

# Consumer Comment

FEB—MAR 2012

## From the President

Welcome to the latest edition of Consumer Comment and welcome to our new members.

Since the last issue we have all been busy doing extraordinary things. To name but a few, Valdene, a contemporary artist (in her spare time) has successfully hosted her inaugural art exhibition. Verity's husband John, of Pink Lady fame, has had his portrait hung by the Royal Agricultural Society. John attended the National Consumer Congress in Sydney and I have enjoyed judging the Sustainable Cities Awards for KABC (congratulations to the City of Subiaco).



Unfortunately however, our attempt to stay the execution of the Building Services Complaints Resolution Bill has failed. We read Hansard with great interest but were very disappointed by the outcome and the facetious treatment of our concerns. Consumers entering into building contracts before the new legislation, were protected by the Home Building Contracts Act which gave them access to the Building Disputes Tribunal with a full complement of lawyer, builder and consumer members for six years from completion of their building work. They have lost this protection.

Joan, Valdene and I will soon lose our positions as Consumer Members of the BDT and CAWA will no longer have the capacity to keep in touch with the legislation or the complaints process as we will have no connection with it. Although the BDT will probably hold a few hearings to finalise complaints submitted under the old system, all new complaints go to the Building Commission. We were hoping to have a CAWA representative on the Building Services Board. However the Minister has chosen to appoint Steven Carulli and Josephine McAllister as Consumer Members.

Mr Carulli is a former joint Managing Director WA at Jones Lang LaSalle (JLL). Jones Lang LaSalle (with a 2010 global revenue of more than USD 2.9 billion) is a financial and professional services firm specializing in Property Management, Project & Development Services and Corporate Finance. Mr Carulli is said to have left JLL

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## **Profile - Anne (Annie) Smith**

I was born in Melbourne in 1953 and spent the first 27 years of my life there. My undergraduate qualification is a BA (Honours First Class) from the University of Melbourne. A double major in English Language and English Literature means that I am one of the few people you might meet who has translated 2/3 of Beowulf! My sub-major was in Music and this has remained a major interest in my life. I won the Shakespeare Scholarship and a poetry prize for my undergraduate thesis on four Anglo Saxon poems of the 5<sup>th</sup> century, drawing comparisons with themes of modern poetry. What I learnt from this is that the deepest needs and concerns of ordinary people are universal and that history constantly repeats itself.



I completed a Dip Ed and Master of Arts (with Honours) at the University of Melbourne, winning Dwight's Prize for Education.

Then followed four very happy years tutoring and occasionally lecturing in English Literature at the University of Melbourne and for two years at LaTrobe University. This was a great time to be young in Melbourne and in England and Europe where I spent four months in 1975/76. In the end I became tired of being a contract worker, sacked in October, rehired in February, so I joined the Victorian Public Service in 1979. After working in recruitment I landed a dream job as Personal Assistant to the Chief of Housing. He was appointed after prosecutions in the Department over land deals. I wrote speeches, visited high-rise, met with Aboriginal people beginning to advocate for their housing needs and met with people from Shelter and Choice. My boss was a passionate advocate for the poor, having been raised in a poor family. What I learned from him about social justice has never left me. In writing the Board minutes I became aware of the political process and I was sad when I had to move to Sydney .

In the early 1980s the Wran Government had just gained power and my new job as a graduate recruit counter pointed my Victorian experiences. Promotion was near impossible so I became Faculty Secretary (administrator) of the Faculty of Science at the University of Sydney, a dynamic job which I enjoyed hugely. My husband's career as a Geologist necessitated a move to Brisbane in 1982 and my brilliant career 'went bung' yet again! But it turned out to be an opportune time to raise three daughters. When we returned to Melbourne for eleven years I volunteered in Kindergartens, sat on a Primary school board for three years and did some research assistance on Victorian Aboriginal enterprises and successes in the 19th Century.

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with the intention of pursuing the good life and some private property development ventures.

Jo McAllister, Principal of Corporate Legal Education has been involved in legal education for over 10 years and has facilitated education programs in the private sector, State Government agencies, and on behalf of large law firms. Corporate Legal Education is a specialist education company designed to demystify, clarify and bring an understanding of law to non lawyers. They work with businesses to identify areas of risk and provide a comprehensive training programme to manage that risk. McAllister Legal (at the same address) lists its major areas of practice as general commercial law, property law, administrative law (including local government), general legal advisory services, succession planning, wills and probate.

Although my search was not exhaustive, I could find no reference to “knowledge of and experience in representing the interests of consumers” or any reference to either of the Consumer Member’s experience with home building consumers, domestic building laws or building standards as they affect domestic consumers. The full list of Building Services Board Members appears on page 6 of *Consumer Comment*.

We call upon consumers to let us know how they are finding the new system. We hope it works but we will just have to wait and see. To date there is no Consumer Representation on the State Administrative Tribunal. There is a possibility that CAWA members may have a future role in advocating for consumers in the SAT, but so far we haven’t pursued the idea.

Appointments to the Minister for Commerce Simon O’Brien’s new Consumer Advisory Committee have been announced, including my own. We have just had our third meeting. The role of the Committee will be to advise the Minister and the Commissioner for Consumer Protection on:

- ◇ the activities and policies of Consumer Protection as they affect consumers;
- ◇ current and emerging consumer issues;
- ◇ research and education projects relating to consumers;
- ◇ matters referred to the Committee by the Minister or the Commissioner.

The names of the Committee members can be found at page 20 of this newsletter.

The previous Consumer Advisory Committee (years ago now) made some great decisions and published information booklets which outlined the rights and responsibilities of consumers, business and government. As far as we can tell they didn't actually lead to any changes. Consumers are still struggling to be paid sitting fees on many committees — for example, the Keep Australia Beautiful Council. Consumers have lives, families and jobs and should not have to provide their time and knowledge for free while other members who are representing government or business interests are paid by those they represent.

Energy and other utility prices have continued to skyrocket since the Economic Regulation Authority decided not to have a member specifically representing domestic

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## ***From the President continued . . .***

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consumers. Meanwhile funding for development and sporting facilities appears to be have no restrictions. I am yet to meet anyone who supports the Barrack St jetty proposal.

The Government is revisiting the Trading Hours issue. With five years since the last referendum, retailing has changed sufficiently that consumers' opinion also may have altered. Many years ago our members undertook shopping centre surveys and could input our results to the (apparently defunct) Retail Shops Advisory Committee. We are unsure where the Government now canvasses consumer opinion, although the views of retailers and their staff are widely reported. Personally, I have no idea which shops are open when any more. I hate shopping and I have so much 'stuff' to get rid of (by any means except landfill) I can't justify any further accumulation. As soon as I'm comfortable doing all my shopping online (available 24/7), I'll be happy to see shopping centres metamorphose into new parks and community facilities.

The Trading Hours Report has finally been released but it is hardly an illuminating document. I've lost count of how many years since it was initiated. More information re trading hours can be found at pages 19-21 of this newsletter.

Our meetings since the last newsletter have focussed on the usual gnarly issues including Genetic Modification (noting the crop contamination issues in the press) and consumer rights when living in retirement accommodation. Thanks to support from Consumer Protection, consumers.asn.au has been updated and we hope more user friendly. This issue of Consumer Comment is available online for all our supporters to access.

Genette Keating

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In December 1995 we moved to Perth where I have continued to be a volunteer and to work as an English tutor for the last 15 years. I hope I can bring a point of view to the committee that is enriched by having lived outside WA, whilst greatly appreciating the many good things about living here. One daughter currently works as a doctor in a public hospital, another works as a volunteer in Legal Aid while the third is still a student. I've been married for 33 years to a Petroleum Geologist, so I have some insight into the drivers of the WA economy while being a casual worker whose income reflects the ups and downs of the two speed economy.

Oh, and I have played netball two or three times a week for 16 years, competing in the Masters Games through which I have met hundreds of great WA women.

The paradoxes I encounter in my life help me to never take things at face value and I hope to be an honest advocate for the WA consumer.

Annie Smith

**The Australian Consumer Survey is the first national survey of consumer and business awareness and understanding of rights and obligations under consumer laws. It also covers the experiences of consumers and businesses in dealing with consumer issues. The Survey was commissioned jointly by the Australian, State and Territory Governments. The full report released last year can be found at:**

**[http://www.commerce.wa.gov.au/consumerprotection/PDF/Reports/Australian\\_Consumer\\_Survey\\_Report.pdf](http://www.commerce.wa.gov.au/consumerprotection/PDF/Reports/Australian_Consumer_Survey_Report.pdf)**

It is estimated that it costs consumers a total of \$14.2 billion a year to deal with consumer problems. It costs Australian businesses \$6.6 billion a year to deal with problems where they have a legal obligation to provide a remedy for the consumer (not including the cost of replacement or repair).

74% of consumers with complaints contacted the business concerned. Of these, 42% were dissatisfied with the response they received. A quarter of consumer problems raised with businesses remain unresolved.

In 2009-10 Australians spent \$724.43 billion (excluding dwellings) on household consumption.

## **WA Consumers**

- ◇ 90% of Western Australians are aware that some consumer protection laws exist.
- ◇ 52% aren't sure what their rights are when purchasing a product or service and 40% don't know their rights after purchase.
- ◇ 80% agreed that there were organisations that ensure businesses comply with Australian consumer protection laws.
- ◇ 46% were not confident that they were adequately protected if something were to go wrong.
- ◇ 49% were not confident that they were protected from exploitation.
- ◇ 46% had heard that dispute resolution services (mediation and conciliation) are available (national average 45%). 45% did not agree that the government provides adequate access to these services (national average 50%).
- ◇ 50% didn't feel that businesses who exploit consumers were likely to be detected.
- ◇ 60% did not agree that the government is proactive in preventing exploitation.
- ◇ 61% did not agree that the penalties for exploitation were adequate. (national average 61%)

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## **Snippets from the Australian Consumer Survey 2011 continued ...**

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- ◇ 63% did not agree that the government provides adequate information and advice about consumer rights. (national average 62%)
- ◇ 75% didn't feel the outcome of a dispute would most likely favour the business. (national average 74%)
- ◇ 72% of consumers had experienced at least one problem when purchasing a product or service in the last two years. (national average 73%)
- ◇ Most problems were associated with mobile phones, closely followed by utility services, electronic/electrical goods and internet service providers, food and drink, banking, clothing and building services.
- ◇ 32% of WA consumers of building services had experienced problems. (national average 28%) with Tasmania (22%), the Northern Territory (24%) and South Australia (27%) having the fewest. The ACT (34%) had the most.

## **Building Services Board Members**

- ◇ Chairperson - Robert Allen
- ◇ Deputy Chairperson - Steven Carulli
- ◇ Consumer Representative - Steven Carulli
- ◇ Consumer Representative - Josephine McAllister
- ◇ Building Representative - Laurence Kruize
- ◇ Building Representative - John Mitchell
- ◇ Building Surveyor Representative - Helmut Swanke
- ◇ Building Surveyor Representative - Mark Donnelly
- ◇ Painting Representative - Omero Combi
- ◇ Painting Representative - Leesa White

***The following information is taken from:***

***<http://www.buildingcommission.wa.gov.au/dispute-resolution/resolution-process>***

Each complaint is unique and no one solution to a complaint is necessarily suitable for another. This is why there are a range of ways to resolve your complaint under the Building Services (Complaint Resolution and Administration) Act 2011. Once assessed by the Building Commissioner your complaint may be dismissed, or may be resolved through any number of the following ways:

- ◇ Conciliation;
- ◇ Interim order (building service or disciplinary);
- ◇ Building remedy order;
- ◇ Home Building Work Contract (HBWC) remedy order;
- ◇ Refer a complaint to the State Administrative Tribunal (SAT); or
- ◇ Refer a disciplinary matter to the Building Services Board.

In general, building service and home building work contract complaints may be resolved through conciliation, interim orders, building remedy orders, home building work contract (HBWC) remedy orders, or through referral to the (SAT). This variety of building-related orders is intended to prevent relatively low cost disputes from proceeding to court by making a decision for parties at an early stage. Orders can be made to rectify substandard work or to correct any regulated work that requires remedying.

For disciplinary complaints (investigations into a building service provider's conduct), the Building Commissioner may refer the matter to the Building Services Board for disciplinary action. Disciplinary action includes the suspension or cancellation of a registration, cancellation of an owner-builder's approval, and fines.

**Note:**

The cost of lodging a complaint with the Building Commission is now a minimum of \$100, and rises to \$200 if consumers lodge both a workmanship and a contractual complaint. This compares to the previous \$32 complaint fee under the now defunct Building Dispute Tribunal. One hopes the complaint resolution process is substantially better, given that for some consumers the complaint resolution process costs is about 600% more.

# ***Consumer sovereignty in an age of republicanism***

***Ruby Hutchison Memorial Lecture, Sydney, Monday, June 6, 2011***

***Ross Gittins, Economics Editor, The Sydney Morning Herald***

***Website: [rossgittins.com](http://rossgittins.com)***

I'm honoured to be invited to deliver the Ruby Hutchison Memorial Lecture. I want to talk about consumer sovereignty, in a couple of senses. Conventional economists believe the consumer is king — and should be king. Keynes said that 'consumption - to repeat the obvious — is the sole end and objective of all economic activity'. Production, in other words, is not an end in itself, but merely a means to an end, that end being consumption. It follows that, in regulating the economy, governments ought always to favour the interests of consumers over the interests of producers.

And, indeed, the founder of modern economics, Adam Smith, said as much in a famous quote:

'consumption is the sole end and purpose of all production and the welfare of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer'.

**Takeaway message:** get your priorities right, the interests of the consumer come first. And if you think I'm reading too much into that quote, try this one - equally famous:

'People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.'

In another, narrower sense, consumer sovereignty is an assertion that, in a well-functioning market economy, the consumer is king: consumers, not producers, determine exactly what producers produce and in what quantities. Why? Because consumers seek to maximise their utility, while producers seek to maximise their profits, and the only way for producers to maximise their profits is to produce exactly what consumers, in their efforts to maximise their utility, choose to consume.

There is a large element of truth in this proposition. You do go bankrupt if you produce things no one wants to buy. And we know that, each year, manufacturers bring on to the market a large number of new products in the hope of catching the consumer's fancy, only to abandon many of them when it's discovered they aren't particularly popular.

**CONSUMER COMMENT**

Even so, we know that, in practice, consumers don't get it all their own way. They often face a fairly narrow choice. There may be a range of producers in a particular field, but they each produce a remarkably similar product, thus rendering the choice more apparent than real. While in the textbook ideal producers between them make sure every niche is covered, in practice competition can have the perverse effect of causing rival firms to offer the same product. In the classic case of two ice cream sellers on a beach, assuming you have an oblong beach with bathers spread roughly evenly over the area, the ideal place for the two sellers is at the quarter and three-quarter marks, thus ensuring that no bather has to walk more than a quarter of the length of the beach to get an ice cream. But human nature doesn't work the way the model assumes and the two sellers usually position themselves, in the classic phrase, 'back-to-back in the middle of the beach'. Why? Because in their competitive zeal, producers don't focus on the convenience of the customers, but rather on the performance of their competitors. And whereas the model tells us firms will seek to beat their competitors, in practice their highest priority is, rather, not to be beaten by them. If so, there'll be a strong tendency for firms to offer the same products at the same locations.

The notion of consumer sovereignty comes from the model of 'perfect competition' - a collection of assumptions about how markets work that's a kind of textbook ideal which has never existed or even been approximated in real life. One of its many assumptions is 'atomistic competition' — so many, small firms in a market that no individual firm has the power to influence the price. This notion may have been less unrealistic at the time when economists were formalising this model, in the second half of the 19th century. Today, however, most markets are characterised by oligopoly — a small number of very big firms. Why? Because that's where more than a century of seeking and exploiting economies of scale has left us. The unending search for scale economies is no bad thing: it's one of the primary reasons we're so much more prosperous today than we were a century ago, with the lion's share of those savings flowing to the consumer in the form of lower prices in real terms. There is, however, a price to be paid for having a smaller number of firms producing on much higher scales: those firms acquire a degree of market power. They're more easily able to engage in non-price forms of competition, they're more likely to offer a very similar range of products and they're able to offer their goods and services on terms and conditions that suit their own purposes.

Were we ever actually to read the fine print of the contracts we sign we'd discover them to be extraordinarily one-sided, written by lawyers whose only goal is to protect their

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## **Consumer sovereignty in an age of Republicanism continued ...**

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client from every adverse eventuality. You and I know full well that, were we to say we were prepared to buy the product provided they struck out clause C on page five, we'd be told to take it or leave it. That being so, it's actually rational not to waste time reading the fine print. And here we see why consumers need the protection of common law and consumer law to even up the bargaining power.

One of the assumptions of perfect competition is 'perfect knowledge' - both the buyer and the seller know all they need to know about the nature of the product, its quality and the full range of prices being offered by other sellers. In truth, of course, knowledge is always far from perfect, and is usually asymmetric - one side (the seller) usually knows far more than the other (the buyer). This asymmetry arises because the sellers are professional, whereas the buyers are amateur. I sell fridges for a living, so it pays me to know all about them, including the quality of particular models and the range of prices my competitors are charging; you buy a fridge only once every 10 years, so you wouldn't know much about fridges and it wouldn't make sense for you to know as much about them as I do. The model assumes information is costless whereas, in reality, gathering information can be costly in time and money. This means it's often not rational for consumers to gather all the knowledge they need to live up to the economists' injunction of 'caveat emptor' (let the buyer beware).

Finally, another reason the consumer isn't king is our susceptibility to the blandishments of advertising. I can't remember ever meeting an economist who disapproved of advertising, but that's because it suits economists to assume the role of advertising is purely informational: merely to inform potential customers of the availability, characteristics and price of their product. In truth, blind Freddy knows the primary purpose of advertising is to persuade us to buy things by playing on our emotions and delusions. Often we end up buying things we don't really want.

So far, I've outlined what you might call the conventional weaknesses in the proposition that the consumer is king. But over the past 20 or 30 years a branch of economics called behavioural economics has been studying all the unconventional weaknesses in the conventional model. It's a study of all the respects in which the bedrock assumption of neo-classical economics is wrong. This is the assumption that we're 'rational' - coldly calculating and self-interested in all the decisions we make. Behavioural economics draws heavily on cognitive psychology and neuroscience. It's the systematic study of things marketers understand intuitively. Many of its findings

turn on the fact that humans simply don't have the neural processing power to think through all the thousands of decisions we make each day, weighing all the pros and cons. A huge proportion of the decisions we make - even the decisions we make in shops about which one to buy - are instinctive and unconscious. Often we don't know why we jumped the way we did, though our brains are adept at articulating plausible after the fact explanations of why we did [act].

We're not good at assessing the strengths and weaknesses of more than two things at a time, which makes it easy for salespeople to manipulate our choices. Economists assume the wider the range of items to choose from the better off we are. Choice is obviously a good thing - but only up to a point.

Studies show that where the choice is too wide people find it hard to make up their mind and often avoid making a decision. Another finding is that we're quite bad at predicting how we'll feel about the actions we take. We tend to expect nice things to give us more satisfaction than they do, while expecting bad things to be worse than they are. This says we often suffer 'buyer's remorse'. The economists' model assumes we know a lot about the quality of the things we buy and this knowledge is reflected in the prices we're prepared to pay. It turns out that, often, we don't know much about the quality of what we're buying and simply work on the assumption that the higher the price we pay the better the quality must be. So the model assumes our knowledge of quality determines the price, whereas in reality it's often the reverse: the price determines our perception of quality. This makes us susceptible to manipulation by marketers - often they can actually sell more of something (cosmetics, for example) by charging a higher price for it.

It's because we often know little about the quality of what we're buying that brands are so powerful: they act as a guarantee of quality, consistency, reliability and refunds where goods prove unsatisfactory. Firms work hard to preserve the value of their brands by making sure they don't disappoint their customers. But brands give firms market power, allowing them to charge higher prices than they otherwise could. Too often, too many of us become too reliant on brands - too often reluctant to try the no-frills product (which in some cases may be identical to the branded product). This reluctance adds to the brand-owner's pricing power. Another aspect of branding is that people often buy prestigious brands as a sign of their success and superior status. This explains why the

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## ***Consumer sovereignty in an age of Republicanism continued ...***

cost of an Alfa Romeo in Australia compared with in Italy can't be explained by freight costs and differences in taxes etc. It's possible that, were the Australian distributors of Alfas to cut their prices they'd sell fewer cars. Is it a bad thing for firms to charge a high premium for selling status symbols? In a sense, it's what the customer wants. It also raises questions about whether the pursuit of economic growth, and the elevation of consumption above all else, is a particularly worthy objective. If our growing affluence merely allows us to devote more of our incomes to the purchase of 'positional goods' (goods that demonstrate our superior position in the pecking order) - a zero sum game if ever there was one - how is this game socially beneficial?

It turns out that the way we react to propositions (including sales propositions) is heavily influenced by the way they're presented to us - the way they're 'framed' as the psychologists put it; by the context in which they're put. This explains the literal importance of packaging, and much else.

Studies have shown people react very differently to propositions which, when you examine them carefully, are actually identical. This aspect of the way our brains work also creates obvious scope for marketers to manipulate our choices.

There's much more I could say about the findings of behavioural economics, but I'll limit myself to one more issue: self-control. Because so many of our decisions are instinctive and unconscious, all humans have problems with self-control: we're always finding ourselves doing things that, in our cooler, more reflective moments we know we shouldn't do. We have problems controlling our consumption: how much TV we watch, how much we eat, how much we drink, how much we smoke, how much we spend on the pokies, how much we put on our credit cards, how little we save.

This is a big issue, to which I'll return. But that's enough about why the economists' model of consumer sovereignty isn't working as it's supposed to. Now let's turn to why the political model often doesn't put the interests of consumers first, either. In theory, since our democracy is organised on the basis of one adult consumer, one vote, you'd expect politicians always to put the consumers' interests first. In practice, however, governments frequently put the interests of producers ahead of consumers, making life easier for producers by raising the prices faced by consumers. Why does this happen? One very basic and powerful reason is that producers usually have a lot more skin in the game, so it makes sense for them to fight harder than consumers do. Some measure to reduce the degree of competition in an

industry may offer considerable benefit to a relatively small number of producers, while increasing the prices paid by each of the huge number of consumers by just a little. Similarly, some reform aimed at increasing competition and thus reducing excessive profits and prices threatens to hit the small number of producers much harder than it would benefit each of the huge number of consumers. The information asymmetry comes into play: producers are far better informed about how they would be affected than consumers are, since the issue lodges far lower in the hierarchy of a consumer's many concerns. Thus producer lobbies find it much easier to organise and raise funds for a campaign for or against some measure than consumer organisations do.

Even so, it remains true that consumers have far more votes than big business does, and politicians care ultimately about votes. This is why the main tactic used by producer lobby groups is to persuade consumers to change sides and back their campaigns, to convince consumers it's they, rather than the producers, who stand to lose most from the measure. Often, this is achieved by slick advertising campaigns. 'This measure would involve huge costs, all of which would be passed on to customers. I'm not worried for myself, just for my customers.' (In which case, why are you fighting so hard?) Many voters know little about how economies work, so when business people tell them some measure (the resource super-profits, for instance) would wreak havoc on the economy and cost a lot of TV viewers their jobs, they're inclined to be believed.

Industry lobbies often start by exaggerating the risk that their own employees will lose their jobs, so unions often join with employers in supporting measures that would reduce the competition in an industry or in opposing measures that would increase competition. This is where it has to be acknowledged that many consumers are also producers—in the sense that they earn their living working for particular industries. People probably pay more attention and are easier to mobilise when wearing their producer hat than their consumer hat. And politicians are no doubt aware that a threat to a voter's job will be taken by that voter a lot more seriously than a modest threat—or benefit—to their pocket. In the effort to turn consumers into defenders of producers' interests, no one does it better than the doctors: with any threat to their remuneration — such as the Rudd government's abandoned attempt to cut the Medicare rebates paid to ophthalmologists' for eye operations, following technological advances that made surgery much easier and faster—all they have to do is wind up their patients and send them out to do battle with the polities.

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## **Consumer sovereignty in an age of Republicanism continued ...**

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All these are the reasons the political model isn't advancing the interests of consumers the way it ought to. So what can we do about it? My first suggestion is that those charged with protecting the interests of consumers, and those who advocate on behalf of consumers, be bolder in their willingness to propose intervention in the market. We live in an age where the rise of economic rationalism and the politically-driven libertarian think tanks has made intervention unfashionable and put consumer advocates much more on the defensive. But as we've seen, the conventional case for the existence of significant areas of market failure remains strong. In this ever-more busy and complex world, it's simply idle to merely warn consumers to beware. Government intervention is often justified to help consumers overcome the extreme information asymmetry and to even up the wide gap between producers' and individual consumers' bargaining power. Further, the case for intervention is greatly strengthened by the more recent evidence provided by behavioural economics. The rationalists' case against intervention rests heavily on the assumption that consumers are rational, but the evidence of hard science shows us how laughable that assumption is. If consumers really were rational—if we really were able to think like Albert Einstein, store as much memory as IBM's Big Blue and exercise the willpower of Mahatma Gandhi—it wouldn't even be necessary to warn buyers to beware. A favourite chant of economic rationalists and libertarians is to assert that 'no government could possibly know better than I do what's in my own best interests'. If all of us were rational, this assertion would be perfectly true. Since all of us are far from rational, there are likely to be many circumstances in which governments are able to see our best interests more clearly than we do.

As we've seen, fallible humans often have serious problems achieving self-control: in the heat of the moment we often have difficulty making ourselves do what, in our cooler moments, we know we should do in our own, longer-term interests. Our main tactic in seeking to achieve self-control is to use pre-commitment devices. There is much scope for governments to help us with this. The libertarians are always disparaging the 'nanny state', but the truth is many of the interventions and prohibitions governments impose to help us with our self-control are quite uncontroversial and have been introduced with remarkably limited public resistance. Think of compulsory seat-belts and random breath-testing; think of the tight regulation of the advertising and sale of alcohol and tobacco. Think of the ready acceptance of smoking bans in the workplace, buildings and even pubs.

Deregulation in any of these areas is unthinkable. Now the Productivity Commission has

drawn heavily on behavioural economics with its proposal for compulsory pre-commitment for gamblers.

One consequence of the rise of economic rationalism is the attempt to limit pro-consumer interventions to the provision of disclosure statements and more information on labels. This approach assumes we would be rational if only we had a bit more information. But the findings of behavioural economics show just how laughably inadequate it is. So consumer guardians and consumer advocates need to be bolder in proposing intervention to protect consumers. At the same time, however, they do need to be more considered and inventive in the types of intervention they advocate. One point the rationalists have sustained is that much intervention is ill-considered, ineffective, has unintended consequences and loopholes, or ends up being captured and subverted by producers. Successful intervention is a tricky business. Intervention is likely to be more successful where it draws on the lessons of behavioural economics. Two good examples are the Productivity Commission's gambling reforms and the Cooper committee's proposals for the reform of compulsory super.

My second suggestion is the need for greater economic literacy on the part of consumer advocates. If proposals for new interventions are to get past Treasury they need to be argued rigorously on economic grounds and it's not enough merely to repeat the words 'market failure' as if they were a magic incantation. More to the point, if consumer advocates were more confident in their economic understanding, they'd be more confident in taking a public stand against producers on the make.

Why, for instance didn't consumer advocates have more to say when dairy farmers were claiming the supermarket chains' discounting of milk prices would be of no lasting benefit to consumers? Why, when governments take on powerful producer interests - such as the casinos, pubs and clubs—aren't consumer advocates more vocal? Aren't gambling addicts considered to be put-upon consumers? Why when people bemoan the high cost of bananas following Queensland cyclones don't consumer advocates point out that prices shoot up because of the long-standing ban on the importation of bananas to protect the incomes of local banana-growers? If politicians could be more confident of vocal support from consumer groups, they would be more willing to take on producer interests.

*(Continued on page 16)*

## **Consumer sovereignty in an age of Republicanism continued ...**

*(Continued from page 15)*

My final thought is more in the nature of a prediction. The internet and e-commerce are in the process of revolutionising the consumer experience. The internet has greatly reduced the cost of information gathering and comparison shopping, and will in the next decade or so break down international price discrimination and parallel import restrictions, making the generally much lower prices charged for goods in America available to consumers in Australia. In time this will exert considerable downward pressure on Australian retail prices and enforce much painful rationalisation on retailers, their employees and their landlords.

Because the internet is so impersonal a medium and because it makes price discovery so cheap and easy, it's likely to intensify price competition at the expense of the non-price competition via marketing that oligopolists much prefer, paradoxically making the real world work more the way the economists' model always assumed it did.

## **Consumer awareness of grocery unit pricing**

***The Queensland Consumers Association and CHOICE recently commissioned a national survey of almost 1000 adults who shop at Coles and Woolworths supermarkets to determine their awareness and use of the grocery unit pricing provided by these chains. The press release and key findings are reproduced below with the kind permission of Ian Jarratt.***

### **Key results:**

There were:

- ◇ high levels of use. 80% of consumers were using unit pricing and 72% found it to be very helpful (72%) in making product comparisons and deciding between packet sizes.
- ◇ high levels of support (around 60% of consumers) for unit price print size to be bigger and unit prices to be more prominent, with even higher levels of support from older and lower income respondents
- ◇ high levels of support (nearly 50%) for consumer education from consumers who are non users, not aware unit prices are provided, or who find them only slightly helpful.

A media release with links to the 6 page report and a blog is below  
<http://www.choice.com.au/media-and-news/media-releases/2011%20media%20releases/supermarket-pricing-system-needs-birthday-boost.aspx>

**Survey suggests benefits of better unit pricing can go wider**

CHOICE says a new survey suggests key improvements are needed to improve the legibility and prominence of unit pricing in Coles and Woolworths supermarkets to help more consumers better compare the costs of everyday groceries.

The national survey was conducted by CHOICE with the Queensland Consumers Association (QCA) to mark the second anniversary of the scheme which began on December 1 2009 after almost 50 years of campaigning by consumer groups.

Unit prices allow shoppers to more easily compare prices and values between different package sizes, different brands and both packaged and unpackaged products, such as sliced ham, to potentially make large savings through changing their buying habits. The unit price is shown on price labels and signs in addition to the selling price.

Both groups are concerned standards are not high enough and want retailers and the regulator the Australian Competition and Consumer Commission (ACCC) to work harder at ensuring, as the Unit Pricing Code dictates, that all unit prices are both legible and prominent.

The national research showed around 60 percent of consumers, particularly the older and less well off, who can use unit prices to help control their shopping bill, would find them more helpful if the print size was bigger and the figures stood out more clearly.

It also found almost 30% of shoppers are either unaware of unit prices, do not use them, or find them only slightly helpful. But almost half of these shoppers would find them more useful if there was more education about what unit prices are and how to use them.

"Unit pricing can help consumers save significant amounts by shopping more smartly but despite most shoppers using the system and finding it very helpful there are some significant areas to work on," said CHOICE director of campaigns Christopher Zinn.

QCA spokesperson Ian Jarratt who helped pioneer the system in Australia says the results are a clear signal to retailers and the ACCC to substantially improve how unit prices are displayed and give better information to help consumers use them.

## ***Proposals for regulation of prepaid funerals***

***The Department of Commerce released The Consultation, Regulatory Impact and Discussion Paper 'Proposals for the Regulation of Prepaid Funerals' in December 2011. The Executive Summary is reproduced here. The full discussion paper can be found at: [http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Publications/1Consultation\\_RIS\\_Prepaid\\_Funerals\\_PROOF.pdf](http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Publications/1Consultation_RIS_Prepaid_Funerals_PROOF.pdf)***

### ***Executive summary***

Western Australia (WA) currently has no specific legislation for the regulation of prepaid funerals as exists in most other States of Australia. Some protections exist under the *Australian Consumer Law*, but these mainly relate to unfair contract terms, providing a service with due care and diligence and unsolicited contracts and do not directly protect the investments of people who have prepaid large amounts of money towards their funeral. Regulation of the funeral industry is provided by general legislation applying to public health, the management of cemeteries, and the licensing of funeral directors.

The WA funeral industry is well regarded with the majority of funeral directors being professional, customer service oriented businesses. There are some concerns however, that the lack of formal regulation of the prepaid funeral industry could potentially expose consumers to financial risk. These concerns relate primarily to the investment and management of monies received as payment for prepaid funerals, by funeral directors who are not members of industry associations.

In WA, the Australian Funeral Directors Association (AFDA) is the peak industry body. The WA Division of AFDA advised Consumer Protection that about 80% of funerals conducted in WA are conducted by AFDA members. All AFDA members must adhere to AFDA's Code of Conduct, Code of Ethics and Prepaid Funerals Standard. Self-regulation via membership of industry associations does not apply to the entire industry and

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

***Annie Smith, Rhonda Algaba and Genette Keating.***

***A special thanks must go to Kit Buckley for his work in proof reading the Newsletter.***

funeral directors who are not AFDA members are under no compulsion to adhere to the AFDA guidelines. AFDA requests members complete an annual statutory declaration to confirm that they are abiding by AFDA's Code and Standard and seeks to conduct tri-annual visits to all member premises to ensure compliance with required standards, which may include the Prepaid Funeral Standard.

Of the estimated \$81.440m expended annually on funerals in WA, it is likely that around \$4.765m annually or around 6% is associated with prepaid funerals. It is estimated that total funds held for prepaid funerals by funeral directors in the metropolitan area could be in the order of \$24.255m, with around \$4.851m of this total (or around \$1m per annum) being held by funeral directors who are not AFDA members.

A previous consultation process conducted in 2006 resulted in a 2007 Final Report, which forms the basis of this Consultation Regulatory Impact Statement (C-RIS).

The five options proposed in this C-RIS are:

- ◇ **Option 1:** Maintain status quo.
- ◇ **Option 2:** Introduce a Code of Practice under the *Fair Trading Act 2010* (FTA 2010) to implement the recommendations of the 2007 Final Report.
- ◇ **Option 3:** Introduce a Code of Practice under the FTA 2010 combining the recommendations and the AFDA requirements.
- ◇ **Option 4:** Amend the informal Funeral Directors Code of Conduct applied by the Metropolitan Cemeteries Board.
- ◇ **Option 5:** Introduce specific legislation for prepaid funerals.

At this stage, the **preferred option is Option 3**, as it is considered that this would achieve the Government's objectives of protecting consumers' interests without imposing new substantial costs on industry.

CAWA Vice-president, Rhonda Algaba read the Consultation, Regulatory Impact and Discussion Paper and the 2007 Report on behalf of CAWA and has concluded that Option 3 is acceptable but believes a register or prepaid funerals is also required. She thinks it should operate in a similar manner to REVS, where relatives and friends organising funerals can check on whether someone has a pre paid arrangement or not. She advocates that in no way should it be just an open or public list for the general public or for funeral companies to check on their competitors.

## ***The Consumer Advisory Committee members***

The Consumer Advisory Committee was established in September 2011 and the following members have been appointed to the Committee for a two-year period. The committee is expected to meet approximately 4-5 times a year.

### **Ms Judy McGowan (Chair)**

Ms McGowan is a law lecturer at the Curtin Business School of Curtin University specialising in trade practices compliance, contract law and consumer law. Ms McGowan was previously deputy chair of the former Building Disputes Tribunal and a Referee of the former Small Claims Tribunal.

### **Ms Sandra Brown**

Ms Brown is the recent past Chief Executive Officer of the Citizens Advice Bureau of WA (Inc.) and is currently a member of the Consumers' Association of WA.

### **Ms Genette Keating**

Ms Keating is the President of the Consumers' Association of WA and is also a Director of Bioscience Pty Ltd. Ms Keating was also a consumer member of the former Building Disputes Tribunal.

### **Ms Bronwyn Kitching**

Ms Kitching is the Manager, Private Tenancy Support Service, Red Cross WA. Ms Kitching was previously employed as the Executive Officer of Shelter WA and has served as Chairperson and Vice Chairperson of Shelter WA.

### **Ms Margaret Nadebaum**

Ms Nadebaum was until recently a regional advisor to the Australian Public Service Commission. Ms Nadebaum is a former Principal of Methodist Ladies College; Chief Executive Officer of the Western Australian Ministry of Education; and a former Director, Executive Personnel, WA Public Service Commission.

### **Mr Suresh Rajan**

Mr Rajan is a consultant in cross-cultural awareness. Until recently, Mr Rajan was the Executive Officer of the Ethnic Communities Council of WA (the Council is no longer funded). Mr Rajan is also a member of the Consumer Consultative Committee of the Australian Competition and Consumer Commission.

### **Mr Patrick Wyburn**

Mr Wyburn is the President of the Western Australian Retirement Complexes Residents' Association (WARCRA). Mr Wyburn's previous roles include Manager, Department of Child Welfare/Community Services; Social Worker; and Executive Officer Community Aid Abroad (voluntary capacity).

Our Association has dedicated a great deal of time, newsletter and website space over many years to the issue of Trading Hours in WA. We have conducted shopping centre surveys and produced a number of articles. The Consumer Advisory Committee, on which Rhonda represented CAWA, was the primary initiator of the Centre for Consumer Research (now apparently defunct) through which this research was facilitated. Despite this CAWA did not rate a mention in the Research Report: Shop Trading Hours in Western Australia released on the 12th December. We were originally given the opportunity to voice our concerns to Dr Hindley who was the original researcher appointed, however we were not approached by Tracy Atkins, the eventual author.

Key interest groups are listed as Chamber of Commerce and Industry WA, Retail Traders Association, Shopping Centre Council, WA Retailers' Association, Property Council of Australia, large retailers including Wesfarmers (all pro deregulation) and Combined Small Business Alliance of WA, Shop, Distributive and Allied Workers Union, WA Independent Grocers Association Inc, National Association of Retail Grocers of Australia. The Liberal Party is pro deregulation. The Nationals are against. Labor and the Greens although apparently pro, have concerns. No consumer organisations are listed.

As cited in the report, the Productivity Commission (2011) found "The most notable omission to the objectives underpinning trading hours regulation are the interests of consumers. Consumer preferences and needs can no longer be ignored." What can I say?

The Report is largely a review of previous surveys/referenda with the Victorian situation used as an example of the likely outcome of deregulation. It claims to be independent but all the recent research reviewed was commissioned by traders' associations or government, with associated vested interests. Much of the research cited is ten or more years old and of little relevance to today's consumer interests.

It is clear that consumers will take advantage of extended trading hours but is not clear whether that is an entirely positive outcome or whether community and culture will suffer. Whilst understanding that the Trading Hours issue is complex, Western Australian voters responded with a clear No to extended hours in WA when they considered community impact rather than shopping convenience in their responses to the referendum question. The question was phrased in terms of "will the community benefit from ....".

The new report glosses over the issues of safety (citing insufficient data), children's weekend and after school sport (only looked at adult sport) and the impact on after school supervision and family meal times (not mentioned). Results were not tabulated

*(Continued on page 22)*

## **Retail trading hours**

*Continued from page 21)*

to give a clearer picture. Victorian Trading Hours were deregulated in 1996. It is surprising that more data is not available.

There is no mention in the Report of online shopping or its impact on consumers or traders in a deregulated environment, but clearly the 24/7 online playing field is in a different ballpark from the mish mash of opening hours consumers are currently negotiating.

The report suggests that the economic outcome in Victoria amounted to a growth in employment of 2% (mostly part time) and a growth in retail sales of 2.5% per year.

After waiting some years for the report to be completed, and with no input from WA consumers, I remain unconvinced but I suppose we won't be asked again, particularly by the present WA Government, who have to date indicated that they know more than we do about what's good for us (eg building legislation, recent trading hours extensions). We'll just have to suck it and see or maybe sniff it and see (although seeing, in either case would require eyes in the mouth or nose but you know what I mean).

Genette Keating

## **Shop Trading Hours in Western Australia: A Research Report ...**

***The report, *Shop Trading Hours in Western Australia* was produced by Tracey Atkins, Assistant Professor, the Western Australia Law School School at The University of Western Australia. The three key findings reproduced on the next page are taken from the Summary of Research Findings.***

***The full Report and Shop Trading Report: Summary of Research Findings can be accessed at:***

***<http://www.law.uwa.edu.au/research/ccr/shop-trading-hours-in-western-australia>***

***It is suggested that it be read in conjunction with our President's comments that are found on the previous page.***

## **Findings of Report**

The Report, through a comprehensive and impartial examination of the history of shop trading hours in Western Australia, an examination of the current regulatory arrangements in each Australian jurisdiction and an analysis of the social, political and economic context of shop trading hours suggests that the long-term consumer interest is served by the deregulation of shop trading hours. This is principally for the following three reasons:

1. Consumers show a clear preference for the ability to shop outside of those hours historically allowed by government regulation. In each jurisdiction that has undertaken shop trading hours reform, roughly equally divided consumer sentiment for deregulation pre-reform changes to overwhelming support post reform. Indeed, in those few examples that exist, most notably the Australian Capital Territory, attempts to reintroduce shop trading hours regulation following previous deregulation met with overwhelming consumer opposition. In this way too, consumer preference, rather than government preference (or the preference of any one group of retailers) determines market offering – a situation that leads to the greatest economic efficiency and optimal price, choice and quality for consumers. Similarly, removal of restrictions reduces regulatory burdens, complexity and cost for business and enhances productivity.
2. The literature reveals that the majority of arguments put forward by opponents of shop trading hours deregulation do not eventuate following shop trading hours reform. In fact, on some of the key indicators, evidence suggests the opposite of that predicted occurs.
3. Shop trading hours deregulation best accords with an approach that respects economic and personal freedom, including the freedom to choose without unnecessary government restraint or distortion. In a deregulated environment, consumers are free to choose when and where to shop and, of course, not to shop and instead undertake any other activity of their choice including attending church or participating in sport or other leisure activities. Businesses are free to choose when to open, how to operate and what to sell, and again, not to open if they choose. Current employees and potential employees benefit from increased employment opportunities and enhanced freedom to work in a way that suits modern lifestyles.

# **Strata Managers**

***The Department of Commerce released The Consultation, RIS and Discussion Paper 'Licensing of Strata managers in Western Australia' in October 2011. The Executive Summary is reproduced below together with a table summarising the current situation found in other parts of Australia.***

***A full copy of the paper can be found at:***

***[http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Reports/Consultation\\_regulatory\\_impact\\_statement\\_and\\_discussion\\_pape.pdf](http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Reports/Consultation_regulatory_impact_statement_and_discussion_pape.pdf)***

## **EXECUTIVE SUMMARY**

In July 2008 the Council of Australian Governments (COAG) agreed to develop a National Occupational Licensing System (NOLS) the purpose of which was to establish a nationally uniform system of licensing for nominated occupations, administered in accordance with common, uniform policies. The first wave of occupations to be introduced under the NOLS will include licensing of property agents, which includes strata managers.

The Western Australian Government is committed to the principle of the NOLS but wishes to ensure that the needs of local stakeholders are adequately addressed in the detail of the proposed regulatory framework.

At present, strata managers are licensed only in New South Wales the Northern Territory and the Australian Capital Territory. Strata managers are regulated in other jurisdictions in various forms other than licensing. In Western Australia strata managers are not specifically regulated.

The Intergovernmental Agreement for the NOLS makes it clear that in implementing the NOLS, States and Territories are not obliged to introduce licensing for a particular occupation if there is no requirement to currently license them. The Intergovernmental Agreement precludes jurisdictions from implementing stand alone licensing regimes or hybrid forms of licensing (such as registration and negative licensing) for occupations that are within the scope of the NOLS. As a consequence, if NOLS is introduced in WA and licensing of strata managers is also introduced in WA, then strata managers will have to be licensed in accordance with the NOLS model.

Since 2003, two parliamentary inquiries and one independent review have been undertaken in relation to the regulation of strata managers in Western Australia. Although the recommendations of both inquiries and the review highlight the need for

**Current situation re Strata Managers as per Consultation paper October 2011**

|                  |                                | NSW      | NT    | Vic      | Qld | ACT      | SA | Tas | WA |
|------------------|--------------------------------|----------|-------|----------|-----|----------|----|-----|----|
| Strata Managers  | Application fee                | \$390    | \$351 | \$174.30 |     |          |    |     |    |
|                  | Annual Renewal                 | \$265    | \$351 | \$122.30 |     |          |    |     |    |
|                  | Annual Fidelity Fund Contribn. | \$63     | \$0   | \$0.00   |     |          |    |     |    |
|                  | Licensing                      | Y        | Y     |          |     |          |    |     |    |
|                  | Registration                   |          |       | Y        |     |          |    |     |    |
|                  | Code of Conduct                |          |       |          | Y   | Y        |    |     |    |
|                  | Fit & Proper Person Test       | Y        |       |          |     | Y        |    |     |    |
|                  | Public Liability Insurance     |          |       |          |     | Y        | Y  |     |    |
|                  | Professional Indemnity Ins     | Y        | Y     | Y        |     |          |    |     |    |
|                  | Trust Account                  | Y        |       | Y        |     |          | Y  |     |    |
|                  | Qualifications Req'd           | Y        | Y     |          |     |          |    |     |    |
|                  | Delegated Power                | Y        |       |          | Y   |          |    |     |    |
| Strata Companies | Building Insurance             |          |       |          |     | Y        | Y  | Y   |    |
|                  | Sinking Fund                   | >2 units |       |          | Y   | >4 units | Y  |     |    |
|                  | Admin Fund                     |          |       |          | Y   | Y        | Y  |     |    |
|                  | Public Liability Insurance     |          |       |          |     |          |    | Y   |    |
| General          | Financial Statements           | Y        |       | Y        | Y   | Y        | Y  | No  |    |
|                  | Audits                         |          |       |          | Y   | No       | Y  | No  |    |
|                  | Strata Council                 |          |       |          | No  |          |    |     |    |
|                  | Fidelity Fund                  | Y        | Y     |          |     |          |    |     |    |
|                  | No regulation                  |          |       |          |     |          | Y  | Y   | Y  |

greater regulation of strata managers, there are divergent views on the need for licensing and none of these inquiries covered all of the issues that would need to be considered before the Government could consider introducing licensing for strata managers. Nevertheless, the evidence presented at both inquiries has been relied upon in preparing this paper.

Having regard to the NOLS, the Hon Simon O'Brien, MLC, Minister for Commerce, agreed that further consultation should be undertaken on the feasibility of licensing strata managers in Western Australia under the NOLS.

This Consultation RIS/Discussion paper looks at three options for the strata management industry:

1. licensing of strata managers under NOLS;
2. regulation of conduct of strata managers without licensing; and
3. maintaining the status quo.

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## **Strata Managers continued ...**

*(Continued from page 25)*

Regulatory impact assessment requirements apply to policy proposals for new and amending legislation that may have a significant negative impact on business, consumers, the government or the economy. One way in which regulatory impact assessments are carried out is via a Regulatory Impact Statement (RIS). The Department of Treasury's Regulatory Gate-keeping Unit requires the development of a RIS for consultation purposes and to inform decision-making. The purpose of a RIS is mainly to ensure that sufficient consideration is given to any adverse consequences or costs (direct or indirect) that the proposed reform may impose, so as to ensure that any potential disadvantages of reform do not outweigh the benefits.

This paper therefore constitutes a Consultation RIS and it includes a preliminary assessment of the likely costs of implementing each of the above options. It also seeks to obtain feedback from interested parties on the options and impacts and to ensure that the options presented to the Government are accurate and confirmed by the community. Views received as a result of this consultation will be considered in the final recommendations presented to the Government.

## **Submission on the Licensing of Strata Managers in WA**



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29<sup>th</sup> February 2012

### **LICENSING OF STRATA MANAGERS IN WESTERN AUSTRALIA**

The Consumers Association of WA (CAWA) provided a submission to the Legislative Council's Standing Committee on Public Administration in January 11 (Report tabled September 11).

**CONSUMER COMMENT**

The key recommendations of the Standing Committee's Report were that Strata Managers should be regulated through a system of licensing and that assets held by Strata Managers be deposited in a trust account and that each strata company have its own trust account.

The Report further recommended a new Act containing licensing and conduct provisions to be administered by the Department of Commerce. The Department of Commerce would coordinate a one stop service to provide information, conciliation and initial legal advice including advice in Landgate's area of expertise.

CAWA supports these recommendations.

We believe that the industry is in favour of Licensing (Option 1) although in a perfect world Option 2 appears to be a lower cost alternative. We do not support maintaining the status quo (Option 3) as there are many inadequacies with the present system.

Although CAWA generally supports positive licensing (Option 1) and the other recommendations of the Standing Committee's Report, we are unable to establish the likely costs of the process, costs which will eventually be passed on to WA consumers. We are not in favour of a system which breeds expensive bureaucracy that those less well off in society may have contribute to funding.

WA has recently experienced a rapid increase in Strata development, both residential and commercial. Systems need to be put in place to protect and inform consumers, who may have little or no experience with the various forms of Strata Title and the rights and responsibilities of owners as members of a Strata Body/Strata Council/Body Corporate.

We agree that the Department of Commerce, Consumer Protection section would be the best agency to oversee Licensing and enforce the Act/s.

Indemnity insurance may be expensive and may be passed on. Fidelity Fund Contributions (eg NSW \$63 per annum) may be cheaper than Public Liability/Professional indemnity Insurance. CAWA supports the establishment of a Fidelity Fund whether or not Public Liability/Professional indemnity insurance is required.

If Fidelity fund contributions were as low as \$63 that would be cost effective. Taking interest money from trust or sink funds renders them useless to counter inflation. We do not support using interest to fund the scheme.

The National Occupational Licensing Scheme (NOLS) proposes consistency of skill and service to consumers across Australia. We are unsure of the impact of the current Consultation in the NOLS process. We understand that many WA occupational licensing standards may be higher than in other states and we would be disappointed by any

*(Continued on page 28)*

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

*(Continued from page 27)*

reduction in those standards. We would like to see WA set the benchmark for the national system.

Whether or not licensing takes place under NOLS, the important outcomes for owners and tenants of Strata developments are:

- ◇ Protection from fraud and maladministration,
- ◇ Public liability, building insurance,
- ◇ Regular transparent accounts,
- ◇ Regular transparent auditing of accounts in plain English,
- ◇ Sink funds invested for big ticket items,
- ◇ "Fit and proper" requirements (including police clearance) for licensing of Strata Managers,
- ◇ Requirement for a quorum of proprietors to countersign large purchases,
- ◇ Dispute resolution processes with rapid remedies for financial loss.

If redress is to be via the SAT or ACL, procedures should be low cost, accessible and swift. Consideration should also be given to those on low incomes e.g. retirees. Many Duplexes or Triplexes are able to care for their own affairs but must have some recourse to dispute resolution. We regret the loss of the Strata Title Referee in favour of the more legalistic SAT process.

Circumstances compelling Strata bodies to use Strata Managers need to be considered. We support the Victorian requirement for licensing if the Manager receives a fee for service, or alternatively where commercial property is involved or where the Strata complex has more than four units.

The ACT requires establishment of a sinking fund in complexes with more than four units. We support this although our attention has been drawn to large high rise Strata where repair/replacement of capital items (lifts, air conditioning) requires considerable outlay. Where these properties have only one or two owners a sinking fund would also be required.

A Code of Conduct should still apply to anyone (eg an owner) acting as a Strata Manager.

We support an education requirement before Licensing.

We would also like to see publications that provide information and advice to both resident and non resident owners and tenants of Strata Titled complexes. These publications (similar to the Consumer Protection Landlords and Tenants guides) should be given to Real Estate agents for provision to prospective owners and tenants. Real Estate agencies do not seem to be providing full information on aspects of Strata arrangements when selling units to prospective buyers and must be considered in the current discussion on Strata Manager Licensing. Publications should also familiarise Owners with the processes attached to belonging to a Strata Body (Incorporated Association).

Accounts should be transparent and Owners should have access to bank statements and accounts (including details of Strata Manager's fees, building insurance, power, water, repairs and maintenance etc.) on request. Where Strata Managers control accounts, owners should be able to request an annual audit, or more frequently as disputes arise.

Many owners do not believe they have to belong to a Strata Body or what such membership entails. They may refuse to take part in meetings, or even the AGM, yet later complain about changes moved at such a meeting. Owners who are non-resident, overseas or interstate often present additional problems. The system of having proxies held by a Strata Manager is fraught with dangers. Owners' wishes may not be advised or represented accurately, especially if a change or expense is mooted but not made clear on the agenda for the meeting.

Owners should be encouraged to attend meetings of the Strata Body. AGM notification can be haphazard or owners may be just not interested, too busy or lazy to attend and exercise their rights. Meetings should be scheduled at convenient times and locations (not during working hours or at the office of the Strata Manager).

CAWA is also concerned about the process of replacing a Strata Manager whilst maintaining continuity of the accounts.

There are many anecdotal examples of confusion and lack of understanding with regard to Strata Management which have in part prompted our submission. We make the following additional comments. Strata managers should be familiar with:

- ◇ banking arrangements and who pays what.

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

*(Continued from page 29)*

- ◇ the legislation as it affects owners of different kinds of Strata developments from small residential units to large inner city office blocks and all kinds of Strata titles including Strata, Survey Strata and Purple Titles.
- ◇ The impact of property installed in one unit for the benefit of all (eg satellite dishes, internet WiFi hubs), particularly where the equipment remains the property of the supplier but impacts predominantly on one resident (eg damage to roofs, tiles, etc.).
- ◇ Who is responsible for gardens and how much leeway can be given to some residents wanting to do great changes to what is really common property or to use more water than other residents. Water usage charges vary with Strata units. Some complexes do not have individual meters and the usage is charged proportionately. Payment is sometimes made from the Strata Manager's (eg Real Estate agency) account with subsequent issuing of individual invoices. CAWA feels that payments should be made from the Strata Body's trust fund with invoices raised by the Strata Body. There are further issues where pensioners cannot claim concessions using this system.
- ◇ Payments to contractors should also be from the Strata Body's bank account and not from the Strata Manager's business account. Issues occur where the Strata Manager has not actually paid a contractor yet demands payment from the residents.
- ◇ Issues involved in the sale of part of a Survey Strata Lot to another Lot owner.
- ◇ Owners should understand the processes of changing by-laws and whether this can be done only at an AGM and whether all owners are required to agree before changes can be effected.

Thank you for accepting our submission.

Yours faithfully

Genette Keating  
President

The Guardian Newspaper posted the press release by the John Vidal, environment editor on Wednesday 19 October 2011. It can be found at:

<http://www.guardian.co.uk/environment/2011/oct/19/gm-crops-insecurity-superweeds-pesticides>

The press release refers to a report titled, 'The GMO Emperor has no clothes' that can be found at: <http://image.guardian.co.uk/sys-files/Environment/documents/2011/10/19/GMOEMPEROR.pdf>

## **GM crops promote superweeds, food insecurity and pesticides, say NGOs**

**Report finds genetically modified crops fail to increase yields let alone solve hunger, soil erosion and chemical-use issues.**

Genetic engineering has failed to increase the yield of any food crop but has vastly increased the use of chemicals and the growth of "superweeds", according to a report by 20 Indian, south-east Asian, African and Latin American food and conservation groups representing millions of people.

The so-called miracle crops, which were first sold in the US about 20 years ago and which are now grown in 29 countries on about 1.5bn hectares (3.7bn acres) of land, have been billed as potential solutions to food crises, climate change and soil erosion, but the assessment finds that they have not lived up to their promises.

The report claims that hunger has reached "epic proportions" since the technology was developed. Besides this, only two GM "traits" have been developed on any significant scale, despite investments of tens of billions of dollars, and benefits such as drought resistance and salt tolerance have yet to materialise on any scale.

Most worrisome, say the authors of the Global Citizens' Report on the State of GMOs, is the greatly increased use of synthetic chemicals, used to control pests despite biotech companies' justification that GM-engineered crops would reduce insecticide use.

In China, where insect-resistant Bt cotton is widely planted, populations of pests that previously posed only minor problems have increased 12-fold since 1997. A 2008 study

*(Continued on page 32)*



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

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in the International Journal of Biotechnology found that any benefits of planting Bt cotton have been eroded by the increasing use of pesticides needed to combat them.

Additionally, soya growers in Argentina and Brazil have been found to use twice as much herbicide on their GM as they do on conventional crops, and a survey by Navdanya International, in India, showed that pesticide use increased 13-fold since Bt cotton was introduced.

The report, which draws on empirical research and companies' own statements, also says weeds are now developing resistance to the GM firms' herbicides and pesticides that are designed to be used with their crops, and that this has led to growing infestations of "superweeds", especially in the US.

Ten common weeds have now developed resistance in at least 22 US states, with about 6m hectares (15m acres) of soya, cotton and corn now affected.

Consequently, farmers are being forced to use more herbicides to combat the resistant weeds, says the report. GM companies are paying farmers to use other, stronger, chemicals, they say. "The genetic engineering miracle is quite clearly faltering in farmers' fields," add the authors.

The companies have succeeded in marketing their crops to more than 15 million farmers, largely by heavy lobbying of governments, buying up local seed companies, and withdrawing conventional seeds from the market, the report claims. Monsanto, Dupont and Syngenta, the world's three largest GM companies, now control nearly 70% of global seed sales. This allows them to "own" and sell GM seeds through patents and intellectual property rights and to charge farmers extra, claims the report.

The study accuses Monsanto of gaining control of over 95% of the Indian cotton seed market and of massively pushing up prices. High levels of indebtedness among farmers is thought to be behind many of the 250,000 deaths by suicide of Indian farmers over the past 15 years.

The report, which is backed by Friends of the Earth International, the Center for Food Safety in the US, Confédération Paysanne, and the Gaia foundation among others, also questions the safety of GM crops, citing studies and reports which indicate that people and animals have experienced apparent allergic reactions.

But it suggests scientists are loath to question the safety aspects for fear of being attacked by establishment bodies, which often receive large grants from the companies who control the technology.

Monsanto disputes the report's findings: "In our view the safety and benefits of GM are well established. Hundreds of millions of meals containing food from GM crops have been consumed and there has not been a single substantiated instance of illness or harm associated with GM crops."

It added: "Last year the National Research Council, of the US National Academy of Sciences, issued a report, *The Impact of Genetically Engineered Crops on Farm Sustainability in the United States*, which concludes that US farmers growing biotech crops 'are realising substantial economic and environmental benefits – such as lower production costs, fewer pest problems, reduced use of pesticides, and better yields – compared with conventional crops'."

David King, the former UK chief scientist who is now director of the Smith School of Enterprise and the Environment at Oxford University, has blamed food shortages in Africa partly on anti-GM campaigns in rich countries.

But, the report's authors claim, GM crops are adding to food insecurity because most are now being grown for biofuels, which take away land from local food production.

Vandana Shiva, director of the Indian organisation Navdanya International, which coordinated the report, said: "The GM model of farming undermines farmers trying to farm ecologically. Co-existence between GM and conventional crops is not possible because genetic pollution and contamination of conventional crops is impossible to control.

"Choice is being undermined as food systems are increasingly controlled by giant corporations and as chemical and genetic pollution spread. GM companies have put a noose round the neck of farmers. They are destroying alternatives in the pursuit of profit."

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

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

CAWA is also interested in receiving articles from other WA consumer groups who would like material published in our Newsletter. Requests and articles

## ***Life in an aged care facility***

***Genette Keating recently wrote to Consumer Protection on behalf of a CAWA member who has had long running problems with management in the high level aged care facility where she lives. Genette was particularly concerned about the poor mediation conducted by Consumer Protection and the subsequent unsympathetic follow up letter the CAWA member received. Genette's letter is reproduced below, but the consumer's name and the name of the complex are omitted to preserve anonymity in an on-going dispute.***



Locked Bag 14  
Cloisters Square  
WA 6850

Stephen Meagher  
Director Property Industries,  
Consumer Protection,  
Department of Commerce,  
Locked Bag 14  
Cloisters Square  
PERTH WA 6850

6<sup>th</sup> March 2012

Dear Stephen,

Ms X is a member of the Consumers Association of WA (CAWA). I have always found X to be a caring and considerate person. Since retirement, she has volunteered in the community over many years and worked to improve the lives of others.

For an extended period X has been attempting to resolve complaints she has with the standard of care and service she has experienced under a lease for life contract for her Independent Living Unit on the seventh floor of a high rise Village. Moving to an Independent Living Unit in a retirement village at an age younger than most, partly for health reasons, she has been in a position to track changes over several years.

X has been trying to resolve her issues for some time and although she is a CAWA member, she initially chose to go it alone to test the system. I have been following the progress of her complaint with considerable interest and last year accompanied

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her to a mediation session with two Consumer Protection (CP) staff, together with staff from the Village, which did not leave me feeling that positive outcomes had been achieved.

CAWA are very concerned that vulnerable community members are treated with the kind of disrespect shown to X by the staff at the Village and subsequently by staff at Consumer Protection. Perhaps the high rise/high density nature of the Village presents different problems from the more usual village style but we are happy to support X in her quest for change.

X has wakened to a window cleaner in her bedroom. She has had staff open her mail. She has received a "breach notice" for hanging washing in the communal laundry. She feels this is her home and she should have some say in how she is treated and in establishing the rules applying to residents. The Village's website states that "they are communities designed for fully independent older people". Nothing is stated about stringent conformation with rules.

Lease for life arrangements mean that X has little chance of selling up and moving elsewhere. She now feels so uncomfortable living in this Village community that whenever possible she stays elsewhere, house sitting for friends etc.

Since her initial complaints, X has had multiple further problems e.g. lifts not working, clothes lines not under cover, mailboxes subject to inclement weather, no staff available or on call during a power failure, air conditioning piped through her unit when it was known she would be away on holidays, extension of roof plumbing drains via her balcony (which are now in disrepair) and she would like to see conditions improve for all residents.

X has now forwarded to me the latest letter she has received from Consumer Protection and I am dismayed by its contents. The author (having reviewed X's two complaints) clearly doesn't understand the issues and I find many of her phrases somewhat inflammatory (e.g. "failed to comply" and "the matter is finalized and no further discussion will be entered into"). Like many consumers, X is not skilled in enunciating the detail of her complaints or clearly expressing the outcomes she desires. I would hope that Consumer Protection staff are trained to see beyond these difficulties and to make greater attempts to empathise with apparently "difficult" consumers.

The Village's Customer Service Satisfaction Survey 2010 (home page of their website) suggests that 13.1% of 2010 residents of their Villages (not only this Village) were dissatisfied with retirement living, 14.9% were dissatisfied in the area of resident

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## **Life in an aged care facility continued ...**

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involvement and feedback and 16.6% were dissatisfied with social life and involvement.

The survey did not canvass whether residents were happy with staffing levels (although most staff are generally well liked), maintenance standards or procedures. The overall satisfaction rating for Retirement Living was 91.8% an improvement of 11% on the last survey in 2004.

Clearly there is always some room for improvement.

### **Breach for hanging washing out to dry in the common areas.**

I believe the rules say washing can be hung in "designated areas" but don't specify where these are. CAWA contend that to occasionally hang some washing in one's laundry (albeit communal between a very few units on the seventh floor) is not unreasonable.

In the letter Consumer Protection quoted the (fairly common) rule "washing will not be hung on verandas or in front of residences or balconies of high-rise residences, in view of other residents." Why would Consumer Protection make the assumption that X had broken this rule? The laundry room is not on view to anyone outside the laundry room whereas presumably the clothes lines are in view of all residents. Many residents hang washing in their balconies in view of adjoining balconies with no censure from staff. I am not sure if a clothes dryer is provided in the laundry but I am sure there are other avenues to mediating/resolving this issue than issuing Breach Notices and restating rules.

### **Mail tampering and trespass**

Consumer Protection suggesting that X approach the police to take action against the retirement village is unlikely to achieve anything. In my own (fully independent) home, I would be calling the police if a third party opened mail given to them in trust for posting and I would certainly be calling the police if I woke in the morning to find a strange man in overalls in my bedroom. In supported accommodation (which Independent Living Units really are) there should be a better way of dealing with these issues, probably involving improved communication, cooperation and assurances of future improvements.

### **Barbeque and screen**

X left a barbeque and screen on the communal balcony temporarily, which I would personally not find unreasonable (Consumer Protection's letter used the phrase "piled personal belongings"). X says that staff "confiscated" the barbecue. Consumer

Protection's attitude concerns me and reflects the attitude of staff at the Village. Resolution could involve providing more storage space or offering to assist with relocation. I understand that if staff deems an item is attractive, residents are permitted to leave it (furniture, vases, a water feature) in common areas. So there is confusion and inconsistency as to when the rules apply. Double standards have the effect of favouring some residents and demeaning others.

X says that there have been staff changes at the Village so I have not named anyone in particular, however there is still validity to the substance her complaints.

### **Residents Association**

The villages' website states that "Residents' Committees operate at most centres and this means that most of the activities are arranged for the residents by the residents". Beyond this, there is no indication of any decision making capacity imbued in the residents.

I have had considerable personal experience with the people and processes involved in aged care at all levels and have generally found staff to be understanding and extremely helpful, generally offering a higher standard of service (even with difficult residents) than X receives, however I would counsel most people to avoid leaving the autonomy of their own home if at all possible.

CAWA are concerned with the broader aged care issues involved in X's complaints and would like Consumer Protection staff to explain to visitors to the Seniors Housing Centre firstly that they are likely to lose the autonomy of private residence on moving to an Independent Living Unit and secondly that unless residents are personable and compliant, they may have difficulty forming positive relationships with staff, even staff employed by a religious organisation.

We would also very much appreciate your discussing with staff at Consumer Protection where their mediation and communication skills might be improved and where a little sympathy would not go astray.

Please feel free to contact me at any time to discuss this further. An increasing number of consumers are approaching retirement accommodation with trepidation and although there are other organisations specifically advocating for retirees, we are certainly happy to join the bandwagon.

Yours faithfully

Genette Keating  
President

## **Safety checks on home solar installations**

**The following information is taken from Energy Bulletin, Issue No 57 (Feb 2012) produced by Energy Safety WA. The full EnergySafety audit report can be viewed at [www.energysafety.wa.gov.au](http://www.energysafety.wa.gov.au) under reports and discussion papers.**

Over 10,000 new domestic solar systems were installed in WA between July and December 2011. Given such an increase, monitoring photovoltaic (PV) installations to ensure they are safe and comply with regulations has become a pressing issue for *EnergySafety*. *EnergySafety*, with the assistance of network operator inspectors, conducted an audit of 260 grid-connected solar installations in Western Australia. Their findings have revealed the industry still has a long way to go to achieve compliance with relevant Australian standards and legislation.

Half of the installations inspected were defect-free, while the remaining 50 per cent contained at least one defect. What is concerning, is 12 per cent of the installations had incorrect wiring which is a potentially serious defect. AS5033:2005, Installation of photo-voltaic (PV) arrays requires a DC isolating device on the DC side of the inverter. Many installers used double-pole DC circuit breakers, which were either polarised or non-polarised. If the circuit breaker is incorrectly wired, a serious fire hazard can result should the correct shutdown procedure not be followed.

Only licensed electrical contractors may perform the solar installations. A Preliminary Notice and Notice of Completion are required to be submitted to the relevant network operator for each installation and an Electrical Safety Certificate provided to the customer. If a copy of the Electrical Safety Certificate has been provided to the solar company, the company should pass it on to the owner of the premises.

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

**The details you need are:**

**BSB: 306 050**

**Account No: 4158656**

If you have any problems contact the Treasurer through the CAWA website. Alternatively, the money can be mailed to the treasurer at:

**The Treasurer**

**Consumers' Association of WA (Inc)**

**Locked Bag 14 Cloisters Square WA 6850**

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Consumer groups have asked Coles and Woolworths to improve the legibility of their unit prices but so far they have refused.”

“There are significant groups, including the young, who need better information and about what unit prices are, and how they can be used to compare prices and values,” he said.

There is also great scope to make unit prices easier to use by having more consistent and logical units of measure. For, example, at present flour must be unit priced per kg but bread and cakes mixes per 100g. The Code should be reviewed and per kg and per litre should be used to unit price more products.

**Consumers' Federation of Australia** also has an article posted on it's website outlining the history of unit pricing. It can be found at:

<http://consumersfederation.org.au/unit-pricing/>

In an article titled, '*Unit prices – are they legible and prominent?*', The Federation presents a strong voice outlining what it wants:

### What we want

1. Full retailer compliance with the prominence and legibility requirements of the Federal government's mandatory Industry Code of Conduct, and with all other requirements, including provision, accuracy, and use of correct units of measurement.
2. More public education by retailers and the ACCC to increase consumer awareness and use of unit prices.
3. Consumers who are unhappy with the way supermarkets are displaying unit prices, or any other aspects of unit pricing, to ring the ACCC's Unit Pricing Hotline on 1300 746 245.

**Consumers' Association of WA (Inc)**  
**Locked Bag 14**  
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**[www.consumers.asn.au](http://www.consumers.asn.au)**

### **Membership and Fee Payment Form**

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

Our main objectives are to:

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

#### *New Membership*

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Areas of interest \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



***A reminder that annual subscriptions are now overdue for 2011-12, and should be forwarded to the Treasurer.***

Once again, I am delighted with the contributions made by CAWA members to the first *Consumer Comment* newsletter for 2012.

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

Please keep up the contributions in the next three months for inclusion in the next issue of *Consumer Comment* in 2012.

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