

SOLD OUT

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The violation of the consumer rights of Aborigines.

In 1985, the United Nations adopted a Charter of Consumer Rights consisting of eight rights that consumer protection laws were intended to safeguard. In an address commemorating the 10th anniversary of the UN Charter, Mick Dodson (Aboriginal and Torres Strait Islander Social Justice Commissioner), highlighted the way in which these rights are violated in the area of health care of indigenous people. This article will expand on the Commissioner's address by examining other areas where Aborigines (mainly those living in remote areas) are denied these rights and thus do not enjoy the protection of consumer laws.

The right to the satisfaction of basic needs

According to the UN Charter, consumers are entitled to have access to basic and essential goods and services: adequate food, clothing, shelter, health care, education and sanitation.¹ In terms of health care, there is a significant gap between the vital statistics of Aborigines and non-Aborigines. Aborigines have an infant mortality rate three times higher than non-Aborigines as well as an average life expectancy 20 years lower. They also suffer from tuberculosis, leprosy, intestinal and respiratory infection, mental illness, hearing defects, trachoma, venereal disease, diabetes, anaemia and heart disease at a significantly higher rate than non-Aborigines.² Most of these illnesses are a direct result of their poor living conditions which include: a poor water supply, inadequate or inappropriate sanitation and sewerage, a meager electricity supply and malnutrition.³ These problems are exacerbated by the lack of professional medical staff living in or nearby Aboriginal communities. According to AMA figures, the doctor to non-Aboriginal patient ratio is 1:500 compared to the doctor to Aboriginal patient ratio of 1:3500. Only one Aboriginal community, Palm Island, has ever had a full-time doctor. Although there has been some improvement in particular areas of Aboriginal health (for example, a dramatic reduction in the incidence of trachoma) the health standard of Aborigines is still well below that of non-Aborigines. In terms of education, Aboriginal standards are much lower than the non-Aboriginal population. Many rural Aborigines do not advance beyond primary school and many are still illiterate.⁴ Thus, despite the existence of consumer protection laws in Australia, the basic needs of Aborigines are still not being met.

The right to a healthy environment

The right to a healthy environment means the right to live and work in an environment which is non-threatening to the well-being of present and future generations. The environment in which Aborigines live, apart from being physically dangerous, is also mentally and socially precarious. This is not surprising given the history of white relations with Aborigines. At the time of 'settlement', the lives of Aborigines were directly affected by their being physically displaced into marginal country, losing access to water and other resources, as well as their traditional spiritual lands. Starting from the end of the 19th century,

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children who were classified as half-castes and all Aborigines under 34 were forcibly removed from their settlements with the aim of assimilating them, while full bloods were left to live out their existence on isolated reserves. These removal policies continued to operate until the 1960s. After World War II, missions were established where Aborigines were forced to accommodate to metropolitan values and to disregard their beliefs. In the late 1960s, formal barriers to equal participation were removed,⁵ yet today Aborigines are still discriminated against, particularly in the areas of employment and the provision of goods and services.

The effect of these policies has been devastating on the lives of Aborigines. It has left them with feelings of despair and hopelessness and has hastened the decline of Aboriginal culture. The reluctance to recognise Aboriginal law as a legal system in its own right has assisted the demise of Aboriginal culture as it has forced Aborigines to submit to a foreign legal system and gradually lose sight of their values and traditions. Even more devastating, has been the removal of Aborigines from their land which for thousands of years formed the basis of their spiritual, religious and cultural identity. The loss of land, which has been accompanied by a loss of Aboriginal culture, tradition and language has already affected countless numbers of Aborigines and hardly bodes well for future generations.

The loss of Aboriginal culture and identity has had the effect of reinforcing negative stereotypes of themselves both outside and inside the Aboriginal community. This has manifested itself in unemployment rates six times higher than the national average, prison rates 14 times higher than that of the non-Aboriginal population and a high rate of mental illness (mainly stress-related diseases). It is not surprising then, that violence and alcoholism are rampant in the Aboriginal community; where they are employed — as they so often are — to displace feelings of frustration and despair, allowing Aborigines to feel a sense of power in a society where they are comparatively powerless.⁶

This analysis clearly indicates that the environment in which many Aborigines live poses a threat to the well-being of current generations and there is little indication that things will improve for future generations. This is characterised by the over-representation of Aboriginal children in corrective and welfare institutions and the high rates of illiteracy, drug and alcohol abuse, gambling, sole parenting, unemployment and boredom among Aboriginal youth.⁷ Any long-term solution to the physical, social and mental ills of Aborigines can only be achieved by giving them the authority to develop viable communities where Aboriginal cultural and other rights are recognised.⁸

The right to safety

The right to safety which is clearly fundamental to the creation of a healthy environment includes the right to be protected against products, production methods and services which are hazardous to health or life. The UN General Assembly has declared that consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information, they declared, should be conveyed to consumers by internationally understandable symbols wherever possible. Education is vital to the successful operation of this right. In many Aboriginal communities, sophisticated sanitary facilities have been provided by the Government in an attempt to improve the health of Aborigines. While this is commend-

able, it has been found that in many communities, the facilities were introduced without explaining why they were established or how to use and maintain them. This clearly contravenes consumers' rights to be instructed in the proper use of goods.

This right was also arguably compromised when a tobacco company in the Top End distributed, with every two packets of cigarettes sold, free T-shirts with the community's name on the back and a tobacco company slogan on the front. Smoking is one of the leading contributors to the poor health of Aborigines in the Top End. Allowing a promotion such as this was clearly in contravention of the right to safety of Aborigines.

The right to be educated

Every consumer has the right to acquire knowledge and skills needed to make informed choices about goods and services, while being aware of their basic rights and responsibilities. In many Aboriginal communities, there is a lack of the most basic skill a consumer can have, namely literacy. Members of these communities often do not have sufficient English language skills to deal with everyday consumer transactions. As a result, Aborigines often shop in large groups in the hope that someone will understand the terms, appraise the quality of the goods, determine whether the price is fair and assess whether they have been charged correctly.⁹ The low level of numeracy skills of some Aborigines leaves them vulnerable to being cheated and does not allow them to make informed choices as they do not appreciate the value of the products they purchase.¹⁰

The lack of legal knowledge in Aboriginal communities and the lack of a basic understanding of commercial transactions results in Aborigines often being unaware of their rights. There are examples of Aborigines not keeping receipts after making large purchases since they could not read them and therefore discarded them.¹¹ Aborigines rarely have adequate knowledge about where to go when things go wrong or when they are entitled to legal aid. Thus if they enter into disadvantageous transactions, their ability to resolve the problem is severely limited by their lack of knowledge of the legal system.

There has been some recognition of the lack of consumer education in many Aboriginal communities. As a result, a few education programs have been designed particularly for the Aboriginal consumer. 'Flash Attack', organised by the NSW Department of Consumer Affairs (the Department) was a video and poster campaign informing Aborigines of the dangers of buying cars and notifying them of their enforceable rights. The Department, with the help of local Land Councils produced the 'smart-card', bearing the logos of the Federal Bureau of Consumer Affairs, and the Department, which consumers could display when experiencing difficulties in a store.¹² The Department also produced a photo comic 'Cashed Up for a Car' providing information about purchasing a second hand car.¹³

Although there have been developments in this area, consumer education among Aborigines is still not at an acceptable level. They do not have the appropriate skills to make informed decisions and are still largely unaware of their rights and responsibilities.

The right to be informed

The UN Charter states that consumers have the right to be given the facts needed to make an informed choice and to be

protected against dishonest or misleading advertising and labelling.¹⁴ A number of health problems Aborigines face could be eliminated if they were provided with adequate health information. Mothers are often not fully aware that a diet consisting of sugary or fatty pre-prepared foods can be nutritionally damaging to their families. Without these basic facts, Aborigines are not making informed choices when they choose to buy fast-food over fruit and vegetables.

The vulnerability of Aborigines to sharp practices is heightened by their lack of knowledge of basic facts which would allow them to make informed choices. In 1992, the Trade Practices Commission (TPC) found that insurance agents had been selling life insurance policies in Northern Territory and North Queensland to Aborigines who could not afford them nor understand what they were purchasing. The TPC found that the Aborigines had virtually no experience with significant commercial transactions and were mostly illiterate.¹⁵ These findings were supported by research conducted by the Federal Bureau of Consumer Affairs which revealed that many Aborigines did not understand concepts such as contracts, warranties, redress and credit ratings.

It is often the case that when facts are provided, they are culturally inappropriate. Sometimes, the fact that Aborigines do not speak English as their first language is not taken into account. Naturally, warnings about lung cancer on cigarette packets are of little use to a person unable to read or unable to understand the link between cigarettes and lung cancer. Other campaigns fail to recognise the unique structure inherent in Aboriginal communities which has a significant effect on their experiences as consumers; for example, the inability to budget due to obligations borne by kinship structures.

The right to choose

Consumers should be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality. The reality for Aborigines living in remote communities is that they usually only have one store to choose from, with goods at highly inflated prices due to the lack of competition and freight costs. The stores are often stocked with overpriced fast food, high in carbohydrates and fats, and the choice of fresh fruit and vegetables is limited. Where it is possible, Aborigines will pool money for petrol and travel to the nearest large centres to do their shopping where they have a greater choice at lower prices. However, due to the great distances required to travel, they only do this once, on average, every 2-3 months. Thus, bare essentials and items required daily still have to be purchased locally at highly inflated prices.

Even where there are non-Aboriginal towns nearby, this will not necessarily result in Aborigines having a greater choice of goods and services at more competitive prices. A study conducted by the Human Rights and Equal Opportunity Commission found that Toomelah, an entirely Aboriginal town, had an inadequate provision of most basic services. The two towns nearby, which were not Aboriginal, had facilities such as hospitals, high schools, retail outlets and recreational facilities. The Report found that racism in the two towns had hampered the effective access by Aborigines to the facilities and had resulted in a high drop out rate of Aborigines from the high school.¹⁶ Thus, even where geographical isolation is not the major impediment to the availability of a choice of goods and services for Aborigines, racism often is.

Due to their socio-economic position, Aborigines usually have little option in the choice of credit available to them. A system has arisen in remote communities, known as the 'book-up' system, where benefit cheques or wages are signed over in exchange for goods. Not only does this lock Aborigines into a state of dependency with the particular store but it discourages them from complaining about inflated prices for fear of their credit being stopped. As a result of the system, Aboriginal consumers rarely enjoy all of their benefits and often don't have enough money left to pay for rent, electricity etc.¹⁷ In many communities, the system has arisen due to a lack of separate banking facilities. A local trader has thus been appointed agent for the bank so that Aborigines may cash their social security benefits. All of these factors result in Aboriginal consumers having little choice as to where to buy, or indeed the means with which to buy their goods.

The right to be heard

Consumers have the right to have their interests represented in the making and execution of government policy, and in the development of products and services. This right is only starting to be realised in a few key areas in Aboriginal life. Until recently, most areas concerned with Aboriginal welfare were run by non-Aborigines. The establishment of Aboriginal legal aid centres marked the first time Aborigines had tackled a problem through their own efforts. Later, Aboriginal health care centres were established and flourished throughout Australia.¹⁸ The development of ATSIC (Aboriginal and Torres Strait Islander Commission) was also significant as it allowed Aborigines to determine their own future through elected regional councils and a policy-making board of commissioners. However, all decisions made by ATSIC are made in a bureaucratic structure which is foreign to Aborigines and does not allow them to use management practices grounded in indigenous traditions.¹⁹ The existence of ATSIC, however, does theoretically allow Aboriginal interests to be represented in the making of policy, however effective or ineffective that may be in reality.²⁰

In the area of health care, Aborigines have little input into the making and execution of policy. In Aboriginal communities, the focus and responsibility of health care lies outside the communities. The major health care networks are usually designed and directed by administrators who are geographically, culturally and philosophically distant from their clients and their clients' experiences. Aboriginal input is usually restricted to filling in application forms. In the May 1995 Budget, the Federal Government transferred the control of Aboriginal health care from ATSIC to the Department of Health. Although this decision seems to have the support of many Aboriginal leaders, it appears to reduce the ability of Aborigines to make their own decisions and choices about the state of health care in their communities.

The right to redress

A consumer has the right to receive a fair settlement of claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services. The problems Aborigines face as consumers, as outlined above, highlight the importance of redress. The appalling health conditions of Aborigines since Europeans first landed on Australian shores, is a clear example of the inadequate right to redress. Aside from health, there are a number of other areas where Aborigines would benefit from a right to redress.

However, there are a number of cultural and social reasons why this right is rarely used. The Aboriginal Consumer Education Project found that Aborigines prefer not to be the focus of attention and will go to considerable lengths to avoid direct verbal confrontation. They would prefer to live with the deficiencies, rather than return goods or seek help in fixing them. For example, it was found that in isolated communities, when the purchaser could not fix his/ her car, they would just leave it in the front yard until it was no longer of use to anyone. Or where ill-fitting clothes were purchased, Aborigines would give them away or sell them at a loss rather than return the item. The project concluded that this was caused by the self-conscious nature of Aborigines who had been raised in the shadow of the reactions of previous generations, who were taught not to antagonise Europeans.

The project also found that Aborigines feel a sense of frustration and intimidation when shopping. They feel that they do not receive the same service as other Australians and would prefer to accept a bad experience rather than annoy the salespeople by complaining about goods. They also feel that they are viewed not as consumers but as potential thieves. So Aborigines would rather buy poorly sized clothes than use change rooms where they could expose themselves to being accused of stealing. Furthermore, the polite nature of Aborigines makes it hard for them to say no to salespeople for fear of insulting them. This was found to be the reason why Aborigines in the Northern Territory and North Queensland bought life insurance policies.²¹

There are other cultural factors which influence Aborigines in their consumer experiences. For example, in Aboriginal culture, it shows disrespect to maintain eye contact with a person. In western culture, however, it is sign of honesty and integrity. It is also not appropriate in Aboriginal culture to discuss financial matters or other personal issues and thus Aborigines are reluctant to raise consumer problems with government departments or legal centres. Non-interference is a quality approved of in Aboriginal society.²²

Even more significant than these social and cultural obstacles in seeking redress, is the lack of knowledge of the right to redress or the means to obtain that redress (as discussed in the right to education). Yet, when Aborigines are aware of their rights, the methods used to protect them are often culturally inappropriate. For example, conciliation is the most common form of redress for consumer complaints. However, many Aborigines feel reluctant and intimidated to negotiate with the white trader. Another significant hurdle that may deter Aborigines from lodging complaints is the formal and usually intimidating nature of complaints handling institutions or even legal aid. An Aborigine referring to legal aid summed these feelings up clearly when he said '[people seeking legal aid] will seek aid, it is believed, only if they find it available to them outside working hours and in a relaxed, suburban environment which dispels the fears of what they supposed to be involved in legal consultation: expense, a formal and unsympathetic reception in unfamiliar surroundings and a likelihood of incomprehensible complication of the problem about which they would like to take legal advice'.²³ Even more daunting is the prospect of going to court to resolve the dispute. In order for Aborigines to exercise their right to redress, there is an urgent need for community-devised programs to determine the needs of the community and to formulate culturally appropriate action plans.

Conclusion

It is apparent that Aborigines are the most disadvantaged consumers in Australian society, receiving little or no protection of their consumer rights. There is an urgent need to address problems relating to health and the lack of basic infrastructure in Aboriginal communities. Education programs aimed at empowering Aboriginal consumers and informing them of their rights and responsibilities, should be implemented, but should be designed with the co-operation of Aboriginal communities. Most importantly, it is imperative that Aborigines be given the opportunity to reconstruct themselves individually and communally by a recognition of land and other indigenous rights. It is only when these measures are successfully adopted, that Aborigines will begin to feel the protection of consumer laws. Until then, every one of the rights propounded by the United Nations will continue to be violated so far as Aborigines are concerned.

References

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2. Cited in Australian Bureau of Statistics report 'Aboriginal and Torres Strait Islanders: Australia, States and Territories', 1987, in McRae, H., Nettheim, G., Beacroft, L. (eds) *Aboriginal Legal Issues*, Law Book Company, 1991, Sydney. These illnesses were identified as being chronic in Aboriginal communities in the Report from the House of Representatives Standing Committee on Aboriginal Health, 1979; pp.3-31.
3. See Ruby Hutchinson Memorial Address on World Consumer Rights Day 1995 by Mick Dodson, Aboriginal and Torres Strait Islander Commissioner for statistics relating to water, food and electricity.
4. Pollard, D., 'Ending Aboriginal Poverty', (1991) 7(1) *Policy* 8.
5. The 1967 Referendum sought to remove discriminatory provisions from the Constitution and also acknowledged the rights of Aborigines to retain their own identity and culture, while still being included in the wider community.
6. Hunter, E., 'Images of Violence in Aboriginal Australia', (1990) 2(46) *Aboriginal Law Bulletin* 13.
7. D'Souza, N., 'Aboriginal Children and the Juvenile Justice System', (1990) 2(44) *Aboriginal Law Bulletin* 4; and NSW Department of Consumer Affairs, *Grin and Bear It: Experiences of Aboriginal Consumers in Rural New South Wales*, 1994; p.11.
8. Report from the House of Representatives Standing Committee on Aboriginal Health, 1979.
9. NSW Department of Consumer Affairs, above, p.4.
10. See case study about woman with no numeracy skills in Ducret, A., 'Trade Practices Commission's Exposure of Exploitation of Aborigines', (1993) 3(3) *Australian Journal of Corporate Law* 3.
11. For example, the sale of life insurance policies to Aborigines see ref. 10, p.1-11.
12. See address by Hon. Jeanette McHugh, Federal Commissioner for Consumer Affairs at World Consumer Rights Day 15 March 1995 for consumer education campaigns for Aborigines.
13. See ref. 9 above, p.10.
14. See ref. 1 above.
15. See ref. 10 above; pp.1-9.
16. Moss, I., 'Combating Racism via the Human Rights and Equal Opportunity Commission', (1987) 29 *Aboriginal Law Bulletin* 6.
17. For more information see Westcombe, R., 'Bad Money Business', (1991) 2(50) *Aboriginal Law Bulletin* 6; and see ref. 9; pp.7-8.
18. Mayers, N., 'Black Health' (1983) 13(1) *Australian Social Welfare Impact* 14-16.
19. Hughes, I., 'Australian Colonialism after Mabo' (1994) 71(1) *Current Affairs Bulletin* 20.
20. There has been much criticism by Aboriginal leaders such as Pat O'Shane and Rob Riley of ATSIC for its failure to improve the socio-economic position of Aborigines and for not negotiating adequately with Aboriginal organisations.
21. See ref. 10 above; p.3.
22. See Kearins, J., 'Factors affecting Aboriginal Testimony', (1991) 16(1) *LSB* 4; and see ref. 9 above; p.5; and Westcombe, R., above p.7 for information on cultural factors influencing consumer experiences.
23. Quoted in Goldring, J.L., Maher, L.W., *Consumer Protection Law in Australia*, Butterworths, Sydney, 1983, p.372.