

"Storecharter and Indigenous Consumer Protection Issues"

**Professor Allan Fels, Chairman Australian Competition and
Consumer Commission**

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Introduction

Thank you Commissioner Anderson for your introduction.

I would like to acknowledge the traditional owners of this land – the Arrente people – and Eli Rubuntja for the welcome that we have been given today.

And thank you also to the Papunya dancers for sharing their culture.

The Australian Competition and Consumer Commission (ACCC) is pleased to be co-sponsoring this conference with the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Australian Securities and Investments Commission (ASIC).

I am also very pleased to be able to take this opportunity to launch *Storecharter* – a service charter for stores serving remote and Indigenous communities. Before doing so, however, I would like to take a little time to comment on the role of the ACCC, the importance of consumer education, which is a particular focus of the conference, and our work specifically in relation to Indigenous consumers.

ACCC role

The ACCC's primary role is to promote compliance with the Commonwealth Trade Practices Act. This Act seeks to promote the welfare of Australians, including Indigenous Australians, through the promotion of competition, fair trading and consumer protection. The Act prohibits business practices that adversely affect competition and consumers. It provides important protection for consumers, for

example, against being misled or deceived by business or being treated in an unconscionable manner.

Many of you may recall the insurance and superannuation cases we were involved in some years ago in Queensland and the NT where company agents engaged in illegal selling practices to residents of Indigenous communities.¹ Our action resulted in significant refunds for the consumers concerned, the payment of substantial funds for consumer education, including funding for the consumer education officer of the Aboriginal Coordinating Council (ACC), and also for one community. It also led to significant amendments to general insurance legislation.

Competition is likely to be effective when consumers have ready access to a number of suppliers of goods and services from which to choose, and these suppliers do not collude. In remote areas, however, it is often the case that consumers do not have a choice of supplier. Where this is the case suppliers can exercise market power by charging excessive prices and/or by providing shoddy, inefficient service. They don't have to collude to do this.

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

Better approaches are to look for ways to introduce competition, promote transparency of business operations, for example by ensuring proper governance arrangements are in place for Indigenous-owned businesses, and by empowering consumers through the provision of information.

In over-sighting the pricing responses of business to the introduction of the New Tax System, the ACCC demonstrated the importance of consumer empowerment. The ACCC issued to all households in Australia a booklet showing expected maximum price changes as a result of the tax changes. This meant that consumers had the information

¹ Taking Advantage – Sale of life insurance to Aboriginal people in remote communities, ACCC, 1994

needed to assess whether the price movements that actually occurred at the time were in line with expectations. Businesses also had more pressure placed on them not to take advantage of the changes.

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

The ACCC is also not alone in the public enforcement of compliance with consumer protection laws. ASIC now has Commonwealth responsibility for consumer protection issues in relation to financial services, including credit; and the State/Territory consumer affairs agencies administer similar consumer protection legislation to that of the Trade Practices Act. Generally, the ACCC's role has been to deal with matters involving widespread or significant consumer detriment or where there is conduct occurring across jurisdictions. More localised issues have been within the domain of the State and Territory agencies.

Consumer education

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

Consumer education is necessary to ensure people have these buying skills and necessary information and awareness to avoid or deal with problems. It is a key to the effective operation of the Trade Practices Act and is recognised as a basic consumer right².

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

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

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

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

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

Consumer agencies and others need to recognise that these disadvantages exist and be prepared to address them in appropriate ways. We cannot just rely, for example, on indigenous consumer complaints to drive our actions but must adopt more direct ways of identifying the problems that exist. If we do not do this we will fail to achieve our basic objective of enhancing welfare for all Australians.

It is not possible for consumer agencies to address the underlying causes of Indigenous disadvantage in any substantial way. This requires fundamental changes to improve economic opportunities and to ensure recognition of the importance of Indigenous culture to the whole Australian community. But this is no excuse for not trying to do what we can. Consumer agencies have a responsibility to serve all consumers. It is not

³ Australia, Department of Industry Science and Tourism, *The Consumer Education Needs of Rural and Remote Australians*, p.15.

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

appropriate that this task be avoided and, in effect, left to the Indigenous agencies that are generally not funded to provide basic services.

An important weakness to date has been the lack of co-ordination and inter-change of ideas between consumer agencies in relation to the needs of indigenous consumers. Partly for this reason, most of our efforts have been piecemeal and relatively ineffective. Also these efforts have often not succeeded because they have not taken full account of Indigenous culture and have not closely involved Indigenous people. Of course, there are some notable exceptions to these generalisations that the conference will hear about and, hopefully, learn from⁵.

A key outcome from this conference must be much closer co-operation between Commonwealth and State consumer agencies and between these agencies and the Indigenous agencies. Co-operation is needed in the enforcement of consumer laws as well as consumer education.

ACCC work in relation to Indigenous communities

For its part the ACCC has over the last year or so taken a number of initiatives to enhance its effectiveness in these areas. We have:

- ◆ conducted a major information and awareness campaign for Indigenous people in relation to the pricing responses of businesses to the New Tax System changes;
- ◆ been actively investigating a number of alleged breaches of the Trade Practices Act impacting on Aboriginal communities;
- ◆ commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) of the Australia National University to undertake for us a major research project on the application of the Trade Practices Act to Indigenous issues;

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

- ◆ developed closer liaison with Indigenous organisations, in particular ATSIC and the ACC.

A formal Memorandum of Understanding between the ACCC and ATSIC will be signed today. The MOU provides a framework for co-operation between the agencies, including information sharing and complaint referral, liaison arrangements, and assistance with investigations, staff training, joint publications and education initiatives.

- ◆ visited numerous communities to ascertain at first hand the problems that exist;
- ◆ tried to improve Indigenous access to the ACCC by establishing an Indigenous hotline within our Information Centre, provided cross-cultural training for telephone operators and produced posters for display in communities with appropriate telephone contact numbers;
- ◆ started to develop a series of “Don’t get tricked ...” consumer education posters for Indigenous communities throughout Australia. The first in the series "Don't Get Tricked...Buying a Car" was developed following an educational seminar on Trade Practices issues with the Maningrida Aboriginal community in Arnhem Land. The poster was developed and designed by members of the Maningrida community, and coordinated by the Maningrida JET Centre in association with the ACCC; and
- ◆ undertaken the task of developing *Storecharter*.

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

Storecharter

I would now like to focus more particularly on the *Storecharter* initiative.

This is an example of what can be done when agencies work together to identify solutions to the problems which have been identified and where there is the determination to implement those solutions. I have the impression that many people have good ideas in the Indigenous affairs area but implementation of these ideas has often been much more difficult.

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

Storecharter is a voluntary charter. This means that stores can decide whether they wish to adopt it or not. If they do adopt it they will be required to indicate this to the ACCC and by displaying the *Storecharter* logo. The logo was drawn by Janet Whitton, an Indigenous artist from North-West Victoria.

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

- ◆ first, to show goodwill with its customers. It is our experience that the great majority of stores want to do the right thing by their customers. Research also shows that the vast majority of transactions do not cause unresolved problems for consumers⁶.
- ◆ second, stores will be encouraged to adopt the charter because of the widespread support it has obtained from all Commonwealth and State/Territory government consumer agencies, from statutory Indigenous agencies; from the peak consumer organisations in Australia, and crucially, from the peak business organisations (the Australian Retailers Association and the National Farmers Federation) representing private store operators, including pastoralists. Many other organisations, including those with a strong involvement in health matters, have also supported *Storecharter*.

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

- ◆ thirdly, stores that do not adopt the charter will be clearly visible to their customers who may be encouraged to try other options where these are available. These stores will also be highlighted to regulators and others and can expect to be subject to closer scrutiny; and
- ◆ fourthly, if the voluntary charter is not successful, and the problems it addresses warrant it, governments may be encouraged to adopt tougher regulatory options, such as a mandatory code. I understand, in fact, that there is already a strong desire by some Indigenous organisations to make the charter mandatory where they have relevant powers, for example in relation to land ownership or control over funding to stores.

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

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

- the lack of price marking of goods.
- stores closing without warning, sometimes for several days. Often these stores were the sole source of supplies for communities and their unexpected temporary closure caused hardship.
- food being sold past their use-by dates
- stores acting as unofficial financial institutions through the use of book-up and holding customers' bank key-cards/passbooks and PIN numbers,

- an apparent lack of awareness by store operators and staff of basic laws such as the Trade Practices Act and State/Territory Fair Trading Acts; and
- a lack of understanding or recognition of cultural practices of indigenous consumers.

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

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

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

Section 1, the introduction, highlights the purposes of the charter which are to help store operators and staff comply with relevant laws; encourage higher trading standards; and help to further develop understanding and respect between store owners, operators and staff and Indigenous people. It also highlights the important role stores can play in consumer education and the difficult circumstances within which stores sometimes operate, including difficulties created by customers. This is part of the balanced perspective that some business associations, in particular, considered was necessary for the charter to have. The introduction also makes it clear that whilst the charter is mainly intended for stores serving Indigenous communities in rural and remote areas across Australia, it is not necessarily restricted in coverage. It also applies to stores irrespective of their ownership.

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

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

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

Section 5 covers the sensitive area of pricing. The fact that prices in remote stores are generally significantly higher than in city stores does not necessarily mean that they are unreasonably high. The charter recognises this but at the same time urges stores to be more open in explaining their pricing, to clearly mark prices on items and shelves, to provide receipts and to ensure that any payments made in kind, for example for art works, are made at fair market rates.

The topical issue of store credit or book-up is covered in **section 6**. Book-up is very common and has a long history in some areas. There are also conflicting views about whether it is a good thing or a bad thing. I see that there is a session in the conference

tomorrow which is to discuss book-up in more detail with the assistance of the paper produced for ASIC.⁷

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

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

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

Storecharter requires stores to:

- ◆ provide receipts whenever book-up is used;
- ◆ maintain clear records of book-up which can be inspected by the customer, consumer protection or law enforcement official;

⁷ Gordon Renouf, Book-up: Some Consumer Problems, Report prepared for the Australian Securities and Investments Commission, March 2002.

- ◆ not allow third parties to use a customer's book-up account unless the store has been provided with specific authorisation from the customer to allow it;
- ◆ make sure that the customer understands the terms and conditions relating to book-up before they engage in book-up. These terms and conditions include any fees of charges for using book-up or even a limit to the amount that can be booked up; and
- ◆ return a customer's key card if and when the customer requests it

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

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

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

The importance of staff awareness and training in relation to the requirements of *Storecharter* is highlighted in **section 10**.

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

Section 12 of the charter indicates sources of further assistance for store owners/operators and **section 13** provides contact points for feedback on *Storecharter* to be sent to the ACCC. Whilst at this stage no specific formal process for review of the operation or monitoring of *Storecharter* has been specified, it is envisaged that over time the charter may be amended as appropriate in light of feedback received. We will be discussing further arrangements for monitoring and reviewing the charter with interested parties in the future.

The comments on drafts of the *Storecharter* received by the ACCC give us optimism that it will make a difference. Indeed, we believe it already has already done so by highlighting the issues it raises and also our interest in seeing improved standards. Many people have said that the charter just represents good practice that is already followed by their store. Whilst this may often be true, for example the Arnhemland Progress Association stores appear to be well managed in a culturally sensitive manner without using book-up, it is clear that not all stores adhere to the *Storecharter* principles. Some store operators suggested that something like the charter had been long overdue. Others recognised that practices would need to change to comply with the charter. This may involve some small cost, for example in ensuring prices are displayed and receipts are issued. It may also provide benefits. One lady, whose

parents had been pastoralists for 70 years, said that putting prices on the shelf actually helped sales.

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

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

In the meantime it gives me great pleasure formally to launch *Storecharter*. It will be a few weeks before the charter and other relevant materials are received by stores so I would urge you to be patient in this regard. After then, however, it would be helpful for you to draw the attention of store operators to the charter and to encourage, in a positive way, them to adopt it.

I trust the conference will be successful in helping us all to move forward in this challenging area.

Thank you for your attention.