement.

*18. Should it be a requirement that all vehicle rental operators provide a vehicle break-down service? If so, what should be the minimum level of service offered?*

Yes, some form of assistance eg. By R.A.C. or their Hire Firm's own mobile mechanic.

continued on next page

*19. Should all vehicle rental operators provide separate printed information, including*

*CAWA's submission re the  
Western Australian Vehicle Rental Industry continued*

*relevant contact details, on what to do and what not to do in the event of a vehicle breakdown or an accident, and the level of assistance the operator would provide?*  
Yes.

*20. Should the vehicle rental contract clearly disclose the obligations of the operator and the consumer regarding breakdowns and accidents?*

Yes. (Re Unsatisfactory condition of Vehicles, could this not come under the Licensing and Compliance Service?)

**4.0 Regulatory options**

*21. In light of the low level of representation of the vehicle rental industry by membership bodies, can a voluntary code of conduct address the range of consumer issues identified, and is the development of such a code practical?*

Do Vehicle Rental Operators at present belong to any form of association that could help improve standards and encourage a Code of Conduct? Can they be given more time as an ultimatum to 'lift their game' and maybe weed out the odd operators who are not up to standard. Do they now have any regulatory mechanisms or administration body with accountability? Or do they have any form of regular evaluation ?

*22. What impact (if any) would a voluntary code of conduct have on the vehicle rental industry and on consumers?*

Little impact it appears!

**4.2 Mandatory code of conduct**

We should keep in mind the Motor Vehicle Industry board in their work of Licensing of Rental Operators as Category F, as dealers and explore fully if they have sufficient powers, or to extend further to more adequately deal with problems in this Rental Car industry. It does depend whether the number of complaints merits a major change in this area.

*23. In light of the low level of representation of the vehicle rental industry by membership bodies, can a mandatory code of conduct address the range of consumer issues identified, and is the development of such a code practical?*

The Car Rental business should be put on notice to improve, 'or else!!!' as a Mandatory Code is a complicated and protracted affair and should not be necessary if the industry could improve by themselves with guidance from discussion with DOCEP.

*24. What impact (if any) would a mandatory code of conduct have on the vehicle rental industry and on consumers?*

If viable for the Government to establish and enforce, due to extra policing etc. it may at least eliminate some of the smaller and not well viable car rental firms.

**4.3 Full licensing**

*CAWA's submission re the  
Western Australian Vehicle Rental Industry continued*

*25. Is regulation appropriate for the vehicle rental industry? If so, what licensing requirements should be imposed?*

While it could prove an expensive and involved move to have full licensing and regulation it would be out-weighted by an increase in Consumer confidence as has been shown in the Car Sales Industry compared to years ago and the Motor Vehicle Industry Board already handles the Category F. Licence. It is strongly supported.

*26. What impact would a licensing model have on the local vehicle rental industry and consumers?*

Would improve image of the industry and inform consumers of their rights and responsibilities when hiring a vehicle.

*27. Is either an accreditation or registration model appropriate for the vehicle rental industry? If so, what impact would either of these models have on the industry and on consumers?*

Registration provides the better enforcement of standards for the benefit of consumers and encourages healthy competition in the industry.

**4.3 Negative licensing**

*28. In light of the consumer issues identified, is a negative licensing model of regulation appropriate for the vehicle rental industry?*

Not advised.

*29. What impact would a negative licensing model (with legally enforceable minimum standards) have on the local vehicle rental industry and consumers?*

Small dealers may set up and not be eventually viable providing no security for consumers

**4.5 Standard industry contract**

*30. In light of the consumer issues identified, is a standard industry contract appropriate for the vehicle rental industry?*

A strong case for a Standard Contract is advised as this seems to be the most important stumbling block encountered by consumers and is most appropriate that it is introduced.

*31. What impact would a standard industry contract have on the local vehicle rental industry and consumers?*

Would benefit Consumers as to clarity in contract re Fees and charges; the industry can offer their own information of benefits, choice of vehicle etc.

continued on page 21

*32. If you do not support having a standard industry contract, should vehicle rental contracts at least contain some standard clauses?*

## *Australian Consumers' Association Policy Review Workshop*

On Friday 30th September, 2005 a group of consumer representatives met at Lotteries House with Gordon Renouf, ACA Manager, Policy and Campaigns to discuss issues concerning a review of ACA and give WA consumers an opportunity to put forward their views and ideas on which policy issues ACA should be addressing. The following questions were put to consumers.

### First Impressions:

- ◇ What do you think about when you think about ACA policy work?
- ◇ What issues do you associate with ACA?
- ◇ What lobbying and campaigning strategies do you associate with ACA?
- ◇ What has ACA done well/not so well over the past 2-5 years?
- ◇ What distinguishes ACA from other Consumer organisations?
- ◇ What are ACA's strengths and weaknesses as a Consumer policy advocate?
- ◇ Are you aware of any research undertaken by ACA, – how useful was it?
- ◇ Are you aware of any campaign undertaken by ACA – how useful and effective was it?

### Choosing Policy Areas and Policy positions:

- ◇ What do you expect from ACA? What areas should ACA look at?
- ◇ How should ACA determine the issues it should take on and the policy positions it takes?
- ◇ What are the most important issues for ACA, now and the future?
- ◇ What about particular consumer groups, eg older consumers, PWD, NES etc?

### Working with others:

- ◇ How can ACA work with state based organisations?
- ◇ How should ACA work with other consumer organisations?
- ◇ How should ACA engage with consumers themselves?
- ◇ How can ACA best inform Consumer stakeholders about our work?

Those present were representatives of the Consumer Advisory Council, including Janet Pine (Chairperson) Eileen Webb, Aileen O'Rourke and Rhonda Algaba, as well as Clive Deverell, retired from WA Health Department, and Michelle Kosky, HCC. There were also members of WACOSS, UWA and DOCEP present.

A wide range of issues were discussed including:

- ◇ De-mutualisation of Health Funds
- ◇ Financial problems, eg. ATM's

*Australian Consumers' Association  
Policy Review Workshop continued*

- ◇ Competition policy
- ◇ Membership fees for ACA
- ◇ Indigenous issues
- ◇ Credit problems
- ◇ Mobile phones
- ◇ Pay-day lending
- ◇ Debt-collecting
- ◇ Unfair contracts
- ◇ Third line forcing
- ◇ Super accounts
- ◇ Swapping utility providers
- ◇ Reverse Mortgages
- ◇ Tampering with goods in supermarkets
- ◇ Packaging
- ◇ Digital television.

The point was made that there is no longer a peak consumer body in Australia, other than CFA, which is struggling to keep alive. There is no consumer group in NSW!!

Rhonda Algaba

*CAWA's submission re the  
Western Australian Vehicle Rental Industry continued*

*A STANDARD CONTRACT IS SUPPORTED.*

**4.6 Product information standards**

*33. What impact would a Product Information Standard that would apply to rental vehicles have on the local industry and consumers?*

May assist Consumers as to what to expect from a vehicle they may be hiring in comparison to what they generally use eg a 4-wheel drive or truck, compared to a family car. Information should be explicit as to use of variant fuel like gas or ordinary ULP or other and how to fill tank and use other attributes of the vehicle. This would all assist consumers during their hire of the vehicle.

## *Register of Encumbered Vehicles (REVS)*

The following information was supplied by Brad Jolly, Manager Registration Services at DOCEP in November 2005.

The Status of the National REVS Project is that following a number of consultations with the jurisdictions and with industry a final report has been prepared by the project consultants. The report will now be submitted to the Standing Committee on Consumer Affairs (SCOCA).

If SCOCA endorses the report, an inter-jurisdictional working group will be appointed to refine a number of threshold issues including the intended scope and strategic objectives of the National REVS service. Once the working group has completed that work, recommendations will be put to the Ministerial Council on Consumer Affairs (MCCA) and the Australian Transport Council (ATC) for their endorsement.

Beyond that point a process will be followed to undertake a cost-benefit analysis, develop a business case and to gain jurisdictional support for implementation. Ultimately for the project to proceed, each jurisdiction will need to be satisfied that a national service will provide a net benefit.

This project is still in the very early stages of development. It could be two to three years away from any changes occurring - if indeed a case for change exists.

RHONDA ALGABA  
Consumer Representative on REVS User Group

## *2006 Consumer Protection Awards*

Last year our hard working, long serving secretary, Verity Cripps was one of five finalists for The Rona Okely Award at the inaugural Consumer Protection Awards. Joan Milne wrote the nomination, and she and Verity have been invited to resubmit it for this year's awards.

Congratulations Verity on being nominated for a second year. Thanks must be extended to Joan for reviewing and adding to last year's nomination and making it relevant for 2006.

## *Western Power*

From April, Western Power will be separated into four stand-alone businesses as part of the State Government's Energy Reform Program to encourage competition in the electricity market.

The name Western Power will be associated with pole and wire maintenance and development and thus the uninterrupted provision of power. Western Power will manage the State Government's \$2.23 billion budget to maintain and upgrade the system over the next four years. The new Western Power business will be monitored by the Economic Regulation Authority.

If you live in the South West Interconnected System (SWIS) which covers most of southwest WA, north to Kalbarri and east to Kalgoorlie, from April you will (automatically) commence buying power from Synergy and your electricity account will come from Synergy. The Customer Service Centre numbers will remain as 13 13 53 (residential) and 13 13 54 (business).

Horizon Power will retail power to the rest of the state (all non-SWIS areas) and also has some generation capacity. Horizon Power customers will call 1800 267 926 (residential) and 1800 737 036 (business).

Verve Energy will compete with privately owned energy companies to generate electricity for the SWIS. Verve will use a variety of fuels (coal, gas, oil, distillate, wind, bio-energy and solar) to produce energy.

## *ConsultWA - have your say*

Have your say at [www.citizenscape.wa.gov.au/consultwa](http://www.citizenscape.wa.gov.au/consultwa)

ConsultWA, provided by the Department of Premier and Cabinet, is a one-stop shop of State Government community consultations and provides information for those interested in active citizenship, community consultation and participation.

The ConsultWA website provides easy access to information about consultations being conducted by Western Australian state government departments and agencies on issues in your area.

## *Keep Australia Beautiful Council*

Look out for data from KAB National Association's National Litter Audit (which was undertaken in November 05) which is expected to be released by the Department of Environment and Heritage in a national media release in the next week or two.

### **Clean Sites Program**

Unfortunately, after only 15 months, the Department of Environment has decided to wind up the Clean Sites Program in WA. The program, aimed at educating and encouraging the building industry to minimise distribution of litter from building sites either around the community or via the drainage system and to reuse and recycle materials. While all other states will continue to run Clean Sites, due to "constraints within the industry and WA's current infrastructure, policy and enforcement capabilities", it was felt the program was not running effectively in WA.

We feel that the training involved in the Clean Sites program, which was part of the course taken by prospective builders, would have been beneficial in raising awareness of the environmental issues faced by builders and would minimise the need for punitive measures.

### **Illegal Dumping**

KABC have contracted an Illegal Dumping Enforcement Officer to investigate and report on illegal dumping at charity bins, bush areas, industrial and construction sites. This has resulted so far in new signs being produced for charity bin sites warning would be offenders of video surveillance and the possibility of prosecution.

CAWA feels that since charity bins are often full, it would be helpful if a phone number was displayed on the bin to ring when the bin is full, some advice as to the frequency of emptying the bin and locations of alternative bins.

The Illegal Dumping Enforcement Officer will work only in an assist role to the statutory authorities, including local councils and CALM, who have primary responsibility in this area. The appointment is for four months ending in April.

### **Litter Reporting Scheme**

Revenue from the Litter Reporting Scheme has almost doubled since October with 96 new reporters joining the scheme since then.

### **Skyworks**

Post-event clean up efforts have been reduced from previous years however once again none of the waste from the event was able to be recycled due to contamination. Broken glass remains an issue.

Genette Keating

*Keep Australia Beautiful Council continued*

**Container Deposit Legislation**

The Keep Australia Beautiful Council's Western Australian Litter Prevention Taskforce have released to stakeholders what is hoped to be the final draft of the *Litter Prevention Strategy for Western Australia*. The document "sets out a framework for effective litter prevention and management and provides strategic direction for the combined efforts of the community, industry and government sectors in Western Australia" until 2009. The former Minister for the Environment, Judy Edwards has also established a Container Deposit Schemes Stakeholder Advisory Group chaired by former PCC Councillor John Hyde. There is an expected extensive community consultation process to look at the effectiveness of different CD schemes with a view to implementation in WA.

Ironically, CAWA has just been received this letter from CONSUMERS SA in response to our enquiry.

**13 February 2006**

**Dear Sirs/Mesdames,**

**Last year you wrote to enquire as to our experience with beverage container deposit legislation.**

**That regulation has been in force for over 30 years now and a predecessor of this organisation argued strongly before the Upper House for its introduction. We believe that the legislation has been most successful. This belief is best evidenced by roadside litter counts which reveal a lower percentage of drink containers in the SA litter stream. The legislation is also largely self enforcing and does provide an income for children and others seeking small monetary benefits. Finally the success of the legislation is reflected in its extension a couple of years ago to flavoured milk and similar drink containers. The extension of the concept to other fast food containers remains an issue for us.**

**Yours sincerely,**

**ANTHONY P. MOORE**

**Secretary CONSUMERS ASSOCIATION OF SOUTH AUSTRALIA (INC)**

*Consumer Advisory Council Meeting  
Friday 11<sup>th</sup> November 2005*

The Minister for Consumer and Employment Protection addressed the meeting in the afternoon with the favourable news of a seeding grant for the proposed Consumer Research and Advocacy Centre.

We are yet to have a final report, which will be sent out in the next week or so to cover issues discussed at our meeting, mainly on the fact that the Centre may concentrate at first as a Research medium. It is likely to be based with either UWA or Curtin University. The Council is keen to ensure that Advocacy remains a key issue in the Centre.

The Council has had the assistance of two students from UWA and Curtin in the drafting of some information leaflets on Consumer Representation taken from some excellent models from New Zealand. We hope to have a suitable launch next year.

Guests, including Gary Newcombe, Chair of the National Indigenous Consumer Strategy, and Maxine Chi, EO of the same addressed the meeting in the morning regarding the recent Indigenous Consumer Strategy: Taking Action, Gaining Trust, copies of which are available from DOCEP.

Also present were Susan Nulsen, Acting Director, C P Trading Standards and Fuel, at DOCEP and Warren Adams, Manager, Education and Research, DOCEP. Their issues were Fuelwatch; Residential Parks; Trade Measurement; Retail Trading Hours; Retirement Villages (where there is some duplication with Federal and State legislation); Charitable Collections; the changes of Boards and Committees; Car Hire; Motor Vehicle Industry Board, taking on the Registration of Repairers.

A draft of the review of the Fair Trading and Consumer Affairs Act is still with the legal unit at DOCEP and the Council is awaiting that at present.

Patrick Walker also addressed the meeting and reiterated the position of the Board as being an 'advisory' board with assistance from DOCEP, who remain at 'arm's length'.

The Council has been appointed to continue through to November 2006 and a replacement member will be announced shortly.

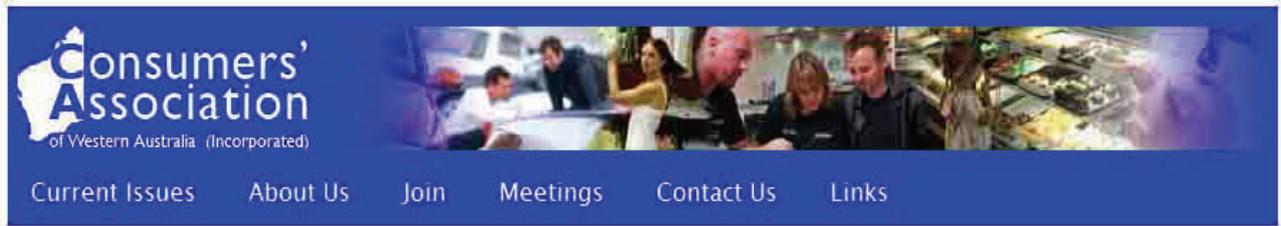
Rhonda Algaba  
December 2005

Rhonda's appointment has been recently extended to December 2006. The Council is currently developing leaflets on 'A guide to being a consumer representative' and compiling a register of interested persons.

## *Consumer Advocates Seminar*

A Consumer Advocates Seminar was held on Tuesday 29th November 2005. DOCEP arranged for Mr Martyn Evans, director of the Scottish Consumer Council to speak and will give us an insight into current consumer issues being faced in the U K. Mr Evans is an internationally recognised campaigner for consumers rights.

## *CAWA Website*



The CAWA website will be updated shortly! Nick Cowie in DOCEP has devised a method by which we can easily access the site and make changes. Genette and I need to 'play' to establish what we can and can't do and then Nick will give us further PD support. And best of all he has a back up copy to restore the original site if we really mess up!

Thanks must go to Nick and DOCEP for their support and hard work!

CAWA is interested in receiving articles from other WA consumer groups who would like material published in our Newsletter and placed on our web site.

Requests and articles should be forwarded to the Editor, Valdene Buckley by emailing [buckley4@bigpond.net.au](mailto:buckley4@bigpond.net.au)

## *EnergySafety*

Kevin Rosher, Principal Engineer Electricity Utilisation, has asked, on behalf of Albert Koenig, Director of Energy Safety, that CAWA publicise the following information in Newsletters in the coming months. Energy Safety is concerned about potential safety risks of wiring installed in housing in the 1970's and early 80's. Consumers are urged to remedy

### **Background information**

Energy Safety has recently introduced a policy for Electrical Contractors dealing with unenclosed electrical cable joints in ceiling spaces, these are typically found in dwellings constructed during the 1970's and early 80's. As part of the new policy Energy Safety has also produced a uniquely numbered client leaflet that is intended to provide the necessary background and supporting information for clients of electrical contractors. The purpose for producing uniquely numbered pamphlets is to reinforce the importance of the leaflet notice to owners/occupiers.

### **Important Notice to Owners of Dwellings and Buildings Constructed During the 1970's and Early 80's**

#### **Unenclosed Electrical Cable Joints in Ceiling Spaces – Rectification Requirements**

##### The Problem

During the 1970's and early 80's unenclosed electrical cable joints wrapped only with insulating tape were often installed in the ceiling space of dwellings and buildings. It has been noted that the insulating tape may come off over time, and this can result in the risk of serious electric shock to persons who enter the ceiling space.

##### Rectification Requirements

As a consequence of this risk Energy Safety, Western Australia's electrical industry safety regulator, has introduced a policy for dealing with this risk, allowing ample time for affected owners to take remedial action. The policy states that where a dwelling/building is identified as containing accessible unenclosed joints, the onus is on the owner to have the remedial work carried out, using a licensed electrical contractor. The remedial actions can be either:

- a) Fitting appropriate joint enclosures, where joints are exposed (ie. liable to be disturbed); or
- b) Installing total RCD (safety switch) protection – covering both power and lighting circuits (preferably through 2 RCD's).

*EnergySafety continued*

continued next page

Until 31 December 2007, an owner of the property who has been advised of the need to perform remedial work is required to arrange for the work to be performed by an electrical contractor within 3 years. Installations identified from 1 January 2008 containing unenclosed joints will be required to have the necessary work carried out within 12 months, and those identified from 1 January 2010 will be required to have the necessary work performed within 28 days.

If you are an owner/occupier it is likely that whilst an electrical contractor is carrying out some work at your premises he/she may notice this type of problem. Please note that Energy Safety has requested the contractor, in the interest of public safety, to point out where unenclosed joints (ie. the safety problem) exist and to hand a uniquely numbered explanatory leaflet to the owner/occupier and then advise the electricity supplier of having done this.

A copy of this leaflet, the advice to the electrical industry and other safety information is available on the Energy Safety website at: [www.energysafety.wa.gov.au](http://www.energysafety.wa.gov.au)

Albert Koenig

**DIRECTOR OF ENERGY SAFETY**

**CAWA Executive for 2005 - 6**

**President:** Genette Keating

**Vice Presidents:** John Robertson and Rhonda Algaba

**Hon. Secretary:** Verity Cripps

**Hon. Treasurer:** Joan Milne

**Newsletter Editor:** Valdene Buckley

A special welcome must be extended to John Robertson. Although John is a relatively new to CAWA he has been very active since joining the Association. His background in law is proving to be a valuable asset to CAWA.

Thanks must be extended to Glenda Lewis for her long standing role on the executive, both as President and then as Vice-President for the last two years.

## *Building legislation reform*

The following information was taken from the DOCEP website.

### **General review of building legislation and a proposed new building act for Western Australia - Building legislation reform**

#### ***Background***

The Western Australian Government, through its Departments of Consumer and Employment Protection ("DOCEP") and Housing and Works ("DHW") is currently carrying out a significant review of building legislation. While the individual reviews specific to each Department are being conducted separately, there will be close consultation and cooperation between the two agencies, to avoid unnecessary duplication and to facilitate stakeholder input.

In addition to the reviews being conducted cooperatively, the agencies will work together closely on the results and recommendations arising from the reviews in an attempt, as far as is possible, to develop an integrated and consistent set of outcomes.

DOCEP's review will be conducted in accordance with Terms of Reference that have established the parameters of the review. These Terms of Reference include the review of appropriate provisions of the Home Building Contracts Act 1991 (WA), the Builders' Registration Act 1939 (WA) and the Painters' Registration Act 1961 (WA). The Terms of Reference do not extend to a review of the existing home indemnity scheme by private insurers but do provide for consideration to be given to enhancements to the current scheme.

In the course of DOCEP's review, the extent to which existing legislation meets the needs of the building industry and building practitioners while providing an appropriate level of consumer protection will be analysed. The objective of the review is to identify areas in need of change and to recommend appropriate amendments. The review is wide ranging in its scope, addressing many of the issues that have been raised in State and National reviews on matters relating to the three Acts, as well as issues that have been raised by individual stakeholders.

DHW's review covers building standards and building approval processes; practitioner standards and registration of practitioners and proposes a new Building Act for Western Australia. In addition, DHW's review contains a number of important options to be considered about a possible framework to be adopted for the future regulation of the building industry in Western Australia. Those options are of significant importance to consumers, building practitioners and regulators.

Issues and discussion papers

As part of the review the State Government is seeking community, consumer and industry input through a number of issues and discussion papers. The DHW has

*Building legislation reform continued*

prepared and published a discussion draft on the subject of the proposed new Building Act for Western Australia and DOCEP will publish separate issues papers about the provisions of three important pieces of existing building legislation that fall within the portfolio of the Minister for Consumer and Employment Protection.

DHW's Discussion Draft relating to a proposed new Building Act for Western Australia can be accessed from their website, [www.dhw.wa.gov.au/buildingactwa](http://www.dhw.wa.gov.au/buildingactwa)

DOCEP intends to publish its three issues papers at intervals, commencing in January 2006 with the document relating to the Review of the Home Building Contracts Act 1991.

The issues and discussion papers relating to the General Review of Building Legislation and to the Proposed New Building Act for Western Australia are:

- ◇ Discussion Draft: A New Building Act for Western Australia - DHW
  - o Licence Issuing, Regulation and Enforcement
  - o Building Code Compliance
  - o Registration of Design and Approval Practitioners
- ◇ Issues Paper: Review of the Home Building Contracts Act 1991 - DOCEP
- ◇ Issues Paper: Review of the Builders' Registration Act 1939 - DOCEP
- ◇ Issues Paper: Review of the Painters' Registration Act 1961 - DOCEP

The issues paper for the Review of the Home Building Contracts Act 1991 is available to download from the DOCEP website

The closing date for submissions is Tuesday 18 April 2006, in lieu of Good Friday 14 April 2006

Hard copies of the issues and discussion papers are, or will be, available from:

Department of Housing and Works

99 Plain Street East Perth

Postal Address 99 Plain Street East Perth WA 6004.

Telephone (08) 9222 4960

Website: [www.dhw.wa.gov.au/buildingactwa](http://www.dhw.wa.gov.au/buildingactwa)

or

Department of Consumer and Employment Protection

219 St. Georges Terrace Perth

Postal Address Locked Bag 14 Cloisters Square WA 6850

Telephone 1300 30 40 54

Email: [buildingreview@docep.wa.gov.au](mailto:buildingreview@docep.wa.gov.au)

*Building legislation reform continued*

CAWA has been actively participating in the Building legislation reform process. In October and November CAWA members met with Norm Griffiths and Gary Newcombe to express their concerns re the incorporation of the Builders' Registration Board into DOCEP. This culminated the detailed response reproduced below.

Department of Consumer and Employment Protection  
Forrest Centre  
219 St George's Terrace  
PERTH WA 6000

ATTENTION: Gary Newcombe

Dear Sir

**Re Builders Registration Board ("Board") Consultation Draft – Acts Amendment (Licensing Boards & Consumer Protection) Bill 2005 ("BRA")**

We are in receipt of a copy of your letter DOCEP to Paul Marsh Builders Registration Board ("BRB") of 31st August 2005 ("August Letter").

We, the Consumers' Association of Western Australia ("CAWA") thank you for the opportunity to provide comment.

CAWA has now been able (under some pressure) to formulate a response given below. CAWA has chosen to make a three part response, the second part of which substantially responds to the Key Issues as set out in the August letter. The third part directs comment to some particular sections of BRA not addressed by the Key Issues.

Although CAWA does not have a working knowledge of the other Boards and committees involved (to be under the DOCEP umbrella) the opinions herein may be transferable to some or all of those entities.

The first part address, or re-addresses, CAWA's concerns with the philosophy of the board change from Independent Board to effectively DOCEP or government. In broad terms we maintain our opposition to this move.

**PART ONE – Philosophy**

Underlying our comment is a fundamental belief that a balanced independent board of seven/eight members representing the diverse views of the industry and consumer groups is best placed to perform its historical functions overseeing the building industry. It sits outside of Government and is not subject to Government jurisdictions or departmental monetary controls.

*Building legislation reform continued*

The argument that the Board only represents the Industry is negated by the balance of industry and consumer representation on the Board.

BRA is we understand part of a broad approach to review various Boards, Tribunals & Committees (“Boards”), arising from and addressing concerns arising from the Gunning and Temby Reports. To the extent that this approach is novel in Western Australia it is an unproven experiment. Scientific experimental method usually requires a ‘control’ by which variables can be measured. To this extent, for example the Board might be left independent to provide some measure of the effectiveness of the Boards brought under the DOCEP umbrella.

Such an approach could provide an effective Public Service – v – Independent Board comparison to guide future attitudes or legislation. This would truly say Government is trying to achieve the best outcome.

Historical evidence with WA (Finance Brokers Board) does not clearly support the move. We are not aware of any difficulties with the BRB.

Further, historical or anecdotal evidence from Eastern States consumer groups suggest the Queensland model of an independent, self funded board – the equivalent of the BRB (and originally based on the WA BRB) is the most effective in meeting consumers’ needs. It appears that the recently replaced NSW model was found to be especially problematic with prosecution, compliance, licensing and education being fragmented as is proposed by this legislation.

CAWA ask why it is that at a time when Government in general is opening Government utilities to competition there appears (with BRA) a movement almost in the opposite direction. Is it not possible to address issues arising from Gunning & Temby by methods other than that proposed? We are of the opinion they can be and would be prepared to assist and address those questions if requested.

BRA as it is set up emasculates the Board and turns it into possibly a disinterested, uninformed cipher with a very narrow range of responsibilities.

In CAWA’s view the Board in any event should have (a) Access, or preferably be provided with information from all levels as to what is occurring day to day. Without full information as to investigations, prosecutions, judgments, disputes, educational initiatives mediations etc it will be operating blind or in isolation. To that extent it will not be able to fully and properly assess applicants, be able to impose realistic conditions and be able to advise anyone let alone the Commissioner as to the education and information programs for consumers, licensees and industry.

The Board has considerable diverse technical expertise which requires continual input from the widest sources.

continued on next page

*Building legislation reform continued*

The Board must be able to educate themselves by participation in all aspects of the process. The best way in our view to achieve that is to participate, allowing full advantage of the Boards extensive experience. They must be able to see and take note of the results of their activities.

CAWA sees a basic tenet of Gunning to be in favour of centralized responsibility and therefore power. Centralized power and responsibility has frequently been seen as a problem rather than a solution. To prevent the problems of centralized responsibility/ power Australia for example has a Federal House of Representatives and Senate to provide Government as to agreed powers (the Australian Constitution) – then there are the States with their own (usually) two tiered system and then Local Government. Within the States there is the Legislative Assembly, Legislative Council, Executive and Judiciary.

In the BRA plan the functions (a broad comparison) of Legislative Assembly, Legislative council and Executive are combined in one person, the Commissioner.

This was previously spread to the many heads of the Board and Registrar. Why do we ignore the perfectly good example of our own Westminster System? The Government's own Cabinet (collective) decisions? Boards for Companies? This system pervades society and for good reason.

**PART TWO - Key Issues from August letter seriatim:**

Included here is comment on two preliminary issues dealt with in the August letter bottom of page 2 and top of page 3.

- (a) “Whether the attached Amended Act to implement recommended model achieves its goals whilst being practical and appropriate.”  
CAWA's response is a tentative yes. Tentative, because many of the sections (which we have looked at) in CAWA Valdene Buckley's Joan Milne's and John Robertson's view, have problems. We do not propose here or in Part 3 to detail all those problems or questions as the view pertains to over half of the sections – our response would be prolix. Also a very significant problem is lack of regulations.
- (b) The Statement last paragraph August letter Page 2 and top Page 3 –  
No adequate response can be made as the Regulations are required so as to make full sense of the whole. This is an important matter. An uninformed response involving guessing is patently inadequate and wasteful of time and resources. To provide proper and adequate input it is imperative that CAWA be in receipt of the regulations with proper time to consider and provide a response. This comment pervades and applies to all subsequent comment herein. CAWA is disappointed and hamstrung by the lack of information re the

*Building legislation reform continued*

regulations.

**Key Issue 1 - Board Membership**

- (a) Attachment as received by CAWA being August letter is not referable to Board but to Painters Registration Board.
- (b) To the extent that the correct attachment “C” differs from Section 54 of BRA the following may be incorrect.  
Section 5A provides for 8 members to sit together perhaps in an even number - what are the provisions for a tied vote?  
CAWA notes that the “Review of Boards and Committees in DOCEP Portfolio – Final Report April 2005 (“Final Report”) mentions only 7 members but fails to mention a “Union Member”
- (c) BRA Section 5.5A (1) (b) – this alludes to the possibility of two consumer representatives but not in clear terms. It should state clearly that at least one preferably two persons are appointed to represent **CONSUMER’S** interests; - Can the present terminology exclude a consumer representative? In CAWA’s view it could and to that extent is defective.
- (d) As to BRA S.5A (1) (a) – the Legal practitioner should not only be not a licensee but also not associated with any of the groups named in Section 5A (1) (b) & (c).

**Key Issue 2 - Investigative Powers**

The following comments are general and subject to comment on specific sections of BRA inclusive of the Schedules.

The powers of investigators as put in BRA and BRA Schedule 2 are breathtaking in their extent. Whilst these provisions may be necessary from time to time the effect could be draconian.

As a generalization these powers should only be used after taking legal advice. This applies to all powers including those requiring a warrant. This is especially so as the term “reasonable grounds” or the like as appears in BRA Schedule 2 is effectively a legal term and its interpretation varies depending on the case. BRA Section 12 AD – compliance checks without warrant deserves extra mention.

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BRA Section 12 AD has the clear capacity to be used to harass licensees and MUST in our view be exercisable either (a) as part of a routine (and therefore time determinable at least to the month) inspection or (b) on reasonable grounds subject to a legal OK.

A key question generally as to the Investigative Sections – 12AA, and 12 AC is as to whom oversees exercise of these functions? As it is it appears all power [except S.12AA (2)] is in the hands of the Commissioner. This is a lot of power in one set of hands – why can't the Board use its extensive experience?

**Key Issue 3 - Public Warnings**

BRA Section 20 C – Public Warnings

This contains a power to do not only good, but enormous damage if exercised on a perhaps innocent party without adequate investigation.

What is the foundation of a (complaint?) leading to a warning? We feel that a decision to issue a warning should go to the Board.

This power we feel should be hedged with Regulation as to its usage to prevent possible bad outcomes.

There should be some criteria set as to what “In the Public Interest” is.

**Key Issue 4 – Warning Notice**

Reference to Key Issue 4 at Page 4 of the August letter erroneously refers to Section 12 AD – it is in fact Section 12 AE.

This provision is peculiar in that a warning notice can only issue after failure to comply with the Act and will tolerate a continuing breach without allowance for prosecution.

CAWA understands (but does not know) that this section is intended for minor matters only. If that is the case the section might be amended so as to say it will apply to such sections (relating to minor matters) as are adverted to in the Regulations – or similar control.

Could there not be a clear element of education or re-education possible especially about the contentious activity? Such education and continuing education of licensees is in CAWA's view important for properly informed and up to date licensees.

## *Building legislation reform continued*

If Section 12 AE is intended for substantial breaches then it appears defective in disallowing later prosecution.

In any event to effectively tolerate continuing breaches even of a minor nature does not appear wise – possibly breeding contempt for the Act – “If I can get away with this why not other matters?”

As in Key Issue 3 above, CAWA feels a warning from the Board would carry more weight.

CAWA notes that the Electrical licensing Board has the power to investigate minor disciplinary issues that will not lead to loss of licence. Consumers are keen to see that minor matters are investigated.

### **Key Issue 5 – Suspension Licence**

This is an immense power and has the clear possibility of inflicting financial damage on a licensee greater than perhaps any inflicted by SAT on a prosecution.

CAWA asks - what are reasonable grounds? Where does the belief come from? “Beliefs” and even “reasonable grounds” likely appear not substantial enough in view of the possible large financial consequences. A builder/licensee should be treated fairly.

Could there be or should there be an expansion to involve “in the Public Interest” as a basis for invocation of the section? (With suitable clarification of the term Public Interest)

Again we feel Board involvement is preferable to take advantage of their undoubted expertise.

Additionally – is there any basis for concern that SAT will be able to undoubtedly comply with the implied time frames involved?

### **Key Issue 6 - Conciliation Powers**

CAWA disagree with the use of conciliation. In CAWA’s view conciliation has in its experience often been colored with bias actual or apprehended. All too often it is used to “lean” on a consumer to take a lesser deal to achieve settlement.

In CAWA’s view mediation is preferable as a means of settlement generally and particularly to overcome the above objections.

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## *Building legislation reform continued*

Mediation if used should not be compulsory. However the advantages of mediation versus Building Disputes Tribunal proceedings should be pointed out to prospective Tribunal litigants. Receipt of a pamphlet on advantages of mediation might be made a necessary precursor to initiation of Tribunal proceedings.

In CAWA's view responsibility/control and provisions for mediation should lie within the Building Disputes Tribunal as opposed to DOCEP. This is more particularly so as BRA S46 allows for Building Disputes Tribunal to make regulations for mediation but not conciliation.

### **Key Issue 7 – Classes of Licence**

CAWA do not understand the issue. BRA S46 relates (as above noted) to Building Disputes Tribunal and its Regulations for the purposes of BRA Part 4.

In any event CAWA does not support the idea of classes or tiers of Licenses by regulation or otherwise

CAWA notes that BRA S.10 itself does not allow granting of classes of licenses - nor does it allow for conditions to be applied to licenses. BRA S.10 should allow for the Board to issue licenses on condition which CAWA feel is a superior way of achieving full accuracy in licensing.

### **Key Issue 8 - Period of Licence**

In CAWA's view a three year period is not an inappropriate period, however there should be consumer certainty that a building part built through the re-licensing period will be finished.

In CAWA's view it would be of great value to tie re licensing to continuing relevant education. This could provide some sort of assurance that licensees were "up to date".

### **Key Issue 9 - Annual Reports and Further Reports**

In CAWA's view the proposal as outlined in August letter page 5 is inappropriate.

CAWA say that a report on operations will allow parliamentary review from the base of that report. Without this the Board and the Commissioner may sink into ineffective obscurity until (perhaps serious) complaint is made. We have difficulty with the concept of the Board (confined to very narrow activities by BRA as proposed) making a report on an organization for which it is not substantially responsible.

To have perhaps a Commissioner's report alone or perhaps Commissioner's plus

*Building legislation reform continued*

Board's report also have difficulty.

This could be solved by a Board report where the Board has taken a much broader role, even if only consultative in part.

Ready identification of responsibility (seemingly achieved at present by entrusting a huge range of responsibility to the Commissioner) in CAWA's view might be more acceptable if the Board acts (in effect up front) with concurrence and not necessarily on the recommendation of the Commissioner. The Commissioner being the proposed person statutorily required to take responsibility would remain responsible. Unless this is done it would promote the Board into carping about its lack of power and inability to oversee the Act functioning properly. The relationship between the Commissioner and the Board would need to be very clearly defined.

Reports will help make the Board and DOCEP accountable and interested in the results of its activities. It should have full information available to make such report.

**PART 3 - Comment on BRA Particular Sections**

1. BRA Section 24A – CAWA has concerns in relation to the general purpose fund the first of which relates to the question of conflict, whereby it appears that it is the Minister who in fact has the real power. CAWA regards this as unsatisfactory and feel that the Board again should have power and for the “buck” to stop there.

Where is the accountability for these funds? Who reports on this fund? In CAWA's view there should be transparency in terms that the funds be used for the building industry benefit i.e. there should be no variance in use from the present. CAWA feels strongly that the Board should be involved.

2. BRA Section 4(4) (5) and (6) of these sub-sections – Exemptions CAWA asks
  - (a) How much scope does this allow - appears extraordinarily wide – should be expressed at least as limited to promote the spirit and intent of the Act.
  - (b) The regulations might allow any person to be exempt. What if an exemption relates to a licence? Does this allow the Commissioner to provide an exemption in relation to a licence? Surely that must be the province of the Board.
  - (c) How long should exemptions be allowed?
  - (d) This is an extraordinary power for the e.g. Commissioner to make a mockery of the Board.
  - (e) The power is far too wide and needs to be severely hedged to prevent abuse.

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3. BRA Section 7

CAWA regards this as an important section especially in that it is unsatisfactory to the Board because:

- a) The Board will be unable to direct or control staff and worse will have not ability to compel provision of staff adequate for its functions. Without adequate staff it may well be unable to function.
- b) Who is the Chief/Executive Officer? This terminology is not defined as it should be. Section 111 (3) definition is not adequate.
- c) The addition of Chief Executive Officer adds more layers devolving to less accountability.
- d) The Board needs to be able to direct its own staff so that it has the liberty to seek/obtain information free of constraints of the Commissioner and DOCEP staff.

4. BRA Section 8

- (a) This section disempowers the Board almost entirely leaving it with ONLY the licensing functions and minor ability in relation to education and minor investigative power under Section 12AA.

A Board with such narrow duties, and Department fed for information, in the outcome can only become disinterested and possibly dangerous because of it.

- (b) To carry out its remaining function the Board still requires a large (preferably compellable) information base – see final Report page 18 Para 14.10.
- (c) It appears the Board has no power to cancel, suspend, annul, impose conditions, provide temporary licenses or provide exemptions. The Board should have clear power in all of these respects.
- (d) Renewal of a licence should be tied to education of the licensee.

5. BRA Section 10

CAWA takes the opportunity to repeat that there should not be tiers or classes of licenses.

6. BRA Section 12AA

CAWA asks why the Board with its extensive experience is cut out of this power. It is the case of many heads makes for wiser decisions.

*Building legislation reform continued*

7. BRA Section 23 Reports

CAWA feels that the Commissioner might report to the Board and his report become part of the Board report.

The Board report can only be as good as the information it relies upon. If the information to the Board relies fully on the Commissioner without the Board having staff of its own to research and produce independently its information; the Board may be fed insufficient, slanted or incorrect information.

The Board should not be subject to direction by either the Minister or the Commissioner

CAWA suggests that monies collected from industry licenses should go to support that industry and it should be a Board responsibility to oversee this and report on this as part of its Annual Report.

CAWA has produced this letter under some pressure and as a result appreciates the difficulties of producing good legislation. This is good reason for there to be further consultations and consideration and for BRB to be left outside as previously suggested to fully test the experiment.

CAWA points out that the Gunning drive for centralized responsibility ignores the problems with centralized power, which in the time honored tradition is avoided by split responsibility and a series of checks and balances.

Again CAWA thanks you for the opportunity to contribute.

Yours faithfully

Genette Keating  
President Consumers' Association of Western Australia.

Enquiries to J N Robertson  
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Last week Genette Keating, Valdene Buckley and John Robertson were invited to a meeting with Dr Gordon Robertson, former Deputy Auditor General for WA to discuss consumers' perceptions of the Builders' Registration Board.

Currently he is conducting an external review into the efficiency and effectiveness of the Builders' Registration Board. His objective is to assess whether the Builders' Registration Board's processes and procedures are adequate and appropriate for it to perform and meet its legislative obligations.

## Consumer Notes

*Consumers' Association of WA  
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Cloisters Square WA 6850*

### Consumers' Association of Western Australia

#### 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 \_\_\_\_\_  
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Areas of interest \_\_\_\_\_  
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Ordinary membership      \$15

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The Secretary

Locked Bag 14,

Cloisters Square WA 6850

Membership is tax deductible,

A reminder that annual subscriptions were due in October 2005, and should be forwarded to the Treasurer.

### *Contributions to Consumer Notes*

I am delighted with the contributions made by CAWA members to the third *Consumer Notes* newsletter for 2005.

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. The material should be formatted as a word document.

Please keep up the contributions in the next three months for inclusion in the second 2006 - April/May issue of *Consumer Notes*.

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