VICTORIA

Report

of the

CONSUMER AFFAIRS COUNCIL

for the

Year ended 30 June 1981

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CONSUMER AFFAIRS COUNCIL

30th November, 1981.

The Honourable Haddon Storey, Q.C. M.L.C.,
Minister of Consumer Affairs,
Victoria.

Sir,

In accordance with the Consumer Affairs Act 1972, Section 7, the Consumer Affairs Council of Victoria has much pleasure in presenting to you this Report concerning the activities of the Council for the year ended 30th June 1980 for tabling before both Houses of Parliament.

Yours faithfully,

Maureen Brunt, Chairman.

Council Members:

R.B. Brooks

Barry E. Coad, E.D.

Andrea M. Farran

K.T.H. Farrer, O.B.E.

Suzanne M. Russell

Yvonne Thompson

K.L. Vertigan

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1. FUNCTIONS AND MEMBERSHIP OF THE COUNCIL

1.1 Functions of the Council

Section 6 of the Consumer Affairs Act 1972 states:

> 6. The functions of the Council shall be -
>
> (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.

1.2 Membership of the Council

Section 5 (1) of the Act states:

> 5. (1) There shall be a council appointed by the Minister to be called the Consumer Affairs Council consisting of a person appointed as Chairman of the Council and at least seven and not more than nine members of whom -
>
> (a) at least one shall be a person experienced in the manufacture of consumer goods;
>
> (b) at least one shall be a person experienced in retail trading in consumer goods;
>
> (c) at least one shall be a person experienced in advertising or sales promotion activities in connexion with consumer goods; and
>
> (d) at least four (including at least two women) shall be persons representing the interests of consumers.

The composition of the Council as at 30 June 1981 was as follows:

Chairman, Maureen Brunt	Other part-time appointments as Professor of Economics, Monash University; and member, Trade Practices Tribunal.

"A person experienced in the manufacture of consumer goods"

Dr. K.T.H. Farrer, O.B.E.	Chief Scientist, Kraft Foods Limited; member, Food Science and Technology (Reference) Sub-committee, NHMRC; member, Antarctic Research Policy Advisory Committee; vice president, Australian Academy of Technological Sciences.

"A person experienced in retail trading in consumer goods"

Ron Brooks	Director, James McEwan & Co. Pty Ltd.

"A person experienced in advertising or sales promotion activities in connexion with consumer goods"

Barry E. Coad, E.D.	Marketing Services Controller, Target Australia Pty Ltd.; member of Victorian Executive, National Advertisers Association of Australia; Major, Army Reserve.

"Persons representing the interests of consumers"

Andrea M. Farran	Lawyer and publisher.
Suzanne Russell	Chairman, Consumers' Association of Victoria; executive member, Australian Federation of Consumer Organizations; Council member, Australian Consumers' Association; Senior Lecturer in Home Economics, R.M.I.T.
Prue Sibree	Practising solicitor; parent; member, Metropolitan Transit Council; family business.
Yvonne Thompson	24 years experience as a consumer and homemaker; three children; involved in many community activities particularly relating to the handicapped; member of State Government Special Transport Committee.
K. L. Vertigan	Retired trade union official; 30 years experience in manufacturing industry.

At 30th June last there was one vacancy in respect of consumer representation in Council membership owing to the resignation of Mr James A. Todd on 16th April 1981 by reason of his transfer to Sydney.

That vacancy was filled on 12th August 1981 by the appointment of:

Roderic N. Armitage	Federal Secretary - States' Operations, Australian Finance Conference ; wide knowledge of consumer credit law practices.

It is understood that it is proposed to amend S.5(1) of the Consumer Affairs Act to provide for the appointment of "at least one... person experienced in the provision of consumer finance". Mr. Armitage is well qualified in that regard. Mr. Todd, too had an extensive background in the finance industry.

We also take the opportunity to record at this stage that Mrs. Prue Sibree resigned from the Council on 24th July 1981 to enable her to stand as a candidate for the Victorian Parliament to which she was, in fact, elected.

1.3 Resignation of Valued Members

The Council wish to record their appreciation of the contribution that both Mrs. Sibree and Mr. Todd have made to Consumer Affairs. Mrs. Sibree after 4 years of membership of Council will be sorley missed. Mr. Todd's expertise in the field of finance has proved invaluable.

1.4 Role of the Council

The Council's brief is fundamentally to investigate, and make recommendations with respect to, consumer issues. It views its role not as "consumer protection" in a narrow sectional sense but as one of securing the resolution of consumer issues

in the overall public interest. Its membership covers a wide spectrum of experience, expertise and interest. The Council affirms its belief that it should be seen as a balanced body, primarily representing consumers, but trying to achieve a harmonious and efficiently functioning market - place for both consumers and business alike.

The Council would particularly welcome opportunities of meeting with consumers and business groups to discuss matters of mutual interest. The Council is always pleased to hear from individual consumers or business firms.

2. OVERVIEW OF THE YEAR'S WORK

2.1 The Major Topics

In recent years the pattern of the Council's work has been changing. The Council now establishes priorities and studies selected topics in greater depth. During the year under review the Council concentrated upon seven major topics:

Product safety

Conveyancing

Hair treatment

Shop trading hours

Immunity from the Market Court Act

Electronic point of sale systems

The draft removals contract of the Standards Association of Australia

It gave particular attention to the first four.

The Council's work on these seven topics will be reviewed in succeeding sections.

2.2 Other Matters

A number of other matters were considered in some detail during the year. All but the last two of these matters are under continuing consideration.

False representations and false or misleading advertising

In September 1980, the Council received a reference from the Honourable J.H. Ramsay M.P., the then Minister of

Consumer Affairs, in which he requested the Council to consider:

1. Whether Part II, Division 2, of the Consumer Affairs Act offers adequate and appropriate protection to consumers as regards false or misleading advertising, and

2. Whether there is, on balance, a case for extending and strengthening Part II, Division 2, by incorporating provisions with respect to false representations and misleading or deceptive conduct generally.

This is an important reference which Council is studying in depth. It is hoped to submit a report within the next year.

Small Claims Tribunals

The Council has commenced a review of Small Claims Tribunals' procedures in response to a letter received from the Boating Industry Association of Victoria which contained certain proposals for change. The review is entailing some study of the relative roles of the Tribunals and the Consumer Affairs Bureau as institutions of consumer redress. It has also raised questions concerning the ambit of the Small Claims Tribunals Act which will be considered next year.

Regulation of insurance brokers

For some years successive Consumer Affairs Councils have affirmed the need for some controls over the activities of insurance brokers. Indeed it was in 1974 that the Council first recommended that "a registration scheme be established to control the operations of all insurance brokers and insurance consultants as soon as possible". However, there has been no action to date.

Attention in the present year has moved to considering in some detail what might be the best technique of control. In particular, the Council is studying the proposals of the Law Reform Commission contained in its Report No. 16, Insurance Agents & Brokers (1980).

Franchise schemes and owner-operated businesses

In conjunction with the Ministry of Consumer Affairs, Council is developing recommendations on the scope of legislation that may be required to control certain undesirable aspects of franchise schemes and the like.

Self-service laundrettes and vending machines

In his Annual Report for the year ended 30 June 1979, the Director of Consumer Affairs commented on the problems arising from self-service laundrettes operating under a "cloak of anonymity" (p.30). The Council, upon consideration, resolved to support the Ministry's recommendation "that it is essential for all premises providing self-service laundrettes to exhibit prominently the full name, address and telephone number of the proprietor, or any other person who is authorised to receive complaints and provide sufficient operating instructions for the machines." It further noted that similar problems may arise from vending machines.

However, the best technique for control is by no means obvious, and Council is pursuing some inquiries in the hope of identifying an efficient technique.

Distribution of Ministry publications

It is part of the Council's brief "to disseminate information and to encourage and undertake educational work" (see section 1.1 above) . Since the Council has no staff (other than a Secretary), and indeed its work is largely honorary, it interprets this function largely as one of making policy and tactical recommendations to the Ministry. The Council takes a keen interest in the educational work of the Ministry; some members, indeed, have expertise in communication, education and marketing.

As part of its educational activities, the Ministry has produced various pamphlets. Although these provide valuable information, members have thought that their availability has not been sufficiently publicised. It is proposed to give further consideration to recommendations for the development and publicising of Ministry publications in the coming year.

The draft Standard Tenancy Agreement of the Ministry

The Council has taken a particular interest in the Residential Tenancies legislation first introduced into the Parliament in December 1978 and finally passed (after much discussion and amendment) in December 1980. It made two detailed submissions to the Attorney-General on the original Bill and the revised (1979) Bill.

So it was with a sense of progress - not to mention relief ! - that it approached the task of commenting upon the draft Standard Tenancy Agreement and its accompanying Statement of Rights and Obligations, following the enactment of the legislation.

Members were impressed by the simplicity and plain language of the Agreement. However there was one comment in critical vein. Noting that the division of subject-matter as between the Agreement and the Statement of Rights and Obligations was to some extent arbitrary, Council questioned whether the Agreement was not too brief. In particular, it was suggested that there should be at least a segment on Security Deposits (bond moneys or an insurance premium). There should also be some reference in the Agreement to the Statement of Rights and Obligations and the Condition Report; and parties would need to be made aware that they were bound by the requirements of the Act no less than by the clauses contained in the Agreement.

The Council's suggestion relating to Security Deposits (or an insurance premium) was incorporated in the final version of the Residential Tenancy Agreement. But we understand that the other suggestions have not found favour. We will be watching the implementation of the legislation with great interest.

Quality of school and college wear

Council reconsidered the role of the Standards Association of Australia Standard regarding School Wear for Boys and Girls, Manufacturing Requirements (AS 1944 Part 1 - 1977).

In 1977 Council had recommended that this Standard be made mandatory. However it now believes that while the Standard fulfills a valuable role in the market place, consumers would be best served if it is used on a voluntary basis by manufacturers and retailers to indicate a particular quality and that other qualities of school and college wear be available to those who wish to buy them. It takes particular note of the fact that consumers have available to them a wide variety of alternative sources of supply. They also have available to them mandatory care labelling of these garments.

In reaching this conclusion Council acknowledges the assistance received from a valuable report by the Research Officer of the Ministry.

2.3 Matters Pending

The Council has quite a lengthy "Matters Pending" list consisting of topics on which it has had some preliminary discussion and which it would like to consider in some depth. These will be taken up as time and priorities permit:

- The Credit Bills
- Class actions
- Mutual home loan funds
- Trust funds, particularly for travel agents and insurance brokers
- Real estate agents legislation
- Packaging and labelling laws

3. PRODUCT SAFETY

In the course of the year the Council gave detailed consideration to the effectiveness of present law and practice governing "unsafe" (or "dangerous") consumer goods in the market place. It produced a Report on Product Safety, for submission to the Minister, which we reproduce as Appendix I.

Essentially the Report makes two recommendations which we regard as of the first importance:

That product safety legislation be enacted in Victoria which -

(1) empowers the Minister and/or the Director of Consumer Affairs

* to ban the sale or supply of dangerous goods;

* to recall dangerous goods; and

* to set conditions of sale or supply on dangerous goods; and

(2) establishes a Consumer Product Safety Committee to investigate and advise on product safety matters generally.

We adopt as our concept of "dangerous" the definition used by the Western Australian legislation (Consumer Affairs Act, Section 23B): "likely to cause death or serious injury to the body or health of any person, whether directly or indirectly". We take it as implicit in this definition that the consumer has no claim to protection against unwise use or capricious misuse of products. But there is a need to protect, for example, where a hazard is unlikely to be known

to the purchaser or user, and where the consequences of an accident can be serious, if not fatal.

In Council's view, there are large and undesirable gaps in the controls upon the sale and supply of dangerous goods in Victoria. While various State and Commonwealth bodies (e.g. the S.E.C., the Health Commission) do have powers to control the supply of certain categories of goods by certain categories of trader, there is in Victoria no general legislative power to ban the sale or supply of dangerous goods. Accordingly we recommend that the Minister and/or Director of Consumer Affairs be given residual powers to plug the gap.

Furthermore there is a need, we believe, for a specialized Victorian agency - a Consumer Product Safety Committee - which would function not only to advise the Minister and Director on specific safety problems but also to liaise with public authorities and business firms and act as a clearing-house for information on product safety matters. We stress that we see the creation of such a central Committee not as adding to the complexity of business regulation but as simplifying it.

We should say something of the process by which the Report was produced. The initial impetus for the project came from a paper on Product Safety prepared by one of our members, Mrs. Suzanne Russell who has taken a keen interest in the topic for some years. In view of the importance of the topic and the desirability of framing concrete proposals, Council decided (in August 1980) to appoint a Working Party, consisting of Mr. Ron Brooks and Mr. Barry Coad (both experienced retailers) with Mrs. Russell and the Chairman, to study the issues in depth. The Ministry's Research Officer, Mr.Glen Carleton, who has expertise in existing practices and problems as regards product safety, met regularly with the Working Party.

The Working Party produced a draft Report which formed the basis for discussion and amendment by the Council. The Council's Report on Product Safety was adopted unanimously at its meeting on 15th July,1981.

At the time of writing this Report, we understand that Cabinet has approved in principle the core recommendations of the Council's Report on Product Safety.

4. CONVEYANCING

A major undertaking in Council's programme of work for the year under review was its study of Conveyancing. The project was large in a number of senses. First, the issues canvassed are of great importance to the Victorian public. Second, the work required much time, research and thought from Council members - more particularly, from members of the Working Party specifically formed. And finally, we are proud to have produced what, in our view, is a significant Report making fundamental recommendations for the reform of conveyancing in this State - a Report , moreover, which has aroused public interest and (to express the point conservatively) support from many Victorians.

The Report is reproduced as Appendix II.

Here we highlight the conclusions expressed in that Report:

1. The solicitors' monopoly of conveyancing is contrary to the public interest.

2. The times are ripe for change. Increasing simiplification, standardization, computerization of conveyancing are inevitable.

3. Some restrictions upon the persons who may effect conveyancing are nevertheless desirable as a form of consumer protection.

4. That protection may be secured through the introduction of a system of licensed "conveyancing agents" (analogous to the "settlement agents" of Western Australia and the "land brokers" of South Australia).

4. continued
The requirements for a licence would be - unlike the present system - intimately related to the requirements of conveyancing work itself. There should be the minimum restrictions upon entry to the field compatible with conveyancing being undertaken efficiently and prudently.

5. Conveyancing charges should be a matter for determination by the individual conveyancing agent. We are opposed to the fixing of "cost scales", whether "recommended" or "maximum" and whether settled by a licensing authority or a trade association.

6. We are even more strongly opposed to the present system of scale fees. Nor do we think that the "reformed cost scale" proposed by the Dawson Committee in its Interim Report solves the fundamental problems created by the solicitors' monopoly.

7. As to improvements in conveyancing methods, we strongly support the Dawson Committee's recommendations [in its Final Report] concerning a caveat vendor (vendor warranty) system, a cooling-off period, increased protection for a purchaser of a damaged or destroyed house, and modernization of the Titles Office. We are disappointed that the Committee is recommending the perpetuation of the Sale Note, and urge that consideration be given to introducing the one comprehensive standard-form contract. Also in critical vein, we are opposed to the practice of a solicitor acting for both parties to a conveyancing transaction (in other than special circumstances).

8. Consumers who wish to do much of their own conveyancing should be able to consult a Legal Services Directory for the names of solicitors willing to do sessional work (e.g. contract, settlement).

9. Finally there is a pressing and quite general need for consumer education; e.g, consideration could be given to mounting a unit in the adult education programmes and also to including some elementary instruction on real property transactions in the school curriculum.

The Council's detailed study of conveyancing practice in Victoria and elsewhere was prompted by the publication of the Interim Report of the Committee of Inquiry into Conveyancing, 1980 (The Dawson Committee) and the very general public controversy concerning the solicitors' monopoly of conveyancing work. It was at a meeting in September 1980 that Council reviewed the Interim Report in the light of widely expressed community concern regarding conveyancing costs in Victoria and resolved to appoint a Working Party, with wide terms of reference, to study both the solicitor's conveyancing function and conveyancing methods in depth. However we should note that Council has had a continuing interest in the conveyancing problems of the ordinary consumer for a number of years; that in 1979 it undertook a review of specific complaints received by the Ministry of Consumer Affairs regarding purchases of houses; and that in October 1979 it made a submission to the Dawson Committee on desirable changes in conveyancing methods (which stemmed from that review).

The members of the Working Party were Mrs. A.M. Farran, Mrs. P.A. Sibree, Mrs. Y.R. Thompson and the Chairman.

Council was fortunate to have within its membership persons of very appropriate experience and expertise to form the Working Party - viz two lawyers, one with considerable experience in conveyancing practice; an economist; and a member with 24 years experience as a consumer and home-maker, and with wide involvement in community activities.

The Working Party met regularly throughout the year under review. Its first task was to collect a body of materials, both published and unpublished , discussing the conveyancing systems within Australia. It undertook a particular study of the two alternative "models" supplied by the very different systems in Western Australia and South Australia. In the course of the work, the Further and Final Report of the Dawson Committee, which discussed possible improvements in conveyancing methods in Victoria, became available and received detailed consideration. Throughout this preliminary work of collating facts and opinions the Working Party consciously reserved judgement; and it was not until the closing stages of the year that it then proceeded to assess, systematically, the options for conveyancing in Victoria. The fundamental question addressed was this: How can the system of conveyancing in Victoria be improved if the ordinary person is to receive a service that is undertaken efficiently, prudently and at an appropriate price.

A draft report was prepared for discussion and amendment by the Council. The Council's Report on Conveyancing was adopted unanimously at its meeting on 21st August 1981 and then forwarded to the Minister who subsequently released it to the public at large. We publish the Report in this Annual Report for 1980-81 , however, since so much of Council's work for the year under review was devoted to its production.

5. HAIR TREATMENT

5.1 Overview of the Council's Investigation

The Council's long-running investigation of the Victorian hair treatment industry was concluded in March 1981 when a full report was sent in a letter to the then Minister, the Hon. J.H. Ramsay.

The project was initiated by the Council under the Chairmanship of Brigadier J.D. Purcell in July 1979. Between commencement and conclusion of the investigation there occurred a rather large changeover in Council membership which, while causing some interruption to the momentum of the inquiry, did enable contributions to be made by a larger group of persons than normally.

At an early stage in the inquiry it became apparent that in this industry there are potentially two main problem areas - firstly, those firms involved in hair restoration through the application of various tonics and solutions to the scalp, and secondly, those firms engaged in the manufacture of hair-pieces, including hair fusion. The surgical treatment involved in hair transplants is not a problem area. It was decided to restrict the investigation to the first two categories of treatment.

Council was of the opinion that there are, fundamentally, two characteristics of the hair treatment industry so defined which might, upon further investigation, call for some intervention:

(1) Some of the persons who seek assistance from hair treatment firms are unusually vulnerable to the use of "come-on" sales tactics.

(2) Putting the medical profession to one side, there are comparatively few alternative sources of supply to potential customers. There are relatively few firms in the hair treatment industry, with Ashley and Martin (Aust.) Pty.Ltd., being much the largest.

Towards the end of the investigation, Council concluded that business conduct in this industry is currently generally acceptable. However there was evident some improvement over the two years of the investigation, conceivably a consequence of the investigation itself. Nevertheless, there are still three sources of concern.

(1) the misleading impression conveyed by some advertising, mainly that of Ashley and Martin (Aust.) Pty. Ltd.;

(2) a particular trading practice of Ashley and Martin, viz its payments plan whereby a customer is 'tied' to the firm for a course of treatment; and

(3) the absence of any labelling requirements as regards care, content, and country of origin of wigs and hair-pieces.

Council's principal recommendations to the Minister were as follows:

(1) that Part II, Division 2, of the Consumer Affairs Act - False or Misleading Advertising-be reviewed with the intention of eliminating loop-holes ; and

(2) that there is a need to have mandatory care instructions, content and country of origin labelling on wigs and hair-pieces.

The most important finding, which was thrust upon the Council in the course of its investigation, is that the provisions of the Consumer Affairs Act are seriously inadequate in their application to false and misleading advertising, false representations, and misleading or deceptive conduct generally. This conclusion has implications which extend far beyond the hair treatment industry, of course. We are most pleased, therefore, to be already in receipt of a request from the Minister, dated 8th September 1980, that we review the adequacy of the provisions contained in Part II, Division 2, of the Consumer Affairs Act . (See Section 2.2, False representations and false or misleading advertising.)

5.2 Procedure

The investigation was undertaken by the Council as a whole.

Initially publicity concerning Council's investigation was received from a "Consumer Watch" article in the Melbourne Herald of 12th July 1979. In that article Brigadier Purcell was quoted as stating:

> "This will be a wide ranging inquiry based on people writing to us in strict confidence telling us of their experiences.
>
> Many people in the hair-loss treatment and hair-piece area are embarrassed to come forward in the usual way, and we believe this invitation for everyone with an interest in the matter to write in will give us a mass of useful information.
>
> We would also welcome the view of people and firms in the business."

In response to the"Consumer Watch" article, 23 individuals and 7 firms made written submissions.

The firms that made submissions were :

Ashley and Martin (Aust.) Pty. Ltd.,
Advanced Hair Studios of Melbourne,
National Skin Institute (Aust.) Pty.Ltd.,
Cosmetiques Francais,
Corrective Hair Centre (N.G. Bromley),
Blundell Hairpiece Centre Pty.Ltd., and
The Victorian Hair and Scalp Centre (A.G. Massey).

The Council also had the benefit of a paper prepared by an officer of the Ministry on consumer complaints; of a summary of complaints received by the Ministry; and of correspondence with the Health Commission and the Media Council of Australia. It made a study of press advertisements. Ashley and Martin made two detailed submissions - a general submission (dated November 1979) and an analysis of fees and charges (received August 1980); they furnished Council a copy of a Survey of Customer Satisfaction prepared by a sales research firm; and the Chairman and Secretary held discussions with the firm's public relations representatives at the firm's request.

In the course of Council's inquiry, discussion ranged widely over selling practices within the industry. Here we report only on the three aspects which cause us concern.

5.3 Advertising - on the Fringe

Council decided that it was necessary to give particular attention to advertising of hair treatments.

Advertising by the industry is currently subject to three controls with "bite":

(1) the provisions in the Trade Practices Act (applying to corporations) regarding misleading or deceptive conduct and false representations;

(2) the provisions of the Hair (Treatment of the Scalp) Regulations 1972 administered by the Victorian Health Commission restricting representations concerning the efficacy of scalp treatments; and

(3) the voluntary Media Council of Australia Guidelines for Hair-Piece/Treatment Advertising.

The relevant terms of the Health (Treatment of the Scalp) Regulations 1972 are as follows:

2. A person shall not represent in any manner whatsoever that he is able to prevent cure or alleviate baldness or loss or thinning of hair.

3. A person shall not represent in any manner whatsoever that he is able to prevent cure or alleviate diseases of the scalp but the provisions of this regulation shall not apply to -

   (a) any representations made by a medical practitioner,

   (b) any representations made by a registered pharmaceutical chemist in respect of medicines extemporaneously dispensed for a particular and individual case; or

   (c) any representations made in respect of any proprietary medicine registered for sale in Victoria in the terms of the Health Act 1958.

4. A printer, publisher or proprietor of a newspaper shall not permit any representations prohibited by Regulations 2 and 3 of these Regulations to be published in any newspaper printed and published in Victoria.

The Media Council Code also dates from discussions held in 1972 by representatives of advertisers in the hair-piece/ hair treatment field. The Council adopted the following guidelines, which became effective as from January 31st, 1973:

> .....in all relevant advertising, the following should be stated:-
>
> GUIDE
> 1. Baldness cannot be cured.
> 2. No new hair can be grown on bald or balding scalp.
> 3. Where mention is made of "thinning hair" no indication shall be given that this hair can be or will be thickened.

The code covers all advertising in commercial media which, in the words of the Assistant Secretary of the Media Council, "must firstly be submitted for censorship approval as a pre-requisite to publication and broadcast".

We have verified that the advertising of this industry is, in fact, monitored by both the Health Commission and the Media Council (through the Australian Publishers' Bureau). But some of the advertising, while very carefully worded to avoid literal infringement of the Health Regulations and the Media Council requirements, yet manages, in our view, to imply that the use of a particular product or treatment could assist persons suffering hair loss. Concern has been expressed by Council that this type of advertising skirts the Health Regulations and the Media Council requirements and is contrary to their intent. However it is only fair to note that both the Health Commission and the Australian Publishers' Bureau vetted and approved each of the advertisements which concerned us.

Nevertheless, Council agrees that the Hair (Treatment of the Scalp) Regulations 1972 and the voluntary Media Council of Australia Guidelines for Hair Piece/Treatment Advertising are tightly drafted, and probably as effectively enforced as is practicable by the bodies concerned. Administrative and voluntary controls, however, do have limitations. The provisions of the Trade Practices Act, Part V, offer greater scope for controlling advertising whose overall impression is misleading. There could be therefore a role for Victoria to enact legislation which would be complementary to the relevant provisions of the Trade Practices Act. In any event, we conclude that the provisions of the Victorian Consumer Affairs Act are in need of revision if they are to have teeth.

5.4 The Ashley and Martin Payments Plan

Council gave particular attention to the system of charging used by Ashley and Martin.

As at August 1980 customers were offered either of two options-

* $446 for a six months course of treatment if paying "cash" (the full amount within one month of enrolment);

* $496 for the six months course if paying by instalments, with deliveries of products and service following each of three bench-marks of $76, $256 and $495.

Concern is expressed by Council as regards two aspects of the "instalment" system:

(1) Prospective clients have the "carrot dangled in front of them" in the form of the hope that their scalp problem can be assisted, only to find that they have to outlay a considerable amount of money before they actually get to sample the treatment and receive the products.

(2) A client has to pay $256 before he receives his supply of Formula 72, the product claimed by Ashley and Martin to be the most beneficial in assisting people with scalp problems.

Council wrote to Ashley and Martin on 2nd September 1980 in these terms:

" After very full discussion, the Council formed the opinion that a "trial period" of say a month, with a suitably adjusted financial arrangement, could be of benefit to both your firm and its prospective clients. In the view we have formed, such a trial period should be so designed as to enable the client to sample the main elements (possibly all elements) of the proposed course of treatment. But at the moment , a client has to pay $256 before receiving Formula 72, which is, in your words, " the essence of the Ashley and Martin system". A "trial period", including a proportion of the full issue of Formula 72, would enable clients to make a rational decision as to whether the treatment is beneficial. At the conclusion of the "trial period" they could then elect either to proceed or to discontinue the treatment.

We are also of the opinion that it is desirable for the client to be given the option of electing to use a "pay-as-you-go" system throughout the course of treatment.

The Council invites your comments on these proposals.

May I add, by way of background, this comment: As you are aware, the hair treatment industry is periodically the subject of adverse comment in the media by reason of alleged "high pressure tactics","taking advantage of a vulnerable section of the community", etcetera. It seems to us that potentially the happiest way of dealing with such allegations - from the

> stance of the industry as well as the consumer - would be to place the consumer in a position where he is free to monitor his own buying decisions in accordance with what he perceives as the seller's capacity to perform to satisfaction."

In reply, the company's public relations representative conveyed verbally that a "pay-as-you-go" system was not suited to such a continuous course of treatment as is offered by Ashley and Martin.

The Council cannot accept that opinion.

5.5 Labelling Requirements for Wigs and Hair-Pieces

Finally Council concluded that there is a need to have mandatory care instructions, content labelling and country of origin labelling on wigs and hair-pieces. The case for such a requirement is thought to be analogous to that for content and care labelling of clothing.

6. SHOP TRADING HOURS

No topic appears with greater frequency in Council minutes for the past year than shop trading hours. Members have felt it to be an extraordinarily important topic, and one to which the Council with its balanced community membership might make a real contribution.

In September 1980 Council determined to make a special study of the issues. It was thought appropriate for the whole Council to become involved from the outset - especially since there was available a wealth of factual information and opinion in Ministry files for members perusal.

In the long discussion which was the feature of the October 1980 meeting there emerged a remarkable unanimity of opinion. There was unanimous support for a total relaxation of all legislative restrictions upon trading hours, including Sundays. It was said that there is here an opportunity for our institutions to move forward in accordance with very fundamental currents of social change.

At that meeting there was unanimous agreement on the following more detailed points.

> It was stressed that it was not for the Parliament to determine shopping hours but rather to create the environment within which retail traders themselves can respond to perceived consumer demands. It was said that under the present legislative structure the opportunity for retailers to respond to consumer needs is being stifled.

Council generally opposed any regulation of shop trading hours for the prime reason that if consumers need or wish to purchase goods or services outside existing trading hours from traders willing to supply such goods or services at a price that is economic for the trader, then any intervention by government will be to the detriment of consumers, employees and traders and costly to the community in terms of enforcement.

Retailing, it was said, is a service industry and as such should provide its services when needed by the community. If existing legislative restrictions were repealed and shops could open when they pleased it would become a matter of "water finding its own level" as to what are the most economic times for retailers to offer their services.

As is evident from recent legal proceedings by the Department of Labour and Industry, some retailers are defying present regulations by trading on Saturday afternoons and Sundays. They would not be doing so if it was not economic for them, with a consumer demand for their services.

The present structure of shopping hours (it was said) is plainly not suited to the times. The most obvious change in family life is the high proportion of working women who find difficulty even in scheduling routine purchases. But there is also a desire for shopping to become an activity participated in by both men and women - either singly or in joint "family" excursions. And as there is evident a freeing of traditional roles within the family, so there is evident a freer attitude to the use of time. Council members saw considerable value in shopping hours which would complement weekend activities centering upon maintenance and enjoyment of the family home. Shopping is appropriately a family activity.

In accordance with the general philosophy expressed, Council was adamant that if there were to be any change in the legislative provisions falling short of total liberalization, there should be no discrimination as between sections of the industry : the same opportunities should be open to all trades and to all types of traders. This was seen partly as a matter of fairness but more fundamentally as permitting the full interplay of the forces of demand and supply in the market-place. Moreover, to protect one section of the trade today would be to create rigidity and vested interests for tomorrow. It was stressed that the need was for an environment in which shopping hours could be adjusted flexibly in accordance with evolving consumer needs.

However, should the Government opt to lift restrictions only on Saturdays, it was thought that the present opportunities to trade on Sundays should be preserved. Admittedly the present exemptions are complex and anomalous, but they are so keenly valued by the community that they should not be removed. In fact, the solution to the anomaly was not to remove the exemptions but, in effect, to extend the exemptions 100 per cent !

Council noted the anxiety expressed by some sections of the retail industry as to the impact of change upon the trade itself. However, it was of the opinion that the removal of restrictions would really create opportunities for the trade. It noted the relative drop in expenditure upon retail goods over the last decade and expressed the thought that more convenient trading hours would create more time to spend. There could also be a fillip to tourism. The removal of restrictions on trading hours would not necessarily mean an expansion of trading hours.

What was important was the possibility of rescheduling trading hours in a way which reflected current life-styles. The example was given of the continental pastrycook who already opens on Sundays but closes on Mondays. Mention also was made of the system in London where Saturday afternoon opening is balanced by half-day closing in the course of the week (with the precise practice varying by district). It was noted, finally in this connection, that the rescheduling of shopping hours might even be associated with greater productivity in retailing through the smoothing out of peaks and valleys in trading hours.

While removal of restrictions upon trading hours would, fundamentally, permit the interplay of market forces, there would be need for much discussion and co-operative exploration of possibilities by retail and trade union organizations and by local governments. Any fears of employees regarding lengthening of the working week should be allayed. It would be the Shops Board Determinations regarding payment of overtime and penalty rates which would then be the crucial determinant of the effects of liberalization upon actual trading hours, upon costs, and upon the structure of retailing. Members hoped that the resolution of wage rates could be achieved in a way which would be in the interests of the community as a whole - and in the interests of those who might be attracted to an expanded and restructured retail sector that the changes could foster.

Council gave some attention to what are often regarded as exceptional categories of trade: butchers meat and liquor. As regards the first, it was agreed that the trade of the butcher is a demanding one, both physically and in terms of hours worked. Nevertheless, it was thought that meat trading hours should be freed: it was agreed that
it is plain that there is a strong consumer demand for meat

to be available at times disallowed by present legislative requirements - both within the supermarkets and outside. The case for permitting supermarkets to trade in butchers meat whenever they are open was thought completely obvious. A less obvious point which members would like to express is this: that current restrictions are putting those large numbers of families, who prefer to buy their meat from butchers shops rather than supermarkets, to extraordinary inconvenience at times to do so. An effect of the restrictions must surely be to divert expenditure from butchers meat to substitute products more conveniently marketed. It was suggested that butchers might take a fresh approach to their hours: some might close on Mondays, for example, or on certain half-days; small butchers might roster their services at certain times; and so on.

Whilst the sale of liquor comes under different legislation from that of shops generally, Council agreed that those two service areas were inter-related. Council noted that there were proposals afoot to allow the consumption of alcohol on Sundays in sporting clubs but not in hotels . It was general opinion, as already expressed regarding shops, that such discrimination was unacceptable. Furthermore, the same argument applied to the different trading hours currently imposed on retail "bottle shops" as opposed to hotel "bottle shops".

It was recognized that the extension of the hours during which alcohol could be sold presents special problems that do not exist with general trading hours; admittedly the liquor trade is associated with special social problems. It would be fair to say that this case caused Council

most concern: if an exception to Sunday trading were to be made, it might lie in this area. Yet it was pointed out that even now there are anomalies in the law which permit some Sunday trading in liquor - in itself a discrimination. And members felt that to relax current restrictions even further might well result in a saner approach to consumption, in much the same way as occurred with the abandonment of six o'clock closing. In general, then, Council concluded that legislative provisions governing the sale of alcohol should be relaxed in similar fashion to those governing other commodities. It would then be for the trade to determine what hours of trading best suited its local community.

The Council has conveyed its views to the Minister and issued a press release expressing support for deregulation. It also wrote to the Minister in the latter part of the year, welcoming the exemption of shops within "tourist precincts".

The Council has been especially concerned that much of the opposition to liberalized trading regulations appears to have been orchestrated by sectional interests to the neglect of the interests of Victorian consumers. In the nature of the case, consumers vote with their feet - and their dollars: the obvious way, members have said, to find out whether consumers would value different trading hours, both now and in the future, is to permit them to express their opinion in the market-place.

7. IMMUNITY FROM THE MARKET COURT ACT

In March 1981 the Council wrote to the Minister of Consumer Affairs recommending " in the strongest possible terms that Section 3 of the Market Court Act 1978 be repealed."

Essentially this means that the Council has recommended that all traders - whether or not subject to statutory licensing schemes and whether or not supplying professional services - should be subject to the jurisdiction of the Market Court. The Market Court is the body which has recently been established to control (in the words of the Act) the activities of traders who "repeatedly engage in conduct that is unfair to consumers".

Section 3 of the Market Court Act states:

> 3. The provisions of this Act shall not apply to the provision of services by any trader if -
>
> (a) he is entitled to provide those services by virtue of any registration licence or other authority granted or issued to him under or pursuant to any Act by any court authority board committee tribunal or other body; and
>
> (b) a court authority board committee tribunal or other body has power in respect of him under or pursuant to any Act to cancel suspend or withdraw that registration licence or other authority for any reason affecting the conduct of that trader in relation to the provision of such services.

For the purposes of the Market Court Act "trader" includes a professional practice(S.2).

The Council supported its recommendation by reference to these considerations:

- Uniformity of treatment between categories of traders is essential.

- The status of "professional" should not guarantee immunity from consumer legislation.

- Numerous complaints have been received by the Bureau of Consumer Affairs concerning the activities of various categories of licensed traders, e.g. motor car traders and certain professional groups.

- Licensing controls have their limitations: Licensing authorities often identify with the traders for which they are responsible. Moreover, they are normally limited in the penalties and controls they might impose for unethical conduct. In those instances in which they are limited to withdrawal of the licence to trade, that penalty is often regarded as inappropriately severe, and the trader may be able repeatedly to engage in conduct that is unfair to consumers with impunity.

8. ELECTRONIC POINT OF SALE SYSTEMS

In September 1980 the Minister, the Hon. J.H. Ramsay, asked Council members to review the material in the Ministry file on computerized check-out systems in supermarkets and advise him of their views.

In November 1980, the Ministers of Consumer Affairs established a national working party to undertake an inquiry into Electronic Checkout Systems and Item Pricing in Supermarkets. The working party comprises the Commonwealth Department of Business and Consumer Affairs, the National Standards Commission and consumer affairs agencies in South Australia, New South Wales and Victoria. Interested parties were invited to make submmissions and Council decided to convey its views to this National Inquiry at the same time as it furnished a reply to the Minister.

There is a large body of material on file within the Ministry of Consumer Affairs. In addition several members of Council have practical experience in the technical, staffing and customer implications of electronic check-outs.

Following full discussion, the Council forwarded its views in very similar vein to both the Minister and the National Inquiry in February 1981. We here reproduce the Council's submission to the National Inquiry.

> "At the request of the Honourable J.H. Ramsay, M.P., Minister of Consumer Affairs, the Consumer Affairs Council has been considering whether the introduction of electronic checkout systems in supermarkets might raise problems which could require special legislation or administrative action.

At its meeting on 17 December 1980 the Council was advised of the establishment of your Working Party and its desire to receive submissions within the published terms of reference. The Council now takes the opportunity to furnish you with its views on the topic.

Generally speaking Council favours the approach of the market-place taking its own course in relation to such systems. It believes the trade is sufficiently competitive, and consumers sufficiently well-informed as regards the existence and characteristics of alternative sources of supply in this field of retailing, for this approach to be both efficient and fair.

Members believe that a comprehensive education programme for the public is essential. Such an education programme would desirably be undertaken by the trade itself. No doubt the Report of the Working Party itself will furnish the trade with a valuable lead as to how this education programme might best proceed.

Council has considered various proposals for control that are the subject of current debate, including the requirement that goods be individually price marked or that the Minister be given power to require that a particular category of goods be price marked.

In general Council opposes this kind of legislation which it sees as increasing retailing costs unnecessarily. It may well be that in phasing in the new system stores may themselves choose to continue individual price-marking for some time, but to make this a mandatory requirement for all time would eliminate access to one of the significant long-term economies associated with the system.

The Sub-Committee's comment upon the usual type of contract then in use by most removal firms was that "these are obnoxious to consumer clients, almost in their entirety, as being totally biased in favour of the contractor, without any corresponding rights being conferred upon the consumer." The Council believed that it should be possible to develop "new forms of documentation which are equitable to both parties involved in removal and storage transactions." Particular stress was made of the need to design the "simplest forms appropriate to the particular transaction."

In the event, the task has proved formidable, and the resulting contract by no means simple. The work continues, and whether the final draft will prove acceptable to consumer affairs bodies throughout Australia remains to be seen.

In May 1981 the Council submitted a number of comments, both general and detailed, upon the March 1981 draft. We reproduce the general comments below, as indicative of the problems in securing a standard contract in the interests of consumers.

1. The proposed contract is extraordinarily heavily weighted against the consumer. Council members are especially critical, first, of the low standard of obligation established for the removalist, and second, of the far-reaching limitations upon the contractor's liability for loss or damage. Examples of the first are the "requested" dates of service and the freedom to sub-contract without notification. Examples of the second are the requirement "in ordinary circumstances" that notice of loss or damage be given within "two working days", and the restriction of liability to negligence only in the case of commercial removals and all storage.

2. As the Trade Practices Commission has emphasised, it must be plain to consumers (and, indeed, to contractors) that they are free to vary a standard contract. But this is still not obvious from the format of the draft.

3. Further, and a related criticism to point 2, the contract endeavours to standardise some matters which should be left to individual negotiation- in particular, the payment terms, "requested" dates of service, and the 26 weeks standard rental.

   It is one thing for an individual removalist to say he is prepared to do business only on certain terms; it is another thing entirely for a whole industry to proclaim these terms as the "norm", embodied in a standard contract which has been granted a certain authority by virtue of its approval by the Standards Association.

4. We question the necessity for having a contract which is so complex and so legalistic in expression. No doubt some complexity and some technicality are inevitable. But some of the language and some of the arrangement of the document have, in our view, two unfortunate effects; first, consumer rights are obscured; and second, aspects of the transaction on which a well-informed consumer might wish to protect his rights are buried in a mass of verbiage.

We stress that we make these comments only upon the March 1981 draft; the final contract may be significantly improved.

10. DEVELOPMENTS IN THE MINISTRY

In January 1981 the Ministry of Consumer Affairs became an independent ministry with its own Permanent Head. The Council welcomes this historic step: "consumer affairs" in Victoria has come of age. Prior to this the Ministry (and its predecessor, the Consumer Protection Bureau) was attached to the Department of Labour and Industry. However it has become increasingly obvious over the last few years that this attachment was inappropriate to, and indeed frustrating of, the developing responsibilities of the Ministry. The Council itself pressed for independence for the Ministry (see, for example, last year's Annual Report, Section 2), and would like to think that this expression of views played some part in forming the Government's decision.

In April 1981 Mr. John O. Miller, A.O., was appointed Director of Consumer Affairs and first Permanent Head of the Ministry. We congratulate Mr. Miller and look forward to a useful association.

These developments set the scene for two important additions to the responsibilities of the Ministry in the forthcoming year- the administration of both the Residential Tenancies legislation and the long-awaited Credit legislation. Present indications are that there will be a substantial increase in staff for the Ministry, along with a fundamental reorganization of the administrative structure. These changes are a source of great satisfaction to the Council which has been advocating a case for improved staffing for some time. We should like to express the hope that the deployment of this new staff will reflect not only the immediate demands of administering the new legislation but also the longer term need for research and policy development.

11. TRIBUTE TO NORMAN GESCHKE, O.B.E.

"A fair market place for both traders and consumers" was the oft quoted aim of Norman Geschke, the first Director of Consumer Affairs in Victoria. Norman Geschke was appointed to his post in 1974, to head the newly established Ministry of Consumer Affairs.

Some six years later, on his appointment in September 1980 as the second Ombudsman in this State, many thousands of Victorians, both consumers and traders, had reason to thank Norman Geschke and wish him well in his new role.

The principle " the consumer is not always right and the trader is not always wrong" encouraged the ethical trader to support the Director and his staff, whilst unethical traders could expect the full force of the Ministry's powers to stop them and make full restitution to their victims.

Norman Geschke's concern for people , especially vulnerable groups such as the elderly and the lonely, was always apparent to those working with him; to the many who listened to him on 3LO; and to those who have heard him speak at one of the seemingly endless schedule of engagements for community groups, trader associations, schools and many other groups.

During the initial six years of the Ministry's existence under Norman Geschke, there was a continuous and discernible improvement in the effectiveness of the Ministry in meeting its objectives. To the ordinary consumer with a problem it is the complaints handling function of the Ministry which is the most visible; over the years there was a dramatic improvement in the speed with which complaints were resolved, partly through improved staffing and trader liaison, partly through a conscious policy of helping consumers to negotiate their own settlements with traders. But emphasis also was given to the need for consumers to be informed. As it was expressed in his last

Annual Report (Year Ended 30 June 1980):

> To effectively enter the market place, a consumer needs to be fully informed on the choice of products available, the true price, life expectancy, consumption costs if applicable, and not only their rights under consumer and other legislation, but also their obligations as a consumer.

There was therefore a need for both consumer and trader education of a fundamental kind which Norman Geschke attempted, albeit with limited staffing and financial resources, to provide. And finally (in what must be a necessarily brief summary of the highlights of Norman Geschke's contribution to Victorian consumer affairs), there was his important contribution to the development of new legislation - the continuous work of amending and improving the statutes already in existence (such as the Consumer Affairs Act, the Small Claims Tribunals Act and the Motor Car Traders Act) and the revolutionary step of fathering the Market Court Act 1978 to control the activities of traders who "repeatedly engage in conduct that is unfair to consumers".

Norman Geschke's work in the Ministry was notable for his enthusiasm, his ability to enthuse those around him, and his concern for the people caught up in problems in the market-place. He was dedicated to "getting things done" whether it was independence for the Ministry of Consumer Affairs, new legislation to protect the rights of consumers, or endeavouring to educate both consumers and traders on their rights and responsibilities.

He built up an outstanding record of service and credibility for the Ministry of Consumer Affairs.

12. 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.

Soon after the close of the year under review the Council learned that it would be losing its Secretary, Mr. Michael Brasher, by reason of a promotion within the Ministry. We should like to record our appreciation for the substantial contribution made by Mr. Brasher to the work of the Council over a period of six years.

APPENDIX 1

REPORT ON PRODUCT SAFETY

1. Introduction

The Consumer Affairs Council has given detailed consideration to the effectiveness of present law and practice governing "unsafe" (or "dangerous") consumer goods in the market place.

In the first instance it appointed a Working Party (Mrs. Suzanne Russell, Mr. Ron Brooks, Mr. Barry Coad with the Chairman) to study the problem in depth. The findings of that Working Party have now been discussed by the Council and are endorsed unanimously.

2. Main Recommendations

Council has concluded that present controls give insufficient protection to consumers from dangerous goods. We therefore make the following recommendations:-

That product safety legislation be enacted in Victoria which -

(1) empowers the Minister and/or the Director of Consumer Affairs

* to ban the sale or supply of dangerous goods;

* to recall dangerous goods; and

* to set conditions of sale or supply on dangerous goods; and

(2) establishes a Consumer Product Safety Committee to investigate and advise on product safety matters generally.

3. The Need

There are large and undesirable gaps in the controls upon the sale and supply of dangerous goods in Victoria.

We have reached this conclusion even while stressing that a quite restricted concept of "dangerous goods" is appropriate.

The terms "unsafe", "hazardous", "dangerous" are imprecise and subject to various interpretations. Safety is relative and may relate to the way in which an article is used. One of the best examples is a box of matches which in the wrong hands is a hazardous article; another such example is a sharp knife. Any attempt to limit unsafe or hazardous products must be linked to the opportunity for the manufacturer to describe how the product should be used and to allow for the fact that some products which are perfectly safe when used in the recommended way may well be dangerous when misused.

We adopt as our concept of "dangerous" the definition used by the Western Australia legislation (Consumer Affairs Act, Section 23B): "likely to cause death or serious injury to the body or health of any person, whether directly or indirectly". We take it as implicit in this definition that the consumer has no claim to protection against unwise or capricious misuse of products. But there is a need to protect, for example, where a hazard is unlikely to be known to the purchaser or user, and where the consequences of an accident can be serious, if not fatal.

Unlike most other States (all other States with the exception of Queensland), there is in Victoria no general legislative power to ban the sale or supply of dangerous goods.

It is true that under Part IV of the Consumer Affairs Act certain classes of goods can be banned indirectly by calling up a specific standard. For example the Childrens' Night-Clothes Regulations effectively ban childrens' night wear manufactured from molleton and chenille. But for this technique to be used, an appropriate standard must be in existence. The development of a standard is a lengthy process, and the use of this power is inappropriate for unsafe products requiring urgent action. Moreover the development and administration of mandatory standards will often be a cumbersome and costly procedure for both the government and the business community. This is especially the case when products are changing, manufacturers and distributors numerous, and small business of importance. The recent attempt to implement a mandatory Commonwealth Bicycle Standard is an example of the heavy administrative and business costs that may be encountered.

There is also in existence a "consumer products safety committee" appointed by the Minister of Consumer Affairs in October 1977. But this committee is " ..... purely the Minister of Consumer Affairs reference on safety" (Ministerial Press Release 20/10/1977) and has no legislative backing. Since its formation the committee has met once. One might then characterize this as an idea in need of development.

Finally, departments or instrumentalities in Victoria, other than the Ministry of Consumer Affairs, have power to prohibit unsafe products - for example, the Health Commission, the Department of Minerals and Energy, the Department of Labour and Industry, the State Electricity Commission. However the coverage is by no means systematic; and the absence of general safety legislation is, in our view, anomalous.

Leaving aside these specific controls, Victoria then is reliant upon two main avenues to restrict the supply or sale of dangerous goods: the implementation of Commonwealth legislation and, where this is inapplicable, the use of a technique of "moral suasion" . We discuss the role of each of these in turn.

The Trade Practices Act both provides for consumer product safety standards and empowers the Minister for Business and Consumer Affairs to ban the supply of certain goods declared to be unsafe goods. In addition, the Minister can declare goods to be prohibited imports under the Customs (Prohibited Imports) Regulations.

Section 62 of the Trade Practices Act states in part:

"Sec 62 Product safety standards

(1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind -

(a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard; or

(b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as to -

(2) continued

(a) performance, composition, contents, design, construction, finish or packaging of the goods; and

(b) the form and content of markings, warnings or instructions to accompany the goods,

as are reasonably necessary to prevent or reduce risk of injury to persons using the goods or to any other persons."

Section 63AA provides that the Minister may by notice ".....declare that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by the Standards Association of Australia or by a prescribed association or body or such a standard or part of a standard with additions or variations specified in the notice, is a consumer product safety standard ....."

Section 62 (2D)-(2E) empowers the Minister to make notices declaring goods to be unsafe. Such initial notices are in effect interim orders and after 18 months must again be considered. At the expiration of 18 months if the goods are to be permanently banned a regulation must be made.

The body making recommendations for action under the Trade Practices Act is the Commonwealth/States Consumer Products Advisory Committee (CSCPAC), consisting of representatives of State and Territory Consumer Affairs Agencies and the Federal Department of Business and Consumer Affairs. The Trade Practices Commission and the Standards Association of Australia take part in discussions.

In our view , these Commonwealth controls are appropriate. The problem, however, for Victoria is that their operation is confined to the control of corporations, and to imported goods or to goods entering interstate trade or commerce. Thus no protection is offered to Victorians for a large class of consumer transactions.

As Council understands the situation, the Victorian Government has failed to legislate to eliminate this gap not by reason of oversight but by reason of supposed administrative convenience. It has been thought that negotiation, or "moral suasion", is a sufficiently effective and attractively inexpensive technique for removing dangerous goods from the Victorian market place.

Council cannot accept this reasoning. We have been persuaded by the following arguments -

(1) It is important to treat large and small traders equally. But the Trade Practices Act applies, in general, only to corporations; and negotiation/persuasion is most practicable with large traders.

(2) Large traders are alienated if small traders continue to sell.

(3) As regards small business, the absence of Victorian legislation provides a loop-hole for the unethical trader. But it also places undesirable pressures upon ethical traders to stock to meet the competition. And just what products are regarded as "unsafe" may be ambiguous and open to interpretation.

(4) If legislation is in force, there is an onus on the trader to keep himself informed and to be careful to comply.

(5) Victoria could become a dumping ground for products banned in other states.

(6) Informal, ad hoc techniques have costs of their own. The creation of a Consumer Products Safety Committee would provide a body which could act as a clearing-house for information and liaison.

(7) The 1979 and 1980 Annual Reports of the Director of Consumer Affairs highlighted the Ministry's problems in dealing with unsafe products in Victoria. Both Reports contain a recommendation from the Director that legislative powers are needed to control the sale of specific unsafe or hazardous goods.

4. Ambit of Proposed Controls

Our proposal is for legislation which would govern the supply of dangerous goods; we do not propose that it encompass the supply of services in a dangerous manner. We adopt this approach for two reasons. First, this is in accordance with Commonwealth and State practice generally. Second, in the nature of the case the ongoing performance of services in a hazardous manner needs to be controlled through the use of different techniques, for example through use of the Market Court.

(The power to ban goods may indeed be viewed as conceptually analgous to the power to negative-license a supplier of services.)

We do however urge that any legislation should bind the Crown.

There is a final , difficult, question to be resolved under the heading of "ambit". This is whether the proposed Product Safety Act should exclude explicitly from its coverage commodities or transactions the subject of other controls. In particular, should the brief of the proposed new Product Safety Committee be formulated to exclude consideration of any matters under consideration by CSCPAC or the S.A.A.? any transactions that might fall within interstate trade or commerce ? any commodities (such as food, drugs and electrical appliances) controlled by established authorities?

Our conclusion, after some thought is that the proposed Committee should have the power to oversee and advise on product safety matters generally, even though as a matter of practice the focus of the new Committee's work should be upon obvious gaps in the coverage of existing safety legislation and institutions. In reaching this conclusion, three considerations have been paramount:

(1) It would be dangerous to attempt to formulate a list of commodities which would be excluded from the new legislation, for there would then be definitional problems with the possibility that certain goods could escape the net.

(2) The work of the Consumer Product Safety Committee would doubtless require the canvassing of alternatives and it would be desirable that it have the power to make recommendations that matters be referred to such bodies as CSCPAC or SAA or NHMRC.

(3) It is important to avoid undue duplication of work amongst various regulatory bodies and undue demands upon the business community. The creation of a Victorian Product Safety Committee offers a technique for central co-ordination and liaison.

However it would be undesirable for the new Committee to assume safety functions which would duplicate or conflict with those already entrusted to long-established bodies with specialized expertise such as the State Electricity Commission, Health Commission, and the Department of Minerals and Energy. It would be desirable that the Committee have only residual power to make recommendations concerning bans, recalls or setting conditions of sale.

Thus other bodies would retain their existing responsibilities to administer bans and related controls over such (statutorily defined) goods as food; drugs and therapeutic goods; poisonous substances; products ingested and otherwise absorbed; gas and electrical appliances ; motor vehicles; and aircraft.

It follows, too, that the powers of the Minister and/or the Director of Consumer Affairs to ban, recall or set conditions of supply would be similarly circumscribed.

5. Proposed Consumer Product Safety Committee

It is recommended that the Minister should have power to establish a Consumer Product Safety Committee to provide advice on product safety matters.

The Committee should have the powers;

(1) to call for and receive expert advice on goods alleged to be unsafe;

(2) to require and commission testing and receive reports on goods alleged to be unsafe;

(3) to refer a matter to any other appropriate body;

(4) to consider and make recommendations to the Minister/Director of Consumer Affairs regarding the banning, recall or setting conditions of sale on goods alleged to be unsafe, giving reasons for the recommendations;

(5) to determine the hazard, and its severity, of products referred to the Committee, the criteria including:

- the extent to which the hazard is likely to be unknown to the purchaser or user;
- the degree of probability that the defect will cause serious accidents;
- number of unsafe products distributed and the number of persons exposed to the risk;
- principal users of the product, whether children. the elderly or handicapped;
- the nature and severity of potential injury;

- percentage of products in which the defect is likely to be present;

- whether recall can be limited to a particular batch or whether it needs to extend to all products of the kind in question.

With these functions in mind, it is recommended that the existing product safety committee be disbanded and a new, appropriately constituted, Product Safety Committee be established . In our view the composition of the Committee should be as small as is practicable, with a balance being struck between technical and consumer/business representation. For there would often be a need for speedy action. There should be power to co-opt where desirable to further a particular inquiry.

It is suggested that a desirable composition might be as follows:

- an officer of the Ministry of Consumer Affairs who shall be the Chairman of the Committee;

- a representative of the Health Commission of Victoria;

- A person who in the opinion of the Minister has expertise in product safety;

- a person who represents the interests of consumers;

- a person who represents the interests of traders;

In addition it might well be thought desirable to make provision for representation on the Committee of other government bodies with a safety responsibility. Whether that could be done without making the Committee too large and slow-moving would be a question for investigation. Possibly some two-tiered structure might be envisaged, a core Committee plus a panel of persons from the specialized bodies who could be called upon to participate in Committee meetings as appropriate.

Referrals to the Committee might be made by the Minister of Consumer Affairs as well as by the Director of Consumer Affairs; but it would also be desirable that the Committee have power to initiate action of its own volition.

The Committee should prepare an Annual Report to Parliament.

6. Bans, Recalls and Conditions of Supply

As noted under Section 4, we are essentially proposing that in the matter of bans, recalls and setting conditions of supply, the Committee and the Minister/Director of Consumer Affairs possess residual powers only - powers in relation to goods not the responsibility of specialized authorities. But within this proposed commodity coverage Council has concluded that provision should be made for a somewhat comprehensive system of controls. As a matter of consistency, for those categories of commodities for which there is power to ban, there should also be power to recall. On the other hand, something less than a complete ban, involving specification of conditions of supply or modification of the product, might be in the public interest. An order governing modification or conditions of supply might sometimes require preparation of a standard. A condition of supply could refer to the provision of appropriate information (e.g. warnings and instructions as to proper use).

We would like to record, however, that the scheme we are proposing may err on the side of conservatism; we are troubled that this approach to Bans, Recalls and Conditions of Supply may leave some gaps in safety coverage. For it is our understanding that in respect of some of those products the responsibility of other authorities the powers to recall and impose conditions of supply (as distinct from the power to ban) may be lacking or imperfect. However we would hope that one of the first tasks of the proposed new Committee (and Secretariat) would be to tabulate the existing structure of controls, thereby identifying any remaining gaps in the existing system.

In the course of discussing the desirable scope of regulations governing product safety, Council formulated a suitable scheme which it commends to the attention of the Minister. That scheme is reproduced as an appendix to this report.

Whether the powers should be exercised by the Minister or by the Director or, indeed, by both would be very much a matter for government decision. We note that in N.S.W., for instance, such orders are made by the Minister; but in W.A., such orders are made by the Commissioner.

7. Administrative Support

There would be a requirement for some staff within the Ministry of Consumer Affairs to provide secretarial and organizational support to the Committee.

Existing facilities in other Government departments could be utilized for the testing of many products initially, but budgetary considerations would have to be allowed for.

The CSCPAC hazardous products register would provide a network of information on product safety matters from other States and the Commonwealth.

Complaints regarding goods the responsibility of other authorities (e.g. food and drugs) could be referred to the appropriate body by the secretariat, with a referral report to the Committee.

8. Conclusion

The apparatus we are recommending is comprehensive . However the costs of establishing the legislative and administrative framework in itself should be modest. And we stress that we envisage that the power to ban, recall or specify conditions of supply would be used infrequently. But, in our view, it is very much in the public interest that the power exist. Further, it is very much in the public interest that a single Victorian Committee be given a co-ordinating role in product safety matters.

APPENDIX: A SUGGESTED SCHEME FOR BANS, RECALLS AND THE IMPOSITION OF CONDITIONS OF SUPPLY

1. Power to Ban

1.1 The Minister/Director of Consumer Affairs should have the power to ban unsafe or potentially unsafe products.

1.2 The Minister/Director of C[redacted]

1.3 Where the product has been banned by the Commonwealth or in another State or Territory the Minister/Director of Consumer Affairs should have the power to impose an interim ban before referral to the Committee.

1.4 Where the [redacted]

2. 2.3 The Minister/Director of Consumer Affairs should have the power to direct a trader to undertake a recall program.

2.4 As product recall notices may be insufficiently conspicuous and widespread or insufficiently informative, it would be important to establish publishing guidelines.

3. Conditions of Supply

(Reference should be made, however, to certain existing powers in relation to conditions of supply contained in Part IV of the Consumer Affairs Act - Safe Design and Construction of Goods.)

APPENDIX II

REPORT ON CONVEYANCING

I. Introduction

1. In the course of the preceding year, the Consumer Affairs Council has made a detailed study of conveyancing practice in Victoria and elsewhere. Our work was prompted by the publication of the Interim Report of the Committee of Inquiry into Conveyancing, 1980 (The Dawson Committee) and the very general public controversy concerning the solicitors' monopoly of conveyancing work.

2. The Interim Report of the Dawson Committee was itself largely concerned with the solicitors' monopoly and conveyancing costs. In its Further and Final Report (delivered to the Attorney-General in 1980 but yet to be printed) the Committee turned to a consideration of possible improvements in conveyancing methods. Our work also has spanned these two inter-connected topics.

3. In the first instance a Working Party (A.M. Farran, P.A. Sibree and Y.R. Thompson with the Chairman, Professor M. Brunt) studied the subject in depth. The issues have now been discussed by the Council as a whole, and this Report contains their unanimous views.

II. Summary of Conclusions

1. The solicitors' monopoly of conveyancing is contrary to the public interest.

2. The times are ripe for change. Increasing simplification, standardization, computerization of conveyancing are inevitable.

3. Some restrictions upon the persons who may effect conveyancing are nevertheless desirable as a form of consumer protection.

4. That protection may be secured through the introduction of a system of licensed "conveyancing agents" (analogous to the "settlement agents" of Western Australia and the "land brokers " of South Australia). The requirements for a licence would be - unlike the present system - intimately related to the requirements of conveyancing work itself. There should be the minimum restrictions upon entry to the field compatible with conveyancing being undertaken efficiently and prudently.

5. Conveyancing charges should be a matter for determination by the individual conveyancing agent. We are opposed to the fixing of "cost scales", whether "recommended" or "maximum" and whether settled by a licensing authority or trade association.

6. We are even more strongly opposed to the present system of scale fees. Nor do we think that the "reformed cost scale" proposed by the Dawson Committee in its Interim Report solves the fundamental problems created by the solicitors' monopoly.

7. As to improvements in conveyancing methods, we strongly support the Dawson Committee's recommendations concerning a caveat vendor (vendor warranty) system, a cooling-off period, increased protection for a purchaser of a damaged or destroyed house, and modernization of the Titles Office. We are disappointed that the Committee is recommending the perpetuation of the Sale Note, and urge that consideration be given to introducing the one comprehensive standard-form contract. Also in critical vein, we are opposed to the practice of a solicitor acting for both parties to a conveyancing transaction (in other than special circumstances).

8. Consumers who wish to do much of their own conveyancing should be able to consult a Legal Services Directory for the names of solicitors willing to do sessional work (eg, contract, settlement).

9. Finally there is a pressing and quite general need for consumer education; eg, consideration could be given to mounting a unit in the Adult Education Programme and also to including some elementary instruction on real property transactions in the school curriculum.

III. The Role of the Council

1. Our conclusions differ from those of the Dawson Committee in a number of fundamental respects. The Dawson Committee was appointed by the Victorian Government with the express function of formulating recommendations with respect to any necessary or desirable changes in existing conveyancing laws and practices.

   Is it presumptuous, at best unhelpful and at worst confusing, for the Consumer Affairs Council to cover the same ground?

2. Council submits that its findings on this topic should be given the most careful consideration, and for these reasons:

   (1) The Council has been established with the charter (inter alia) of making "recommendations with respect to any matter calculated to protect the interests of consumers." (Consumer Affairs Act, S.6)

   (2) Its membership covers a broad spectrum of experience, expertise and interest. Half of its members represent consumers and half are experienced in trade and industry. It includes two lawyers and an economist.

   (3) The Council has become accustomed, in a variety of investigations, to making wide-ranging inquiries as to whether existing business practices are in the public interest. Likewise with its present enquiry. From the outset the Working Party actively sought out a wealth of information and opinion; and it has spent much time debating the issues exposed.

3. By contrast, the Dawson Committee largely restricted its attention to the matters and arguments raised in formal submissions to itself. It was indeed the very narrow interpretation of its role by the Dawson Committee as displayed in its Interim Report which led the Consumer Affairs Council to enter the field. At an early stage in our work, the very general sentiment expressed by Council members was that the Committee had failed, in its Interim Report, to get down to fundamental issues. The Interim Report was not in sympathy with the mood of the public which was demanding change; indeed the Report appears to display a reluctance to disturb the status quo. A more "open" approach would have studied the various alternative institutions for effecting conveyancing, appraising their advantages and disadvantages.

4. The fundamental question we determined to address was this: How can the system of conveyancing in Victoria be improved?

5. In the course of our work we have reached the conclusion that the two Parts of the Dawson Report are, to a degree, inconsistent. The Second Report looks to the future and seeks to modernize, simplify and standardize conveyancing techniques. The Interim Report, on the other hand, in its recommendation that conveyancing for reward continue to be confined to qualified members of the legal profession, looks to the past. Yet in our view it is of the utmost importance to recognize that a simplification in conveyancing techniques goes hand in hand with a freeing of the market.

IV. The Solicitors' Monopoly

1. In Victoria, by virtue of S.93 of the Legal Profession Practice Act 1958 only qualified legal practitioners can undertake conveyancing for reward. But most conveyancing does not, in fact, demand legal training and skills for its satisfactory completion. This is apparent from a consideration of the nature of the work and of the satisfactory existence of alternative systems in S.A. and W.A.

   Our most fundamental criticism of the present restrictions upon entry to the business is, then, that they call for over-qualified conveyancers.

2. As Professor Ronald Sackville has expressed it (Current Affairs Bulletin, June 1975, p.15):

> It can be seen that in general the solicitor's role in conveyancing transactions is essentially routine and simple. Searches of title do not require substantial legal expertise and the documentation employed (such as contracts of sale and transfers) are in standard printed form. The various inquiries that must be made outside the register are tedious, but rarely involve the exercise of professional judgment and are delegated as a matter of routine to clerical staff in a legal office. Some solicitors deeply resent the suggestion that they delegate work to unqualified staff. Nevertheless the fact remains that, unless a point of difficulty or some dispute arises, the tasks of the conveyancer are eminently suited to delegation and, indeed, efficient business practice demands that the services of less skilled and less highly paid personnel be employed wherever possible. Certainly it cannot seriously be maintained that a long and expensive professional education is required to deal with the great bulk of home purchase transactions.
>
> It is necessary to add that future developments are likely to restrict even further the range of tasks performed by conveyancing solicitors.

3. In S.A., land brokers have operated side by side with solicitors for over a century. Their current acceptability to consumers is attested by the fact that licensed land brokers now account for 75-80% of total conveyancing transactions in that state. In W.A., the market has hitherto been even freer. Until a few months ago (with the introduction of licensing) there have been no restrictions upon the class of person able to undertake conveyancing and there have been few formal controls upon the work. It is significant that in the order of 75% of W.A. settlements are currently effected by settlement agents, the remainder being effected by solicitors and banks.

4. It follows that even if the solicitors' approach to pricing were to charge no more than would cover essential costs, in the long run and on the average fees must be established at a level that is unnecessarily high. Using figures quoted by the Dawson Committee in its Interim Report (p.17), conveyancing accounts for 39% of the remunerative time of principals and employee solicitors.

5. But more than this: the legislature has entrusted conveyancing to a tightly organized professional group whose code of conduct prohibits free competition amongst themselves. We refer to the "ethical restrictions" upon advertising, "touting" for business, and "attracting business unfairly". While a solicitor is not bound to charge the scale fee (thus formally a maximum), he must not "hold himself out or allow himself to be held out directly or indirectly as being willing to perform work for a fee less than that fixed". Whatever the justification for these rules in regard to professional activities or in relation to earlier times, in the matter of conveyancing we have thus reached the strange position that what is essentially a business activity cannot be conducted in a business-like way, subject to the regulation of the market-place.

6. To speak of the "solicitors' monopoly" of conveyancing is particularly apt; there are the restrictions upon entry to the activity, there are restraints upon internal competition - and most members of the public find themselves compelled to retain solicitors for conveyancing work at some time in their lives. In economists' language, there is a low elasticity of demand for conveyancing work, with solicitors in the happy position of being able to raise price above cost and retain much of their patronage.

7. We regard the factual outcome of this monopoly power, then, as scarcely surprising:

   * Overall, prices are excessive in relation to costs, with the lucrative conveyancing work subsidizing other categories of solicitors' work.

Indeed the Dawson Committee concluded (p.17):

> There is undeniably a degree of what has been called cross-subsidization of other costs by conveyancing fees. Upon the figures provided by E.S. Knight and Company, conveyancing accounts for some 47 per cent of gross income but takes 41 per cent of a principal's remunerative time and 43.8 per cent of the remunerative time of employees, not including employed solicitors. If principals and employee solicitors are grouped together, 39 per cent of their time is taken in earning 47 per cent of the grosss income derived from conveyancing.

Further (p.15):

> ... the evidence before it (the Committee) suggested that the fees prescribed for solicitors acting for mortgagors were, in many instances, excessive.

The Land Transfer Company offers conveyancing services at half the scale fee, on this arrangement that the Company undertakes the clerical work on instruction from the client's solicitor who then bills the Company on a fee for itemized legal services. The Company carries professional indemnity insurance.

It is known that numbers of solicitors regard the existing scale fees as excessive and charge less. In practice, too, clients with a large volume of conveyancing business are able to negotiate lower charges.

In the 1970's there has been an explosion in conveyancing charges in Victoria. Using figures contained in an appendix to the Interim Report (p.23), in 1978 the conveyancing fee charged to the buyer of an average suburban house was over four times the figure in 1971. By contrast the Melbourne CPI approximately doubled (over the same period) and average weekly earnings (per employed male in Victoria) increased approximately 2½ times. The cost of the average suburban house in Victoria rose by a little less than a factor of three. Between 1971 and 1978, the level of scale fees (the Solicitors Remuneration Order) was adjusted upwards on three separate occasions.

* Even within the conveyancing area, prices charged bear limited relation to the work and risks entailed in the individual transaction. With the existing ad valorem scale fee system, the simple transaction subsidizes the more complex and the high-priced transaction subsidizes the low.

* There are often complaints from the public concerning delays, a lack of "business-like" attitudes; and there is some feeling that conveyancing is at the end of the queue for the solicitor's attention. While in the nature of the case it is difficult to obtain direct evidence concerning the efficiency with which solicitors' offices are organized, we would regard it as contrary to human nature if some solicitors were not to take advantage of the absence of market pressures.

* There appear to be limited pressures within solicitors' ranks for simplification of conveyancing in Victoria. Certainly it is in the solicitors' interests to preserve the mystique and technicality of conveyancing for as long as possible. We doubt that it is a coincidence that there are simpler conveyancing procedures in both W.A. and S.A.

8. In summary, we are convinced that the price for conveyancing services in Victoria is too high, both overall and for particular categories of work. That this is so is a reflection not only of cross-subsidisation from conveyancing profits but also of excessive costs.

9. Interstate comparisons of costs and prices for conveyancing are not entirely straight forward, and we do not base our recommendation that the solicitors' monopoly be abolished primarily upon them. Nevertheless we should record that, even upon the most conservative approach, it is safe to generalise that conveyancing in Victoria (excluding government fees) costs the typical consumer more than double what it costs in S.A. and W.A. (See Section VIII).

V. The Question of Fee Scales

1. It is quite often suggested that the way to "reform conveyancing" is to "reform fee scales". At the one extreme it is proposed that fee scales be abolished; at the other, it is proposed that fee scales be refined, to become a technique of price control in the public interest.

1. Continued

The Dawson Committee propose that we combine both approaches. For more expensive transactions (above the level of the average home price) scale fees should be abolished; for less expensive transactions, there should be a new formula, using wider steps for the scale and seeking a closer relation to "time calculations".

2. If the argument from the preceding section is accepted, the essential objection to either approach (whether used singly or in combination) is that a more fundamental reform is needed.

3. Even if the scale fee system were entirely abolished, as in England in 1970, we doubt that this in itself would make much practical difference. There would still remain the prohibitions on advertising and touting; there would remain all the aversion to "business" that is a mark of much of the profession; and conveyancing would remain a "closed shop", with entry denied to persons of different experience and outlook. We note the Dawson Committee's comment upon the English scene (Interim Report, p.10):

> The effect of the abolition of scale charges does not, however, seem to have involved any radical departure from the previous fee structure.

In England solicitors are still subject to prohibitions on advertising and touting.

4. The proposal to refine fee scales is superficially attractive. If the price of conveyancing in Victoria is too high, why not then reduce that price directly?

In our view there are two basic objections to this proposal. First, it embodies a cost-plus approach. To begin with, there is the obvious inappropriateness of the base itself - the use of the cost of solicitors' time when much of conveyancing does not require high-level solicitors' skills.

4. Continued

But further, it takes the existing level of efficiency as the norm: there are no market pressures and inducements for cost reduction - through the exploration of alternative ways of organizing the work and through tailoring the service to the requirements of the individual consumer.

Second, even accepting such a cost-plus approach, price-control techniques in themselves are complex and inflexible. There are always controversies as to whose costs are relevant and how cost elements are to be combined. It is a matter of common knowledge that problems with formula pricing are exacerbated in periods of technical change - and it seems peculiarly inappropriate to place one's faith in price control as conveyancing in Victoria enters upon its period of greatest technical change.

5. There is a third objection to the controlled-scale-fee approach, of a somewhat less fundamental character than the two foregoing objections. This is to question the relevance of the ad valorem scale itself. It assumes a correlation between the value of the property and conveyancing time (including a "margin for responsibility") which is doubtful to say the least. It makes no allowance for complexity of work unrelated to property value.

We have been told that in the A.C.T., where fee scales have also been dispensed with, there has been some experimentation by solicitors in using different fee structures. Whatever might ultimately prove to be the practicality of alternative fee bases, including the fee for service approach, we make this criticism of the scale fee system, that it precludes experimentation by individual conveyancers of alternative fee structures and the active seeking of fee structures which reflect the costs of doing business in the individual case.

6. As against this, it is said that the fee scale system gives "certainty" and "fairness". In our view, the certainty of a high charge is of very doubtful utility to the consumer; and the subsidy granted to the complex transaction by the ordinary is scarcely "fair".

6. Continued

Moreover, the standardization of conveyancing charges denies the consumer the right to choose his own preferred level of service. Nor is there anything in the market system of charging which would deny the individual consumer or conveyancer the right to negotiate a certain charge in advance of service if that is desired.

VI. A proposal for Conveyancing Agents

1. We urge that the most serious consideration be given to loosening existing restrictions to permit persons other than qualified lawyers to undertake conveyancing. Such a liberalization would open the market to a class of what might appropriately be termed "conveyancing agents".

2. Such persons, in our view, should be licensed. But the requirements for a licence would be set much lower than the requirements to practice law and would be - unlike the present system - intimately related to the requirements of conveyancing itself. There should be the minimum restrictions upon entry to the field compatible with conveyancing being undertaken efficiently and prudently.

3. The Victorian conveyancing agent would be analogous to the S.A. land broker and to the W.A. settlement agent (making appropriate allowance for interstate differences in conveyancing practice). Indeed, it would be appropriate to enact legislation embodying similar controls to those contained within the S.A. Land and Business Agents Act 1973-79 and the W.A. Settlements Agents Act 1981.

4. The essential elements of a licensed conveyancing agents system would be as follows:

   * A clear distinction would be drawn between strictly legal work and the conveyancing functions open to the conveyancing agent. The relevant statute would define the functions of a conveyancing agent. (Cf Schedule 2 of the W.A. Act)

4. Continued

* The requirements for a licence would include both educational qualifications and practical experience. One element of the training would be to learn to recognize the existence of a legal problem for which advice from a qualified legal practitioner is necessary.

* There should be financial controls - compulsory trust accounts, annual audits, professional indeminity and fidelity guarantee insurance.

* There should be a strict separation of real estate and conveyancing work, with a prohibition on real estate agents undertaking conveyancing. However if a system of "caveat vendor" were introduced (see Section IX), it would be appropriate - and an economy - for the estate agent to draw up a proposed contract on behalf of the vendor, as happens in S.A.

* There should be special provisions enabling licensed landbrokers (S.A.) and licensed settlement agents (W.A.) to gain a Victorian licence in the minimum time compatible with protection of the Victorian public.

* There should be a Licensing Board, with strong consumer representation, to license and supervise.

It is, however, no part of our scheme that there should be a prescribed fee scale. (See Section V.)

5. Thus, while highly critical of the existing solicitors' monopoly of conveyancing, we have concluded that some restrictions upon the persons who may effect conveyancing are desirable as a form of consumer protection. The question may be asked: Is this but to replace one monopoly with another?

By no means. There are vital differences between the existing system and what we propose. In our view, the new scheme would have these clear advantages over the existing system:

* There would be comparatively easy entry to the conveyancing field. The numbers of conveyancing agents would be formally restricted only by the relatively modest educational requirements that would be appropriate.

5. Continued

* Thus competition would be enhanced. Persons would enter and leave the field in accordance with market opportunities; there would be a variety of talent in the field, persons of varied experience and outlook; conveyancing agents and solicitors would be in competition.

* The conveyancing agent could secure economies of specialization and the service could be quicker. It is pertinent that both these advantages are claimed by the W.A. Settlement Agents Association. But lawyers too would retain characteristic advantages for certain classes of more difficult work and offer continuity of professional advice. Indeed the pressure of competition should quickly reveal for which tasks solicitors are better equipped.

* The selection of a solicitor or a conveyancing agent- or indeed a combination of the two - for a particular transaction would thus be a matter of consumer choice. Some members of the public are already showing their demand for a "para-legal" conveyancing service, as demonstrated by the popularity of conveyancing kits and the Land Transfer Company type of service, but it is also clear that other members of the public would prefer to retain a solicitor's service.

* It is possible that in the short run the price of conveyancing might rise for some consumers - those whose work is presently subsidized by others. But overall, the system should be substantially cheaper.

6. What of other alternatives to the present system? We have already stated that we reject price control; the issues were discussed in the previous Section. We now comment briefly on the most important of the other possibilities we have considered:

* A completely "open shop" (no restrictions upon who may enter the field) Such an approach would be consistent with the present practice of permitting the consumer to do his own conveyancing work. While the forces of competition might offer the consumer a considerable degree of protection, conveyancing has these peculiarities which justify some modest regulation:

6. Continued

- "Routine conveyancing", as viewed by the supplier, is nevertheless sufficiently technical to make it difficult for many consumers to monitor the work.

- The typical consumer is scarcely in a position to acquire knowledge through experience: he may purchase conveyancing only once or twice in a lifetime.

- There is considerable scope for fraud and misappropriation on the part of the supplier.

- The consequence of a "bad bargain" could be catastrophic for the consumer.

- Even if the individual consumer was prepared to assume the risk of a bad bargain through choosing an unqualified conveyancer, there could be spill-over effects upon other members of the community (especially the other party to the transaction).

- Some degree of skill is necessary to recognize legal problems and potential conflicts of interest.

* Negative-licensing of conveyancing agents
We understand that such an approach is currently under consideration in S.A. It might be termed the "bad apple" approach. But while possessing the advantages of "de-regulation", it does not meet the characteristic consumer problems that have impressed us and are listed above.

* Opening up conveyancing to building societies and financial institutions generally
In a recent speech, Mr Justice Kirby advised building societies "to consider breaking the monopoly held by lawyers on land conveyancing" (Speech to Association of Co-operative Building Societies, 1-12-1980). Similar proposals are quite often floated in public discussion. The main problem with this proposal is the potential conflict of interest entailed. To open up conveyancing only to building societies (or financial institutions generally) would mean that the one alternative open to consumers would carry with it the seeds of this conflict of interest.

6. Continued

Under our proposals, we would not preclude financial institutions from undertaking conveyancing, provided they employed licensed conveyancing agents; but this would be just one of a range of alternatives open to consumer choice.

VII. Impact of the Conveyancing Agent Proposal upon the Legal Profession

1. The current reliance of solicitors upon conveyancing work merits some concern. Conveyancing is the single most important category of solicitors' work. Conveyancing would account for close on 50% of solicitors' gross income and very likely in excess of 50% of net profit. Thus the financial core of the typical practice lies in work for which the full panoply of legal training is unnecessary.

   The existence of this protected conveyancing core is associated with cross-subsidization and a somewhat arbitrary fee structure for other categories of work. Many would say, too, that the existence of this core diminishes incentives for a more innovative approach to developing other fields of work.

2. Moreover the traditional allotment of conveyancing to solicitors is becoming increasingly anachronistic. Increasing simplification, standardization, computerization of conveyancing are inevitable. The very changes in methods of conveyancing that are proposed by the Dawson Committee in their Second Report would make the solicitors' monopoly even harder to justify than is presently the case. The ground is being further undercut from solicitors' feet by better consumer education and increased consumer awareness of the alternatives to reliance upon the profession.

3. Undoubtedly the times are ripe for change. But what will be the impact upon the profession of this change we are recommending? Has adequate attention been given to transitional problems for the profession?

3. Continued

We have given most careful consideration to this aspect of our proposal. Of first importance is this consideration, that the admission of licensed conveyancing agents to the field would necessarily take time: there is thus a built-in adjustment period.

Further, solicitors would have considerable opportunity to compete successfully with the new class of conveyancing agents. They have the experience. They can offer complementary legal and conveyancing services for more complex transactions. They can conveniently undertake conveyancing for established clients. In small country towns, the specialized conveyancing agent would scarcely be viable and we anticipate that the solicitor would continue to act. Solicitors would have open to them the Land Transfer Company type of operation. They could, too, undertake a shared conveyancing facility with other solicitors, or open a specialized facility of their own.

4. We believe it would be in the interests both of the profession and the wider public if solicitors, under the pressure of our proposed changes, were to become more accessible to the community at large. We believe there is a much wider market for strictly legal services than is currently being tapped.

VIII. Some Interstate Comparisons

1. We do not make recommendations to free up the conveyancing market t primarily on actual interstate cost comparisons. rtheless we think it appropriate to include me d ssion of the topic for two reasons: First, the fa ble view of the present level of conveyancing costs ctoria was a major theme of the Dawson Committee's Interim Report and their main reason for supporting the preservation of the lawyer's monopoly. Second, the level of conveyancing charges in Victoria has been subject to much public criticism; and the belief that prices are unnecessarily high is probably the main basis of calls for reform.

2. The following table gives a tabulation of what might be termed "core conveyancing charges" in Victoria, S.A. and W.A. It is this kind of comparison that has dominated media discussion in Victoria. If taken at face value it would indicate that conveyancing charges in S.A. and W.A. are extraordinarily low in comparison with those in Victoria.

   Does this comparison give a fair picture?

3. In defence of Victorian charges, there are three main arguments customarily put forward.

4. First it is said that the appropriate interstate comparison is the total cost of conveyancing, including estate agents' commission and government taxes and fees. This, it is said, is what the public is interested in. This was the approach adopted by the Dawson Committee in its comparison of conveyancing costs in Victoria and S.A. It underlies their conclusion (Interim Report, p.7) that

> the claim that conveyancing costs in South Australia are appreciably cheaper than in Victoria cannot be sustained.
>
> .....
>
> As we have said, the introduction of land brokers in Victoria was suggested to the Committee solely upon the basis of cheaper cost. Such a basis does not, in the view of the Committee, exist ...

We have carefully considered this argument but we cannot accept it. It is, in effect, to propose that an unnecessarily high charge by solicitors for their work would somehow be excused if offset by comparatively lower charges by real estate agents and state governments.

TABLE 1

CORE CONVEYANCING CHARGES IN VICTORIA, S.A. & W.A. 1980.

	10,000	20,000	40,000	60,000	80,000
	$	$	$	$	$
A. Victoria					
Vendor's solicitor	125	191	321	426	506
Purchaser's solicitor	187	287	485	638	757
	$312	$478	$806	$1064	$1263

Assumes vendor's and purchaser's solicitor act throughout.

B. South Australia					
Purchaser's land-broker	$ 95-135	105-149	124-176	143-203	162-230

Excludes preparation of contract and vendor's statement of particulars.

Assumes vendor does not use a landbroker.

C. Western Australia					
Vendor's settlement agent	60	69	88	106	125
Purchaser's settlement agent	90	104	132	159	187
	$150	$173	$220	$265	$312

Excludes preparation of contract.

Source: A & B - Dawson Committee Interim Report, Attachment 2.

C - Recommended Scale of the W.A. Settlement Agents Association.

4. Continued

It is true that in S.A , under the caveat vendor (orvendor warranty) system, with the vendor required to supply certain particulars at an early stage, the functions of the land broker are more limited than those of the Victorian solicitor; and it is the real estate agent in that state who prepares the one simple contract of sale on behalf of the vendor. But it is better to attempt to allow for this difference in function directly.

5. Second, it is said that the conveyancing task in Victoria is more complex than in S.A. and W.A. This is undoubtedly true; and the two interstate systems are outlined in Attachments 1 and 2. But as was argued in Section IV we think that the very complexity of Victorian practice is, to a degree, the product of the solicitors' monopoly. In any event, even if this argument were to be found unconvincing, it can certainly be said that a total reform of Victorian conveyancing - going to both institutions and techniques - promises cost savings at the interstate level.

6. Third, it is said that there is a somewhat different division of function between conveyancers and estate agents as between Victoria on the one hand and S.A. and W.A. on the other. This is undoubtedly the case, and some small adjustments to the figures already set down are in order. In both S.A. and W.A. it is normally the real estate agent who prepares the contract on behalf of the vendor. No separate fee is charged. But in S.A. when this function is separately performed by a land broker (as is sometimes the case) the standard charge is $70, and this seems the appropriate allowance to make - rather than the full estate agent's fee - particularly in light of the statutory prohibition upon estate agents (or "land agents" as they are called in S.A.) assuming the functions of land brokers. We do not, however, have a suitable figure for contract preparation to insert in the W.A. figures.

Finally it should be noted that, in S.A., more often than not the vendor dispenses with the services of a land broker. But when this is not the case the appropriate further charges can be added in.

Table 2 sets down the relevant supplementary charges, and for completeness presents the legal charges in respect of mortgages in each state.

TABLE 2

FURTHER CONVEYANCING CHARGES IN VICTORIA, S.A. & W.A, 1980.

	10,000 $	20,000 $	40,000 $	60,000 $	80,000 $
A. Victoria					
Mortgagee's solicitor	130	174	280	382	468
Mortgagor's Solicitor	25-29	30-80	35-127	35-176	40-216
B. South Australia					
Contract fee	70	70	70	70	70
Vendor's land-broker, if used	81-115	89-127	105-150	122-173	138-196
Mortgagee's land-broker	122	132	142	162	172
Mortgagor's land-broker	..	..	..	..	..
C. Western Australia					
Contract fee	?	?	?	?	?
Mortgagee's solicitor	21	42	84	126	168
Mortgagor's solicitor	11	21	42	63	84

All mortgage figures based on a mortgage of 70% of purchase price.

Source: Victoria and S.A. - Dawson Committee, Interim Report, Attachment 2

W.A. - Solicitors Remuneration Order, 1980.

TABLE 3

CONVEYANCING CHARGES IN VICTORIA, S.A. & W.A.

FOR A $40,000 HOUSE IN 1980

	VIC.	S.A.	W.A.
Vendor's solicitor	321		
Purchaser's solicitor	485		
	$806		
Mortgagee's solicitor *	280		
Mortgagor's solicitor	35-127		
	$1121-1213		
Purchaser's landbroker		124-176	
(Vendor's landbroker, if used)		(105-150)	
Contract fee		70	
		$194-244	
Mortgagee's landbroker *		142	
Mortgagor's solicitor		00	
		$336-386	
Vendor's settlement agent			88
Purchaser's settlement agent			132
Contract fee			?
			$220 plus
Mortgagee's solicitor *			84
Mortgagor's solicitor			42
			$346 plus

* In each case assumes a loan of 70% of purchase price.

Source: Derived from Tables 2 and 3.

7. If then we seek to compare charges for a transaction at the level of the average price for a house in Victoria of $40,000, Table 3 gives the relevant figures. It will be observed that our earlier generalization(p.13) is amply justified. To repeat: Even upon the most conservative approach, it is safe to generalize that conveyancing in Victoria (excluding government fees) costs the typical consumer more than double what it costs in S.A. and W.A.

IX. Improvements in Conveyancing Techniques

1. Undoubtedly there is much that can be done to improve conveyancing methods. And as we have earlier observed, simplification of conveyancing methods and freeing of the conveyancing market should go hand in hand.

2. We have found the discussion of techniques in the Second Report of the Dawson Committee very valuable. While we are critical of some of the conclusions reached, we find ourselves in substantial agreement with much of the discussion. We now make a number of comments and proposals stemming from the ground canvassed in the Second Report.

3. A caveat vendor system. We enthusiastically support the Dawson Committee's proposal that a caveat vendor system be introduced. This would require the vendor to warrant information concerning title, mortgages, charges, encumbrances, and restrictions upon use in advance of the signing of any contract or legally binding document. Where the sale is by a terms contract, the proposal would also require the vendor to reveal certain financial details to the prospective purchaser and would do much to remedy the problems associated with some vendor terms contracts.

4. Sale notes and a cooling-off period. We express our disappointment that the Dawson Committee is recommending the perpetuation of the Sale Note. Victoria is the only state to use a double-contract system. So many customers do not realize that the Sale Note is a legally binding contract. At the very least, we consider that the document should be headed "Contract of Sale".

4. Continued

But the Dawson Committee also recommends that purchasers (other than bodies corporate, estate agents, sub-agents, barristers and solicitors) be allowed a cooling-off period of three business days following the signing of a Sale Note. This would rememdy some of the problems, and Council welcomes this proposal. Since the essential elements of the contract are the matters the subject of the Sale Note, we consider it altogether appropriate that a person be permitted to seek legal, financial and other advice before being irrevocably committed. However we would prefer a more comprehensive proposal. We think it desirable that vendors, as well as purchasers, should be given the opportunity to seek advice and to remedy the effects of undue pressure. We also think it desirable that the protection should be available to all purchasers and vendors without exception - for reasons of fairness, convenience and administrative simplicity.

5. The one comprehensive standard-form contract?

If the proposals regarding caveat vendor and the cooling-off period (especially our wider version) were accepted, this would raise the possibility of using a comprehensive standard-form contract from the beginning, thus eliminating the Sale Note. Such a standard-form contract (or perhaps several versions to cover terms sales, cash sales, strata titles, etc) could be somewhat intimidating. But members comment that this very feature could be positively desirable - certainly the consumer would know he was signing a contract!

The Dawson Committee has recommended that a committee of the Law Institute review the two existing printed versions of contract of sale, with a view to standardizing these incorporating the proposals relating to the principle of caveat vendor. We would urge that the opportunity be taken to consider whether the one comprehensive standard-form contract (or variants thereof) could be satisfactorily devised.

6. Insurance and other protection for purchaser of a damaged or destroyed house.

There is a pressing need for enactment of the Committee's proposals to protect a purchaser of a damaged or destroyed house that is the subject of an uncompleted contract. We strongly support the Committee's proposal with respect to the treatment of the vendor's insurance cover and with respect to the purchaser's right to rescind the contract.

7. Solicitor acting for both parties

Council is strongly opposed to the practice of a solicitor acting for both parties in a conveyancing transaction. At the very least there should be a requirement similar to that governing settlement agents in W.A. that a solicitor may act for both parties only with their prior knowledge and consent. We also note the rulings of the Law Society of the A.C.T. which is generally opposed to this practice.

We support the conclusion of the Minority Report contained in the Second Report of the Dawson Committee which reads as follows:

> II. It is therefore recommended that the law be altered to prohibit a solicitor acting for both parties in a conveyancing transaction, except where:
>
> (a) the solicitor is in a country area (as distinct from provincial town); or
>
> (b) the transaction is -
>
> - between members of the same family (except in the case of divorce or similar proceedings), or
>
> - between members of a family and a private company controlled by members of that family, or
>
> - between two corporations.

In cases where a solicitor does act for both parties, in accordance with the above, the solicitor should be bound to advise the client in writing (in a form of words agreed to by the Law Institute) of the fact that he is acting for both parties and of the problems which may arise therefrom.

8. Modern techniques for the Titles Office

Council would like to express its support for the Committee's recommendation for the establishment of a consultative committee to represent the interests of users in relation to the proposals for the introduction of modern techniques into the Titles Office and the introduction of a land information system.

8. Continued

The introduction of modern techniques in the Titles Office will be very costly. We urge therefore that priorities be established. If to undertake complete modernization in the near future is impossibly expensive, this does not mean that no improvements can be effected. Nor does it mean that the other improvements in techniques discussed above should not be implemented.

X. Consumer Self-help

1. Finally we raise two matters not discussed by the Dawson Committee.

2. First, we think that nothing should be done which would prevent a consumer from using a conveyancing kit if he should so desire. In particular if such a consumer wishes to use a lawyer for contract and settlement, he should be able to consult a Legal Services Directory for the names of lawyers willing to do sessional work.

3. Second, there is a pressing and quite general need for consumer education; eg, consideration could be given to mounting a unit in the Adult Education Programme and also to including some elementary instruction on real property transactions in the school curriculum.

21 August 1981

ATTACHMENT I

Features of the South Australian System

1. Most land is on the Torrens System.

2. Conveyancing for reward can be done not only by qualified legal practitioners but also by licensed land brokers.

3. The use of land brokers in S.A. is long-standing, a practice over a hundred years old. It is commonly said to stem from the hostility of the legal profession to the introduction of the Torrens system in 1860. These days land brokers undertake some 75 - 80% of total conveyancing transactions.

4. There is a caveat vendor system under which the vendor is required by law to supply particulars of all mortgages, charges, prescribed encumbrances, and recent transactions involving transfer of title.

5. There is no sale note. The one simple contract of sale, together with the statement of required particulars, is normally prepared by a "land agent" (the real estate agent).

6. Subject to certain exceptions (sale by auction, certain classes of purchasers), there is a cooling-off period of two clear business days following the signing of the contract, during which the purchaser may rescind the contract.

7. More often than not, the land broker (or solicitor acting as broker) is employed only by the purchaser - not by the vendor. His work usually commences after the signing of the contract. He undertakes appropriate inquiries, and attends to the transfer and settlement.

Attachment I (Continued)

8. Both land brokers and land agents are required to be licensed; and they are normally required to operate independently.

9. There are educational qualifications, inter alia, for both land brokers and land agents. In each case an applicant must complete a prescribed three-year course of part-time study under the Department of Further Education (or have attained qualifications of equivalent standard).

10. Both brokers and agents are required to maintain audited trust accounts; and there is a system of controlled investments and payments to a fiduciary fund.

11. There is a prescribed fee scale for land brokers laid down by regulations under the Real Property Act. Solicitors are entitled to use a different scale but in practice most conform to the brokers' scale.

ATTACHMENT II

Features of the West Australian System

1. Most land is on the Torrens system.

2. Until very recently, ie the enactment of the Settlement Agents Act 1981, there have been few formal controls upon conveyancing work in W.A. In the order of 75% of W.A. settlements are currently effected by settlement agents, the remainder being effected by solicitors and banks.

3. While settlement agents have operated in W.A. for about 15 years, they burgeoned in the 1970's. Prior to 1970 much documentary work was undertaken within the Titles Office itself but in that year a reorganization of the Titles Office threw greater responsibility for settlement upon transactors and their agents. Coincidentally there was at this time a marked increase in the volume of transactions.

4. There is no sale note. The one simple contract of sale is prepared by the real estate agent on a standard Offer and Acceptance form.

5. There is no cooling-off period.

6. The settlement agent makes the title search, and attends to transfer and settlement.

7. Prior to the new legislation, the Settlement Agents Association would establish a "Recommended Maximum Cost Schedule" for settlement fees, a fee scale which was generally observed both by settlement agents and solicitors undertaking settlement work.

Attachment II (Continued)

8. The main provisions of the Settlement Agents Act 1981 are as follows:

* Apart from qualified solicitors and stock exchange members, all persons undertaking the business of a settlement agent are to be licensed.

* Requirements for a licence include both educational qualifications and practical experience.

* Settlement agents must carry professional indemnity and fidelity guarantee insurance, and operate audited trust accounts. There will also be a settlement agents fidelity guarantee fund administered by the Licensing Board.

* There will be a prescribed maximum fee scale established by the Board.

* A settlement agent may act for either the vendor or the purchaser but may not act for both except with their prior knowledge and consent.

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