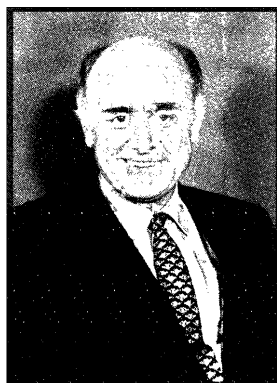

Forum

Storecharter and Indigenous consumer protection issues



Following is an edited version of a speech given by Commission Chairman, Professor Allan Fels, at the launch of Storecharter during the Indigenous Consumer Protection Workshop, Alice Springs, 22 April 2002. The workshop was co-sponsored by the ACCC, the Aboriginal and Torres Strait Islander

Commission (ATSIC) and the Australian Securities and Investments Commission (ASIC).

Commission's role

The Commission's primary role is to promote compliance with the Commonwealth Trade Practices Act. This Act seeks to promote the welfare of Australians, including Indigenous Australians, by promoting competition, fair trading and consumer protection. The Act prohibits business practices that adversely affect competition and consumers. It provides important protection for consumers, for example, against being misled or deceived by business or being treated in an unconscionable manner.

Many of you may recall our insurance and superannuation actions some years ago in Queensland and the NT after company agents had engaged in illegal selling practices to residents of Indigenous communities.¹ These gained significant refunds for affected consumers, substantial funds for consumer education, including funding for the consumer education officer of the Aboriginal Coordinating Council (ACC), and also for one community. They also led to significant amendments to general insurance legislation.

¹ *Taking advantage—sale of life insurance to Aboriginal people in remote communities, ACCC, 1994.*

Competition is likely to be effective when consumers have ready access to a choice of suppliers of goods and services, and these suppliers do not collude. In remote areas, however, consumers are often unable to choose between alternative suppliers. A supplier can then exercise market power either by charging excessive prices, by providing shoddy, inefficient service, or by both. They do not have to collude to do this.

An understandable response might be to seek to regulate these businesses by, for example, controlling prices. However, such regulation is difficult to apply effectively and can be counter-productive. It may be of little benefit if it caused a marginal supplier in a remote area to cease operating.

It is better to try to introduce competition, promote transparency of business operations, for example by ensuring proper governance arrangements are in place for Indigenous-owned businesses, and to empower consumers by informing them of the dangers.

In overseeing the pricing responses of business to the New Tax System, the Commission demonstrated the importance of consumer empowerment. It issued to all Australian households a booklet showing expected maximum price changes from the tax changes. This meant that consumers knew how to assess whether price movements were in line with expectations. It also pressured businesses to not take advantage of the changes.

Enforcement action under the Trade Practices Act is not the sole prerogative of the Commission. Private parties, businesses, consumers or anyone else, can bring court actions under the Act.

The Commission is also not alone in the public enforcement of compliance with consumer protection laws. ASIC now has Commonwealth responsibility for protecting consumers when using financial services, including credit. And the state/territory consumer affairs agencies administer similar consumer protection legislation to that of the Trade Practices Act. Generally, the Commission has dealt with matters that are widespread or have significant consumer detriment or when conduct occurs across jurisdictions. More localised issues have been dealt with by state and territory agencies.

Consumer education

If consumers are to benefit from competition and be protected by the Act they need to have skills to be able to make appropriate marketplace choices. If problems do arise, they need to be able to take action to correct them. They need then to have at least a basic understanding of their rights and of where to go to obtain assistance if necessary to enforce them.

Consumer education is needed to ensure people have these buying skills and necessary information and awareness to avoid or deal with problems. It is a key to the effective operation of the Trade Practices Act and is recognised as a basic consumer right.²

It is also well recognised that some consumers are more disadvantaged than others in their levels of consumer education. Some consumers may have limited access to educational resources because of low incomes and poor provision of public services. Some may suffer from disabilities. Language differences may restrict access to consumer education when this is only available in English. People of different cultural backgrounds, including Indigenous people, may be disadvantaged when education is not available to them in ways that build on their existing understanding.

A significant study of the consumer and education needs of rural and remote Australians in 1997 highlighted the low level of awareness of consumer rights and services among Aboriginal people and the high level of disadvantage suffered by them. It commented that:

In practice, for many Aboriginal people, high levels of functional illiteracy mean much of what is involved in consumer transactions and promotions is simply not understood.³

We are aware that Indigenous people seldom complain to bodies like the Commission. There are reasons for this related to disadvantage, culture and access.⁴

Consumer agencies and others need to recognise that these disadvantages exist and be prepared to

² The right to consumer education and the right to be informed are recognised in the UN Guidelines for Consumer Protection and by Consumers International.

³ Australia, Department of Industry Science and Tourism, *The consumer education needs of rural and remote Australians*, p. 15.

⁴ Roger Westcombe, 'Bad money business', *Consuming Interest*, June 1990.

address them in appropriate ways. We cannot just rely, for example, on Indigenous consumer complaints to drive our actions but must adopt more direct ways to identify problems. If we do not do this we will fail to achieve our basic objective of enhancing welfare for all Australians.

It is not possible for consumer agencies to address the underlying causes of Indigenous disadvantage in any substantial way. This requires fundamental changes to improve economic opportunities and to ensure recognition of the importance of Indigenous culture to the whole Australian community. But this is no excuse for not trying to do what we can. Consumer agencies have a responsibility to serve all consumers. It is not appropriate that this task be avoided and, in effect, left to the Indigenous agencies that are generally not funded to provide basic services.

An important weakness to date has been the lack of coordination and interchange of ideas between consumer agencies on the needs of Indigenous consumers. Partly for this reason, most of our efforts have been piecemeal and relatively ineffective. Also these efforts have often not succeeded because they have not taken full account of Indigenous culture and have not closely involved Indigenous people. Of course, there are some notable exceptions to these generalisations that the conference will hear about and, hopefully, learn from.⁵

A key outcome from this conference must be much closer cooperation between Commonwealth and state consumer agencies and between these and the Indigenous ones. Cooperation is needed in the enforcement of consumer laws as well as consumer education.

Working with Indigenous communities

For its part the Commission has over the past year or so taken various initiatives to enhance its effectiveness in these areas. We have:

- conducted a major information and awareness campaign for Indigenous people on pricing-responses of businesses to the New Tax System changes
- been actively investigating some alleged breaches of the Trade Practices Act that affect Aboriginal communities

⁵ In particular the NSW Department of Fair Trading appears to have developed a comprehensive Indigenous consumer program.

- commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) of the Australia National University to undertake a major research project on the application of the Trade Practices Act to Indigenous issues
- visited numerous communities to ascertain at first hand the problems that exist
- tried to improve Indigenous access to the Commission by establishing an Indigenous hotline within our Information Centre, provided cross-cultural training for telephone operators and produced posters for display in communities with appropriate telephone contact numbers
- started to develop a series of 'Don't get tricked ...' consumer education posters for Indigenous communities throughout Australia. The first in the series 'Don't Get Tricked ... Buying a Car' was developed after an educational seminar on trade practices issues with Maningrida, a small Aboriginal community in Arnhem Land. The poster was developed and designed by members of the Maningrida community, and coordinated by the Maningrida JET Centre in association with the Commission
- developed *Storecharter*.

Thus the Commission has developed closer liaison with Indigenous organisations, in particular ATSI and the ACC. This will be formalised today through the signing of a memorandum of understanding between the Commission and ATSI. The MOU provides a framework for cooperation between the agencies, including information sharing and complaint referral, liaison arrangements, and assistance with investigations, staff training, joint publications and education initiatives.

Now I am aware that some consider these initiatives to be a case of too little too late. I am also aware that not all of what we have done has been successful in producing significant change, but we have been learning and, importantly, we have a commitment to do more. We expect that this conference will assist us in developing our future strategy for work in this area.

Storecharter

Storecharter is an example of what can be done when agencies work together to identify solutions to the problems and have the determination to implement those solutions. I have the impression that many people have good ideas in the Indigenous

affairs area but implementation of them has often been much more difficult.

Storecharter is a set of principles that aims to enhance the standards of trading of stores in remote areas. It does this by raising awareness of legislative requirements and by identifying good practice going beyond required legislative minimums. It is more about trader education than consumer education, but we hope consumers will be encouraged to learn more about their rights when they hear about the charter.

Storecharter is a voluntary charter. If stores do adopt it they will be required to indicate this to the Commission and display the *Storecharter* logo. The logo was drawn by Janet Whitton, an Indigenous artist from north-west Victoria.

Why would a store adopt the charter? There are several reasons:

- The first is developing goodwill with customers. It is our experience that most stores want to do the right thing by their customers. Research also shows that most transactions do not cause unresolved problems for consumers.⁶
- Second, stores will be encouraged to adopt the charter because of the widespread support it has obtained from all Commonwealth and state/territory government consumer agencies, from statutory Indigenous agencies, from the peak consumer organisations in Australia and, crucially, from the peak business organisations (the Australian Retailers Association and the National Farmers Federation) representing private store operators, including pastoralists. Many other organisations, including those with a strong involvement in health matters, have also supported *Storecharter*.
- Third, stores that do not adopt the charter will be clearly visible to their customers who may be encouraged to try other options when these are available. These stores will also be highlighted to regulators and others and can expect to be subject to closer scrutiny.
- Fourth, if the voluntary charter is not successful, and the problems it addresses warrant it, governments may be encouraged to adopt tougher regulatory options, such as a mandatory code. I understand, in fact, that there is already a strong desire by some Indigenous organisations to make the charter mandatory where they have

⁶ Trade Practices Commission, Survey of Consumer Opinion in Australia, 1987.

relevant powers, for example for land ownership or control over funding to stores.

The initiative to develop *Storecharter* came from a liaison group formed to consider what could be done about problems being experienced by Indigenous consumers. ATSI in Central Australia (Rhonda Loades and Mark Walker) and the Papunya Council (Clarry Robinya) helped to organise a visit to stores around the Alice Springs area by the Commission (David Cousins and Fiona MacRae), NT Business and Consumer Affairs (John Carroll), NT Anti-Discrimination Commissioner (Tom Stodulka) and the Banking Ombudsman (Colin Neave).

The group saw at first hand some of the problems experienced by the local communities including:

- the lack of price marking of goods
- stores closing without warning, sometimes for several days—often stores that were the sole source of supplies for communities and whose unexpected temporary closure therefore caused hardship
- food being sold past their use-by dates
- stores acting as unofficial financial institutions through the use of book-up and holding customers' bank key-cards/passbooks and PIN numbers
- an apparent lack of awareness by store operators and staff of basic laws such as the Trade Practices Act and state/territory fair trading acts
- a lack of understanding or recognition of cultural practices of Indigenous consumers.

While some of the concerns raised are unlikely to constitute breaches of existing consumer laws, some had the potential, at least, to exploit the vulnerability of customers and could, if left unchecked, lead to breaches of the law. Especially relevant here are the laws against unconscionable conduct by suppliers.

The charter's development required consultation with a wide-range of groups interested in the operation of stores across all jurisdictions. This is reflected in the list of supporters in Attachment 1 to the *Storecharter* document. Many other smaller and local organisations that have expressed their support could not be listed because of space problems. We also wrote to more than 300 community and pastoralist stores seeking their views on a draft of the *Storecharter*. CAEPR's review of the literature on stores in remote communities also helped in developing the charter.

So what does *Storecharter* have to say? It has thirteen sections and I will briefly highlight some of their key elements. The introduction and preamble to most sections provide some context to the specific charter provisions that are numbered.

Section 1, the introduction, highlights the purposes of the charter. These are to:

- help store operators and staff comply with relevant laws
- encourage higher trading standards
- help further develop understanding and respect between store owners, operators and staff and Indigenous people.

It also highlights the important role stores can play in consumer education and the difficult circumstances within which stores sometimes operate, including difficulties created by customers. This is part of the balanced perspective that some business associations, in particular, considered was necessary for the charter to have. The introduction also makes it clear that while the charter is mainly intended for stores serving Indigenous communities in rural and remote areas across Australia, it is not necessarily restricted in coverage. It also applies to stores irrespective of their ownership.

Section 2, on general requirements for fair trading, simply highlights the existence of consumer legislation relevant to stores. It is important that wherever stores are located they recognise that this legislation applies and that it will be enforced if necessary by agencies such as the Commission. We have found that often store operators in remote areas have not been fully familiar with their legal obligations, and even on occasions, their own rights.

Section 3, on general principles for dealing with Indigenous customers, is intended to alert store operators to the circumstances of many Indigenous people and to their culture, which may influence the behaviour of Indigenous customers and employees. Greater understanding and respect should help improve relationships between store management, employees and customers.

Section 4, advertising and selling activities, highlights the importance of providing essential pre-purchase information to customers in a way that is not misleading or deceptive.

Section 5, on the sensitive issue of pricing, covers how prices in remote stores are generally significantly higher than in city stores but how this does not necessarily mean they are unreasonably high. The

charter recognises this but at the same time urges stores to be more open in explaining their pricing, to clearly mark prices on items and shelves, to provide receipts and to ensure that any payments made in kind, for example for art works, are made at fair market rates.

Section 6 is on the topical issue of store credit or book-up. Book-up is very common and has a long history in some areas. There are also conflicting views about whether it is a good or bad thing. A session in this workshop discusses this in more detail with the help of a paper produced for ASIC.⁷

For its part *Storecharter* does not venture an opinion on whether book-up is good or bad. However, where it does operate, the charter requires that full transparency and accountability should apply. *Storecharter* also addresses some of the more common concerns about book-up. These include concerns that:

- consumers who surrender their keycards are unable to retrieve them and are therefore tied to that particular store
- handing over keycard and PIN makes the consumer vulnerable to fraud or financial exploitation
- consumers do not know how much is charged for goods under book-up; or whether the amount being withdrawn from the customer's account is the same as the amount booked up.

Storecharter does not encourage the holding of keycards and specifies that stores should not demand the customer's PIN number.

Storecharter requires stores to:

- provide receipts whenever book-up is used
- maintain clear records of book-up that can be inspected by the customer, consumer protection or law enforcement official
- not allow third parties to use a customer's book-up account unless the store has been provided with specific authorisation from the customer to allow it
- make sure the customer understands the terms and conditions for book-up before they engage in it. These terms and conditions include any fees of charges for using it or even a limit to the amount that can be booked up

⁷ Gordon Renouf, *Book-up: some consumer problems*, report prepared for the Australian Securities and Investments Commission, March 2002.

- return a customer's keycard if and when the customer requests it.

Section 7 is on the quality of goods and services provided and refunds. The preamble briefly describes the legal position. Customers are entitled to refunds for faulty goods if there has been a breach of a statutory right and should not be required to pay the cost of any additional freight. This section also highlights the importance of stores supplying affordable and nutritious food, including fresh fruit and vegetables, to communities, and of compliance with use-by dates.

Section 8 deals with trading hours. It requires stores to display clearly their trading hours and to give as much notice as possible when these have to be varied.

Section 9 covers complaint handling. Dealing successfully with consumer complaints builds customer confidence and loyalty and encourages repeat sales. It is probably better for stores and customers that complaints be satisfactorily resolved between them rather than having others, including regulators, becoming involved. The charter specifies that stores will put in place a system for dealing with complaints, will deal with any third party assisting the customer, unless there is good reason not to, and may use a mediator to resolve a dispute.

Section 10 highlights the importance of staff awareness of, and training in, the requirements of *Storecharter*.

Section 11 is on the display of the *Storecharter* logo and *Storecharter* principles. The latter is contained in attachment 2 to the *Storecharter* document. The nine principles summarise some of the key matters covered by the charter.

Section 12 of the charter indicates sources of further help for store owners/operators.

Section 13 provides contact points for feedback on *Storecharter* to be sent to the Commission. While no specific formal process for review of the operation or monitoring of *Storecharter* has so far been specified, it is envisaged that over time the charter may be amended as appropriate in light of feedback. We will be discussing further arrangements for monitoring and reviewing the charter with interested parties.

The comments on drafts of the *Storecharter* received by the Commission make us optimistic that it will make a difference. Indeed, we believe it has already done so by highlighting the issues it raises and also our interest in seeing improved standards.

Many people have said that the charter just represents good practice that is already followed by their store. While this may often be true, for example for the Arnhemland Progress Association stores, it is clear that not all stores adhere to the *Storecharter* principles. Some store operators suggested that something like the charter had been long overdue. Others recognised that practices would need to change to comply with the charter. This may incur some small cost, for example in ensuring prices are displayed and receipts are issued. It may also provide benefits. One lady, whose parents had been pastoralists for 70 years, said that putting prices on the shelf improved sales.

Several store operators highlighted the importance of the mutual trust built up over time between store operators and their Indigenous customers. From research by the Centre for Aboriginal Economic Policy Research it was noted that Indigenous people often see their relationships with store operators more in social than economic terms. *Storecharter* should not be seen in any way as cutting across these relationships. It does say, however, that that these relationships are not an excuse for sub-standard trading practices.

Stores play a key role in serving remote Indigenous communities. In our view they could play an even greater role in Indigenous consumer education. This is something that would require goodwill and cooperation. It may be something the conference could give consideration to.

The Trade Practices Act: are we becoming a branch office economy?

Following is an edited version of a speech given by Commission Chairman, Professor Allan Fels, to the 2002 Melbourne Institute Economic and Social Outlook Conference, Towards opportunity & prosperity, at the University of Melbourne on 4 April 2002.

Introduction

Paul Kelly reported on the front page of *The Weekend Australian* on 10 February 2001 that:

Business leaders are about to confront the Howard Government with the ultimate issue for corporate Australia: how our best companies can stay onshore and how the nation can avoid becoming a New Zealand-style branch-office economy.

He also reported that the Business Council of Australia:

... breaks the challenge down into three main areas where the government's response is crucial: First the competition law under which the ACCC chief Allan Fels makes judgments, solely in relation to the domestic market, rejecting mergers and acquisitions, which [David] Buckingham [then Business Council Executive Director] says 'denies our companies the scale they need'. The hostility towards Professor Fels and the Commission has now reached incendiary levels within business ...

Kelly went on to say:

... at the heart of this agenda lies two questions. How much is Australia's corporate future driven by the unalterable forces of scale and currency, as opposed to the potential policy? And second, how much of the Business Council debate is consistent with the interests of consumers?

The issue was reported as most pertinent for:

- Lend Lease
- BHP
- AMP
- Pioneer
- Brambles
- National Australia Bank.

At the end of the list it was stated that 'nearly every efficient company now confronts these problems'.

But the views of the Business Council of Australia on merger law are only one from the business community. The small business sector generally supports a strong, perhaps stronger, merger law. Thus NARGA, the National Association of Retail Grocers of Australia, has called for changes to the merger law so that it better addresses the phenomenon of creeping acquisitions in the supermarket industry. Some including NARGA and the Council of Small Business of Australia (COSBOA) also support the introduction of a divestiture law.

There is also discussion in big business quarters about the claimed need to take more account of globalisation. Yet parliament amended the Trade Practices Act last year to provide specifically that when considering mergers the courts and the Commission should explicitly include the effects on regional markets in their analysis. Globalisation did not seem to be on its mind.

The government announced during the elections that the competition provisions of the Trade Practices