

1978

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By Authority :

F . D . A T K I N S O N , G O V E R N M E N T P R I N T E R , M E L B O U R N E .

CONTENTS

	<u>Page</u>
INTRODUCTION	3
SECTION I - The Changed Role Of The Council	4 - 5
SECTION II - Consumer Credit	5 - 6
SECTION III - Introduction Agencies	6 - 8
SECTION IV - Compulsory Annual Testing Of Motor Vehicles	8 - 10
SECTION V - Petrol Consumption Of Passenger Cars	10 - 11
SECTION VI - The Provision Of Warranties/ Guarantees For Household Goods	12
SECTION VII - Insurance Brokers	13
SECTION VIII - Packaging And Labelling Laws In Australia	13 - 14
SECTION IX - When Do Children Become Adults	14 - 15
SECTION X - House Cladding	15 - 16
APPRECIATION	16

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 1978 to the Honorable the Minister of Consumer Affairs for tabling before both Houses of Parliament.

SECTION I.THE CHANGED ROLE OF THE COUNCIL.

The functions of the Consumer Affairs Council were defined in the Consumer Protection Act 1964 and have remained unchanged since that date :

- (a) to investigate any matter affecting the interests of consumers referred to it by the Minister;
- (b) to make recommendations with respect to any matter calculated to protect the interests of consumers;
- (c) to consult with manufacturers, retailers and advertisers in relation to any matter affecting the interests of consumers; and
- (d) in respect of matters affecting the interests of consumers, to disseminate information and to encourage and undertake educational work.

Nevertheless, since then there have been some important shifts of emphasis in the Council's work.

From the time the Council was first appointed mid 1965 until late 1970, it was the only totally consumer oriented statutory body in existence, and in consequence, despite severe staff and financial limitations, it nevertheless endeavoured to take action on the many complaints which inevitably flowed in from consumers, as well as undertaking the broader role of submitting recommendations to the Government of legislative or administrative action which should be taken in the interests of consumers.

Largely as a result of representations made by the Council, the Consumer Protection Bureau was established in 1970, with the prime mission of dealing with the ever increasing number of complaints being received from consumers. The Council, however, continued its interest in the complaints field, particularly as it was then the only consumer body which submitted a report to the Parliament and hence the only body which could expose the objectionable practices being suffered by consumers. Its detailed involvement in the handling of complaints though virtually ceased once the Bureau was established.

The next major step in the evolutionary process of involvement by the Government in consumer affairs was the creation in 1974 of the Ministry of Consumer Affairs and the appointment of a full-time Director of Consumer Affairs. At the same time the Ministry of Consumer Affairs Act 1973 was proclaimed, requiring the Director of Consumer Affairs to submit an annual report to the Minister of Consumer Affairs on the activities of the Ministry for the preceding year. As a result, the role of the Council in analysing and reporting on the nature and extent of complaints received by the Consumer Affairs Bureau was rightly assumed by the Director of Consumer Affairs, and it is his report which now provides this vitally important information to the Parliament and the public generally. The Council's involvement for nearly a decade in this important role thus ended.

The creation of the Ministry and the progressive growth in staff and funds made available by the Government over the years are clear recognition by the Government of the need to provide a greater capacity to handle the constantly growing involvement of Government in consumer affairs matters.

As the size of the Ministry has increased, so has its ability to recognise the many areas causing, or likely to cause, concern to consumers, and to initiate administrative action to correct them, or where necessary, to recommend appropriate changes to legislation. This is a continuous process on which the Council is kept informed, the effect of which is that the Council does not generally concern itself further with these areas when it becomes aware that corrective action is already in hand by the permanent staff of the Ministry. This continuous action by the Ministry has considerably lessened the role of the Council in identifying areas of concern to consumers and recommending appropriate corrective action thereto. The Council remains, however, as a body, independent of the departmental structure, which can submit its own views on matters of concern to consumers direct to the Minister.

Whilst the functions of the Council, as originally defined in 1964, remain unaltered, its role has certainly changed over the thirteen years since its original meeting. The need for the continuance of an independent Council to advise the Government on consumer affairs matters, however, remains as valid today as it was in 1965.

Although this section is virtually a repeat of Section I of the Council's Report for the year ending 30th June 1977, it is included again in order that readers of this Report can comprehend the evolutionary changes which have occurred in the Council's work since it first commenced to function in mid 1965.

SECTION II.

CONSUMER CREDIT.

It was in January 1972 that the Molomby Committee, a committee of the Law Institute of Victoria, presented its Report on Fair Consumer Credit Laws to the Attorney-General of Victoria.

Having been aware for many years that both directly and indirectly a significant percentage of the complaints received by the Consumer Affairs Bureau are caused by inadequacies inherent in current consumer credit arrangements, much of which are only a reflection of the laws pertaining thereto, the Council has watched the years go by for some tangible evidence that the recommendations of that Committee were to be converted into legislative form.

It was therefore delighted to see the efforts of the years between finally emerge in May 1978 when the Attorney-General presented three bills relating thereto to the Victorian Parliament, viz :-

Credit Bill,
 Chattel Securities Bill,
 Goods (Sales And Leases) Bill.

These bills certainly represent a major change in the credit laws of Victoria, and clearly are intended to improve significantly the relative situation of the consumer. It is a matter of regret that the conversion of the Government's obvious intention to update these provisions by the Parliamentary Draftsman into legal form has proved so complex.

At the time of preparation of this Report, the Bills have been circulated for public comment, and debate on the Bills in the Parliament has been adjourned. The Council would expect that the proposed legislation would be subject to much comment, particularly, but not exclusively, by those involved in the finance industry. The consequences of this quite complex legislation are so far reaching, and will require so much administrative effort in the way of preparation of new financial documents, the training of staff both directly and indirectly involved in the granting of credit, the education of consumers, etc., that there must be no doubt that the legislation is as practicably effective as it can be made before it becomes the law. The Council understands that this draft legislation is largely the work of the legal profession, with little or no input from either consumer representation or the finance industry, and that this is the first opportunity that those directly concerned in this legislation have had to comment on it. The views expressed by these parties must therefore be given the fullest consideration, even though it will mean further delay in its enactment. It would be a great pity if the intentions of the Government are frustrated by unforeseen practical difficulties which may arise from the quite complex drafting of this legislation.

The Council is studying the Bills and will make a submission in some detail to the Minister in due course.

Meanwhile, as a matter of urgency, the Council expresses its concern at the provision in the Credit Bill to establish a Credit Advisory Council with almost identical membership and functions to this Council, except for the addition of a person experienced in the provision of credit. The creation of a new council would seem to us to be unnecessary, confusing and wasteful of the community's resources. Generally the granting of credit is but part of a related consumer transaction. The functions of this Council in the past have included consumer credit. We suggest that the Government employ the simple expedient of adding one further member experienced in the provision of credit to this Council.

The Council also hopes that once this legislation is finally passed by the Parliament, responsibility for its administration will be vested in the Ministry of Consumer Affairs. It was after all the Report on Fair Consumer Credit Laws which led to the legislation being developed in the first place, and consumers are the ones who have a direct personal interest in the outcome.

SECTION III

INTRODUCTION AGENCIES.

Following representations to the Government, the Minister of Consumer Affairs asked the Council to examine the role of introduction agencies and to advise him as to whether these agencies should be subject to registration or some other form

of supervision or control, and to advise whether a code of ethics or practice is desirable for these agencies.

To assist the Council in its consideration of this subject, advertisements were inserted in the daily press inviting interested or aggrieved persons to submit information and opinion on the matter under enquiry. Nineteen submissions were received from aggrieved consumers and four from companies operating introduction agencies.

The underlying cause of the dissatisfaction expressed in the letters received from consumers was that after several months of membership of one or more of the introduction agencies, due to one of the following reasons, they had not received one "effective" introduction:

- (a) the person named was no longer a member of the agency, or alternatively, had already met a suitable partner;
- (b) the person named was no longer living at the address provided;
- (c) the person named could not be contacted on the telephone number given;
- (d) they received no reply to letters sent to addresses given by the agency;
- (e) the person named was totally unsuitable to requirements specified, e.g. non-smoker, no children, single person, wrong age group, etc.

From the information furnished by the agencies, or as a result of the discussions held with the principals, there appears to be certain fundamental requirements which should form part of any agency's system, if the consumer is to have a reasonable chance of getting value for money paid. These are -

- (a) All potential clients should be met personally and interviewed by a member of the agency staff.
- (b) The agency should establish, so far as it is possible, the credentials and the identity of the individual applicant.
- (c) The agency should maintain a reasonable balance between the sexes in their various age groups. If there is little chance of the agency assisting a client because of a shortage of the opposite sex in a particular age category, they should refuse to register the applicant.
- (d) The agency should make the first contact between the two parties and an introduction should not be made unless agreed to by both parties beforehand.

Most of the submissions received from dissatisfied users of introduction agencies arose because the particular agency did not satisfy one or more of these fundamental requirements in their operating system.

In addition, it is highly desirable that the following matters be clarified in whatever remedial action is taken.

- (a) There is some ambiguity as to what constitutes satisfactory service for money paid. There is a need for more specific definition of the service offered.

- (b) Agencies should not accept as clients any person below the legal contractual age. Some agencies had clients as young as 16.
- (c) The agencies should agree to respect the confidentiality of the personal information provided to them other than in the legitimate performance of their own business. There is no evidence that they were in any way transgressing in this way, but it is important that their obligations should be clearly understood.
- (d) Agencies should agree that they will not subject their clients to any form of coercion.

In its report to the Minister the Council recommended -

- (i) In view of the fact that the users of such services are, to some extent, a vulnerable segment of our society, some action should be taken to protect them.
- (ii) Despite this view, the Council does not believe that the financial loss, and perhaps even mental stress, suffered by users justifies special legislation being passed solely to impose some control over the operating methods of businesses engaged in this industry alone.
- (iii) No formal action be taken to register firms engaged in this industry.
- (iv) The Ministry should develop an appropriate code of ethics to be observed by firms engaged in this industry, having regard to the findings and views expressed by the Council in its report.
- (v) The Ministry should hold discussions with each of the known operators of introduction agencies and seek their co-operation in observing the established code.
- (vi) When the proposed Market Court is established, consideration be given to seeking endorsement by the Court of the established code of ethics and any further sanctions the Court may wish to impose if there is any evidence that any of the operators of introduction agencies are failing to comply with the established code of ethics.

SECTION IV.

COMPULSORY ANNUAL TESTING OF MOTOR VEHICLES.

Arising from publicity in the daily press regarding the submissions by the Victorian Automobile Chamber of Commerce to the Government on this subject, the Council obtained from the V.A.C.C. a copy of their submissions in relation thereto.

The Council realises that the V.A.C.C. has been urging the Government for several years now to bring in legislation

requiring compulsory annual testing of motor vehicles as a further step in the overall road safety programme. It further recognises that there are other bodies, e.g. ROSTA, who are far better equipped than this Council to advise the Government on road safety measures.

However, in this instance, the Council notes that considerable additional income would accrue to members of the V.A.C.C. should their proposal be accepted by the Government. This additional income would not only comprise the testing fee, and on present day costs this would not be inconsiderable, but also the income derived from the rectification work which would flow from the classifications by the testers. Council members are aware of owners being required to undertake repairs as a result of a roadworthy check on transfer of a vehicle which really had no bearing on the safety of the vehicle, and the Council fears that under an annual system, the possibility exists for a gross multiplication of this type of repair. Many of the items checked call for a subjective opinion and it is to be expected, human nature being what it is, that inspectors will tend to over-classify when the income of the business in which they are employed, or an associated business, can be increased as a result of their classifications.

The vehicle owner consumer is already subjected to tremendous cost pressures, and it is with this thought in mind that the Consumer Affairs Council has considered this proposal. Most of the statistics used by the V.A.C.C. in their submissions are overseas based. The Council therefore sought to obtain some relevant local statistics in respect to the number of accidents in which the mechanical condition of the vehicle was a contributing factor. These are outlined below.

Victoria

	<u>1974</u>	<u>1975</u>
Total number of "casualty" accidents	12542	12625
Defect in vehicle a contributing factor	322	330
Percentage	2.6 %	2.6 %

(Source: Victoria Police Records)

New South Wales

	<u>1976</u>
Total number of accidents	130872
Mechanical failure a contributing factor	3666
Percentage	2.8 %

(Source: NSW Police Records)

In the 1973 submission by the V.A.C.C. they state "there is evidence to suggest that vehicle defects are a contributing factor in at least 15% of the road crashes in Australia". This conclusion is not borne out by the figures which the Council has obtained from the Victoria and N.S.W. Police.

Present law requires that when the ownership of a vehicle is being changed, the vehicle has to undergo a roadworthy

check, and a roadworthy certificate must accompany the request for change of registration. The Council understands that approximately 684,000 vehicles are subject to change of ownership annually, so already approximately one third of the vehicles registered in Victoria are subject to a roadworthy check. In addition, the Victoria Police conduct random roadworthy checks of vehicles on the road. These Police checks are whole-heartedly supported by the Council and any recommendation the Police might make to extend this programme would likewise be supported by the Council.

The total cost which the motorist tax-payers of this State would have to bear under a compulsory annual testing programme would run into many millions of dollars. The Consumer Affairs Council is not convinced that this is the best way to use these dollars and therefore strongly recommends to the Government that it should continue to resist the pressures being applied by the Victorian Automobile Chamber of Commerce for the Government to bring in legislation requiring the annual testing of motor vehicles.

SECTION V.

PETROL CONSUMPTION OF PASSENGER CARS.

Following the issue by the Standards Association of Australia of Australian Standard AS 2077-1977, Methods of Test for Petrol Consumption of Passenger Cars, and representations from the Australian Consumers Association, the Minister of Consumer Affairs sought advice from the Council as to whether information regarding petrol consumption figures derived from the Standard should be made mandatory under the Consumer Affairs Act 1972.

This Standard sets out test methods for measuring the petrol consumption of passenger cars and their derivatives under controlled conditions simulating city and highway driving conditions. Measurement of the petrol consumed is made either by analysis of the exhaust gases, or by direct measurement of the volume, or mass, of petrol consumed.

The main aim in preparing the Standard has been to provide a basis for comparison of the petrol consumption of different cars. It was recognised that the results obtained from these tests will only be broadly indicative of the petrol consumption that will be achieved by individual motorists owing to the widely differing conditions of use.

In this connection, it is worth repeating part of the Foreword to the Standard.

"The petrol consumption of a car is not a fixed quantity. It is affected by many factors, the most variable of which are the individual motorist's driving habits, which include driving speed, acceleration and braking characteristics, and how well the car is maintained.

Some of the factors affecting the petrol consumption are related to the car, and some are independent of it. The main factors related to the car are -

- (a) vehicle size and shape
- (b) vehicle mass

- (c) engine power
- (d) engine capacity
- (e) compression ratio
- (f) axle ratio
- (g) type of transmission
- (h) type of tyre
- (i) standard of maintenance
- (j) accessories fitted and used

The main factors affecting petrol consumption that are independent of the car are -

- (i) speed (both average speed and speed range)
- (ii) acceleration and deceleration
- (iii) stopping frequency
- (iv) trip length
- (v) engine starting temperature (hot start or cold start)
- (vi) traffic conditions
- (vii) temperature
- (viii) humidity
- (ix) rain
- (x) wind
- (xi) road surface
- (xii) road curvature
- (xiii) road gradient
- (xiv) altitude

With so many variables, only a few of which will normally be under the control of the motorist, petrol consumption will vary from time to time. Furthermore, different motorists driving the same type of car are likely to achieve different petrol consumptions. It is therefore very difficult to derive a single value for petrol consumption that an individual motorist would find meaningful in relation to his or her particular circumstances."

Despite these qualifications, the Council concluded that the position of consumers would be considerably enhanced when purchasing a new vehicle if petrol consumption figures, derived in accordance with this Standard, were made available as part of the information package related to a particular vehicle make and model, and accordingly recommended that manufacturers/importers of new passenger cars should be required to include this information in the technical data made available to prospective purchasers.

SECTION VI.THE PROVISION OF WARRANTIES/GUARANTEES FOR HOUSEHOLD GOODS.

One of the Standard Forms of Contract considered for development by the Standards Association of Australia concerned the supply of durable household goods. It was decided, however, that the structure of the industry concerned with retailing these commodities, and the diverse forms of transaction involved, did not lend themselves to the use of a standard form of contract. It was considered that a more suitable alternative to help protect consumers was to develop Standard Codes of Practice covering -

- (a) Information Labelling, and
- (b) The Provision of Warranties/Guarantees for Household Goods.

Draft standards covering both of these topics were subject to comment by the Consumer Affairs Council.

Major difficulties are being experienced by the S.A.A. Committee involved in finalising the standard on Information Labelling.

However, the Standards Association of Australia has finalised and issued the Standard on The Provision of Warranties/Guarantees for Household Goods (Australian Standard 2202-1978). The intention of this Standard is to define the subjects that should be covered by written product warranties (or guarantees) offered by manufacturers, importers or retailers, and the way in which they should be expressed. The subjects listed are -

- Name and Address of Guarantor,
- Warranty Coverage,
- Warranty Performance,
- Duration of the Warranty,
- Conditions to be Met By the Consumer,
- Costs to be Met By the Consumer,
- Geographic or Climatic Limitations,
- Parties Who Can Enforce the Warranty,
- Warranty Claim Procedure,
- Additional Obligations of the Guarantor, and
- Consumer's Statutory Rights.

This Standard has been prepared with the objective of assisting manufacturers, importers or retailers who wish to offer voluntary warranties or guarantees additional to those implied by law. So far as the Council is aware, there is no intention of making this a mandatory standard.

SECTION VII.INSURANCE BROKERS.

It was in the Council's Annual Report for the year ending 30th June 1972 that it first recommended that a registration scheme be established to control the operations of all insurance brokers, and it reiterated this recommendation in each subsequent Annual Report up to and including 30th June 1976.

The Council was pleased to learn therefore in mid 1976 that the Federal Government intended to introduce legislation for the supervision of insurance brokers.

It now understands that this proposed legislation was not proceeded with and that further discussions between interested parties, both from the industry and governments, are continuing.

In light of the fact that abuses are continuing, this Council again reaffirms its view that regulation of the activities of insurance brokers should be developed urgently, and it trusts that the present discussions will lead to some finality on the matter.

SECTION VIII.PACKAGING AND LABELLING LAWS IN AUSTRALIA.

Over the years, this Council has been concerned with many aspects of this subject and has submitted a number of specific recommendations thereon.

It was pleased therefore to note last year that the Minister for Business and Consumer Affairs had asked the Trade Practices Commission to examine critically and report on the laws in force in Australia relating to the protection of consumers in respect of the packaging and labelling of goods.

The resultant Report by the Trade Practices Commission on Packaging and Labelling Laws in Australia, June 1977, is a most comprehensive and informative document which provides a host of evidence of the differences which exist throughout the Commonwealth in the legislative requirements of the various States and Territories applicable to packaging and labelling.

The Consumer Affairs Council holds strongly to the view that Australia is one market place, and that industry generally should be able to treat it as such. It therefore is in complete agreement with the views expressed by the Trade Practices Commission in Paragraph 1.19 of the Report, viz. -

"Industry, and hence consumers, have to meet the cost of complying with packaging and labelling requirements laid down by Governments in the public interest. In the TPC's view, it is a far from satisfactory situation if those costs are unnecessarily increased simply because, in relation to some particular requirement, the various

State laws, or the various laws regulating trade in particular products or particular activities, fail to adopt a uniform and consistent approach in regard to that requirement, even though the broad objective that that requirement is designed to achieve is a common one. The case for uniformity and consistency, and minimising costs imposed on industry and consumers, is a strong one at any time. It is particularly strong now, when every effort is needed to reduce the present high rate of inflation."

Clearly the situation revealed in the Report is one which calls for positive and dynamic action.

The Council therefore fervently hopes that all Governments will give urgent consideration to this Report and to the recommendations contained therein. It recommends to the Government -

- (a) that it should support the adoption of a policy that uniform Australia-wide legislation/regulation in the packaging and labelling field is essential, a clear recognition of the fact that Australia is one market place, and
- (b) that an appropriate Commonwealth Government Department should be charged with the task of leadership and co-ordination in ensuring that packaging and labelling laws are uniform within and between each commodity grouping. We would be concerned however if such a Department attempted to replace the expertise currently involved in the preparation of regulations for the labelling of food, drugs, poisons, etc.

SECTION IX.

WHEN DO CHILDREN BECOME ADULTS.

Arising out of some complaints which the Ministry had received regarding the age at which children were charged the adult entrance fee for admittance to certain functions, the Minister of Consumer Affairs requested the Council to examine the matter.

The Council was informed that there was a wide variation in the ages at which children were required to pay the full adult charge as indicated hereunder :-

	<u>Age At Which Full Adult Charge Applies</u>
Domestic Airlines	15
International Airlines	12
Victorian Trains	15
Victorian Trams	15
Football Matches	15
Movie Theatres	15 or 16
Drive-Ins	12

	<u>Age At Which Full Adult Charge Applies</u>
The Zoo	15
Swimming Pools	15 or 16
Skating Rinks	13
Victorian Art Gallery	17
Ski-Tows	11

The Council was also informed that, in some cases, the ticket box attendants used other parameters, such as the height of a person, or whether they saw the person smoking.

The Consumer Affairs Council believes that where an entrepreneur claims to offer a price concession to children, a child should be defined as a person up to and including 15 years of age. This would not prevent a price concession being offered to children above 15 years of age but would introduce a degree of uniformity not existing at present.

The Council accordingly recommended to the Minister of Consumer Affairs that legislation be introduced under the Consumer Affairs Act 1972 requiring that where a concession charge is offered to children, a child should be defined as a person up to and including 15 years of age.

SECTION X.

HOUSE CLADDING.

The Council has for many years been concerned with the nature and extent of complaints received by the Ministry on this subject and accordingly arranged during the year for the Consumer Affairs Bureau staff involved in this area to brief them on the then current situation. The main features of this briefing were subsequently incorporated into the Director of Consumer Affairs Report for the year ending 30th June 1977. As stated in the Report:-

"These complaints are mainly in the artificial brick cladding area. Complaints relate to gross unethical conduct towards consumers, false and misleading advertising relating to the product, poor standard of manufacturing, poor standard of fixing, and refusal of companies to honour guarantees issued at the time of sale."

The Council was impressed with the efforts being made by the Ministry of Consumer Affairs, firstly in trying to resolve the complaints received, secondly in prosecuting those members of the industry against whom sufficient evidence could be obtained to enable such action to be taken, and thirdly by persuasion to encourage other members of the industry generating the complaints to rectify their ways.

The Council was informed that there were no agreed standards of manufacturing of brick cladding and that the quality control arrangements of many of the manufacturing companies were inadequate or totally non-existent. There were likewise

no agreed standards covering the fixing of brick cladding.

The Council therefore recommended that as a matter of urgency the Consumer Standards Advisory Committee be asked to consider the development of a standard by the Standards Association of Australia covering both the manufacture and fixing of imitation brick cladding.

Action to implement this recommendation was initiated at a widely representative conference called by the Standards Association of Australia in June 1978.

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 :

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