

1979

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C O N S U M E R   A F F A I R S   C O U N C I L  
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R E P O R T

FOR THE YEAR ENDED 30TH JUNE, 1979

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PRESENTED TO BOTH HOUSES OF PARLIAMENT PURSUANT TO THE  
PROVISIONS OF SECTION 7(2) OF THE CONSUMER AFFAIRS ACT  
1972.

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F. D. Atkinson, Government Printer, Melbourne

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INTRODUCTION

In accordance with the Consumer Affairs Act 1972, Section 7, the Consumer Affairs Council of Victoria has much pleasure in presenting this Report concerning the activities of the Council for the year ended 30th June 1979 to the Honorable the Minister of Consumer Affairs for tabling before both Houses of Parliament.

SECTION I.

REVIEW OF PREVIOUS RECOMMENDATIONS.

During the year the Council reviewed the recommendations made in its Annual Reports for the years 1973/74 to 1976/77. The review disclosed that excluding the recommendations referred to hereunder the great majority of recommendations had either resulted in amendments to legislation, been clarified by other Ministries or authorities, or ratified indirectly by subsequent events.

The following recommendations are re-affirmed:-

That if there is any doubt in respect to the rights of the Ministry as regards professional services, then appropriate amendments should be made to Victorian legislation. The attention of the Government is drawn to the definition of "services" contained in the Trade Practices Act 1974.

That the Consumer Affairs Act should be amended to cover all door-to-door transactions irrespective of whether they are subject to a credit purchase agreement or not, whether or not the transactions are on a cash payment basis and whether or not they are initiated by the vendor or purchaser.

The latest amendment to the Consumer Affairs Act covers cash transactions exceeding \$50.00; the Council does not wish to press for cash transactions of a lesser amount. Effectively therefore the Council now recommends that the

Act be further amended to cover the matter  
underlined above.

That the activities of all mutual home loan funds  
be rigidly controlled by the Government in the  
State of Victoria.

That legislative action be taken to prohibit mis-  
leading advertising of employment opportunities.

That controls similar to those which apply to solicitors  
trust funds should be extended to all groups, professional  
or otherwise, holding funds in trust on behalf of clients.

This is an abridged version of a recommendation  
originally made in 1973. The major concern at  
that time was with travel agents and the events  
of intervening years have strengthened the  
Council's belief that the operations of travel  
agents needs some form of regulation in respect  
to trust funds. The substantial increase in  
bookings due to modifications to the advanced  
booking system and the reduced air fares now  
available for overseas travel inevitably means  
considerably larger sums of money are being held  
in trust by travel agents. This situation  
emphasises the importance of urgent action being  
taken by the Government to introduce some form  
of regulation. It is understood that the N.S.W.  
Government has introduced legislation regulating  
the activities of travel agents.

That a registration scheme be established to control the operations of all insurance brokers, agents, and consultants, as soon as possible.

That date marking in a clear, legible, direct and uncoded manner, of all packaged perishable foodstuffs (ie., with a shelf life of less than 90 days) should be made compulsory.

This recommendation was originally made in 1974. The South Australian Government passed legislation in this area some 2 years ago; The New South Wales Government introduced regulations under the Consumer Protection Act regarding date marking late in 1978; and in October 1978 the National Health and Medical Research Council finally approved a standard covering date marking. The Council urges the Government to introduce legislation in line with the National Health and Medical Research Council approved standard as soon as possible.

## SECTION II.

### PURCHASING OF HOUSES

Arising from a review of complaints received by the Ministry of Consumer Affairs regarding purchases of houses, the Consumer Affairs Council was able to identify a number of problem areas, viz:

- (i) the use of Sale Notes,

- (ii) problems associated with Vendor Terms Sales,
- (iii) problems arising from the disposal of deposit monies paid by purchasers where the transaction was unable to be finalized through no fault of the purchaser,
- (iv) agents allegedly misrepresenting or giving misleading information about the quality of the property or chattels sold in it and,
- (v) the sufficiency of information made available during the sale negotiating phase.

The Council firstly sought the views of The Real Estate and Stock Institute Of Victoria and the Real Estate Agents Association Of Victoria, on these matters. The information provided by these bodies in response to the Council's invitation was most helpful and much appreciated by the Council.

SALE NOTES.

Unless there is some defect in its preparation the Sale Note is a legally binding document. There is no doubt however that a number of consumers have either been misled or are ignorant as to the significance of the document with often disastrous results. In the view of the Council the opportunity for consumers to be confused

arises from the fact that in Victoria the purchaser is first asked to sign a Sale Note at the same time being informed that some time later he will be required to sign a formal contract of sale. The Council acknowledges that it is the misuse of the document, rather than the document itself, which causes the trouble. However in the purchase of a house, which to so many people is an event which occurs perhaps once only in their lifetime, one disaster is one too many and we should do what we can to eliminate the possibility. The Council considers two options, (i) to give the Sale Note a different title with perhaps some additional wording in large print and maybe different colouring to highlight the fact that it is a binding memorandum of offer and acceptance, and, (ii) to abolish the Sale Note system entirely and require that preparation for private sales through agents be the same as for auction sales, ie., everything ready for an immediate exchange of contracts. The R.E.S.I. believes that the second option is perhaps a desirable long term aim but it is so radical a change that it would need long examination and careful, evolutionary, introduction, together with proper public education and that at present the continued use of the Sale Note system is essential. The Council acknowledges that we cannot change overnight but believes that a decision should be taken now to abolish the Sale Note and then allow adequate time for preparing for such a change. These views have been submitted to the Committee of Enquiry into Conveyancing.

#### VENDOR TERMS SALES

As a general rule property sold on vendor terms attracts a higher price than it would do if sold for cash. The Ministry has had many representations made to it on behalf



of purchasers who have found themselves in grave difficulties after entering into this type of contract. In all these cases, the purchaser has paid a relatively small deposit, virtually all of the periodic payments are absorbed in paying the interest as a result of which little if anything is being paid off the capital, which has to be paid in full say in 3-5 years. If the property market is appreciating rapidly, as it was a few years ago, the value of a particular property bought on vendor terms could increase to a degree sufficient to allow it to be re-financed at the end of the terms contract. However, when market values are relatively stable, as they are at present, purchasers of property on vendor terms can find the re-financing of a vendor terms contract to be well nigh impossible as the re-financing institutions will generally only lend 80% of the cash price valuation of the property. The fundamental problem of course is that many would be purchasers do not understand the implications of vendor terms contracts.

The Council believes these two complementary actions are necessary to rectify this situation:-

- (a) In all vendor terms sales where a deposit of less than 20% is paid, the vendor should be required to give to the purchaser before any deposit is paid or any sale note or contract signed, a separate document showing:

- (i) the balance of any purchase money owing at the date of possession,
  - (ii) the re-payments required by the contract together with the relevant rates of interest, the way in which interest on amounts owing is computed,
  - (iii) the date when the balance of purchase money is due to be paid in full and,
  - (iv) the total sum which the purchaser will have to pay on the due date assuming that no more than the minimum repayments provided for have been made by the purchaser.
- (b) A cooling-off period of say 7 days should be provided in the contract to allow the purchaser time to seek independent advice on the course of action they are contemplating.

These views have also been submitted to the Committee of Enquiry into Conveyancing.

DISPOSAL OF DEPOSIT MONIES.

The Council has noted with concern several instances where purchasers having entered into contracts of sale for the purchase of a property, and which through no fault of the purchaser the contract has not been able to be finalized,

a significant part of the money paid as a deposit has been retained by the estate agent and/or solicitor. Whilst the Council understands that such action is lawful it firmly believes that it is clearly immoral and that action should be taken by the Government as a matter of urgency to introduce suitable amendments to relevant legislation to prevent such innocent purchasers from being so gravely disadvantaged. The Council recognises that many vendors, perhaps the great majority, need to utilize the deposit, less agents commission and legal fees, to put down as a deposit in the purchase of a further property, and that any amendments to the law to protect the legitimate interests of the purchaser must at the same time allow the vendor access to the deposit money, if and when he can satisfy the purchaser that there is no impediment to the successful completion of the transaction.

The Council accordingly proposes that any monies paid as a deposit by a purchaser should be held in trust by the estate agent as a "stake-holder", until such time as the transaction has been completed or until the purchaser or his solicitor have signed an agreement to the release of the money, the vendor having satisfied the purchaser that there was no impediment to the successful completion of the contract.

The Council understands that the Committee of Enquiry into Conveyancing has submitted recommendations on this matter.

THE QUALITY OF THE PROPERTY.

This is a very vexed question and one which in the view of this Council does not lend itself to resolution by legislative action, at least in the case of "older" properties. As a general principle we believe that the "caveat emptor" principle should apply in respect to this question. However we further believe that the position of the purchaser could be enhanced if he was furnished with a short list of check points to help him inform himself of the state of the property being sold. We visualize the list being developed by the Ministry of Consumer Affairs in association with The Real Estate and Stock Institute Of Victoria and being strictly limited to those features which are not self-evident to an intending purchaser.

INFORMATION MADE AVAILABLE DURING THE SALE  
NEGOTIATING PHASE.

A matter of almost continuous concern to this Council is the amount and nature of information made available to consumers to enable them to make an informed judgement in the market place, and much has been done both on a voluntary basis and by various legislative measures to improve the situation. In the particular area of property sales however we believe that the vendor

should have a statutory obligation to provide during the sale negotiating phase full details regarding mortgages, charges and encumbrances relating to the property. It is our view that many of the problems and difficulties experienced in the purchase of properties could be overcome or at least minimised if the nature and amount of information provided to intending purchasers was improved.

Again these views have been made known to the Committee of Enquiry into Conveyancing.

### SECTION III

#### RESIDENTIAL TENANCY LAW REFORM.

Revision of the laws regarding the landlord/tenant relationship took a major step forward with the introduction into the Parliament in December 1978 of the Residential Tenancies Bill. The Council welcomed the decision of the Government to allow the Bill to stand over until the next session of Parliament, in order that interested parties in the community could have a chance to study the proposed new laws.

Whilst the Council has some reservations about certain clauses in the Bill, it nevertheless wishes to express its agreement and support to the concept of the Bill as a whole.

Matters upon which the Council had some reservations and upon which it made detailed representations to the Attorney-General included:-

- (1) the expression of the functions and authority of the Director of Consumer Affairs,
- (2) the provision for the Director in defined circumstances to make a loan or a grant from the Residential Tenancies Fund to a person who is or is about to become a tenant,
- (3) the provision that there will be not more than one rent increase in each twelve months,
- (4) sub-letting and assignment,
- (5) tenant's power of termination of tenancy agreement and,
- (6) landlord's power of termination of tenancy agreement.

The final observation the Council wishes to make is in connection with the administration of the legislation once it is passed into law. The Council believes, that with this particular piece of legislation, both landlords and tenants, and particularly the latter, will be seeking to take advantage of their new rights virtually from the date of proclamation of the Act.

It is vital therefore that the whole of the administrative machinery necessary to give effect to the new legislation be established prior to the date of proclamation. There will be no time for a gradual build up of staff and operating methods; the nature of the provisions in the new law demand that the whole of the administrative machinery must be capable of operating effectively from day one. The Council trusts therefore that a realistic view will be taken of the staffing needs of the Bureau and Tribunals, and that adequate time will be allowed for the recruitment and training of staff and the development of operating procedures etc.

#### SECTION IV

#### LAY-BY SALES

Following consideration by the Council some time ago of various characteristics of lay-by systems used throughout Victoria, together with a study of the New South Wales Lay By Sales Act; the Council recommended that the Ministry of Consumer Affairs should prepare a set of guidelines covering this type of transaction.

After considerable effort and a high degree of co-operation between the Ministry and the Retail Traders Association of Victoria the following lay-by sales guidelines have been agreed to:

Lay-by sale is defined as a contract for the sale of goods at retail under terms which provide that the goods are not delivered nor is the title to the goods intended to pass to the purchaser until the purchase price is paid. The trader is responsible for the condition and insurance of the goods until passed to the consumer. The purchase price to be paid over a fixed period by instalments.

In lay-by sales the following principles should apply:-

1. Goods on lay-by should be set aside and stored separately to other goods and should be identified by a number or some such identification
2. A vendor should keep adequate records, which include:
  - (a) Description of goods
  - (b) Date of transaction
  - (c) Identification mark or number of sale
  - (d) Deposit and instalments paid



3. The customer shall be given a copy of the lay-by docket or other documentation which clearly sets out the conditions of the lay-by, including the information in paragraph 2 and also indicating:
  - (i) When ownership in the goods passes
  - (ii) The period over which the instalments are to be made.
  - (iii) The conditions applicable to determination of the lay-by agreement where for example payments are not made on time, or the customer wishes to cancel the agreement.
4. The purchase price of the goods on lay-by shall not change during the lay-by period.
5. Prior to a lay-by transaction being terminated because of default by the customer, the customer shall be given at least 14 days notice sent to the last address notified by the customer. It shall be the customer's responsibility to notify change of address.

SECTION V

PRICE ADVERTISING OF NEW MOTOR VEHICLES

The attention of the Council was drawn during the year to the general practice in advertising new vehicles of quoting a price less than total price ultimately paid by the consumer. The terminology used by the trade is confusing. There is reference to "delivery charges", "pre-delivery charges", "on-road costs" and so on whose coverage is ambiguous and which moreover may or may not include the statutory charges for registration, third party insurance and stamp duty.

Advertisements inserted by dealers invariably make reference to the fact that such costs are additional to the price quoted; some manufacturers advertisements quoting recommended retail prices make a similar reference; others conveniently omit to do so. In the experience of the Council the additional delivery charge (as distinct from statutory charges) can be as high as \$400.

It is the Council's view that the price advertised by dealers should be the total retail price at which the vehicle is being offered to consumers, including the delivery charge and the statutory charges for registration, third party insurance and stamp duty. Council also believes that advertisements inserted by manufacturers which mention recommended prices should note that these recommended prices are exclusive of on-road costs including statutory charges.

The Council acknowledges that this practice is Australia wide and has therefore agreed that the matter be referred to the Trade Practices Commission.

SECTION VI  
PACKAGED BEER

The Council gave consideration to two matters concerned with packaged beer during 1978/79.

1. Date Marking of Packaged Beer.

Following representations on behalf of a consumer, the Minister of Consumer Affairs sought the views of the Council on the need for date marking of packaged beer. In response to its initial enquiries the Council was provided with a copy of a submission made by the Australian Associated Brewers to the Food Standards Committee of the National Health and Medical Research Council, related to this very question. In brief, the submission makes the following points:-

- (i) No country in the world requires open - date labelling for packaged beers.
- (ii) Packaged beer has an extensive shelf life, certainly not less than a year in conditions of reasonable storage.
- (iii) Some 95% of all packaged beer produced in Australia is consumed within a period of about two months from the date of manufacture.

- (iv) Dating equipment for high speed bottle and canning lines is not in common use and is still in the development stage. The cost of its development, acquisition and installation would be high. The capital costs involved for a major brewery were estimated in 1977 as approximately \$500,000, and additional operating costs in the vicinity of \$80,000 per annum.
  
- (v) The application of date marking to a product such as packaged beer which has a shelf life vastly in excess of the normal brewery to drinker cycle serves no useful or recognisable purpose.

The Council agrees with the decision made by the National Health and Medical Research Council that packaged beer should be exempt from any requirement for date-marking.

2. Minimum Price for Packaged Beer.

The Council noted that the State Conference of the Liberal Party had endorsed a sub-branch proposal urging the Government to forthwith abolish the existing legislation giving the Liquor Control Commission power to fix a minimum price for packaged beer.

In the course of the year the Council decided that it should re-affirm to the Minister the views which it had expressed in September 1976 viz;

"The Council notes with grave apprehension the announcement by the Government that it will legislate to impose a minimum price for packaged beer. This departure from established principles of free competition would appear to be against the interests of consumers and could lead to further transgressions against the operation of a free market.

It is difficult for the consumer to reconcile this new move with the Government's long-standing policy against price control in Victoria".

## SECTION VII

### REAL ESTATE ADVERTISING

Following representations from the Consumers' Association of Victoria, the Council gave consideration to the need to extend the cover provided in Division 2- False or Misleading Advertising of the Consumer Affairs Act 1972.

The Council noted that Section 13(1), dealing with false or misleading advertisements, covers both real property, personal property and services. Section 13(2)(A) dealing with bait advertising and Section 13(2)(B) dealing with the use of Post Office Box Numbers however only cover advertisements relating to goods (Section 13(2)(A) and sale of goods or provision of services (Section 13(2)(B)). The Council believes that consumers should be protected from bait advertising and the use of P.O. Box numbers

equally with real estate advertising as for goods and services and therefore recommended to the Minister of Consumer Affairs that Sections 13(2)(A) and 13(2)(B) of the Consumer Affairs Act be amended accordingly.

SECTION VIII  
OTHER MATTERS CONSIDERED BY THE CONSUMER  
AFFAIRS COUNCIL IN THE YEAR ENDED 30TH JUNE, 1979.

Other matters considered by the Council during the year included:-

Fire Hazard Notices  
Compulsory Annual Testing of Motor Vehicles  
Consumer Credit Bills  
Third Party Property Damage to Vehicles  
Tattsлото Systems  
Date Marking of Vitamin Tablets  
Private Hospital Ownership  
Advertising Substantiation  
Consumer Affairs(Amendment) Act 1978  
Market Court Act  
Local Government (House Builders' Liability)  
Act 1973  
Vehicle Title.

APPRECIATION.

The Council wishes to express its thanks for the support given to it by the staff of the Ministry of Consumer Affairs and for the ready co-operation received from those government departments and other organisations from whom the Council sought advice during the year.

J.D. PURCELL, Chairman.

Council Members:

M. BRUNT

A.M. FARRAN

K.T.H. FARRER

D.G. HOBSON

H.R. HOBSON

A.W. MUDDYMAN

P.A. SIBREE

J.L. WATERS

