



**FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE**

**Inquiry into Marketplace Discrimination Against Women Consumers**

**November 2001**

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Ordered to be Printed

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National Library of Australia

Family and Community Development Committee (2001)

Inquiry into Marketplace Discrimination Against Women Consumers

ISBN 0-7311-8185-9

Cover Design:  
ColorBox Design  
252 Church Street  
RICHMOND VIC 3121

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## Referral of Matter to the Family and Community Development Committee

### **Order in Council**

The Governor in Council, pursuant to section 4F of the *Parliamentary Committees Act 1968*, refers the following terms of reference to the Family and Community Development Committee of Parliament for inquiry, consideration and report to the Parliament on marketplace discrimination against women consumers and its effects on the economic wellbeing of women. In particular, the Committee is requested to:

1. identify and examine the incidence and impact of price discrimination (where the price of a good or service is determined by the gender of the purchaser, not the quality of the good or service) on women consumers in the purchase of goods and services;
2. identify and examine the incidence and impact of discrimination based on stereotyping of women consumers as lacking technical knowledge, lacking financial independence and unable to make 'big purchase decisions' in the purchase of goods and services and enquiries and complaints related thereto;
3. consider whether existing anti-discrimination legislation (both Victorian and Commonwealth) is adequate to address marketplace discrimination against women; and
4. consider whether intervention is necessary to reduce the incidence of discrimination against women consumers and, if so, what form that intervention should take and whether it would be best undertaken by government agencies, industry bodies or a combination of the two. In particular consider non-legislative options such as the development of codes of conduct, accreditation schemes, education and training programs and the development of information products.

Without limiting the Committee to examining only specified industries, the Committee should, in addressing the terms of reference, ensure that it considers the following industries: Dry cleaning, motor vehicle repair, clothing, domestic building; and banking and credit, including access to credit by small business women.

The Committee is required to report to the Parliament by 31 May 2001.

Dated: 18 April 2000

Responsible Minister:  
Marsha Thomson  
Minister for Consumer Affairs

## ***Parliamentary Committees Act 1968***

S.4ED. The Family and Community Development Committee is to inquire into, consider and report to the Parliament on—

- (aa) any proposal, matter or thing concerned with the family or the welfare of the family;
- (a) any proposal, matter or thing concerned with community development or the welfare of the community;
- (b) the role of the Government in community development and welfare including the welfare of the family—

if the Committee is required or permitted so to do by or under this Act.

## CHAIRMAN'S FOREWORD

I have great pleasure in presenting the Family and Community Development Committee's *Final Report* on its Inquiry into Marketplace Discrimination against Women Consumers in Victoria.

In receiving this Inquiry from the Minister for Consumer Affairs, the Committee was asked to examine a number of issues of potential community concern, given that discriminatory market practices, where they occur, can have direct impact on the economic wellbeing of women.

This Inquiry required the Committee to examine a wide range of issues within a nominated group of industries, especially marketplace discrimination which can take a number of forms, including price discrimination, restricted access to goods or services or inferior service when purchasing goods and services. Price discrimination, which may occur legitimately in certain market conditions, becomes a problem when it is based on the attributes or assumed attributes of women consumers and causes disadvantage to women. The Committee was concerned to establish whether, in cases of restricted access to goods or services, women may find themselves unable to gain access despite being in the same, or materially similar, circumstances to men. Inferior service includes sales tactics which presume that women are not interested in the technical performance of goods such as cars or electrical goods. The Terms of Reference for the Inquiry directed the Committee to examine a number of industries and in some cases this examination was extended.

In inquiring into marketplace gender discrimination the Committee had the task of distinguishing between consumer and discrimination issues. Female consumers recognise sex discrimination but in the context of a competitive market, they may prefer to seek out the competition as a 'remedy' to such discrimination. However, such consumer-led solutions may not be possible or effective in all cases: non-discriminatory options may not be available; the costs involved in transferring to a non-discriminatory business may be prohibitive; and lack of competition may mean that transferring business is not an option, especially in rural Victoria.

Whilst the Committee has received a small number of detailed and substantial submissions to this Inquiry there has been a lack of both qualitative and quantitative evidence on women's experiences in the marketplace. Industry complaints bodies rarely separate complainants by gender or by the nature of complaint, a situation made more difficult by the large number of complaints which do not proceed beyond initial stages. Government and statutory bodies often do not analyse consumer inquiries to identify traits which are gender specific or related to certain industries. This lack of evidence has contributed to the Committee's difficulty in establishing the need for dramatic changes or the need for major legislative reform. The Committee recognises that issues surrounding gender based marketplace discrimination are often discussed in the media and the community at large and would like its *Report* to the Victorian Parliament to emphasise a range of practical and positive outcomes, such as the need for improved collection of data to enable more effective review of the issue in the future.

In closing the Committee would like to thank those who participated in this Inquiry either through appearance at Public Hearings or preparing written submissions.

Hong Lim MLA

Chairman

## RECOMMENDATIONS

### Chapter 1:–Introduction

**Recommendation 1:**–*That the Equal Opportunity Commission direct adequate resources to allow education and enforcement of the prohibitions against discrimination in the provision of goods and services contained in the Equal Opportunity Act.*

**Recommendation 2:**–*That the Human Rights and Equal Opportunity Commission direct adequate resources to allow education and enforcement of the prohibitions against discrimination in the provision of goods and services contained in the Sexual Discrimination Act.*

**Recommendation 3:**–*That Consumer and Business Affairs Victoria work with the Equal Opportunity Commission Victoria and other appropriate bodies to develop protocols for referral when marketplace discrimination against women is identified. This, in combination with improved identification of referral agencies, will better capture incidences of discrimination in women’s experience as consumers.*

**Recommendation 4:**–*That Consumer and Business Affairs Victoria work with the Equal Opportunity Commission to design and produce educational materials that would address discrimination in trader/consumer relationships, including gender based discrimination.*

**Recommendation 5:**–*That the Minister for Fair Trading consider amending the Fair Trading Act 1999 (Vic) to include a specific prohibition against marketplace discrimination on the basis of gender.*

### **Chapter 3:–Price Discrimination**

**Recommendation 6:**–*That the Hairdressing and Beauty Industry Association, in consultation with consumer groups, hairdressing salons, barbers and Consumer and Business Affairs Victoria (CBAV), finalise and adopt a voluntary code of practice, which CBAV is able to endorse, by the 30 June 2002.*

**Recommendation 7:**–*That Consumer and Business Affairs Victoria ensure that this code of practice is distributed throughout the industry.*

**Recommendation 8:**–*That the Hairdressing and Beauty Industry Association in consultation with the hairdressing and beauty industry, consumer groups and Consumer and Business Affairs Victoria establish a complaints system which is widely advertised within the industry.*

**Recommendation 9:**–*That Consumer and Business Affairs Victoria and the Hairdressing and Beauty Industry Association ensure that the industry is fully informed of the issues surrounding price discrimination and their responsibilities under the Equal Opportunity Act.*

**Recommendation 10:**–*That Consumer and Business Affairs Victoria (CBAV) and the Drycleaning Institute of Australia, in consultation with consumer groups and the drycleaning industry, finalise and adopt a voluntary code of practice which CBAV is able to endorse, by the 30 June 2002.*

**Recommendation 11:** –*That Consumer and Business Affairs Victoria ensure that this code of practice is distributed throughout the industry.*

**Recommendation 12:** –That the Drycleaning Institute of Australia in consultation with the drycleaning industry, consumer groups and Consumer and Business Affairs Victoria, establish a complaints system which is widely advertised within the industry.

**Recommendation 13:**–That the Drycleaning Institute of Australia and Consumer and Business Affairs Victoria ensure that members of the industry are fully informed of the issues surrounding price discrimination and their responsibilities under the Equal Opportunity Act.

#### **Chapter 4:– Gender Stereotyping and Other Issues**

**Recommendation 14:**–That the State Government encourage banks to list the telephone numbers of their complaints offices in telephone directories and look to the creation of websites where complaints can be directed.

**Recommendation 15:**–That the State Government encourage the Australian Bankers’ Association to adopt Recommendation 8 from the Review of the Code of Banking Practice Final Report and ensure that all relevant staff and agents have an adequate knowledge of the provisions of the Code. In addition all banks should be encouraged to inform all relevant employees on their responsibilities under the Equal Opportunity Act.

**Recommendation 16:**–That the Victorian Automotive Chamber of Commerce in collaboration with consumer groups, the industry as a whole and Consumer and Business Affairs Victoria, continue to address issues of gender stereotyping and discrimination in the marketplace.



# CHAPTER 1

## INTRODUCTION

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- **Structure of the Report**
  - **Legislative context**
  - **Women in the marketplace**
  - **Marketplace discrimination**
  - **Sex discrimination, consumer protection and marketplace discrimination**
- 

### **Background to the Report**

1.1 The Inquiry into Marketplace Discrimination against Women seeks to understand the existence and extent of economic discrimination against women as consumers and the impact that this has on their economic wellbeing. In accordance with the Terms of Reference, this Report examines dry cleaning, motor vehicle repair, clothing, and banking and credit. However, during the course of the Inquiry, the Committee decided to further investigate hairdressing, motor vehicle sales, superannuation and annuities. The Committee's findings in these areas are included in this Report. The Committee was disappointed by the lack of relevant submissions on the domestic building industry. Even after the Committee had repeated the Inquiry advertisement the Committee was provided with insufficient evidence to consider this industry in detail. However, some of the broader recommendations in this report can be applied in this industry, so that appropriate bodies can effectively gather and monitor complaint data in this sector.

### **Structure of the Report**

1.2 The remainder of this chapter reviews the anti-discrimination and consumer protection laws currently operating at Commonwealth and State levels as they affect the role of women in the marketplace, what is meant by marketplace discrimination and a brief discussion of issues involved in sex discrimination, consumer protection and marketplace discrimination.

1.3 The Report is then divided into a further three chapters:

- Traditional Pricing;
- Gender Stereotypes; and

- Solutions to Marketplace Discrimination.

1.4 Traditional Pricing discusses price discrimination and how it may affect women consumers, focussing on: hair dressing; dry cleaning; clothing and personal care products; and annuities.

1.5 Gender Stereotypes examines how stereotypes about women as consumers may affect their ability to exercise financial autonomy and to make ‘big purchase’ decisions without hindrance. It addresses access to credit (personal and business); superannuation; financial service; and motor vehicle sales and repairs.

1.6 In the final chapter, Solutions to Marketplace Discrimination, the Report addresses the question of whether further action is required to address marketplace discrimination against women consumers and, if so, what form that may take. This chapter encompasses: the effectiveness of anti-discrimination legislation; codes of practice and industry self-regulation; State and Commonwealth legislation; and the place of education, training and information.

## **Legislative context**

### ***Anti-discrimination laws***

1.7 There are both Commonwealth (Sex Discrimination Act 1984) and Victorian laws (Equal Opportunity Act 1995) which deal with sex discrimination in all areas of life. While the Commonwealth legislation concerns sex discrimination only, the Victorian legislation covers other areas of. Both of these Acts aim to eliminate, as far as possible, discrimination and disadvantage on the grounds of sex.

1.8 The Equal Opportunity Act 1995 (Vic) makes it unlawful to discriminate because of certain attributes in a wide range of activities. An attribute is a characteristic that can identify a person for example, sex, race, marital status, physical features etc. The objectives of the Act are:

- to promote recognition and acceptance of everyone's right to equality of opportunity;
- to eliminate, as far as possible, discrimination against people by prohibiting discrimination on the basis of various attributes;
- to eliminate, as far as possible, sexual harassment;

- to provide redress for people who have been discriminated against or sexually harassed.

1.9 The activities listed in the legislation are:

- Employment and employment-related areas;<sup>1</sup>
- Education;<sup>2</sup>
- Provision of goods and services and disposal of land;<sup>3</sup>
- Accommodation;<sup>4</sup>
- Clubs and club members;<sup>5</sup>
- Sport;<sup>6</sup> and
- Local government.<sup>7</sup>

1.10 Under the Act, it is unlawful to discriminate against someone or treat them unfairly on the basis of sex in the provision of goods and services.

1.11 Discriminating against someone means acting on assumptions about a person with a certain attribute to the disadvantage of that person. For example, assuming that all women do not have any technical knowledge about motor vehicles and then discriminating against an individual woman by charging her higher prices for repair work or not performing work properly, is an act of sex discrimination on the basis "of a characteristic that is generally imputed to a person with that attribute".<sup>8</sup>

1.12 Discrimination can be direct or indirect. The Equal Opportunity Commission of Victoria states that direct discrimination on the basis of sex is:

"treating a person of any sex less favourably than a person who is of a different sex, in the same or similar circumstances."<sup>9</sup>

1.13 Indirect discrimination on the basis of sex occurs when:

"a requirement, condition or practice which does not appear to be unfair, in fact does discriminate against people of a particular sex."<sup>10</sup>

1.14 When providing goods and services, it is unlawful to discriminate by doing any of the following things:

- refusing to provide goods and services;
- imposing discriminatory terms and conditions; or

- subjecting that person to any detriment concerning the supply of goods or services.

1.15 Under the terms of the legislation, services includes the following:

- access to and use of any place that members of the public are permitted to enter;
- banking services, the provision of loans or finance, financial accommodation, credit guarantees and insurance;
- provision of entertainment, recreation or refreshment;
- services connected with transportation or travel;
- services of any profession, trade or business, including those of an employment agent;
- services provided by a government department, public authority, State owned enterprise or municipal council.

1.16 The legislation does not consider education or training in an educational institution as a service.

***Recommendation 1:—That the Equal Opportunity Commission direct adequate resources to allow education and enforcement of the prohibitions against discrimination in the provision of goods and services contained in the Equal Opportunity Act.***

1.17 It is possible for providers of goods and services to discriminate against a consumer for some specific reasons. Insurance and credit providers can discriminate if there is an actuarial or statistical basis for their decision or there are other 'reasonable' data and factors. Further exceptions are available when the supervision of children is involved and if there is 'special manner' of providing a service. The primary test for an act of indirect discrimination is whether the action was reasonable given the circumstances of the time.<sup>11</sup>

1.18 In essence, discrimination occurs when the rights of an individual have been infringed because an action is based on assumptions about behaviour or characteristics ascribed to a class of people. Those assumptions may simply be incorrect or they may only apply to some members of that class of people. A woman is discriminated against when assumptions or beliefs about her as a woman do not apply to her as an individual and these subsequently cause her disadvantage, whether it be economic or otherwise.

***The relationship between Commonwealth and State anti-discrimination laws***

1.19 In the area of anti-discrimination, both the Commonwealth and the State of Victoria have legislated to make discrimination unlawful. Normally this would mean that the State law is invalid. However, the Commonwealth legislation has specifically allowed States and Territories to frame their own anti-discrimination laws, according to their own preferences. Both Commonwealth and State and Territory laws operate at the same time.<sup>12</sup>

1.20 A complaint can only be pursued within one jurisdiction: a person who has pursued a complaint in one jurisdiction (eg. State) cannot pursue the same complaint in the other jurisdiction (eg. Commonwealth). In the same manner, a person cannot be punished more than once for the same offence.

1.21 Though Commonwealth and State and Territory anti-discrimination laws can operate at the same time, the possibility remains that a State or Territory's anti-discrimination legislation could conflict with Commonwealth laws in other areas, such as industrial relations.<sup>13</sup>

***Recommendation 2:—That the Human Rights and Equal Opportunity Commission direct adequate resources to allow education and enforcement of the prohibitions against discrimination in the provision of goods and services contained in the Sexual Discrimination Act.***

***The intent and scope of consumer protection legislation***

1.22 Consumer protection laws may also have a role to play in preventing marketplace discrimination against women. The two relevant pieces of legislation concerning consumer protection are the Trade Practices Act 1974 (Cth) and the Fair Trading Act 1999 (Vic). The main purposes of these Acts are to prohibit unfair trading. Under the Acts, "unfair trading" refers to misleading or deceptive conduct; conduct which is likely to mislead or deceive; and false or misleading representation as to the nature, quality or characteristics of the goods. Furthermore, both Acts prohibit "unconscionable conduct" in the sale or supply of goods and services to consumers. Generally, both of these Acts consider a consumer to be someone who has purchased goods or services up to the value of \$40,000, or for the purposes of personal, domestic or household use and where those goods were not for re-sale.<sup>14</sup>

1.23 Both Acts have similar understandings of misleading, deceptive, and falsely representative conduct. Under the Acts, examples of such prohibited conduct could include:

- falsely representing when supplying or promoting goods and services;
- misleading conduct about the nature, suitability or the quality of any goods;
- accepting payment for goods or services where there is no intention to supply them;
- offering of gifts, prizes or other free items when supplying goods or services with the intention of not providing them or not providing them as offered.<sup>15</sup>

1.24 In relation to marketplace discrimination against women, it is the understanding of what constitutes unconscionable conduct that is of the most interest. Of the types of conduct prohibited by fair trading legislation, unconscionable conduct is the one that may offer any redress to women consumers.

1.25 In deciding whether or not there has been unconscionable conduct, a court or tribunal would consider the following factors:

- the relative strengths of the bargaining positions of the supplier and the purchaser;  
and
- whether, as a result of conduct engaged in by the supplier, the purchaser was required to comply with unreasonable conditions; and
- whether the purchaser was able to understand any documents relating to the supply or possible supply of the goods or services (perhaps the document was too technical and difficult to understand or it was not in a language easily understood by the purchaser);  
and
- whether any undue influence or any unfair tactics were used against the purchaser;  
and
- whether the same goods or services may have been obtained at a more favourable price and under better conditions.

1.26 It appears that most legal practitioners do not consider the misleading or deceptive conduct clauses, or the false representation clause as creating an avenue for redress in the case of marketplace sex discrimination. Unconscionable conduct may, in theory, offer such an avenue but the Committee has not received any evidence to suggest that instances of marketplace discrimination against women consumers would be handled in this way.

**Women in the marketplace**

1.27 Discriminatory market practices, where they occur, may have a direct impact on the economic wellbeing of women – whether through higher prices or inferior quality goods and service (with the effect occurring over an entire lifetime); by curtailing their entrepreneurial potential due to restrictive access to credit; or by restricting their ability to exercise full financial autonomy. Such practices and their effects will be explored in the following chapters.

1.28 In 1996/97, women overall (incorporating full-time and part-time earnings) earned nearly 84% of the male full-time adult ordinary time earnings. The following table demonstrates that in no age group did women's mean gross weekly income equal or surpass men's mean gross weekly income.

**Table 1.1: Individual Income for Women and Men, 1996/97<sup>16</sup>**

Age Group	Women	Men
15-24	\$228	\$248
25-34	\$368	\$588
35-44	\$375	\$676
45-54	\$361	\$666
55-64	\$222	\$435
65 and over	\$221	\$278

1.29 Where women face marketplace discrimination, it will occur while a woman earns less over a working lifetime than a man will.

**Marketplace discrimination**

1.30 Marketplace discrimination by the providers of goods and services takes a number of forms. These include:

- price discrimination;
- restricted access to goods or services; or
- inferior service when purchasing goods and services.

**Price discrimination**

1.31 In the consumer market, the price of goods and services is usually determined by a range of factors including costs of production, the maximum price consumer would be prepared to pay and the minimum price the seller would be prepared to accept. There are

times when other factors are included in the price equation and result in price discrimination.<sup>17</sup>

1.32 Price discrimination is charging different buyers (consumers) the same price for the same good or service. Examples of price discrimination include movie ticket prices, airplane ticket prices, assorted child or senior citizen discounts, bulk purchases, early-bird and pre-paid discounts. The latter examples, where prices are usually lower than the standard market price, reflect consideration of the consumer's ability to pay – children rarely have their own income and senior citizens usually have lower incomes due to retirement from the workforce. Price discrimination in these cases works to both the supplier's and consumer's interest and is not considered illegal.

1.33 Price discrimination becomes a problem when it is based on the attributes (or assumed attributes) of a particular group of consumers and has the effect of disadvantaging that group of consumers. This disadvantage can be seen through higher prices for goods and services of a similar quality or similar prices for inferior goods and services. This type of price discrimination, when experienced by women as consumers, is sex discrimination.

***Traditional pricing (“Gender-based Pricing”)***

1.34 This phrase is used to indicate pricing which reflects the gender of the consumer rather than the actual cost of the good or service itself.<sup>18</sup> It is argued that an example of this type of price discrimination is haircuts. It is argued that it is the practice of many Australian hairdressers to charge women more for a haircut than they charge men for the same service.<sup>19</sup> In these cases, the assumption is that women want more elaborate cuts and styles whereas men want a simple, no frills cut.

1.35 It is argued that other examples of traditional pricing may include dry cleaning, clothing and personal care items.

***Pricing which assumes, and takes advantage of, vulnerability or ignorance based on gender***

1.36 It is argued that motor vehicle repair and sales may be an area where price discrimination exists because women may be perceived as knowing far less about motor vehicles than men, and are consequently taken advantage of in the form of higher prices (not getting as good a deal as possible in the saleyard), or standard prices for substandard work.<sup>20</sup>

***Restricted access***

1.37 It is argued that in this type of marketplace discrimination, women find themselves unable to gain access to goods or services on the same basis as men, despite being in the same, or materially similar, circumstances to men. In evidence before the Committee, an example may be access to credit, where women are denied credit or face more burdensome conditions, because lenders apply assumptions about women and money which are sexist and are not true in the circumstances of the credit applicant.

1.38 Another issue may be restricted access to the benefits of superannuation, which best operates as a source of post-retirement income if the recipient has an unbroken full-time work record. This is not a work pattern which fits the experiences of most working women who combine family responsibilities with work. Chapter 4 deals with this in greater detail.

1.39 A view was advanced that a similar situation may arise in the case of annuities where actuarial predictions about the life expectancy of men and women may mean that women do not receive the full benefit of the amount invested in their annuity.<sup>21</sup> Due to a lack of relevant evidence and submissions, the Committee was unable to give informed consideration to this issue.

***Inferior service when purchasing goods and services***

1.40 The Committee understands that inferior service may include sales pitches that are sexist and patronising. This may be considered a detriment in the provision of goods and services, and it is also unlawful to sexually harass someone when providing goods or services.<sup>22</sup>

1.41 The Committee wanted to establish whether inferior service might be found in the sales of technical or electrical goods or motor vehicles, where the salesperson presumes that female customers are only interested in the aesthetics of a product rather than its performance. These assumptions may limit the service offered and the product gained.

**Sex discrimination, consumer protection and marketplace discrimination**

1.42 Marketplace sex discrimination is sometimes obscured by the entwining of consumer and discrimination issues. This seems to affect how the discrimination is perceived and the options which are likely to be pursued. Female consumers recognise sex discrimination but

in the context of a competitive open market they, like male consumers, may prefer to seek out the competition as a 'remedy' to such discrimination. This may be an appropriate sanction for non-competitive business behaviour and a quick, efficient remedy for the individual consumer, but it is not necessarily the best remedy for female consumers as a group (ie. discriminatory practices persist and affect women who, for a number of reasons, do not or cannot seek a competitive alternative).

1.43 Solving marketplace discrimination at the level of the individual female consumer is possible or effective in most cases. Non-discriminatory options may not be available to the female consumer if the industry as a whole practices discriminatory behaviour.

1.44 Transferring to a non-discriminating business may not be possible if the associated costs are prohibitive: transport (if the distance is greater), time (in seeking out such a business), or buying a product or service which does not entirely meet all of the consumer's requirements. This last 'cost' is particularly relevant in the area of personal care and grooming, where consumer preferences can be very specific.

1.45 There may also be a lack of competition in some circumstances. Accessing another car dealership for more professional service might be an efficient individual remedy but this solution may only be available where there is marketplace competition such as metropolitan areas; areas where there are geographic concentration of dealerships. Rural, regional or otherwise isolated consumers may not always have the choice and be in a position to take their custom elsewhere.

***Recommendation 3:—That Consumer and Business Affairs Victoria work with the Equal Opportunity Commission Victoria and other appropriate bodies to develop protocols for referral when marketplace discrimination against women is identified. This, in combination with improved identification of referral agencies, will better capture incidences of discrimination in women's experience as consumers.***

***Recommendation 4:—That Consumer and Business Affairs Victoria work with the Equal Opportunity Commission to design and produce materials that would address discrimination in trader/consumer relationships, including gender based discrimination.***

***Recommendation 5:—That the Minister for Fair Trading consider amending the Fair Trading Act 1999 (Vic) to include a specific prohibition against marketplace discrimination on the basis of gender***

## Endnotes

- <sup>1</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Divisions 1 & 2.
- <sup>2</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Division 3.
- <sup>3</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Division 4.
- <sup>4</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Division 5.
- <sup>5</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Division 6.
- <sup>6</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Division 7.
- <sup>7</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 3, Division 8.
- <sup>8</sup> 1995, *Equal Opportunity Act*, Parliament of Victoria. Part 2, Division 7.
- <sup>9</sup> Equal Opportunity Commission of Victoria, *Sex Discrimination*, Rights Brochure, 2000.
- <sup>10</sup> Equal Opportunity Commission of Victoria, *Sex Discrimination*, Rights Brochure, 2000. Extracts from the *Sex Discrimination Act 1984* (Cth) and *Equal Opportunity Act 1995* (Vic) which contain the legal definitions of discrimination are contained in the Appendix.
- <sup>11</sup> Lowe, C. (2000), Full Committee Meeting No. 26/00. Parliament of Victoria, Melbourne, Family & Community Development Committee.: 6
- <sup>12</sup> 1984, *Sex Discrimination Act*, Section 10.
- <sup>13</sup> Butterworths, *Australian Legal Encyclopaedia*, on-line at <http://beta.butterworths.com.au/www/lpext.dll?f=templates&fn=main-j.htm&2.0>. Access date: 21 August 2001.
- <sup>14</sup> See the Appendix for a more detailed definitions contained in 1974, *Trade Practices Act*,
- <sup>15</sup> 1974, *Trade Practices Act*, Commonwealth of Australia, 1999, *Fair Trading Act*, Parliament of Victoria.
- <sup>16</sup> Office of the Status of Women (1999), *Women in Australia 1999*. Canberra, Australian Government Publishing Service:47-9. "Income" includes wage or salary, own business or partnership, Government pensions/allowances, or superannuation/annuity.
- <sup>17</sup> Black, J. (1997), *Dictionary of Economics*, London, Oxford.
- <sup>18</sup> Foster, A. (1997), *Do Women Pay More?* Melbourne, Consumer Law Centre Victoria:17
- <sup>19</sup> *Ibid.*: 17-18
- <sup>20</sup> Foster, A. (1997), *Do Women Pay More?*, Melbourne, Consumer Law Centre Victoria, Balogh, S. (2001), "Women Exhausted with Motor Trade Bias", *The Australian*, 17 January 2001, Collier, K. (2001), "Car Sharks a Turn-Off", *Herald Sun*, 16 January 2001, Consumer and Business Affairs Victoria, *Submission*, March 26 2001.
- <sup>21</sup> Moultrie, T. A. and R. G. Thomas *The Right to Underwrite? An Actuarial Perspective with a Difference*, Institute of Mathematics & Statistics, University of Kent at Canterbury, Canterbury; Tickle, L. *Sex Discrimination and Underlying Mortality Differentials*, Macquarie University, Sydney.
- <sup>22</sup> Refer to the Appendix for the provisions of the *Equal Opportunity Act 1995* (Vic) relating to sexual harassment and goods and services.

## **CHAPTER 2**

# **MEASURES TO ADDRESS MARKETPLACE DISCRIMINATION**

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- **Introduction**
  - **Regulatory Options**
  - **Statutory Underpinning of Codes of Practice**
  - **Voluntary Codes of Practice**
  - **Mandatory codes**
  - **Legislation**
  - **Alternatives to Regulation**
  - **Education**
  - **Conclusion**
- 

### **Introduction**

2.1 This Chapter discusses options that could be considered to reduce or eliminate marketplace discrimination against women consumers. It firstly considers various forms of market regulation. Secondly, it considers types of industry regulation and the benefits and disadvantages associated with each type. Finally, it considers the effectiveness of non-regulatory options including legislation and consumer and industry education.

### **Regulatory Options**

#### ***Forms of Regulation***

2.2 Regulatory intervention in the marketplace may occur for a range of reasons including a lack of information needed by consumers to make informed decisions, unacceptably high transaction costs, or where the price of the good does not reflect the actual cost of the good to society. Governments may also choose regulatory intervention to achieve particular community outcomes, such as law and order and public health and safety. Industry regulation, which is intended to reduce or eliminate the incidence of marketplace discrimination by providers of goods and services against women consumers, is an example of intervention intended to achieve a community benefit.

2.3 There are number of forms which regulation can take but in general, these can be categorised as:

- self-regulation;

- co-regulation; and
- government regulation.

### ***Self-regulation***

2.4 Self-regulation can be described has been described by Consumer and Business Affairs Victoria as ‘any regulatory regime or set of rules that has been developed, funded and enforced by industry.’<sup>1</sup> There are a range of self-regulatory options available to industry including service charters, internal complaints handling departments and procedures, accreditation schemes and the development of standards. Generally, industries have regulated their own activities through the formation of an industry or trade association and the adoption of a code of practice.

### ***Co-regulation***

2.5 Co-regulation usually occurs where industry develops and administers a code and government provides the ability to enforce the code by giving it legislative backing. Co-regulatory mechanisms can include legislation which:

- delegates power to industry to regulate and enforce codes;
- enforces undertakings to comply with a code;
- prescribes a code as a regulation but the code only applies to those who subscribe to it (prescribed voluntary codes);
- requires industry to have a code but has no provision for government to impose a code in its absence;
- requires industry to have a code and in its absence government will impose a code; or
- prescribes a code as a regulation to apply to all industry members (prescribed mandatory code).<sup>2</sup>

2.6 Prescribed mandatory codes are currently provided for in the *Fair Trading Act 1999*, administered by Consumer and Business Affairs Victoria (CBAV). The Commonwealth and all States and Territories now have legislative provisions relating to codes of conduct.

### ***Government regulation***

2.7 Government regulation is usually in the form of primary legislation, such as acts of parliament, and subordinate legislation, such as regulations and statutory rules. The major

Victorian State consumer protection legislation is the *Fair Trading Act 1999* and the *Fair Trading Regulations 1999*.

2.8 During the last decade there has been a significant change in the area of consumer affairs promoting market based means of achieving fair trading outcomes rather than direct government regulation. Many factors have been identified which have contributed to this changed approach including:

- an acceptance of Competition Policy principles by all State and Territory Governments;
- the need to reduce the cost of regulation for business, especially small business; and
- the move toward a global market, precipitated by significant technological change, not amenable to state or national government regulation.

2.9 Coupled with the emphasis on market based solutions to changes in the marketplace, the role of governments throughout Australia has changed. Industry and business are being encouraged to regulate their own activities to protect consumers in place of government regulatory intervention. There is a view that effective industry self-regulation can provide benefits for consumers as well as enhancing the competitiveness and long term economic health and of individual firms and industries.

2.10 In 1994, the then Office of Fair Trading and Business Affairs (OFTBA) released its *Guidelines For Establishing Self-Regulation Schemes*. These *Guidelines* were based on a self-regulation policy framework document prepared for and accepted by the then Minister for Fair Trading, the Hon Jan Wade MP, earlier in the same year. The current Victorian Government has not, to date, indicated a policy position with regard to industry self-regulation, voluntary codes and mandatory codes of practice.

2.11 There is a widespread view that effective competition in markets with little regulatory intervention is the best way of promoting economic efficiency and consumer welfare. Underpinning this view is the assumption that consumers are most desirous of goods and services produced at least cost and supplied at competitive prices. Difficulties may arise in open competitive markets however, that result in detriment to both traders and. Lack of information needed by consumers to make informed decisions, unacceptable transaction costs, and consumers having a lack of access to effective and efficient complaints

mechanisms may lead to inefficiencies in the marketplace. Governments may choose in these instances to intervene in markets with the intention of achieving outcomes beneficial to the community.

2.12 As previously mentioned, regulation can range from self-regulation where there is little or no government intervention through co-regulation to legislation. Along the spectrum are differing arrangements that vary in the degree of government and industry involvement. The forms of regulation are not necessarily distinct but can be complimentary. In self-regulation, Governments may assist industry or trade associations in the development of voluntary codes of practice then leave industry to administer and enforce.

2.13 The form of regulatory option chosen is dependant on a number of factors including the characteristics of the industry involved, problems to be addressed, the desired outcomes and the cost to relevant. Self-regulation is one option for dealing with a market problem and is not an end in itself the most appropriate form of regulation being that which provides the largest benefit to the community.

### **Statutory Underpinning of Codes of Practice**

#### ***State/Territory Arrangements***

2.14 Fair trading legislation provisions relating to codes of conduct exist in all States and Territories.<sup>3</sup> These provisions vary depending on policy emphasis and local administrative arrangements. The South Australian legislation states a direct intention “to encourage trade and professional associations to develop, disseminate to their members and enforce codes of practice designed to promote fair trading and to safeguard the interests of consumers”. Provision for codes to be prescribed by regulation after a process of consultation exists in other jurisdictions.

2.15 Enforcement of prescribed codes can occur by obtaining a deed or undertaking to discontinue conduct in contravention of a code, relating to future compliance with a code and action to be taken to rectify the consequences of any contravention of a code. An order may be obtained from a Tribunal/Court if undertakings cannot be obtained,. Pecuniary penalties for contravention apply in NSW, ACT and the Northern Territory. Consumers can initiate enforcement action only in NSW.

2.16 In Western Australia a tri-annual review is required for a prescribed code to continue. Other jurisdictions may subject their codes to review under general sub-ordinate legislation review arrangements.

### ***Commonwealth Arrangements***

2.17 Under section 51AD of the *Trade Practices Act* (TPA), “a corporation must not, in trade or commerce, contravene an applicable industry code”.

An applicable industry code is defined to mean:

- (a) the prescribed provisions of any mandatory industry code relating to the industry; and
- (b) the prescribed provisions of any voluntary industry code that binds the corporation.

Code provisions are to be prescribed by regulations under the TPA. This acts to prescribe the conduct provisions of a code; administrative and other provisions of a code not prescribed will have no legal effect.

2.18 An industry code is defined to be a code “which regulates the conduct of participants in an industry toward other participants in the industry or towards consumers in the industry” (Section 51ACA(1)). The term ‘industry’ is not defined in the section and to remove doubt the Act declares that franchising is an industry in relation to Part IVB. In general, however, it seems likely that an industry code is intended to encompass broad sector codes or codes which deal with specific practices across all industry.

2.19 An applicable code must be declared by regulation and may be declared as a mandatory code or a voluntary code. A voluntary code binds a person who has agreed to be bound to the code. The method by which a corporation agrees to be bound and ceases to be bound must be prescribed by regulation. Usually this entails a corporation becoming a member of an organisation recognised by the code, giving written notice in the prescribed form to the Australian Competition and Consumer Commission (ACCC) of the corporation’s agreement to be bound. Notices would be kept on a public register under Section 95.

2.20 A consumer in relation to an industry code is defined to mean “a person to whom goods or services are or may be supplied by participants in the industry” (Section 51ACA(1)). Consumers are not restricted to the final purchasers of goods or services and there is no prescribed amount to limit what is a consumer transaction.

2.21 The provisions of the Act, therefore, allow for a range of types of code to be prescribed covering conduct between both industry participants and final consumers.

2.22 Both the ACCC and private parties can take action in relation to breaches of prescribed codes. Sanctions available include injunctions,<sup>4</sup> orders to disclose information or to publish advertisements,<sup>5</sup> damages,<sup>6</sup> other court orders<sup>7</sup> and undertakings to the Commission.<sup>8</sup> Monetary penalties do not apply.

2.23 Part 6 of the *Fair Trading Act 1999* (FTA), brings Victoria into line with the other States and Territories and the Commonwealth. It enables codes of practice to be prescribed by regulation. This has the effect of making compliance with rules contained within a prescribed code mandatory for all members of an industry both firms that are members of industry and trade associations and unaffiliated firms.

2.24 Section 94 enables the Director Consumer and Business Affairs with the approval of the Minister to develop codes of practice between particular classes of suppliers and purchasers. It is argued that this should provide the opportunity to mandate codes adopted by industry associations thus mirroring the concept of mandatory/voluntary codes contained within the TPA. This provision may be useful in circumstances where an industry association was experiencing difficulty in enforcing a code of practice deemed to be of significant community benefit.

### **Voluntary Codes of Practice**

2.25 Self-regulatory mechanisms may be adopted by industries for a number of reasons, including protection of product and service quality or simply avoiding the need for outside or government regulatory action. There are a variety of self-regulatory forms- the Taskforce on Industry Self-regulation in its Final Report *Industry Self-Regulation in Consumer Markets*, August 2000, identified codes of conduct, industry service charters, guidelines and standards, industry accreditation and complaint handling schemes as options available. The most popular of these forms, however, both in literature discussing self regulation and attempts to create self regulatory systems have been voluntary codes of practice. Similarly, the previous State Government's policy on self-regulation and the *Guidelines For Establishing Self-Regulation Schemes* focused on voluntary codes when considering self-regulation.

### ***Benefits of Self-regulation***

2.26 The guide, *Fair Trading Codes of Conduct, Why have them, how to prepare them* developed by Commonwealth, State and Territory consumer affairs agencies notes that voluntary codes offer a comprehensive range of benefits to both business and consumers.

The benefits include:

- the provision of a flexible, cost effective approach to problem areas and the establishment of a form of industry quality control by addressing recurring or structural problems;
- industry members can engage in a measure of control over the regulation of their industry;
- codes can set a benchmark in dispute resolution and provide quick and informal complaint handling mechanisms especially when they are developed as part of a consultative process with consumers and government,; and
- codes can set best practice benchmarks beyond minimum legal requirements giving the industry and its members a competitive advantage.

### ***Circumstances in which Self-regulation can be Effective***

2.27 Although self regulation cannot be deemed appropriate for all industries, there are general circumstances in which self-regulation has been recommended. These include:

- where government regulation is unlikely, as in the absence of a significant possibility of consumer detriment;
- where the aim is to lift trading standards above a minimum in the face of strong overarching industry legislation;
- where there is a nascent or fast emerging industry attempting to set trading standards at an early stage; where an industry has been put on notice that failure to put its 'house in order' will result in government regulation; and
- where previous government regulation within an industry has been deemed unnecessary.

2.28 Where a voluntary code of practice is identified as a desirable and practicable policy approach, the *Guidelines* recommended that the following criteria be met:

- the industry has a unified perception of future directions;

- the industry association has a broad coverage, the involvement of industry leaders and a strong determination to implement a self-regulatory scheme;
- there is involvement by consumer advocates and external in the development of the code rules;
- the code should extend benefits beyond the range expected as a result of legal requirements and normal industry practice;
- the codes rules should address consumer problems;
- the governing structure should be representative of both industry and consumer interest, to ensure the code is not perceived to be self-serving; and
- provision should be made within the code for internal dispute resolution and an industry-wide external complaints mechanism.

2.29 In relation to the latter, there are approved benchmarks that should be met. These are the Australian Standard on Complaint Handling, AS 4269-1995, and the Benchmarks for Industry-Based Customer Dispute Resolution Schemes, August 1997.

2.30 Many of the above criteria would also be relevant where an alternative self-regulatory mechanism is contemplated, particularly the establishment of a complaints process consultation with government and consumer stakeholders and adherence to the Benchmarks for Industry-Based Customer Dispute Resolution Schemes.

***Where Self-regulation may be Inappropriate***

2.31 Self-regulation may not be an appropriate policy response for all problems that emerge in the marketplace. In situations where governments have determined that it is essential for all industry participants to adhere to a particular set of standards such as in issues of public health and safety, self-regulation is not an appropriate response. Similarly, where consumer detriment, such as the threat of significant financial loss is widespread, government regulation may be a more appropriate response.

2.32 Other perceived weaknesses of self-regulation include:

- where lack of adequate industry coverage by an industry or trade association leads to lack of the financial resources to adequately administer, enforce or publicise the code;
- where market leaders are outside the industry association, the self-regulatory system may lose it's effectiveness;

- where industry and trade associations are unwilling or unable to enforce a code because the financial viability of the association may be threatened by the expulsion of recalcitrant members or the code may lack meaningful sanctions;
- where codes are used for anti-competitive purposes such as regulating prices and advertising and preventing entry into a trade or profession.

Industry or trade associations agreeing to a code with provisions that substantially lessen competition in a particular market for goods or services, may be open to legal action under the *Trade Practices Act 1974* either by the Australian Competition and Consumer Commission (ACCC) or a competitor who suffers detriment as a result of the code. However, the ACCC can authorise a code if it can be shown that the public good as a result of the agreement outweighs the detrimental effect the code would have on competition. The ACCC assesses public benefit, by ascertaining whether a code addresses market problems enhancing the competitive process.

2.33 The experience of Consumer and Business Affairs Victoria (CBAV) in code implementation has also indicated that at State level, where associations tend to be smaller with fewer members, limitations may be exacerbated<sup>9</sup> by the additional factors discussed below.<sup>10</sup>

### ***Costs to Industry***

2.34 Frequently, insufficient attention is given to the cost of developing and implementing an effective code of conduct. In industries that do not have pre-existing associations difficulties arise in finding a common purpose with individual firms viewing other industry members primarily as competitors. In such industries it is difficult to establish a strong association and adopt a code of practice. Even where an industry has adopted a code of practice, compliance can be costly. Benefits may be difficult to quantify and may lead to a lack of competitiveness compared to large firms and those outside the associations self regulatory scheme. The Office of Small Business (Commonwealth) in its submission to the Taskforce on Self-regulation noted that many small businesses had no option than to pass on the costs of code compliance to customers in the form of higher prices<sup>11</sup>

***Lack of a strong Industrial Association***

2.35 Many industries associations have paid officials, and the development of a code becomes the responsibility of honorary officers. In such cases the division of responsibility between operation of personal businesses and the development and administration of a code of practice may be preclusive and the capacity of such an association to effectively monitor and enforce a code may be hindered. In the experience of Consumer and Business Affairs Victoria even where an association has paid officials, the development of a code can be a protracted process, particularly in the face of conflicting priorities, such as the provision of industrial relations services.<sup>12</sup>

***Costs to Government***

2.36 Although government generally views codes of practice as less costly than legislation, CBAV has incurred costs in the process of assisting associations in the development of an effective code structure and code rules, particularly where associations were unable to identify or pay the sitting fees of consumer representatives on complaints committees. This can be compounded by the policy of endorsing codes with the need to monitor compliance to ensure appropriate endorsement.<sup>13</sup>

2.37 It has been argued, however that a greater overall cost was the inability to use self-regulation as another policy option. Self-regulation became, instead, an end in itself and CBAV assisted any association that sought help with codes. In some cases, assistance was provided in areas in which there were no significant consumer issues.<sup>14</sup>

2.38 In addition, as self-regulation has previously been associated with the development and implementation of voluntary codes, other more appropriate self-regulatory options can be neglected. As an example, approaches may be made by industries whose associations have limited coverage and may not have the capacity to develop and implement an effective code. Other self-regulatory options, such as effective complaint resolution procedures, may have been preferable, thereby gaining a satisfactory outcome for both consumers and the association.<sup>15</sup>

2.39 It is argued that self-regulatory mechanisms should be utilised to maximise effectiveness within individual industries taking into consideration characteristics, problems and objectives to select the most appropriate whether voluntary codes, charters, compliance

programs or the development of standards. As a corollary, the regulatory principle seen to be the most appropriate when deciding between a range of options is that which imposes the minimum degree of intervention necessary to achieve the identified objectives and imposes the least cost of compliance.<sup>16</sup>

### ***Benefits to the Consumer***

2.40 The value of codes of conduct or self-regulatory schemes has been questioned by some associations and consumer advocates. Consumers need to be aware that an industry association has a code in place and that effective enforcement of the code can lead to superior service or quality goods. Smaller State based associations may not have the money or resources to mount an adequate publicity campaign to ensure recognition. As previously mentioned traders within these industries may then argue that adhering to standards higher than required by law costs them money which their competitors outside the association do not incur. This problem may be exacerbated in industries which are price sensitive, the quality achieved in code compliance offset by the increase in price such compliance entails. Competitors who do not meet the same standards maybe able to undercut on price. This may lead to non-compliance by industry association members or a request to government that it apply the associations' standards to the entire industry by legislation.

2.41 In an attempt to encourage associations to adopt effective codes, the previous government implemented a policy whereby codes that were developed in accordance with the criteria described in the Guidelines document were given endorsement. This took the form of a foreword to the codes signed by the Minister for Fair Trading and publicity through the former Office of Fair Trading and Business Affairs (OFTBA) publications. In addition, consumers were advised to deal with members of an endorsed self-regulatory scheme.

2.42 The policy rationale behind endorsement was recognition by the State Government that development and implementation of a code that delivered tangible consumer benefits could be a costly exercise for industry. Endorsement was seen as a recognition of an association's efforts as well as perhaps giving that association some competitive edge through publicity in publications and advice to consumers to deal with members of an endorsed association.

2.43 Despite this cooperative effort in drafting and commenting on draft codes and providing advice as to steps associations should take to meet the criteria set down in the Guidelines, only the Victorian Furniture Removers' Association Code of Conduct was endorsed.<sup>17</sup>

2.44 In its submission to the Taskforce on Self-regulation, the Commonwealth Consumer Affairs Advisory Council noted that codes could be invisible to certain consumers including the elderly, rural and remote families, working parents, people isolated in their homes due to poverty or ill health, people with low literacy and/or verbal skills, people of working age dependent on government support, young people and non-English speaking people.

2.45 In order to make informed purchasing decisions consumers need to be aware of not only the existence but the objectives and intentions of the code and any complaints mechanisms which operate within it.

#### ***Long-term Benefits versus Short-term Costs***

2.46 Industries may incur significant costs establishing a code of conduct. Some costs, such as code development, printing, publicity and code administration are short term while intended benefits may accrue in a longer time frame. Even where an industry has an appreciation of the benefits of self-regulation, it must recognise that the benefits will be long term and in the event of a high turnover of membership within the industry, there may be inadequate numbers wishing to pay today for a benefit which can only be quantified at a later date.

#### ***Input from Consumer Representatives***

2.47 The importance of input from consumer organisations to the code development process and as consumer representatives on complaints bodies formed as part of the self-regulatory mechanism has been noted by both the Commonwealth, States and Territories and the 1994 Victorian *Guidelines*.<sup>18</sup> Often consumer representatives require costs for travel and administration which industry associations are asked to pay. As previously mentioned, industry associations often do not have money to finance such arrangements, thus a dilemma arises as to who represents the consumer interest in self-regulatory schemes and complaints bodies.<sup>19</sup> It can be argued that the importance of independent input from consumer

representatives into self-regulatory schemes and complaints mechanisms are a reason for continued government funding of consumer organisations.<sup>20</sup>

2.48 In Australia, the limitations of voluntary codes have led all States and Territories and the Commonwealth to introduce provisions enabling codes to be prescribed by legislation thus making them mandatory across an industry. Following the passage of the *Fair Trading Act 1999*, Victoria now has the power to introduce mandatory codes.

### **Mandatory codes**

2.49 Part 6 of the *Fair Trading Act 1999* enables codes of practice to be prescribed by regulation. Section 94 of the *Fair Trading Act 1999* enables the Director of CBAV, with the approval of the Minister for Consumer Affairs, to develop codes of practice between particular classes of suppliers and purchasers. Specifically, section 94 permits the making of draft codes of practice between a particular class of suppliers and any purchasers, by a particular class of persons and a particular class of purchasers, or in relation to the supply of a particular kind of goods and services. Responsibility for initiating prescribed codes rests with the Director, either following approval for such action by the Minister or upon direction by the Minister that a code be prepared. Alternatively, where an association has already developed a code in consultation with affected parties, that code may be submitted to the Minister for prescription as a regulation.

2.50 As mandatory codes will have the status of regulations, their development will be subject to the preparation of a Regulatory Impact Statement (RIS). This will be discussed further at 2.56

2.51 All States Territories and the Commonwealth have provisions to make mandatory codes. Victoria was the last jurisdiction to enact legislation authorising the making of mandatory codes and no mandatory code has been made under the *Fair Trading Act 1999*. The Committee notes, however, that mandatory codes have been used in other jurisdictions. For example, the Australian Capital Territory has made mandatory codes of practice under the *Fair Trading Act 1992*, including codes governing the motor vehicle service and repair industry, the fitness industry, and the retirement village industry.<sup>21</sup> Similarly, the Commonwealth Government used provisions in the *Trade Practices Act 1974* to prescribe the Franchising Code of Conduct. This code was made mandatory because the Government

determined that there were serious social and economic costs of problems identified in the franchising sector, together with the failure of the previous self-regulatory mechanisms to address business conduct problems in this sector. The Australian Competition and Consumer Commission enforces the Franchising Code.

***Situations in which Mandatory Codes may be Considered***

2.52 Prescribed codes of practice are a relatively new regulatory option. However, as a subordinate instrument, it is unlikely that their use will be extensive or frequent. Mandatory codes of practice may be used in the following general circumstances:

- where a range of self-regulatory or co-regulatory options have been implemented but have been found to be ineffective and it is determined essential that all industry participants adhere to particular minimum requirements;
- where a self-regulatory system which is in place exhibits on-going and serious enforcement deficiencies and it is judged in the net public interest to intervene;
- where problems emerge in the marketplace but it is not judged to be of sufficient seriousness to warrant industry specific legislation; and
- as a “half-way” house in moving from an industry regulated by primary legislation to de-regulation.<sup>22</sup>

***The Process for Prescribing Codes***

2.53 As mandatory codes have the status of regulations, their development will be subject to the Regulatory Impact Statement (RIS) process as previously mentioned. Accordingly, the following steps will be required:

- an accurate definition of the objectives of the proposed code;
- identification of the nature and extent of the problems necessitating the mandating of a code;
- an explanation of the nature and impact of the problems;
- identification and assessment of the costs and benefits of the proposed code;
- identification of any restrictions on competition;
- identification of any alternatives to the proposed code;
- assessment of the costs and benefits of the alternatives.<sup>23</sup>

2.54 Although the RIS process involves considerable public consultation, it is expected that in the development of a mandatory code, there will be early notification of key stakeholders and on-going consultation to ensure the code is drafted in a way which is clear, unambiguous and in language that can be easily understood by industry participants, consumers, regulatory authorities and the courts.

### ***Enforcement of Mandatory Codes***

2.55 CBAV has responsibility for enforcement of mandatory codes. Under section 97 of the *Fair Trading Act 1999*, breach of a prescribed code carries a penalty of 20 units (\$2000). An alternative way of enforcing a breach of a mandatory code would be through an undertaking. Section 146 of the *Fair Trading Act 1999* states that the Director of CBAV may accept a written undertaking given by a person in connection with a matter in relation to which the Director has a power or function under the *Fair Trading Act 1999*. If the Director considers that the person who has made the undertaking has breached any of its terms, an application may be made for an order to the Magistrates' Court. The Magistrates' Court has the capacity to make a range of orders if it is satisfied that an undertaking has been breached, including:

- an order directing a person to comply with a term of the undertaking;
- an order directing a person to pay an amount which represents the financial benefit obtained from breaching the undertaking; and
- an order directing a person to pay compensation to a person who has suffered loss, injury or damage as a result of the breach.

2.56 While the ultimate responsibility for the enforcement of mandatory codes rests with the State, in other jurisdictions such as Western Australia and the ACT, Code Administration Committees have either a direct or advisory role in the administration and enforcement of mandatory codes. The Fair Trading Act does not provide for a direct enforcement role, where a strong industry association exists.

### ***Advantages and Disadvantages of Mandatory codes***

2.57 The Office of Regulation Reform's publication *Regulatory Alternatives* identifies advantages and disadvantages of co-regulation, including mandatory codes. Advantages include:

- the expertise of industry or relevant professional association can be more fully and directly utilised;
- it encourages the industry or relevant professional association to take greater responsibility for the behaviour of its members;
- it reduces the requirements for government resources to be dedicated to regulation;
- industry sanctions can be given legislative backing;
- it promotes independence and accountability of the professions or industry; and
- it allows industry participants to rule on matters best determined by peer groups.<sup>24</sup>

2.58 The Victorian Office of Regulation Reform maintains that co-regulation can be used when strong industry associations with broad industry coverage are present and when there is a large commonality of skills within the industry.<sup>25</sup>

2.59 As mandatory codes prescribed under the *Fair Trading Act 1999* have the status of regulations, the RIS accompanying the making of a prescribed mandatory code will need to clearly identify the costs and benefits of regulation, describe why the benefits of regulation outweigh the costs, and demonstrate that the proposed prescribed mandatory code represents the best regulatory option available to government. This means that there must be clear evidence that marketplace discrimination against women consumers is a problem before mandatory prescribed codes can be considered. The Office of Regulation Reform recommends that agencies should consider:

- who is affected by the problem;
- the source of the problem;
- whether there is sufficient evidence that a problem exists;
- whether the extent of the problem is able to be quantified or whether its identification is based upon anecdotal evidence;
- the social and economic cost of the problem and who bears this cost;
- whether the problem is a minor irritant or a significant problem ; and
- whether the problem exists at present or is merely anticipated.<sup>26</sup>

2.60 In practice, it would be more feasible to use the prescribed code provisions of the *Fair Trading Act 1999* in relation to industries where there are a range of issues that could be

addressed by the use of a prescribed code, including marketplace discrimination. This approach would assist in ensuring that the requirements of the RIS procedure are met.

### **Legislation**

2.61 As discussed in Chapter 1, it is already an offence under the *Equal Opportunity Act 1995* to discriminate in the provision of goods and services on the basis of sex. This includes direct discrimination, where a person of any sex is treated less favourably than a person who is of a different sex in the same or similar circumstances, and indirect discrimination, which occurs when a requirement, condition or practice which does not appear to be unfair does in fact discriminate against people of a particular sex. At a Commonwealth level, the *Sex Discrimination Act 1984* makes it unlawful for a person who provides goods or services to discriminate against another person on the ground of the other person's sex. There are also general protections against unconscionable, deceptive or misleading conduct available to Victorian consumers in the supply of goods and services.

2.62 In CBAV's view, it will only be appropriate to consider new or amending legislation to address marketplace discrimination against women consumers if there is clear and compelling evidence that the current legislative protections are inadequate.<sup>27</sup> Given this perspective, amendment of the *Equal Opportunity Act 1995* may therefore be appropriate if it is established that the existing prohibition on sex discrimination in the provision of goods and services is ineffective. One possible way this could be achieved is through giving the EOCV power to enter into co-regulatory arrangements with specific industries.

2.63 The Office of Regulation Reform has identified advantages and disadvantages to extending the coverage of principal legislation. Advantages include:

- eliminating unnecessary duplication of a proven legislative framework;
- enabling existing legislation to be better utilised; and
- promoting consistent treatment of related issues or concerns.<sup>28</sup>

2.64 Where existing legislation is well understood, this option also promotes a high level of compliance.<sup>29</sup> However, amending principal legislation also has some disadvantages. These include the fact that current resources may not be able to adequately deal with new matters covered by the legislation and that legislative amendment may still not adequately resolve the problem.<sup>30</sup>

2.65 The Office of Regulation Reform recommends amending principal legislation where existing laws are pertinent to the issue being addressed, where existing legislation is comprehensive and well understood, and when extending legislation can be achieved with minimum cost or difficulty.<sup>31</sup>

### **Alternatives to Regulation**

2.66 There is a range of alternatives to industry regulation. These may include tradeable permits or licenses, negative licensing schemes, information disclosure, public education programs and the provision of economic incentives. These should not necessarily be seen in isolation – they may complement each other or other regulatory policies.

2.67 CBAV engages in widespread public education programs to ensure that consumers and traders are informed about their rights and responsibilities. This includes the production of printed and audio-visual information products,<sup>32</sup> a fax back service to provide information on specific industries and services, the provision of information on the consumer affairs website, funding for community based consumer and tenancy groups to provide advice and assistance to the general public, and responding to requests to provide speakers on various topics. As an example a brochure was recently released providing information to prospective consumers in the automotive market. CBAV also makes a number of materials available in a range of community languages.<sup>33</sup>

2.68 CBAV has evaluated or arranged for evaluations to be conducted for ‘Get a Life’, a magazine for young people, the Victorian Renters Magazine and the Homebuyers Magazine. The majority of participants in these evaluations had retained the publications for future reference and stated that they found these publications useful.<sup>34</sup>

### **Education**

2.69 According to the Office of Regulation Reform, research on regulatory compliance and the practical experience of regulators demonstrates that non-compliance with the requirements of regulations is sometimes the result of ignorance rather than any intentional desire to flout the law.<sup>35</sup> The Office of Regulation Reform recommends using a public education program where the problem to be addressed results from a lack of knowledge amongst consumers or participants in an industry. Such a campaign is likely to be successful

when the target group can be easily identified and reached economically. It is also likely to be effective where the virtues of a particular policy are not well understood.<sup>36</sup>

2.70 Public education campaigns can have the advantage of being quick and of relatively low cost to government. They can also be used to educate the community about the existence and virtues of a particular policy, which in turn is likely to increase compliance.<sup>37</sup> However, the Office of Regulation Reform cautions that public education campaigns can be less effective than other regulatory approaches because of the lack of a coercive element, and that the public can become weary of messages which reduces the effectiveness of such campaigns. Public education campaigns, conducted in the absence of other regulatory measures, may also not be appropriate or effective when the issue being considered is of a complex nature.<sup>38</sup>

### ***Industry Education***

2.71 Whilst the issue of marketplace discrimination against women is recognised as a problem by some participants in some industries, part of the barrier to change may come from some individual traders' denial of the problem.<sup>39</sup> As industry associations or industry members work with government agencies and consumer groups to arrive at codes of conduct, the process will provide an opportunity for industry to collect information which may be used for member education.

2.72 Examples such as General Motors Holden (discussed further in Chapter 4) can be used to illustrate the business advantage of treating giving women consumers equally. Similarly, examples such as the settlement in *Atkins* case show that it is possible to amend pricing structures such that they are based upon services provided rather than the gender of the purchaser.<sup>40</sup> *The Way Ahead Report* produced by the automotive industry in conjunction with a National Working Party comprised of representatives from Departments/ Offices of Women's Policy and Fair Trading for the Ministerial Council on Consumer Affairs makes a number of useful recommendations regarding industry education and other initiatives specific to the motor industry.<sup>41</sup> These could be adapted as appropriate to suit other industries engaging in marketplace discrimination against women.

### **Consumer education**

2.73 Consumer education about consumer rights needs to occur on a range of levels. It is necessary to target consumers in the marketplace as well as undertake preventative strategies for young women who will be the future consumers. It is also necessary that this education be supported by acknowledgment of the problem by industry and through effective avenues for redress where problems occur. It should occur in tandem with the measures discussed above, not in alternative to them. It has been suggested to the Committee that strategies could include:

- Public awareness campaigns regarding the internal and external complaints resolution mechanisms discussed above. This could be effected by a provision in the industry specific codes, discussed above, that code signatories display a sticker prominently in their premises advising of the availability of a complaints mechanism.
- Inclusion of the issue of marketplace discrimination against women in social science courses, including strategies for overcoming the problem.<sup>42</sup>

2.74 As recommended in The Way Ahead Report,<sup>43</sup> inclusion of information about matters such as buying a car and vehicle service and repairs or managing finances, including joint finances, in life skills courses at secondary school.

### **Conclusion**

2.75 The Committee recognises the need to ensure that women consumers are adequately protected in areas where they may experience disadvantage or discrimination. Research undertaken as part of the Women as Consumers – Motor Vehicle Project<sup>44</sup> has indicated that some women are still treated differently to men when purchasing goods and services. This may include being subjected to patronising or stereotypical attitudes, experiencing aggressive sales techniques and, in extreme cases, being charged more for a product or service than a man.

2.76 In the view of the Committee, government and industry need to work cooperatively to eliminate marketplace discrimination against women and ensure that high quality goods and services are provided to all consumers, regardless of their gender. There are a number of regulatory options to achieve this objective. In its submission CBAV recommended that more interventionist regulatory approaches, such as the development of prescribed

mandatory codes, only be pursued where there is evidence that other regulatory and non-regulatory approaches have been ineffective or are not appropriate.<sup>45</sup> In addition, there would need to be clear and compelling evidence that discrimination against women consumers is a significant problem in the subject industry.<sup>46</sup>

## Endnotes

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<sup>1</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>2</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>3</sup> The relevant legislation is the NSW *Fair Trading Act* 1987 Part 7; Queensland *Fair Trading Act* 1989 Section 88A; SA *Fair Trading Act* 1987 Section 8(1); WA *Fair Trading Act* Part IV; Tasmania *Fair Trading Act* 1990 Part 4; ACT *Fair Trading Act* Part 111; and NT *Consumer Affairs and Fair Trading Act* 1990 Part XII.

<sup>4</sup> (Section 80(1)(a))

<sup>5</sup> (Section 80A(1))

<sup>6</sup> (Section 82(1))

<sup>7</sup> (Section 87(1))

<sup>8</sup> (Section 87B(1))

<sup>9</sup> Over the past four years, the Office of Fair Trading and Business Affairs, the predecessor to CBAV worked with many industry/trade associations in the development of codes. These included:

Victorian Furniture Removers' Association (VFRA)

Weight Management Industry (national)

Fitness Industry

Massage and Allied Health Industry (national)

Victorian Retirement Villages Association - implementation of accreditation scheme

Hairdressing and Beauty Industries Association

Boating Industry Association

Introduction Agency Industry - prior to development of legislation

Television and Electronic Service Industry Association

Domestic Whitegoods Service Industry Association

Antenna Technicians Association

Master Plumbers and Mechanical Service Association of Australia

In addition to the above listed codes, many organisations sought OFTBA comment on their codes. Some codes on which comment has been sought include: Furniture Quality Program; Accreditation Scheme for Retail Meat Outlets; Franchising Code; Jewellery (and Timepieces) Industry Code; Scanning Code of Practice; Financial Planning Association Code of Ethics and Rules of Professional Conduct; Internet Industry Code of Conduct; Code of Practice for Steer Axle Correction - Heavy Vehicles; Natural Gas Customer Service Code; Tourism Industry Code of Conduct; Seed Industry Code of Conduct.

<sup>10</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>11</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>12</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>13</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>14</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>15</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>16</sup> *Industry Self-regulation in Consumer Markets*, Report prepared by the Taskforce on Industry Self-regulation, August 2000.

<sup>17</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>18</sup> *Industry Self-regulation in Consumer Markets*, Report prepared by the Taskforce on Industry Self-regulation, August 2000.

<sup>19</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>20</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>21</sup> Copies of these codes are available on-line at [www.fairtrading.act.gov.au/index.html](http://www.fairtrading.act.gov.au/index.html)

<sup>22</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>23</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>24</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 17.

<sup>25</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 17

<sup>26</sup> Office of Regulation Reform, *Principles of Good Regulation*, p 12.

<sup>27</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001

<sup>28</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 19.

<sup>29</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 19

- <sup>30</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 19
- <sup>31</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 19
- <sup>32</sup> These include *Stuff*, a magazine for young people which addresses issues such as rental rights, dealing with repairers, financial management, and shopping over the internet; *Victorian Renters Magazine*, a magazine for renters and landlords, and *Better Car Deals*, a guide to buying a new or used car.
- <sup>33</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001
- <sup>34</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001
- <sup>35</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 31.
- <sup>36</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 31.
- <sup>37</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 31.
- <sup>38</sup> Office of Regulation Reform, *Regulatory Alternatives*, p 31.
- <sup>39</sup> Consumer Law Centre, Women's Legal Centre & Women's Trust, *Submission* February 2001
- <sup>40</sup> See Chapter 3, 3.50–3.59
- <sup>41</sup> *The Way Ahead: Women and the Motor Vehicle Industry*, August 2000, pp 46-48
- <sup>42</sup> Consumer Law Centre, Women's Legal Centre & Women's Trust, *Submission* February 2001
- <sup>43</sup> *The Way Ahead: Women and the Motor Vehicle Industry*, August 2000, pp48-49.
- <sup>44</sup> *The Way Ahead: Women and the Motor Vehicle Industry*, August 2000.
- <sup>45</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001
- <sup>46</sup> Consumer and Business Affairs Victoria, *Submission*, 26 March 2001



# CHAPTER 3

## PRICE DISCRIMINATION

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- **Introduction**
  - **Hairdressing**
  - **Dry Cleaning**
  - **Clothing and Cosmetics**
- 

### **Introduction**

3.1 In order for a business to legally price discriminate, that is charge different prices without reducing demand for that business's product, certain conditions need to be met. Firstly, the business must have sufficient market control in that they are a price maker and able to affect prices in the manner they desire. Secondly, the business must be able to identify two or more groups of consumers that are willing to pay different prices and, finally, the business must be able to prevent the consumers in one group from reselling the business's product to another group.

3.2 Price discrimination can occur when businesses operate in an environment of monopolistic competition. This market structure is characterised by:

- A large number of small businesses;
- Similar, but not identical, products sold by all businesses;
- Relative freedom of entry into and exit out of the market; and
- Extensive knowledge of prices and technology.

3.3 Effectively, each business has its own monopoly as a result of product differentiation. For example, while every hairdressing salon sells the same product (a haircut), each salon in fact produces a slightly different service that makes that product unique. That difference may lie in technique, personal style and quality of customer service. This enables these salons to act like monopolies because many of their customers prefer that salon's product and will rarely transfer their custom to another salon.

3.4 Monopolistic competition means that businesses may find themselves in a position to price discriminate. They have market control (within their own 'little' monopolies) and are

therefore price makers. However, they do need to satisfy the other two conditions for price discrimination: they must be able to segment their market into different consumer groups and prevent the resale of their product.

3.5 Businesses which produce or supply goods and services in the retail sector often have enough information about their consumers (such as age, gender) to differentiate between them. The nature of the goods and services usually means that one consumer group could not resell the good or service to another consumer group. It is not possible to sell a haircut to another consumer, and it would be very difficult for a man to sell a pair of his trousers to a female consumer, or a female consumer to sell a dress to a male consumer. These businesses are then in a position to price discriminate.

3.6 There are three degrees of price discrimination: first-degree, second-degree and third-degree.<sup>1</sup> First-degree price discrimination means selling the good or service at the maximum price which consumers would pay, all the time. This usually occurs in a monopoly situation, when there is only one supplier of a good or service and where that good or service is in high demand.

3.7 Second-degree price discrimination is where prices can be determined by the quantity of goods ordered by the consumer. This would commonly take the form of price discounts for bulk orders. Usually this means that the greater the quantity of goods ordered, the cheaper those goods become.

3.8 Third-degree price discrimination occurs when a seller charges different consumers different prices for the same product. These consumers can be differentiated by an identifiable characteristic such as age, location, gender or ethnicity. Crucially, the seller has two or more consumer groups with different 'demand elasticities'. This means that each group has a different tolerance for a maximum price, where at least one consumer group is prepared to pay more for a product than another consumer group.

3.9 Third-degree price discrimination can take two forms. In the first form, producers would like to sell the same good or service to different groups of consumers at different prices but they do not know before the point of sale to which group consumers belong. In order to price discriminate, the producer must persuade the customer to reveal which group they belong. Examples of this kind of price discrimination include child or senior citizen

discounts. In these cases, prices are usually lower than the standard price, reflecting consideration of the consumer's ability to pay – children rarely have their own income and senior citizens usually have fixed incomes due to retirement from the workforce. Continuing to set prices too high for these groups of consumers would probably lead to a significant drop in demand for the product from these groups of consumers. Importantly, this form of third-degree price discrimination allows consumers to choose whether they will participate in price discrimination.

3.10 This type of price discrimination tends to have benefits for both the retailer and the customer. The retailer may be better off because of the increased number of customers the discounts attract (thereby offsetting any losses incurred by offering the good or service at or lower than cost price). The customer is certainly better off, receiving a desired or needed product at a lower price.

3.11 The second form of third-degree price discrimination occurs when the producer can identify different consumer groups before the point of sale and adjusts prices accordingly. Consumers must accept this form of price discrimination because the products, as well as the prices, are usually tailored for that particular consumer group and cannot be satisfactorily replaced by another, even similar, product. Price discrimination against women consumers usually takes this form.

3.12 Price discrimination as such is not illegal. It remains the decision of the producer or seller of goods and services to determine pricing according to a number of factors, including how much it costs to produce and sell those goods and services, and how much consumers are willing to pay. However, it becomes illegal where such pricing is based merely on the gender of the consumer, or the attitudes and attributes ascribed to people of that gender, and where it has the effect of disadvantaging that group of consumers.

3.13 This disadvantage can be seen through higher prices for similar quality goods and services or similar prices for inferior goods and services. For example, a basic men's t-shirt may cost less than the women's version because of the producer's assumptions about the behaviour of women as consumers rather than differences in the quality of the fabric, complexity of design or other relevant factors. This type of price discrimination, when experienced by women as consumers, is gender discrimination.

3.14 The following sections examine the incidence of price discrimination in hair dressing, dry cleaning, and clothing and personal care items. In addition to the submissions received by the Committee and evidence gathered during the course of the Inquiry, reference will also be made to the market conditions at work in each industry. As this discussion on price discrimination indicates, certain conditions will influence the form and extent (if any) of price discrimination against women consumers.

### **Hairdressing**

3.15 Hair dressing has been highlighted as an issue for marketplace discrimination in previous research<sup>2</sup> and with the outcome of the *Atkins v. Beale & Ors* case in the Victorian Civil & Administrative Tribunal.<sup>3</sup> The practice of gender-based pricing, a long-standing practice within the industry, has come under examination for the possibility that it allows men to be charged less than women for similar services.

3.16 The Committee received submissions from industry and consumer groups, as well as anecdotal evidence from individuals. The Hair and Beauty Industry Association (HBIA) provided both written and oral evidence as did the Consumer Law Centre Victoria (CLCV). Mr Edward Beale, a well-known hairdresser, also provided oral evidence to the Committee.

3.17 There are approximately 2,800 hairdressing salons currently operating in Victoria. A majority of these salons offer a range of hair dressing services to both women and men, while some are barbers or men's salons, offering hair cutting and barbering services to men only. Hairdressing salons vary from high-profile or franchise salons, to small salons employing 2-3 staff. There are also a number of micro businesses (one person) who work in the home or residence of their customers, particularly the elderly and disabled. The price range of salons also varies significantly, from top end hair cuts (\$80-\$120) to low end (approx. \$30). Micro businesses tend to charge even lower prices. Evidence suggests that a majority of salons have gender-specific pricing, that is, separate price lists for women and men.

3.18 During the course of its Inquiry, the Committee received evidence that suggested, rather than women paying too much for hairdressing services, men were paying too little. The experience of traditional pricing in hair dressing seems to be the result of a number of convergent historical trends: the assumption that (all) women want a complete and complex service; that this service will be more expensive because most women have long hair or

intricate styles; and that most men will not pay full salon prices for salon services since they are used to prices found in barber shops. There are strong suggestions that the elimination of gender-based pricing in this area will not necessarily lead to all women paying less in all circumstances, but to more men paying more, as salons restructure their price lists to reflect the actual services delivered to each individual.

***Traditional pricing structures: Past practices, industry structure and consumption patterns***

3.19 Prices for hairdressing services are determined by a number of factors. Similarly with other businesses, salons must take into account overheads, the expertise of employees, products used and the services rendered to clients. In addition to this, industry structure, traditional consumption patterns and assumptions about consumer behaviour and expectations have had a significant impact.

3.20 Prior to the deregulation of the hair dressing industry in the 1970s, the hair dressing industry operated along gender segregated lines. Unisex salons were not permitted, and separate trade certificates were required for men's and women's hair dressing. This professional segregation was reflected in, and reinforced by, consumer behaviour. Men and women had qualitatively different styles and cuts, with a greater emphasis on styling and treatments for women.

3.21 Previous research has pointed to the consumption patterns that dominated the 1950s and 1960s. Women went to the hair dressers for a 'do': usually a cut, styling and a set whereas as men attended the barber's for more straightforward services, such as a cut and possibly a shave.<sup>4</sup> These gendered consumption patterns were so widespread that it was simpler and perhaps plausible to generalise about "women's cuts" and "men's cuts". These consumption patterns supported the presumption that women took more time and had more elaborate expectations from a hair dresser and therefore cost more to service. Men, on the other hand, were apparently easier to service because they took less time and required fewer services. Prices for each were set according to these assumptions with the consequence that women paid more for hair dressing services than men did.

3.22 However, these consumption patterns began to change during the 1970s and this trend has continued through the 1980s and 1990s. The appearance of unisex salons and changes in fashion encouraged men to choose a salon over a barber in order to receive different cuts and

styles and to avail themselves of a wider range of hair treatments. Similarly for women, changes in fashion meant a greater range of styles were available, including short and very short hairstyles more akin to a men's cut. Overall, the last thirty years have seen a considerable blurring of the lines between male and female consumption patterns, demands and expectations of hair dressing services.

3.23 It has been suggested to the Committee that initial industry responses to changes in trade qualifications and the growth of unisex salons have exerted a strong influence on pricing practices for the last 25-30 years. The Committee inquired about the historical nature of price structures and the possibility that women's prices subsidised cheaper men's prices. The CLCV confirmed that when the prohibition on unisex salons was lifted, salons which previously had an exclusively female clientele sought to attract male customers with competitive pricing:

"I think that is exactly what it was...hairdressers started trying to attract male business, and it may well be that the price was set low as a result of that sort of trying to attract that new market into their salons."<sup>5</sup>

This interpretation was reinforced by the HBIA, who noted that

"It all stems back to what barbers used to charge. Barbers always charged a lot less than was charged in a salon environment; yet when males chose to go to a salon environment, they still were not prepared to pay full pricing. It is a lot more complex as to why women pay more. It is much more detailed than that."<sup>6</sup>

3.24 Even though the industry has been deregulated for some time and that there is now only one trade certificate for hair dressing, traditional industry conditions which no longer apply continue to shape pricing practices. The Committee sought to clarify industry qualifications and the effect this has on how salons operated. The HBIA informed the Committee that,

"In fact, to cut men's hair in a salon in the past you had to have a barber's certificate, and you received that only after you had received your hairdressing certificate. Male hairdressing was an extra course, which was interesting...because the salons never charged more for it, and if anything they charged less. The salons had to be competitive, and as men were used to paying a barber only \$10 or \$15 the women's hairdressers thought, 'Even though I have this extra qualification and I can now do men's hair, I will charge that amount

to get the men into my salon'. I believe a lot of the current issue has flowed on from that.

However, there is now the one curriculum, although there are specialist areas for barbering services.”<sup>7</sup>

***‘Willingness to pay’***

3.25 It seems that assumptions about male consumer’s willingness to pay were a determining factor in setting prices for barbering services. There are two possible explanations for this reluctance to charge male consumers in line with the actual cost of the service. The first could be that the plainness of men’s hair styles belied the expertise required to produce them (customers may feel that they weren’t getting value for money) and secondly, that male consumers had a lower threshold of ‘willingness to pay’ because they were apparently less concerned with personal appearance and maintaining a fashionable cut. In Mr Beale’s view, the frequency of cuts is an economic issue for men. In his salons’ experience, men have hair cuts between 10-12 times per year and would not pay extra and still maintain the same number of haircuts.<sup>8</sup>

3.26 The HBIA’s point regarding the complexity of why women pay more is a pertinent one. The HBIA further commented on the different standards of beauty generally applied to women and men and a societal expectation that women will care more about their appearance. This leads to a perception that women are willing to pay more to achieve a socially desirable appearance, whether on hair or cosmetics. Conversely, men are not generally expected to aspire to socially defined concepts of beauty and appearance and therefore are not motivated to spend as much money on their appearance. This, however, is beginning to change as the HBIA outlined to the Committee:

“One thing that really concerns my members is whenever an article appears in the paper about discriminatory pricing they always say that women are paying far too much. It is that thing that men are not prepared to pay as much, yet 10 years ago you would not have found a male cosmetic range. You go into the department stores now and you will find numerous male cosmetic ranges as men are now looking at that part of their personal care. Looking at the magazine racks you now find numerous magazines costing \$6 and \$7 that are all about male health, whereas going back a few years you would not have found them. The male consumer is being marketed to and is certainly becoming more aware that it is all part of that sell — to have the image, to be successful you need to use this product. I think that is

all part of it. It is something females have always had. Females have always been made aware or seen that to go and have your hair done was very important, whereas it was not necessarily so to the males.”<sup>9</sup>

3.27 As male consumption patterns change in the area of personal care and grooming, so there might be a similar change in their ‘willingness to pay’ for these goods and services. Such a change in male consumers’ attitudes to prices for hair services may make them less resistant to hair salon’s adopting service-based pricing.

***Pricing for service or gender?***

3.28 The main issue with regard to hair dressing prices is the extent to which pricing for service is taken as having the same meaning as pricing for gender. For those salons that maintain a gender-based pricing list it is not so much a matter of deliberate discrimination but a pricing policy based on averages. The average woman will have a more detailed cut and style and have longer hair than the average man, and since average pricing is easier to manage than individual pricing, it makes sense for the proprietor of a hair salon to price according to the average ie. to male and female averages. The end result however, is that the salon is pricing for gender and not for the service rendered.

3.29 The Hair and Beauty Industry Association informed the Committee that it discourages its members from this practice:

“One thing that we impress on our members and the industry is that if you have a male and a female side by side having the same service taking the same amount of time there should be no difference in the price. However, the majority of my members come back to me and say that rarely happens.”<sup>10</sup>

3.30 While it may be the experience of the majority of salons that women and men continue to have different cuts and styles, it is a discriminatory pricing practice if the salon charges a woman more for a cut similar to a men’s cut, simply because she falls outside the average experience of female customers for that salon.

3.31 The salon that prices on the basis of generalisations about its customers stands at risk of discriminating against the customer who does not conform to those generalisations. Mr Beale informed the Committee that his salons’ experience (based on their records) was that 90% of women had shoulder-length hair or longer, requiring more services (shampoos and blow-drying, for example). It was also Mr Beale’s experience that 97% of his male customers

had short or very short hair which required a limited range of services (single shampoo and towel dry, for example).<sup>11</sup> As one submission argued, what might seem average may not be the case on closer inspection. The CLCV conducted a simple survey of women's hair length in five Melbourne suburbs. Of 1,943 women surveyed, 20.1% had short hair (ear length or above), 31.3% had medium length hair (between ear and collar length) and 48.6% had long hair (below collar length). The CLCV argued that,

“These results not only suggest that a pricing structure based upon an assumption that most women have long hair will be inaccurate in 51.4% of cases, they give cause to question any assumption that “most women have long hair.”<sup>12</sup>

3.32 These types of observations and the experience of hair salons require closer examination in order determine what an appropriate pricing policy might be.

3.33 This next section goes into some detail about current pricing practices in Victorian hair salons and canvasses the views of those within the industry about appropriate pricing practices.

#### ***Price survey results***

3.34 Comprehensive Australian data for the prices of hair dressing services is not available, but some evidence has been gathered which points to a widespread industry practice of pricing for gender, regardless of the type of cut and length of hair involved.

3.35 During March and June 2000, the CLCV undertook a price survey of hair salons advertised in the Yellow Pages (1999/2000 edition). This survey was undertaken during the course of the *Atkins v. Edward Beale & Or's*,<sup>13</sup> a price discrimination case in which the CLCV was involved.

3.36 With 2,295 hair dressers listed, the CLCV attempted to contact every sixth hair dresser. Contact with some was not possible for reasons including:

- Salon was closed on the day of the call;
- Answering machine was turned on;
- Salon concerned traded as either men or women only;
- The line was engaged; or
- The phone number was no longer in service.

Using this process, a total of 372 salons were contacted, comprising 16% of listed hair dressers.

3.37 When contact could be made, the hair dresser was asked to quote the price of a ‘wash, cut and blow dry’ for women and men, where hair was of a similar length (ie. short). Of the 372 salons questioned, 357 or 96% charged a higher price for a women’s cut. The price differential ranged from \$1 to \$27. The average price difference was \$12.40.<sup>14</sup>

3.38 In June 2000, an article in the Herald-Sun cited the prices for a hair cut and style of selection of top end salons. Six of the nine salons mentioned charged women more:

**Table 2.1: Hairdressing price survey: Metropolitan Melbourne<sup>15</sup>**

<b>Salon</b>	<b>Women</b>	<b>Men</b>
Aveda Pure Escape	\$55-65	\$45
Biba	\$40-50	\$35-45
Edward Beale salons	\$40-65	\$30-45
Joh Bailey	\$70	\$45 (cut only)
Kusco & Murphy	\$68	\$53
Tremayne Salon	\$65-100 (45min)	\$50 (30min)
Efbee	\$55-85	
Rok Studios	\$50-85	
Shibui	\$63-78 (cut & dry off)	

3.39 The Committee’s own research indicates that this pattern is repeated in rural and regional Victoria, though the price range tends towards the lower end of the market:

**Table 2.2: Hairdressing price survey: Rural and Regional Victoria**

<b>Salon</b>	<b>Women</b>	<b>Men</b>
Graphic Hair Design	\$25	\$17.50 - \$19.50
Beyond the Fringe	\$30	\$20
Unique Hair & Beauty	\$32	\$20
Glints Hairdressing	\$32.45	\$21.50
Dawson’s Hair Design	\$48	\$28
D’Coco Hair Studio	\$29	\$23
Razor’s Edge Hairdressing	\$24	\$14
Hairdo	\$22	\$16.50

Dianne Hair Design	\$30	\$17
Fringe Benefits	\$33	\$16.50

3.40 Taken as a one-off purchase, paying more for a hair cut may seem an inconsequential thing. The concern is over the fact of discrimination itself in addition to the ongoing and cumulative financial implications of gender based pricing. This point was articulated to the Committee by the CLCV:

“Whilst on a one-off basis it might be a \$5 difference or a \$10 difference or up to even a \$20 or \$25 difference, certainly the economic effect of that on a one-off basis is small, but people tend to have the haircut over the entirety of their lives. Now, if you are having your hair cut four, say, five times a year, and there is a \$20 price difference, over a period of time that really does start to add up.

The other point to note is that even if there is not an economic effect or a significant economic effect, if you like, all of these sorts of practices are at the end of the day discrimination against women, and we all know that that still occurs in a myriad of forms; less so in our country perhaps than others, but still to a significant and concerning degree. And those practices being allowed to subsist in the marketplace help maintain an environment that says it is okay to do it. And for that reason as well they need to be addressed and they need to be seriously addressed.”<sup>16</sup>

3.41 As was indicated in the Introduction, the ongoing financial impact of gender based pricing is significant. Using an average price differential of \$12.40 and hair cuts five times a year; the annual cost to a woman will be \$62. That amount increases to \$310 over five years and \$620 over ten years. However, this differs from the experience of Edward Beale salons which suggests that male customers have haircuts 10-12 times per year while female customers have hair cuts 3-4 times per year.<sup>17</sup> At the prices quoted in his salons,<sup>18</sup> that means male customers will spend between \$400-\$480 per annum (\$40 per cut) while female customers will spend between \$177-\$236 per annum (\$59 per cut). On this basis, the yearly differential between female and male cuts is \$223-\$244, increasing to \$892-\$1,220 over five years and \$2,230-\$2,440 over ten years.

3.42 There are a number of salons operating in Victoria which do not have gender based pricing. The HBIA noted that

“Many other salons are also pricing on the expertise of the operator, the time taken, and the expertise required [for that particular service]. Indeed, many more salons are displaying their prices so that the customer has a clear picture on what the service is likely to cost.”<sup>19</sup>

3.43 Salons have tackled service based pricing in different ways. As the previous table demonstrated, some salons have selected a price range that may allow pricing flexibility according to the needs of the individual customer. Others have adopted a single price for women and men. One such salon is Devine Decadence which quotes \$45 for a “Ladies’/Men’s style, cut & finish” and \$60 for a “Ladies’/Men’s style, cut & blow dry”.<sup>20</sup> Price Attack, a chain of hair salons operating throughout the Australian mainland, has an extensive published price list.<sup>21</sup> It is a unisex price list where prices for each type of service are differentiated according to hair length (short, medium, long and extra long). Salons that take this approach are still very much in the minority and do not represent a sufficient proportion of the industry to challenge systemic gender based pricing.

3.44 There is sufficient evidence that many hair salons continue to price their services on assumptions about women’s behaviour and expectations of hair services. While it may be the case that some women (even a majority) continue to request cuts and styles that are more difficult and time consuming than some men choose, it may not be the case for all women.

### ***What are women paying for?***

3.45 The Committee sought to determine whether the variation in pricing structures within salons was based on the qualitatively different experience of men and women in hair salons. The difference between barbers and hair salons in terms of prices and services was raised by the Committee with the HBIA, which was able to clarify the matter:

“I think it would generally be that the men who go to a salon have more services than they do in a barber shop. In a barber shop they tend to go and have a haircut rather than having a shampoo or any other services whereas in a salon they tend to have a more complete service. I think that is where the price difference is. When they used to go to barber shops men did not tend to have colours in their hair. The barber shop traditionally offered them a short back and sides, a shave...It was the male consumers who led the way in going into the

female salons because they wanted to have colours and perms and more added-on services.”<sup>22</sup>

3.46 Lower prices are more common in a barber’s, not because they exclusively service men, but because generally the range of services and products available is more limited.

3.47 Male and female expectations and experience of salons was also raised as an issue. Again, this seems to be subject to changing consumer trends and generalisations about gender-based service preferences must be treated with caution. As the CLCV argued, preferences about pampering should not be assumed:

“It is a question of making sure that you are not imposing a characteristic on the entirety of the gender simply because some people are like that...I, for example, would be happy to be in and out of the hairdresser in 20 minutes flat, and I prefer that they did not speak to me and fuff around.”<sup>23</sup>

3.48 The HBIA agreed that women were more likely to seek a pleasant and relaxing environment as part of their hair cut/style and consequently take more time, but also noted changing consumer trends:

“My members tell me that in general men do not really want to go into a salon and spend an hour having their hair done. This is also changing in that women traditionally did like to do that as they found it relaxing, but now there are more women working in high-powered positions, time is an issue and a lot of women do not want to spend that time either. It is changing.”<sup>24</sup>

3.49 It appears that current pricing practices in a majority of salons are shaped by industry practices of licensing and registration that are now different and by consumption patterns which are no longer exclusively confined to either gender.<sup>25</sup> More men and women are becoming less predictable about the styles and services they expect from a hair salon and there are increasing demands for salons to recognise these trends with explicitly service-based pricing.

***Atkins v. Edward Beale***

3.50 In June 2000, the Victorian Civil & Administrative Tribunal mediated in a case between Ms Amanda Atkins and an Edward Beale salon. The complaint revolved around the issue of the price Ms Atkins was asked to pay for a hair cut compared to a male customer who had received a similar cut. In a test case run by the CLCV, and funded by both the

CLCV and the Victorian Women's Trust,<sup>26</sup> Ms Atkins and Mr Simon McGregor requested a similar hair cut for similar length hair.<sup>27</sup> Mr Beale noted that Mr McGregor's hair was an unusual length for a man.<sup>28</sup> Both Mr McGregor and Ms Atkins booked in at the same time and received a hair cut from the same hair dresser, with photos taken before and after the hair cuts.<sup>29</sup> Despite this and the fact that Mr McGregor's cut took 10 minutes longer than Ms Atkins' hair cut, Mr McGregor was charged \$38 and Ms Atkins \$56.

3.51 The case was taken to the Equal Opportunity Commission Victoria and then proceeded to the Victorian Civil & Administrative Tribunal. The basis for the case was discrimination on the grounds of gender in the provision of goods and services. Mr Beale was directed to refrain from gender based pricing and to introduce a unisex price list. The direction arising from a Tribunal decision can only apply to the respondents and consequently the direction to supply a unisex price list can apply only to Edward Beale salons and not to the industry as a whole.

3.52 It is usual for mediated cases to remain confidential but one of the conditions of settlement was publication of the outcome. No monetary compensation was awarded to Ms Atkins. The outcome sparked some media interest<sup>30</sup> and has raised public and industry awareness of the issue of gender based pricing.

3.53 As the CLCV was at pains to point out to the media at the time, the case does not require salons to charge the same price for all services:

“There is nothing wrong with Edward Beale, or indeed any other hairdresser in Victoria or Australia, saying ‘You’ve got two shampoos, conditioner, a blow wave and a perm and so that’s a higher price than a basic haircut’. The critical issue is, whatever service is offered up, the same price is charged for men as it is for women.”<sup>31</sup>

3.54 The HBIA was quoted at the time as saying that the issue of gender pricing was “a deeply rooted, cultural one”<sup>32</sup> and it may take time for the industry to change. This underscores the different attitudes to pricing, which exist within the industry.

#### ***Edward Beale Salons and Atkins vs. Beale***

3.55 In testimony before the Committee, Mr Edward Beale was able to inform the Committee about pricing practices at his salons prior to the *Atkins vs. Beale* case. There are a number of factors to take into account:

- ◆ The skill level required (less for men's and children's hair cuts);
- ◆ The 'economics' of men's and women's haircuts (the experience of Edward Beale salons is that men have their hair cut more frequently than women);
- ◆ The time taken by a particular hairdresser;
- ◆ Input costs; and
- ◆ What the market will bear.<sup>33</sup>

3.56 In Mr Beale's experience, men's and women's haircuts are different and this is reflected in the cost:

“The situation in our mind is that we are comparing apples with oranges... Where men's hairdressing and women's hairdressing are compared...there is definitely a difference and there is definitely a case where the economics of it and the skill factors are quite different.”<sup>34</sup>

In addition, Mr Beale noted that the overwhelming majority of female customers had medium length or long hair and that the vast majority of male customers had short hair. Mr Beale argued that women are a “different service” than men. Pricing rules are also based on this generalisation.<sup>35</sup> It should be noted however, that practices, rules, policies or procedures which are based on generalisations about a group of people and that have an adverse impact on some members of that group, may constitute indirect discrimination.<sup>36</sup>

3.57 After the ruling handed down by VCAT, Mr Beale was required to amend his price list so that it was non-gender specific. The two types of style cut were renamed ‘Style Cut 1’ and ‘Style Cut 2’. Style Cut 1 offers a shampoo, cut and dry-off (formerly known as a men's cut) while Style Cut 2 offers two shampoos, style cut and blow-wave finish (formerly known as a women's cut). Both cuts are available to either gender though Style Cut 1 is more appropriate for those customers with short hair. Mr Beale commented that this arrangement had caused some confusion in the salon.<sup>37</sup> Nevertheless, it has opened up a less expensive option for those women whose hair length and personal preference is directed to a limited-service cut.

3.58 In discussing the impact of the ruling on his business, Mr Beale stated that there was a 22% drop in the number of men's haircuts. He also made the Committee aware of the fact

that since his was the only salon required to adopt a service-based pricing list, other salons were able to specifically advertise their men's prices. This took advantage of a perception that service-based pricing automatically meant an increase in the cost of a man's haircut.<sup>38</sup> Mr Beale argued that the broader effects of service-based pricing would be seen in men having fewer haircuts, seeking a barber or switching to a cheaper hairdresser.<sup>39</sup>

3.59 There are two issues that remain after the *Atkins vs. Beale* case. The first is that the directions in the settlement bind only one proprietor's salons. It is not legally binding on the industry as a whole and there is no obligation imposed on the remainder of the industry to move to service based pricing. The second issue flows from the first - a case of individual discrimination has been addressed but the systemic issues which supported that act of discrimination have not been remedied. How this affects solutions to gender based pricing in the hair dressing industry are discussed below and more fully in Chapter 4, Solutions to Marketplace Discrimination.

### **Solutions to gender pricing**

#### ***Consumer-led solutions***

3.60 From the point of view of the consumer, gender based pricing has two possible solutions. One is to 'vote with your feet' and take your custom elsewhere or, secondly, take legal action. The Committee raised the option of 'voting with your feet' as a proportional consumer-led response to unattractive pricing. The CLCV did not agree that this was appropriate, given the market conditions prevalent in the hair dressing industry:

“The first thing to say about voting with your feet is...96 per cent of hairdressers in Melbourne, according to the evidence we have got, price on the basis of gender. So that is really no opportunity, in my submission, to vote with your feet, because it is simply unreasonable to expect a woman to go out and find that 4 per cent of hairdressers that do not price on that basis.”<sup>40</sup>

3.61 The problem with a consumer-led response to unattractive pricing is that, by its very nature, there are limited opportunities to take business elsewhere. Furthermore, this approach may impose costs on the consumer in the time, effort and transport costs involved in finding a non-discriminatory salon.

***Pricing for individual service***

3.62 There was agreement from some industry and consumer representatives who made submissions to the Inquiry that pricing for services was the most appropriate way of pricing for hair dressing. Mr Beale maintained that such an approach was inappropriate.<sup>41</sup> Time based pricing was briefly considered by the CLCV during its involvement with the *Atkins vs Beale* case but was discarded because it still left open the possibility of pricing on assumptions, eg. that women take longer to service.<sup>42</sup>

3.63 The HBIA noted moves towards service based pricing in some Melbourne salons and regards it as a positive move since it not only addresses discrimination but also encourages salons to realistically assess the cost of their services:

“Many salons throughout Melbourne have implemented a non-gender pricing policy into their business. Importantly for the industry, these salons are also charging what the service is truly worth. Due to the vast difference in salons across Melbourne there is naturally vast difference in pricing which leads to a highly competitive market. A large portion of the industry strongly feels that the majority of salons are still pricing historically and are not charging enough for their services across the board because the consumer won’t pay the price.”<sup>43</sup>

3.64 As the HBIA explained, there are a number of factors which determines the price of hair services:

“We tell our members that they need to look at their overheads, expenses, the staff they employ and all those sorts of things as well as the time it takes them to do that service and what they believe the level of expertise is, but more importantly the time and products that are used. Obviously somebody in an Armadale or Toorak will have much higher pricing than someone in an outer suburban area.”<sup>44</sup>

3.65 The Committee did not encounter any arguments that suggested that hair salons should all charge within a similar price range. What was argued was the need for service-based pricing which was capable of reflecting the salon’s market position.<sup>45</sup> The challenge for the industry is to implement service-based pricing in a manner that does not adversely affect either salons, consumers or employees. It was not clear to the Committee that this challenge could be met. The difficulties involved were outlined to the Committee as the HBIA

described an industry seminar with former Federal Sex Discrimination Commissioner, Ms Susan Halliday:

“It...outlined clearly that the industry holds a great fear regarding the public perception that female pricing is too high when, in fact, for many salons the male pricing is too low. This is also coupled with the fact that most salons do not charge enough for their services and owners believe that their consumer market will not pay any more. This then leads to a situation whereby for these salons to remain in business and [stay] competitive they cannot afford to raise prices any further.”<sup>46</sup>

3.66 However much the competitiveness of the industry leads individual salons to believe they cannot afford to introduce realistic service based pricing, they cannot continue with an illegal practice.

***Recommendation 6:—That the Hairdressing and Beauty Industry Association, in consultation with consumer groups, hairdressing salons, barbers and Consumer and Business Affairs Victoria (CBAV), finalise and adopt a voluntary code of practice, which CBAV is able to endorse, by the 30 June 2002.***

***Recommendation 7:—That Consumer and Business Affairs Victoria (CBAV) ensure that this code of practice is distributed throughout the industry.***

***Recommendation 8:—That the Hairdressing and Beauty Industry Association, in consultation with the hairdressing and beauty industry, consumer groups and Consumer and Business Affairs Victoria, establish a complaints system which is widely advertised within the industry.***

### ***Industry education and training***

3.67 Another dimension of resolving the problem of gender-based pricing is industry education and training. The HBIA has indicated to the Committee that it seeks to inform and educate its members about appropriate pricing structures. It has conducted a seminar with

the former Federal Sex Discrimination Commissioner, Ms Susan Halliday and advises its members to price according to overheads and expenses and not on a gender basis.<sup>47</sup> This type of approach will be discussed in greater detail in Chapter 4, Solutions to Marketplace Discrimination.

***Recommendation 9:—That Consumer and Business Affairs Victoria and the Hairdressing and Beauty Industry Association ensure that the industry is fully informed of the issues surrounding price discrimination and their responsibilities under the Equal Opportunity Act.***

### **Dry cleaning**

3.68 The Committee was directed to examine the dry cleaning industry under the Terms of Reference for its Inquiry and dry cleaning has also been discussed within the literature on gender-based pricing.<sup>48</sup> The Committee received written and oral submissions from the Dry Cleaning Institute of Australia (DIA), the Victorian Women’s Trust (VWT) and the Consumer Law Centre Victoria (CLCV).

The issue of gender-based pricing in dry cleaning concerns whether women are charged more for dry cleaning garments which are of a similar fabric and construction to men’s garments and whether women are charged excessively for garments that are specifically female (plain and special occasion dresses). Two issues that have arisen during the course of the Inquiry are:

- A lack of consumer awareness of the technical aspects of dry cleaning and its impact on prices; and
- Confusion over what is regarded as a ‘standard’ and ‘plain’ garment by consumers and the industry.

These need to be understood in order to make an accurate assessment of the existence and extent of gender-based pricing. They will be discussed in more detail below.

3.69 The dry cleaning industry in Victoria has 387 dry cleaners operating from approximately 420 stores where dry cleaning takes place on the premises. These are known as ‘wet’ sites. There are a further 20 ‘dry’ sites which function purely as drop-off and pick-

up points for garments. The DIA describes 70% of establishments as “High Street” family retail operations that have an average individual turnover of approximately \$150,000 per annum. Members of the DIA account for 75% of industry employment in Victoria and approximately 83% of industry turnover.<sup>49</sup>

### ***The dry cleaning process***

3.70 As explained by representatives of the DIA, many consumers are not fully aware of the processes involved in dry cleaning or laundering garments and how this impacts on the prices for dry cleaning services. The DIA argued, and the Committee agrees, that it is necessary to understand the dry cleaning process before further analysis of pricing structures within the industry.

3.71 The DIA outlined to the Committee the 7-step process that each garment goes through when dropped off at a dry cleaner’s, whether it is a wet or dry site:

- Identification and inspection;
- Spotting and stain removal;
- Sorting;
- Dry cleaning or laundering;
- Drying;
- Pressing and finishing; and
- Final inspection and packaging.<sup>50</sup>

3.72 The DIA elaborated on this process:

Firstly, identification and inspection — garments are looked at. That inspection is crucial to determining how garments are charged...A garment is priced specifically on the garment itself and what it costs to give it back in the state the owner wishes. Stains are spotted and removed. Garments are sorted, and dry-cleaned or laundered according to their care labels. We are bound to treat garments within their care label requirements...If we move outside those care labels we become liable.

Then comes the drying, pressing and finishing, and the finishing is an area of great labour intensity because it is all hand done...Then they go through a final inspection and packaging. It is a labour-intensive process depending on the amount of time, whether a garment can be fully machine finished or totally hand done. Factors that go into the costs include the garments care label treatment and the materials themselves. The more exotic

the garment, the more difficult it is to clean; its design and detail are all taken into account, as are the dyes and trimmings, its finishing, and soiling.<sup>51</sup>

3.73 Although all garments go through the same process, the amount of time and skill involved depends entirely on the nature of the garment, with prices varying accordingly. Cotton or polycotton fabrics in plain designs are far easier to clean than delicate or special fabrics in intricate designs. This applies to both male and female garments.

#### ***Price survey results***

3.74 This section analyses the results from two price surveys, one conducted by the Victorian Women's Trust (VWT) and the other by the Dry Cleaning Institute of Australia (DIA). A brief outline of the methodology of both surveys is given, followed by a direct comparison of results. This comparison is possible given that the DIA decided to model its own survey on that conducted by the VWT.<sup>52</sup>

3.75 In November 2000, the VWT produced a survey on dry cleaning prices in Melbourne.<sup>53</sup> This research was conducted in response to anecdotal evidence produced in Allyson Foster's book, *Do Women Pay More?* It sought to gather statistical evidence of the prices charged for men's and women's business shirts, women's blouses, the exclusion of dresses from 3-item specials, and prices for evening and wedding dresses.

3.76 Respondents to the survey were drawn from the 353 dry cleaning businesses listed in the 1999/2000 edition of the Yellow Pages. Data was collected by phoning every third dry cleaner listed. In all, 108 dry cleaners were contacted for the survey, representing 30% of dry cleaners listed in the Yellow Pages.

3.77 The dry cleaners were asked:

- The price for dry cleaning a men's business shirt and a women's business shirt (plain, polycotton);
- The price for dry cleaning a plain woman's blouse (cotton, without decoration or frills etc, but not a business shirt);
- If they offered a three-item special and, if 'Yes', whether they included a dress. Reasons for accepting or declining a dress were recorded if supplied;
- The starting price for dry cleaning a wedding dress (conditions recorded, if supplied);
- The starting price for dry cleaning an evening dress (conditions recorded, if supplied)

3.78 The DIA sent a voluntary written survey to all its members in January 2001. The questions mirrored those contained in the VWT survey. In all, 77 dry cleaners or 30% of the DIA’s membership responded to the survey. The results of both surveys were as follows:

**Table 2.3: Dry cleaning price survey comparison<sup>54</sup>**

	VWT	DIA
<i>Sample size</i>	108 (30% of YP advertisers)	77 (30% of DIA members)
<i>No. of cleaners charging a higher price for women’s business shirt than man’s business shirt</i>	13 (12%)	2 (2.59%)
<i>No. of cleaners charging a higher price for women’s blouse than man’s business shirt</i>	32 (29.6%)	16 (20.78%)
<i>Average price difference, women’s &amp; men’s business shirt</i>	\$2.97 (Range from 80c - \$5.40)	Not reported
<i>Average price difference, men’s business shirt &amp; women’s plain blouse</i>	\$2.41 (Range from 50c - \$5.40)	Range from 40c - \$3.70
<i>No. of cleaners charging the same price men’s &amp; women’s business shirts &amp; women’s plain blouse</i>	63 (58.3%)	61 (79.22%)
<i>No. of cleaners offering a 3 item special</i>	85 (79%)	45 (58.45%)
<i>No. of cleaners incl. a dress in 3 item special</i>	70 of 85 (82%)	41 of 45 (91.11%)
<i>Conditions on dress as part of 3 item special</i>	100% (ie. must be ‘plain’)	38 of 45 (92.68%, must be ‘plain’)
<i>Cost of cleaning a wedding dress</i>	Starting prices ranged from \$15.00 - \$220 (average was \$106.71)	Starting prices ranged from \$22 - \$175 (average was \$85.87)
<i>Cost of cleaning an evening dress</i>	Starting prices ranged from \$6 - \$30 (average \$15.47)	Starting prices ranged from \$8.35 - \$45 (average \$16.79)

***Men’s and women’s business shirts; women’s plain blouses***

3.79 The VWT survey defined a women’s business shirt as “a plain, polycotton business shirt, like a man’s business shirt”.<sup>55</sup> There were no embellishments, intricate designs or

special buttons. The DIA survey defines a business shirt according to the standard accepted by the clothing industry and is a “non-fitted, collared, buttoned, non-padded, cotton or polycotton plain shirt, designed to be worn with a tie as part of a business shirt (traditional standard male business attire)”.<sup>56</sup> This definition does not include fancy shirts for either gender. A plain blouse was defined in the VWT survey as “plain, made of cotton, not silk or linen, that it wasn’t decorative, but it wasn’t a business shirt”.<sup>57</sup> By implication, a blouse may be slightly more fitted than a business shirt but still without intricate design features and it is made of the same fabric as a business shirt might be.

3.80 As can be seen from the survey results, the number of dry cleaners charging more to clean a woman’s business shirt than a man’s was quite small. However, the number of dry cleaners charging more for a plain blouse than a business shirt is rather larger, with the VWT survey quoting 30% and the DIA survey 21%. Varying explanations were given for the price differences. Where two dry cleaners responded to the DIA’s survey as charging more for women’s than men’s business shirts, both stated that the smaller size of women’s shirts meant that they did not fit on the standard finishing machine and had to be hand pressed.<sup>58</sup> The VWT survey noted similar responses, with comments such as “they didn’t fit on the machine” and “couldn’t be done on the autopress, and so have to be handpressed”.<sup>59</sup> The VWT survey found that a small group of respondents did not know why different prices were charged and one stated that she thought the price difference unfair. Only five said they would have to view the item before quoting a price. However, those who charged the same price gave reasons such as “The procedure is the same for all shirts” or noted that they did not discriminate.

3.81 As the VWT noted, contradictions were apparent when explaining pricing policy:

It tended to be that the survey simply recorded people’s comments, and contradictions emerged. Some would say, ‘Well, there is more time involved; the procedures are different’, and then others would say, ‘Well, the procedures are the same’, so it was a bit all over the place. There was no set pattern of response in terms of that difference.<sup>60</sup>

These comments were being made by different dry cleaners about the same item of clothing – a plain women’s business shirt.

3.82 The Committee understands that, in some dry cleaning establishments, processes for men's and women's business shirts are different. The DIA informed the Committee that some dry cleaners make the use of high-volume shirt finishing machines which "are specifically designed to handle up to 75 garments an hour". These machines are able to dry and press laundered cotton or polycotton shirts in minimal time. It was also noted by the DIA that:

The production equipment is designed for an average person, based on the formula of a definition of a business shirt as it has always been...If you are small or large in size, you will not fit that equipment. If you need any form of handwork because you do not fit the actual equipment...you add an element of cost.<sup>61</sup>

3.83 Effectively, the machines are designed for men's business shirts in terms of the fabric, design and size of garment they are able to accommodate.<sup>62</sup> Although this implies that the smaller or larger than average man will be charged more for a business shirt to be laundered, responses to both surveys did not indicate if this was a routine consideration when quoting prices.

3.84 However, this situation will only apply to a small number of dry cleaning establishments in Victoria. The finishing machines are expensive and demand a high volume of garment turnover. The Committee was informed that only half a dozen dry cleaners would have these machines.<sup>63</sup> The VWT survey, which reported a higher incidence of dry cleaners charging women more than men for cleaning business shirts than did the DIA survey, did not indicate whether all thirteen of these dry cleaners had finishing machines or access to them. If any of these dry cleaners did not use finishing machines, processed men's and women's business shirts in the same manner, and charged women more, then this would constitute gender-based pricing.

3.85 The DIA survey showed that 79% charged the same for blouses as for men's business shirts while 21% did not. The DIA argued that:

These results would suggest that as much as possible the charges for comparable garments are the same. The major variable contained in the question was the garment is made of cotton (rather than the polycotton that most business shirts are made from).<sup>64</sup>

3.86 This contradicts the definition of a standard business shirt supplied by the DIA where such a shirt is described as one made of polycotton or cotton. Consequently, this seems to be

an insufficient explanation for any price differences. It also does not address the issue of why the majority of dry cleaners are able to charge the same prices for men's and women's business shirts and women's blouses, and why others are not.

3.87 The Committee accepts that manual or automated processes are an important factor in determining the price of dry cleaning shirts and blouses. The Committee is concerned that the number of automated machines in used is not consistent with the number of dry cleaners who claim to use substantially different processes for men's and women's business shirts and blouses. The use of automated processes explains the price difference for those dry cleaners who use the six finishing presses, but is not sufficient explanation for those dry cleaners who claim the use of different processes for shirts and blouses and do not having access to the time- and labour-saving finishing presses. Given some of the explanations noted in the VWT survey, it appears plausible that some dry cleaners are setting prices for women's shirts and blouses in expectation of labour-intensive cleaning, rather than the fact of it (refer to paragraph 2.76 and Table 2.3).

#### ***Dresses and 3-item specials***

3.88 Where dresses were not included in a 3- item special, the responses to the VWT survey reported responses such as dresses were:

- difficult to press;
- a lot more work; or
- just didn't go into the 3 item special (effectively no explanation).

3.89 Both surveys indicated that dry cleaners who accepted dresses under a 3-item special accepted plain, street dresses or uniforms, without pleats, beading or other fancy work or fabric. The VWT survey did note that one dry cleaner was prepared to accept a plain evening dress. The DIA submission does not report on reasons provided for not including dresses in a three item special.

3.90 During the Committee's site visit to a dry cleaning establishment, it was demonstrated that the pressing machines that might be used for dresses were not easily manipulated to accommodate differing dress and sleeve lengths. It was suggested during the visit that dry cleaners might include dresses in order to attract a higher garment volume per customer.

***Evening and wedding dresses***

3.91 Responses to both surveys regarding the price of dry cleaning evening and wedding dresses implied technical and procedural reasons for the increased cost. Explanations for the cost of wedding dresses in both the DIA and VWT surveys were largely technical – the special fabrics used, the complex structure of the dress and that much of the work would be done by hand. Some respondents to the VWT survey would not give a price over the phone, stating they would have to see the dress first; a few others gave a starting price with the qualification that a business price would be given on viewing the dress. Similar responses were given for evening dresses.

3.92 The conclusion to the VWT survey argues that:

Since wedding dresses are understood to be more expensive to buy than evening dresses and evening dresses more expensive than normal dresses, the issue of pricing dry cleaning according to the perceived cost of the dress was implicated. This requires further investigation.<sup>65</sup>

3.93 The DIA was able to clarify this matter by noting that both evening dresses and wedding dresses, however plain they may be, are usually made of different materials and have design features such as lace, beading or pleats which will require particular care and attention. The DIA also noted in its submission that the minimum prices quoted for evening and wedding dresses in its survey “would represent a very substantial loss” to the dry cleaner concerned.<sup>66</sup>

3.94 The particular characteristics of wedding dresses were noted in the DIA’s submission and these would have an impact on the cost of cleaning. In particular, wedding dresses are designed as a one-wear garment and “after-care considerations are often not designed into the dress. This compounds the difficulty in dry-cleaning them.”<sup>67</sup> It is usually the case that there are higher expectations of a dry cleaned wedding dress, that it will be returned ‘as new’ so that it might be later sold or stored for posterity. All of these factors contribute to the time and skill required to clean a wedding dress and the cost of the service reflects this.

***Recommendation 10:—That Consumer and Business Affairs Victoria (CBAV) and the Drycleaning Institute of Australia, in consultation with consumer groups and the drycleaning industry, finalise and adopt a voluntary code of practice which CBAV is able to endorse, by the 30 June 2002.***

***Recommendation 11: –That Consumer and Business Affairs Victoria ensure that this code of practice is distributed throughout the industry.***

***Recommendation 12: –That the Drycleaning Institute of Australia in consultation with the drycleaning industry, consumer groups and Consumer and Business Affairs Victoria, establish a complaints system which is widely advertised within the industry.***

***Pricing for service or gender?***

3.95 On allegations of gender-based pricing, the DIA has consistently stated that it abhors the practice and that it does not occur among their members:

As pricing is garment, not gender, specific the DIA strongly contends that discrimination does not occur in the dry cleaning industry. Discrimination is not systemic or endemic. Any isolated incident that may occur would be based on a failure to understand the nature of the action and would not be intentional. However, any incident no matter what its cause in unacceptable.<sup>68</sup>

3.96 The Committee accepts the DIA’s commitment to non-discrimination but the results of both price surveys provide evidence that some dry cleaners are using gender-based pricing for men’s and women’s business shirts and women’s blouses. It is not widespread but it does involve a sizeable minority of dry cleaners.

***Recommendation 13:—That the Drycleaning Institute of Australia and Consumer and Business Affairs Victoria ensure that members of the industry are fully informed of the issues surrounding price discrimination and their responsibilities under the Equal Opportunity Act..***

3.97 There is also the broader issue of dry cleaning machinery being able to cope with the size and type of garments most commonly brought in for cleaning. It appears that some industry standards are defined by ‘male’ standards – the definition of a business shirt is that of a male shirt and finishing machines are tailored for the standard male size and garments. It is most likely that this reflects past and current trends in the types of garments most commonly brought in for dry cleaning. However, as was noted by members of the DIA in discussion with the Committee, consumer patterns are likely to change quite dramatically in the medium to long term. It is predicted that the Australian market will begin to resemble the American market for dry cleaning, with more people using dry cleaning and laundering services for a greater range of garments.<sup>69</sup> If, as a consequence, the industry finds itself dealing with more and more ‘non-standard’ garments such as women’s shirts, blouses and (plain) dresses, it should be encouraged to respond by increasing its ability to deal with these garments as efficiently and cost-effectively as it is able to deal with standard male garments.

### **Clothing and cosmetics**

3.98 Clothing was listed in the Terms of Reference for this Inquiry and both clothing and cosmetics were raised as an area of concern in some submissions received by the Committee.<sup>70</sup> The Committee received written and oral submissions from the Australian Retailers’ Association Victoria (ARAV) and the Consumer Law Centre Victoria (CLCV).

3.99 Evidence before the Committee suggests that the clothing and cosmetics retailers operate under conditions substantially different to those experienced by the hairdressing and dry cleaning industries.<sup>71</sup> Male and female consumer behaviour patterns are more varied, as are the products they buy. Retailers find themselves at the end of a manufacturing process where the cost of an item is largely pre-determined and leaves them with little price flexibility. They are in the position of “price takers” rather than “price makers”.<sup>72</sup> These factors combine to make the task of determining whether there is marketplace discrimination against women consumers in this area a difficult and complex one.

***Factors in price setting***

3.100 In the Introduction to this chapter, it was noted that certain conditions need to be in place in order for a business to be able to price discriminate. The primary condition is a state of monopolistic competition in that particular market.<sup>73</sup> This means that a business has market control in its individual monopoly and is able to direct prices according to their preferences (it is a ‘price maker’).

3.101 In the hairdressing and dry cleaning industries, product differentiation means that although each business technically sells the same good or service, small differences (such as the particular style of a hairdresser or the geographic convenience of the local dry cleaner) can encourage customer loyalty. This means that the goods or services offered by another business are an imperfect substitute for those customers and they less likely to seek out alternatives. However, two further conditions are required before businesses operating in these market conditions can price discriminate. They must be able to segment their market into different consumer groups and deliver a non-resaleable product or service. These last two conditions are easily met within hairdressing and dry cleaning.<sup>74</sup>

3.102 However, only two out of three of these market conditions apply to garment and cosmetics retailers. While they may be able to differentiate between consumer groups (female, male, children, adult etc) and prevent the resale of their products from one consumer group to another (the clothing needs of women and men are quite different), they do not operate within their own monopolies and do not have the ability to control prices as they wish. Instead they must react to the prices set by manufacturers. This situation was explained to the Committee by the ARAV:

“As a summary, retailers really are price takers rather than price makers under these circumstances. The manufacturers outline a price, and that price then has to have a margin placed on it by the retailer. The retailer, obviously depending on their leverage, puts on different margins and is able to charge different prices. But inevitably they are working from what the manufacturer gives to them, not vice versa. Very few retailers are able to force prices for manufacturers.”<sup>75</sup>

3.103 Therefore clothing retailers accept a manufacturer's price which includes varying design and manufacturing costs. Factors involved in calculating clothing prices include:

- Seasonal colour and fabric changes: "The continual turnaround of stock in women's fashion retailing means both retailers and manufacturers spend more time searching out the latest styles, colours and fabrics for their customers, which inevitably adds to the cost of women's clothing."<sup>76</sup>
- New patterns; and
- Varying cost of fabrics.<sup>77</sup>

Another cost is the considerable one of marketing in a very competitive market. The ARAV commented on those cases where prices for male and female perfumes may vary:

"Everything that a manufacturer or a retailer prices into a product will be included in the final retail price. That will include the marketing and the additions they have to do, and it might include the research they feel they have to undertake in order to produce a different perfume.... That must all be taken into account."<sup>78</sup>

3.104 This does not mean that gender-based pricing is impossible in a competitive retail market. It means that, where it does occur, it can be the result of a decision made at any point of the manufacturing or retail process. The Committee also notes that clothing and cosmetics products are sold at a range of prices, from discount to luxury brands. Price differences between comparable male and female clothing and cosmetic products may be based legitimately on differences in manufacturing costs or they may be based on a decision to make the most of women's presumed willingness to pay higher prices for these items. Establishing which situation applies is a difficult task.

### ***Consumer behaviour***

3.105 The Committee received evidence which suggested that different consumption patterns between most men and women have an impact on the cost of clothing. There was general agreement that women are assumed to be more fashion-conscious, and are expected to acknowledge the changing trends in colours and styles by changing their wardrobe on a frequent basis. Allyson Foster noted that "in the market place, clothes for men...are seen as essential, functional and durable, while for women they are seen as a fleeting fashion

whim”.<sup>79</sup> The submission from Women’s Health Victoria commented that

“Men [are] able to wear the same suit for a week and only change their shirt and tie[,] a practice that all women agreed they would not be able to follow without comment from others.”<sup>80</sup>

3.106 The ARAV observed,

“But the important thing about that is that women are buying for this season. Next season when brown is no longer in and black is the new grey or grey is the new black, or whatever, they will have to buy a new product. However, men can buy the classically cut dark or black suit which we know will be in fashion next year...It is a catch-22 situation: any retailer that does not have the new lines is behind the market. Irrespective of whether we think it is right or wrong, women have an expectation of fashion changing all the time and they enjoy it.”<sup>81</sup>

3.107 A smaller proportion of women’s clothing is styled in a ‘classic’ manner enabling many seasons of wear without looking obviously ‘out of fashion’. It is not a very attractive option for retailers when there is a great deal of pressure on retailers to have the latest ‘look’ available for their customers:

“Consumer demand frequently drives not only the seasonal changes... but also changes within the season, when a new story or fashion range of nightwear or something is added. Where does it come from — magazines showing us that these are the new fashions, or television? ...from what retailers have told me they are keeping up with the demand from their customers. They believe if they do not have those new lines their customers will go somewhere else to find them.”<sup>82</sup>

3.108 The seasonal change in women’s fashions means higher production costs (for example, patterns are rarely re-used the following season, type and weight of fabrics change etc)<sup>83</sup> and therefore higher costs for female consumers. This does not necessarily constitute marketplace discrimination since prices are based on legitimate business costs, but there are other consequences such as limited choices for those women who choose not to change their wardrobe with every fashion season.

## **Price comparisons**

### ***Comparability of items***

3.109 In order to determine instances of marketplace discrimination against women consumers, there needs to be a direct comparison between female and male products. The Australian Retailers' Association Victoria (ARAV)

“Sees this as an impediment to the whole issue of price discrimination against women consumers.”<sup>84</sup>

The Consumer Law Centre Victoria (CLCV) acknowledges these difficulties, but argues that comparison of some items is still possible:

“Whilst the range of manufacturers, products and constituent ingredients in some cases makes it difficult to make direct comparisons, pricing differentials can be observed amongst basic items.”<sup>85</sup>

The following price comparisons are based on directly comparable male and female products.

### ***Price surveys***

3.110 There is a dearth of relevant Australian data on this subject and the Committee has received anecdotal evidence supplied to it by the ARAV and the CLCV. The Committee welcomes the evidence but is not in a position to determine whether these cited examples constitute gender-based discrimination. The CLCV cited the following instances of alleged gender-based pricing, where the items concerned were similar in most respects:

- Holeproof Explorer socks - \$10.92 in the women's clothing section and \$8.72 in the men's clothing section (July 2000);
- 7 pink Bic Lady Shavers at \$1.97 with men's Shavers at 8 for \$1.76;
- identical body scrub sold at \$33 (150ml) for women and \$39 (200ml) for men;
- Bonds white t-shirt at \$15.31 for men and \$16.40 for women; and
- Same-sized wallets with coin purses at \$90.23 for men and \$125.57 for women.<sup>86</sup>

3.111 In a focus group discussion conducted by Women's Health Victoria, the female participants recounted experiences of:

- higher prices for women's 'basic' items (socks, briefs, and t-shirts) than men;

- the higher quality and durability of men’s business suits compared to women for less cost;
- inducements offered to men not available to women (an extra pair of trousers to the purchaser);
- the availability of good quality men’s shirts at a cheaper price than comparable quality women’s shirts; and
- comparable items of clothing (basic woollen jumpers) cheaper for men than women.<sup>87</sup>

3.112 The ARAV spoke to a number of its members about price differences between comparable male and female items and the basis for those differences. For basic items in its casual range, Calvin Klein charges the same price for men’s and women’s t-shirts (\$40) and jeans (\$140). More expensive items are available and a representative from Calvin Klein stated that

“If an item is more expensive than a similar item in the men’s range, it is because it has been constructed from more expensive fabrics and has cost more to buy in the first place.”<sup>88</sup>

3.113 The ARAV stated that the basic range of Calving Klein underwear was more expensive for men (briefs costing \$24.95 compared to \$19.95). This was attributed to more expensive packaging and slightly different garment construction. Again, a seasonal range is available for both women and men which is more expensive given the cost of different fabrics and changing styles. In these ranges, women’s underwear tends to cost more because of the more expensive fabrics used. Similar experiences were recounted in sportswear and formal wear, where fabrics could be more expensive or styling was more detailed and therefore more time-consuming.<sup>89</sup>

3.114 In the view of the Committee, anecdotal evidence appears to suggest individual experience of gender-based pricing in clothing and cosmetics, even though a lack of data prevents broader inferences being drawn. Without extensive research into the design, manufacturing and retailing processes, it is also difficult in individual circumstances to determine whether pricing decisions have a gender basis and at what point these decisions may have been made.

### ***Solutions to gender-based pricing***

3.115 It is acknowledged by the ARAV that clothing and some cosmetic products are more expensive for women than they are for men. These differences are largely attributable to increased costs of design and manufacture that are passed on to the retailer. Where this is the case, the manufacturing and retail sector is encouraged to consider the preferences of women consumers who demand good quality garments of durable construction and style.

3.116 Where materially similar men's and women's products are sold at different prices – such as t-shirts of the same design and fabric – gender-based pricing can be inferred, but not easily confirmed. Given the highly competitive nature of the retail sector, shopping around for cheaper men's products may be a reasonable, low-cost short-term solution for women.

3.117 During the course of this Inquiry the Committee has been made aware of the difficulties which may face rural and regional consumers. They may be faced with a smaller range of businesses or long travel times to access larger business centres. These factors can impede the ability of rural and regional consumers to satisfy their needs.

### **Summary**

3.118 This chapter has reviewed the evidence available to determine the existence and extent of gender-based pricing in hairdressing, dry cleaning and clothing and cosmetics. In the case of hairdressing, the evidence and testimony presented to the Committee indicates that discrimination against women consumers does exist. This discrimination, where it occurs, is usually the result of assumptions that all women take longer to service than all men. Price lists are consequently based on gender rather than the actual cost of providing the service to the customer regardless of gender. Both consumer and industry groups agree that service-based pricing is an appropriate solution to the problem.

3.119 The situation with regard to dry-cleaning was less clear cut. Price surveys conducted by consumer and industry groups indicate differential pricing for particular men's and women's garments. Many of these price difference could be traced to technical processes which impacted on the cost of service. However, where technical processes are the same, differential pricing may in fact be discriminatory. Increased consumer and industry awareness of the problem and an effective code of conduct have been recommended.

3.120 The Committee's investigation into clothing and cosmetics did not reveal clear evidence of discriminatory pricing. Manufacturing processes and the position of retailers as 'price-takers' made it difficult to accurately declare an instance of differential pricing as discriminatory.

## Endnotes

- <sup>1</sup> Definitions taken from Black, J. (1997), *Dictionary of Economics*. London, Oxford.
- <sup>2</sup> Foster, A. (1997), *Do Women Pay More?* Melbourne, Consumer Law Centre Victoria.
- <sup>3</sup> *Atkins vs. Beale & Ors*, Proceeding No. 131 of 2000, dated 6 June 2000.
- <sup>4</sup> Foster, A. (1997), *Do Women Pay More?* Melbourne, Consumer Law Centre Victoria:18
- <sup>5</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne: 15-16
- <sup>6</sup> Lowe, C. and A. Foster (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne.:48
- <sup>7</sup> *Ibid.*: 48
- <sup>8</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001.4-5.
- <sup>9</sup> Lowe, C. and A. Foster (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne.:49-50
- <sup>10</sup> *Ibid.*: 51
- <sup>11</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001.3.
- <sup>12</sup> Consumer Law Centre Victoria, Women's Legal Service, et al. (2001), *Submission #6*, Melbourne: 8
- <sup>13</sup> *Atkins v Edward Beale & Ors*, Victorian Civil & Administrative Tribunal – Anti-discrimination List, Proceeding No. A131 of 2000.
- <sup>14</sup> Consumer Law Centre Victoria, Women's Legal Service, et al. (2001), *Submission #6*, Melbourne: 6-7
- <sup>15</sup> Titelius, R. (2000), "Wrangle Puts Men in Haircut Hotseat", *Herald Sun*, 22 June 2000.
- <sup>16</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne: 20
- <sup>17</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001.3.
- <sup>18</sup> *Ibid.*.5.
- <sup>19</sup> Hairdressing & Beauty Industry Association (2001), *Submission #8*, Melbourne: 2-3
- <sup>20</sup> As quoted at Devine Decadence web site, [www.devinedecadence.com.au](http://www.devinedecadence.com.au), March 2001.
- <sup>21</sup> Refer to Price Attack at [www.priceattack.com.au](http://www.priceattack.com.au)
- <sup>22</sup> Campitelli, S. (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne: 49
- <sup>23</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 17
- <sup>24</sup> Campitelli, S. (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 51
- <sup>25</sup> Refer to *Ibid.* at p. 53.
- <sup>26</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne.9.
- <sup>27</sup> *Ibid.*.14.
- <sup>28</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001.10.
- <sup>29</sup> *Ibid.*.2, 11.
- <sup>30</sup> Johnson, L. (2000), "The Price of Victory Proves the Kindest Cut of All", *The Age*, 28 June 2000; Titelius, R. (2000), "Wrangle Puts Men in Haircut Hotseat", *Herald Sun*, 22 June 2000; Titelius, R. (2000), "Women Win Price Battle", *Herald Sun*, 28 June 2000.
- <sup>31</sup> Johnson, L. (2000), "The Price of Victory Proves the Kindest Cut of All", *The Age*, 28 June 2000.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001: 3, 10.
- <sup>34</sup> *Ibid.*: 3.
- <sup>35</sup> *Ibid.*: 3-4.
- <sup>36</sup> Information available at Victorian Equal Opportunity Commission website, [www.eoc.vic.gov.au](http://www.eoc.vic.gov.au), and Human Rights and Equal Opportunity Commission website, [www.hreoc.gov.au](http://www.hreoc.gov.au). Access date 18 October, 2001.
- <sup>37</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001.: 5.
- <sup>38</sup> *Ibid.*: 4-5.
- <sup>39</sup> *Ibid.*: 5.
- <sup>40</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 20

- <sup>41</sup> Beale, E. and U. Prendergast, *Submission*, 15th October 2001.3.
- <sup>42</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne.:13
- <sup>43</sup> Hairdressing & Beauty Industry Association (2001), *Submission #8*, Melbourne: 2
- <sup>44</sup> Campitelli, S. (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne: 50
- <sup>45</sup> Lowe, C. (2000), *Full Committee Meeting No. 26/00*, Family & Community Development Committee, Parliament of Victoria: Melbourne: 18-19
- <sup>46</sup> Hairdressing & Beauty Industry Association (2001), *Submission #8*, Melbourne: 3
- <sup>47</sup> *Ibid.*: 3.
- <sup>48</sup> Foster, A. (1997), *Do Women Pay More?* Melbourne, Consumer Law Centre Victoria.
- <sup>49</sup> Drycleaning Institute of Australia (2001), *Submission #5*, Melbourne: 8.
- <sup>50</sup> *Ibid.*: 17.
- <sup>51</sup> Meere, M., R. Bancroft, et al. (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne: 26
- <sup>52</sup> *Ibid.*: 26.
- <sup>53</sup> Morgan, G. (2000), *Do Women Pay More? Price Discrimination in the Marketplace*, Victorian Women's Trust, Melbourne.
- <sup>54</sup> Consumer Law Centre Victoria, Women's Legal Service, et al., *Submission*, , Drycleaning Institute of Australia, *Submission*,
- <sup>55</sup> Morgan, G. (2000), *Do Women Pay More? Price Discrimination in the Marketplace*, Victorian Women's Trust, Melbourne.: 11
- <sup>56</sup> Drycleaning Institute of Australia, *Submission*, : 20.
- <sup>57</sup> Morgan, G. (2000), *Do Women Pay More? Price Discrimination in the Marketplace*, Victorian Women's Trust, Melbourne.: 11.
- <sup>58</sup> Drycleaning Institute of Australia, *Submission*, : 21.
- <sup>59</sup> Morgan, G. (2000), *Do Women Pay More? Price Discrimination in the Marketplace*, Victorian Women's Trust, Melbourne.: 14.
- <sup>60</sup> Crooks, M. (2001), *Public Hearing*, Family & Community Development Committee, Melbourne.:21.
- <sup>61</sup> Meere, M., R. Bancroft, et al. (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 31.
- <sup>62</sup> Members of the Committee witnessed these finishing machines during a site visit to a 'wet' dry cleaning establishment, 19<sup>th</sup> March 2001.
- <sup>63</sup> Meere, M., R. Bancroft, et al. (2001), *Public Hearing*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 31.
- <sup>64</sup> Drycleaning Institute of Australia, *Submission*, : 22.
- <sup>65</sup> Morgan, G. (2000), *Do Women Pay More? Price Discrimination in the Marketplace*, Victorian Women's Trust, Melbourne.: 18.
- <sup>66</sup> Drycleaning Institute of Australia, *Submission*, : 26.
- <sup>67</sup> *Ibid.*: 27.
- <sup>68</sup> Statement of Position, DIA, March 2001: 2.
- <sup>69</sup> Site visit, 19<sup>th</sup> March 2001.
- <sup>70</sup> Frawley, N. (2000), *Submission #2*, Moonee Ponds, Vic, Consumer Law Centre Victoria, Women's Legal Service, et al. (2001), *Submission #6*, Melbourne, Women's Health Victoria (2001), *Submission #3*, Melbourne.
- <sup>71</sup> Australian Retailers' Association, *Submission*, February 2001.
- <sup>72</sup> Foster, A. (1997), *Do Women Pay More?* Melbourne, Consumer Law Centre Victoria, Australian Retailers' Association (2001), *Submission #10*, Melbourne, Consumer Law Centre Victoria, Women's Legal Service, et al. (2001), *Submission #6*, Melbourne.
- <sup>73</sup> Refer to paragraph 2.2 for a description of monopolistic competition. See also Black, J., at Note 1.
- <sup>74</sup> Black, J. (1997), *Dictionary of Economics*, London, Oxford..
- <sup>75</sup> Australian Retailers' Association (2001), *Transcript of Proceedings*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 58.
- <sup>76</sup> Australian Retailers' Association, *Submission*, February 2001.: 3.
- <sup>77</sup> *Ibid.*: 3-4.

<sup>78</sup> Australian Retailers' Association (2001), *Transcript of Proceedings*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 58.

<sup>79</sup> Foster, A. (1997), *Do Women Pay More?* Melbourne, Consumer Law Centre Victoria.: 74.

<sup>80</sup> Women's Health Victoria, *Submission*, 23 January 2001.: 2.

<sup>81</sup> Australian Retailers' Association (2001), *Transcript of Proceedings*, Family & Community Development Committee, Parliament of Victoria: Melbourne.: 59.

<sup>82</sup> *Ibid.*: 59.

<sup>83</sup> Australian Retailers' Association, *Submission*, February 2001.: 4.

<sup>84</sup> *Ibid.*: 6.

<sup>85</sup> Consumer Law Centre Victoria, Women's Legal Service, et al. (2001), *Submission #6*, Melbourne.: 17.

<sup>86</sup> *Ibid.*: 18.

<sup>87</sup> Women's Health Victoria, *Submission*, 23 January 2001.: 1-2.

<sup>88</sup> Australian Retailers' Association, *Submission*, February 2001.: 5.

<sup>89</sup> *Ibid.*: 4-7.

## **CHAPTER 4**

### **GENDER STEREOTYPING AND OTHER ISSUES**

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- **Introduction**
  - **Access to Personal and Business Credit**
  - **Relationship Debt**
  - **Banking Services**
  - **Superannuation**
  - **Motor Vehicle Sales and Repairs**
  - **Domestic Building**
- 

#### **Introduction**

4.1 In contrast to what has preceded, this chapter deals with services rather than products and possible differences between sexes which are difficult to gauge. The terms of reference specifically mention the motor and banking industries for consideration and there has been anecdotal evidence in the past of gender related issues. However, with women increasingly gaining economic independence both industries have made attempts to enhance the business opportunities created by addressing perceived problems both on the basis of individual firms and employees and the industry as a whole.

#### **Access to Personal and Business Credit**

4.2 The Committee received a number of submissions commenting on the perceived difficulty of women to obtain credit. This comment can be divided into two areas personal and business credit

#### ***Personal Credit***

4.3 As written in the Code of Banking Practice in considering whether to provide a Banking Service involving the provision of credit to a Customer, a Bank shall take into account the range of factors it considers are relevant to the Customer and the Banking Service to establish whether, in the Bank's view, the Customer has or may have in the future the capacity to repay. These factors may include:

- (i) the customer's income and expenditure;
- (ii) the purpose of the Banking Service;

- (iii) credit scoring (being a scoring method used by Banks to assess whether a credit applicant is an acceptable risk); and
- (iv) the customer's assets and liabilities.<sup>1</sup>

4.4 Evidence submitted to the Committee has argued that there is a source of possible discrimination in the reliance by most lending institutions on credit scoring, computer look-up tables or point-scoring systems that are based on computer assessments of borrower information. This is despite evidence presented to the Committee by Westpac that women are 50% more successful at loan repayment than men.<sup>2</sup> Put simply information about applicants is compiled and a score obtained by points allocated on various criteria including assets. Eligibility for credit is then based on the applicant achieving the required point score. The Committee received evidence that an applicant will be asked about income but rarely questions about the number of dependants he or she supports on that income or what other commitments the applicant might have.<sup>3</sup> A number of questions seek to establish that the applicant has consistency of residence and employment:

There are questions such as: do you have the telephone on in your name? Have you worked with your last employer for three years or more? Have you lived at your current address for three years or more? If not, give details of previous employer, address and so on. The reason for the questions is that financial institutions want to be able to trace defaulting borrowers, so the questions are pitched at deciding whether you will be an easy person to find if you do a skip or your loan goes into risk. It is not uncommon to be asked the name and address of the nearest relative not living with you. Again, will they be able to find you by those various means? The answers to the questions are fed into the computer and a score is given that determines your creditworthiness based on how easy you will be as an individual to trace.<sup>4</sup>

4.5 It is argued that given these criteria in accessing credit applicability women in relationships will struggle to get credit on the point-scoring system in comparison to men.<sup>5</sup> Couples tend to put the phone and other utilities in the name of the male partner. Traditionally, connection with utilities has been established by using the name of the male 'head of the house':

so if a couple is moving into newly established premises, even if the female partner is putting on all the utilities and connecting up everything, most of those utilities will go into

her partner's name and this makes it difficult for her to accumulate points in terms of getting a loan.<sup>6</sup>

4.6 Another more obvious problem for women in scoring points on these computer assessment systems is that women who have had a break from the work force for the purposes of child rearing or other family responsibilities can struggle to establish employment stability and again score low points for traceability. It is not about whether they are earning a good income now, but if they were not with that employer for three years or a prior employer for three years they will not score as many points as men generally tend to achieve as loan applicants.<sup>7</sup>

### ***Business Credit***

4.7 The Committee recognises the enormous contribution to the country's economy made by women in small business. It is noteworthy that:

- women make up 35 per cent of Australia's 1.3 million small business operators;
- there are now around 460,000 female small business operators, excluding agricultural businesses;
- the growth rate of female small business operators from 1995 to 1997 was three times that for men;
- structural change in the labour market and international experience suggest this growth will continue in coming years.<sup>8</sup>

4.8 Recently research has been conducted into perceived and actual barriers to entry for small businesswomen. Although women have long claimed access to finance as a barrier in starting and operating a small business, research comparing the success rates of men and women applying for loans suggests that gender is not a restricting factor.<sup>9</sup> However, some research in assessment of the gender finance gap, concluded that women in small business had deficient access to debt and equity finance through networks, banks and the finance sector.<sup>10</sup>

4.9 In addition, the results of the Yellow pages survey (below) suggest that concern over possible negative stereotyping by the banks in regard to credit was seen as a barrier to business entry by only 13 % of those surveyed.

**Table 4.1: Yellow Pages survey on barriers to women in small business<sup>11</sup>**

<b>Barriers to success cited by women in small business</b>	
Male chauvinism	20%
Banks think men are better credit risks	13%
People think women lack knowledge/technical skills	11%
A male dominated industry	8%
People prefer to deal with men	5%
Suppliers take men more seriously	5%
None	35%

4.10 However, considerable anecdotal evidence exists suggesting women experience discrimination and that finance remains a barrier for women. Research conducted at Flinders University of South Australia has identified three issues particularly pertinent to women: attitudes that discriminate against women; women's relative lack of equity; and lack of access to potential business partners through business networks.<sup>12</sup> These issues were also highlighted in consultants' discussions with various government agencies and providers in a report conducted by the Commonwealth Office of the Status of Women.<sup>13</sup> Of these, the first two are of significance to this reference.

#### ***Attitudes***

4.11 It is still being reported that would-be lenders and investors perceive women to be less skilled in the area of business and financial management and poorer business risks than their male counterparts. In some cases perceptions about women's business competence is said to have resulted in discriminating practices.<sup>14</sup> The nature of this discrimination has been described by some researchers as follows:

Banks in particular were seen as obstructive to women wanting to set up a business. The women felt that loan officers treated them in a condescending or a discriminatory fashion, and loan granting procedures appeared to vary for male and female applicants.<sup>15</sup>

### **Equity**

4.12 While some women have more opportunity to accumulate economic resources than other women (and some men), gender remains a significant variable in respect to the distribution of income and the accumulation of capital and assets in Australia. Women who enter small business do not always have the same level of accumulated wealth or equity as many men because of their segmented position in the labour force and the nature of their domestic responsibilities. As a result, few can seek external finance for their businesses.<sup>16</sup> Women are also less likely to inherit a family business than men, depriving them of the opportunities associated with business inheritance (capital, assets, business goodwill and networks). Thus, more women start their businesses 'from scratch' than men.

4.13 In addition it has been argued that several explanations exist for the differences in the quantitative research and the ground-level view which emerge from consultations. First, comparisons between the percentage of men and women who successfully apply for bank loans do not reveal the experiences of women who are discouraged from approaching banks. Because women on average seek smaller amounts than men, making them uneconomic clients for financial institutions, they may not proceed with an application after making initial inquiries.<sup>17</sup> Research has established that women tend to use their own or family resources, rather than that of financial institutions, to commence their business. It is not known why this is so, but the explanation above may be a large contributing factor.<sup>18</sup>

4.14 Furthermore, there is little evidence available, either research-wise or anecdotal, as to the kinds of loans women receive and whether the loans are the most suited to their business and personal commitments. Research needs to be directed towards this if the nature of the full financial situation facing women and their business requirements are to be understood.

4.15 To-day, most financial institutions are endeavouring to become more 'female friendly' to their women customers, while the worst forms of overt discrimination appear to have diminished (although some banks still have a reputation for such discrimination). However, anecdotal evidence suggests that less direct forms of discrimination exist. While research evidence on this is sparse, it could be investigated by examining the financial situation of the male partners of women who have received loans to discover whether women who have partners with more financial resources are more successful than other women.

4.16 The Victorian Women's Trust initiated a guaranteed loans fund where it undertook to share 50 per cent of the risk for low-income women who were being refused credit by the major banks of the day. Only a decade ago they were refused credit because they were women, and the banks did not adjudge that they were worth while and risk free so far as taking credit was concerned. Five hundred women were assisted in this way, and just about every one of them went on to develop a successful micro-business.<sup>19</sup>

4.17 As a response to the 1997 Yellow Pages survey described above, Westpac established a 'Women in Business Program' on a national level to assess the cause and extent of the problems outlined.<sup>20</sup> A number of areas of action were identified including the need for staff training, consideration of the image of the bank in the marketplace and making the bank an attractive place for women to work. As a result Westpac and the Bank of Melbourne have established a permanent 'Women in Business' unit nationally and 'Women in Business' managers in every state.<sup>21</sup> The Committee considers these initiatives a useful template for other financial institutions to consider.

### **Relationship Debt**

4.18 'Relationship' debt is a commonly used expression for the assumption by one person of responsibility for a debt owed by another person to whom they are related in some way. The assumption may be unintended or unauthorised. It includes what is often referred to as sexually transmitted debt. The key feature of relationship debt is the nature of dependence or other emotional ties that dominate the transaction. These are often found, for example, in wife/husband, parent/child and de facto relationships. The dependent party in the relationship accepts responsibility for the other party's debt primarily because of that relationship. If the other party becomes unable or unwilling, for example, through bankruptcy or divorce, to meet the debt, the dependent party becomes liable for the debt. In that way the debt is 'transmitted' to the dependent party.<sup>22</sup>

4.19 A useful generic definition of sexually transmitted debt is:

the transfer of responsibility for a debt incurred by a party to his/her partner in circumstances in which the fact of the relationship, as distinct from an appreciation of the

reality of the responsibility for the debt, is the predominant factor in the partner accepting liability.<sup>23</sup>

or more concisely: Surety within intimate relationships<sup>24</sup>

4.20 Responsibility for the debt is usually assumed via the provision of a guarantee supported by security. The context for ‘sexually transmitted’ is usually the assumption by women of responsibility for debts of their male partners.

4.21 The expression ‘relationship debt’ is used in this report because not all difficulties experienced by female guarantors are due to surety obligations assumed by women as partners. Complaints are received from women and men in a range of relationships with the principal debtor—partners, parents, children and other relatives. A broad view has been taken of what constitutes relationship debt.

4.22 The Australian Banking Industry Ombudsman (ABIO) has reported a relatively small proportion of complaints received concerning guarantees (in the year July 1997-1998 they represented about 0.4%).<sup>25</sup> However these figures were assessed in the period before the ABIO could consider complaints about guarantees given to support loans to companies in July 1998. These figures were not broken down on the basis of gender.

4.23 Both the ABIO and the Financial and Consumer Rights Council of Victoria commented on the lack of information about:

- the number of third-party guarantees given to financial institutions;
- the proportion of guarantees given which are actually called upon; and
- the amount guarantors, on average, have to pay.<sup>26</sup>

4.24 The Committee has received evidence suggesting that in some cases there is a paucity of information provided to prospective guarantors concerning the nature of the responsibilities entailed.<sup>27</sup> A requirement that prospective guarantors obtain independent legal advice in most cases transfers the risk of an inadequate explanation to the legal practitioner who gives the advice. The Committee was told that in turn, legal practitioners’ insurers have taken various steps to manage that risk. These steps include limiting the amount of information and advice that is provided to prospective guarantors.<sup>28</sup>

4.25 The giving of a guarantee involves considerable risk. The requirement that independent advice be obtained goes some way to alerting the guarantor to the risk of giving a guarantee. Legal advice is, however, limited and is unlikely to address what appears to be a common theme in relationship debt cases, namely, that many people give guarantees because, when asked, they feel they should. They want to help their children get a start or they want their partner's business to succeed. They don't feel they can say no.

4.26 The ABIO's *Relationship Debt Report* disclosed that in the year to May 2000 there were 21 complaints throughout Australia about guarantee matters, the majority concerning business loans.<sup>29</sup> When a complaint of this kind is received by the ABIO the bank is contacted to provide the relevant files and justification sought for the decision to rely on the guarantee, and then in relying on the guarantee to seek a contribution from the guarantor towards reducing the debt. The ABIO has reported that this process has disclosed that, in general, banks comply with the law in relation to taking guarantees from individuals.

4.27 However, the *Relationship Debt Report* also cites cases of questionable decisions surrounding the giving of a guarantee or making someone a co-borrower, another way of structuring the guarantee transaction. The recommendation of the ABIO in such cases is that the bank forego reliance on the guarantee, or in cases where the guarantor has been called upon, that the bank make a refund to the person involved.<sup>30</sup> The ABIO reported to the Committee that the number of cases in this category had been small in recent years.<sup>31</sup>

4.28 In contrast, the Financial and Consumer Rights Council of Victoria informed the Committee that they advise many individuals every year who are suffering financial hardship or difficulty due to their obligation as guarantors or co-borrowers. In addition the Council reported that the vast majority of those who contacted financial counsellors concerning such difficulties were women.<sup>32</sup>

4.29 The Financial and Consumer Rights Council highlighted to the Committee two possible areas of reform to the Committee:

- a switch from assessing the acceptability of a potential guarantor from assets to income; and
- to provide more information upon which potential guarantors can base their decision to proceed.

4.30 In respect of the first area of reform the Council made the following comments:

A large number of general recommendations have been put out about guarantees, and one of the most significant ones is that guarantees not be advanced on the basis of the guarantor's assets but that the guarantor be assessed for their ability to fulfil their responsibilities based on their income. Grandma and mum may not be so ready to say, 'Oh, that's okay, it's just a reference, isn't it?', if their income is being assessed as was the borrower's. Asset-based guarantees are a significant problem, particularly for older folk.<sup>33</sup>

4.31 In regard to the second potential area of reform the Council highlighted the disparity in information available to the parties. The lending institution has the information on what the borrower owes, the borrower's income and other liabilities. This is not information to which the guarantor is privy:

To be clear on this point, if you apply for a loan and the lender says, 'We want a guarantor on this loan', and you wander off to find someone who might own some land and is silly enough to agree to be your guarantor, the guarantor has no right to access the information that the credit provider has about you. The guarantor can make inquiries of you as to what the loan is for, what else you owe to other lenders or to this lender, but you do not have to provide the information, nor does the lending institution. Lending institutions do not provide it on the basis that the information is private and confidential. It strikes me as quite extraordinary that if the lending institution is wanting to shift the risk of a dodgy loan from itself to a third party the lending institution does not get the applicant borrower to agree to reveal that information. It is a simple thing, but I do not see how a private practitioner or solicitor can adequately explain the nature, effect and risk of a guarantee if only the lender has access to the full picture about that borrower<sup>34</sup>

4.32 Under the provisions of the Privacy Act 1988 guarantors have a right to access of such information provided that approval is obtained in writing:

*18H Access to credit information files and credit reports*

(3) An individual's rights of access under this section may also be exercised by a person (other than a credit provider, mortgage insurer or trade insurer) authorised, in writing, by the individual to exercise those rights on the individual's behalf in connection with:

(a) an application, or a proposed application, by the individual for a loan; or

(b) the individual having sought advice in relation to a loan.<sup>35</sup>

*18K Limits on disclosure of personal information by credit reporting agencies*

(1) A credit reporting agency in possession or control of an individual's credit information file must not disclose personal information contained in the file to a person, body or agency (other than the individual) unless:

(B) a person in relation to whom the individual is, or is proposing to be, a guarantor;<sup>36</sup>

*18N Limits on disclosure by credit providers of personal information contained in reports relating to credit worthiness etc.*

(1) A credit provider that is or has been in possession or control of a report must not disclose the report or any personal information derived from the report to another person for any purpose unless:

ba) the report or information is disclosed:

(i) to the guarantor of a loan provided by the credit provider to the individual concerned; and

(ii) for any purpose related to the enforcement or proposed enforcement of the guarantee<sup>37</sup>

4.33 The Banking Code of Practice currently provides (clause 17.4) that before accepting a guarantee a bank must provide the guarantor with a copy or summary of the contract evidencing the obligations to be guaranteed provided the borrower consents. Submissions to the current review of the code have suggested that this is inadequate. The Australian Securities and Investments Commission submission<sup>38</sup> (following the earlier Report of the Expert Group on Family Financial Vulnerability<sup>39</sup>) called for banks to provide prospective guarantors with all relevant information about the principal debtor and the transaction or facility to be guaranteed which:

(a) is in the possession of the bank; and

(b) a reasonable prospective guarantor would reasonably require in order to decide whether or not to enter the guarantee.<sup>40</sup>

Information includes representations with respect to a future matter, and also includes information provided by the borrower to the bank and any credit reporting agency and other expert reports obtained by the bank. It would not include the' internal opinions of the bank.<sup>41</sup>

4.34 The Review of the Code of Banking Practice, *Issues Paper* included this formulation as an interim recommendation.<sup>42</sup> The Review of the Banking Practice-Final Report went further in this area recommending that the code incorporate provisions modelled on sections of the Uniform Consumer Credit Code.<sup>43</sup>

4.35 In December 1999 a roundtable seminar was co-hosted by the NSW Departments of Fair Trading and Women to discuss issues faced by women as consumers of financial services, especially relationship debt, and to develop strategies to address these issues.

4.36 In the ensuing Report the massive increase in the types of products and organisations providing loans and credit in the past twenty years was recognised.<sup>44</sup> The relative ease of entering into loan contracts with the introduction of electronic banking and phone loan approvals often meant a reduced emphasis on providing adequate information to borrowers. While this was not considered to be a problem for some consumers, it was seen as problematic for co-borrowers and guarantors who needed to fully understand their risk and obligations. In response to this situation, the NSW group agreed that there was a need to categorise transactions into those that could be dealt with electronically and those that required person to person contact or personal interview.<sup>45</sup>

4.37 In addition a need was seen to recognise the emergence of new or increased problems with respect to consumer over-commitment if interest rates rise and economic pressure increases. Policies need to be put in place to minimise the effects of over-commitment in consumer transactions for both debtors and guarantors. The Uniform Consumer Credit Code<sup>46</sup> makes provision for a court to reopen unjust transactions. Matters to be considered by the court include whether the credit provider took measures to ensure the debtor, mortgager or guarantor understood the nature and implications of the transaction or, if so, the adequacy of those transactions. The UCCC however, only covers credit, not business loans. Many relationship debt problems relate to guaranteeing small business loans. The Banking Code of Practice requires in many cases that a guarantee be limited in amount. The NSW group reported that it is unclear whether there is sufficient recognition of this among lawyers and bankers.<sup>47</sup>

4.38 As previously mentioned The Banking Code of Practice requires banks to ensure that they receive certification that a joint debtor or guarantor has received independent legal

advice before a contract is signed. The NSW group reported that the legal certificate might absolve financial institutions, rather than provide legal advice that fills in all the information gaps. As an example stated, a lawyer independent of the lender and without benefit of the lender's financial information cannot provide an assessment of the risk of the borrower defaulting. Nor can the lawyer make an assessment of the guarantor's ability to repay the loan in 10-20 years time.<sup>48</sup>

4.39 The NSW group also commented on the competitive nature of the industry where lenders are under pressure to maximise the number of new customers, including some high-risk borrowers. High-risk borrowers who are rejected by one lender can apply and receive a loan from another due to the different rules of individual lenders. It was suggested that a uniform code of practice for all lenders with provisions for credit assessment criteria would help overcome inconsistencies in lending practices.<sup>49</sup>

4.40 It was also reported that there appeared to be a lack of appreciation of the ramifications of transactions by persons taking out loans or going guarantor. As a consequence a need was seen to educate the community about loans and common terminology used such as co-borrower, guarantor, joint tenants and tenants in common. Community education was seen as an important strategy in informing people about lending practices and associated risks and particularly important for people in the community who tend to have less access to information from mainstream sources such as women from non-English speaking backgrounds.<sup>50</sup>

### **Banking Services**

4.41 The Consumer Law Centre Victoria (CLCV) publication, *Do Women Pay More?* examined a number of instances where women received disadvantageous or discriminatory treatment within the banking and finance industries.<sup>51</sup>

4.42 *Do Women Pay More?* detailed case studies in which the practices of particular branches or employees, were in breach of women's rights to financial privacy and control of their financial affairs. Common assumptions about financial independence or capacity enabled women's account details to be changed and private financial information to be accessed.<sup>52</sup> Similarly the Australian Banking Industry Ombudsman (ABIO) has cited

instances of inappropriate behaviour from individual banks and employees. Some involved breaches of the Code of Banking Practice and included:

- breach of a duty of confidentiality;
- breach of the Code of Banking Practice in relation to privacy; and
- dismissal of the need to consult and seek approval.<sup>53</sup>

4.43 It has been argued that these case studies have as a common theme, the reluctance of some banking officers to view a woman's financial affairs as distinct from those of her husband's and in some cases, her ex-husband's.<sup>54</sup> This tends to suggest that whilst all financial institutions have policies which prohibit discrimination against women consumers of their services, those policies appear to be inadequately communicated or enforced.

4.44 While these case studies could be considered illustrative of the continuance of outdated practices, it must be acknowledged that these instances are few in relation to the massive volume of customer transactions around Australia. A lack of research in this area leaves unclear the extent to which women's consumer rights are being compromised because of generalisations and stereotypes held about their gender. It can be said, however, that these examples show that attitudes at a branch level can operate quite contrary to the stated policy of banking or financial institutions, sometimes at significant disadvantage to women consumers.

4.45 Further, as noted above, a significant proportion of women report that they believe they are discriminated against by banking and financial institutions due to their gender.<sup>55</sup>

4.46 As has been previously mentioned, the Code of Banking Practice is currently under review. One of the major Interim Recommendations in the *Issues Paper* is the extension of education on the operation of the Code among banking employees and the banking industry in general.<sup>56</sup> Under this Interim Recommendation the banks would be 'obliged' to ensure all relevant staff and agents have knowledge of the Code and its provisions.<sup>57</sup> This recommendation has been reaffirmed in the *Final Report*. It is hoped that widespread knowledge of possible breaches of the Code will lead to a corresponding decline in the practices outlined above.

***Recommendation 14:—That the State Government encourage Banks to list the telephone numbers of their complaints offices in telephone directories and look to the creation of websites where complaints can be directed.***

***Recommendation 15:—That the State Government encourage the Australian Bankers' Association to adopt Recommendation 8 from the Review of the Code of Banking Practice Final Report and ensure that all relevant staff and agents have an adequate knowledge of the provisions of the Code. In addition all banks should be encouraged to educate all relevant employees on their responsibilities under the Equal Opportunity Act.***

### **Superannuation**

4.47 The results of a questionnaire survey of 800 adults in Sydney confirmed that women, even those employed full-time, were far less likely to have actively financially for their retirement, and to have actively planned a retirement lifestyle. Generally, 65 % of men have actively planned financially for their retirement, compared with 52% of full-time employed women and 38% of casual or part-time employed women. Men were far more likely to belong to a superannuation fund, to join at an earlier age, and to maximise their own contributions. Full-time employed women were equally likely to belong to a fund and to make contributions to it, but usually at a much lower rate, and over a shorter period.<sup>58</sup>

4.48 In Australia in 1998, women accounted for 73.4% of the total number of workers employed part-time. While this figure represents a decrease of 4.95 since 1988, it is clear that women still constitute the majority of part-time employees.<sup>59</sup> The percentage of women working full-time in 1998 was 34% compared to 72% working part-time.<sup>60</sup>

4.49 This research suggested that women and particularly those employed on a casual basis:

- placed greater emphasis on children than paid work;
- were more likely to spend any windfall money on their family than themselves;
- were less likely than men to expect to have continued employment after age 60.

Women employed on a casual or part-time basis were more likely than the other groups to say

- that their pay was too low and they had too many financial commitments
- that they had no long-term employment and
- that planning for retirement was their spouse's responsibility

4.50 The study concluded that women, and particularly those employed on a casual or part-time basis:

- were more likely to have received no information concerning retirement;
- were more likely to have a discontinuous career with an average of six or more years out of the workforce to raise children;
- received lower wages than men.<sup>61</sup>

4.51 A study conducted in 1997 concluded that on average women employees had far less superannuation for retirement than male employees. The research concluded that the reasons for women accruing less superannuation than men were as follows:

- fewer years in the workforce-on average women spend 17 years in the workforce whilst men spend 39 years;<sup>62</sup>
- more women working in part-time or casual employment;
- lower wages on average;
- more women work in lower paid professions
- broken work patterns mean that seniority, and higher salaries are not obtained; and
- women tend to leave the workforce earlier than men to care for aged or sick relatives.<sup>63</sup>

4.52 In addition women may lose access to superannuation through divorce or separation from a partner. In an attempt to alleviate the situation pertaining to divorce the Federal, Government, in April 2000, introduced into Parliament a bill to allow couples to divide their superannuation interests on marriage breakdown.<sup>64</sup> The Family Court will also have the power to order division of superannuation in cases where the parties cannot agree. Under this reform, superannuation will be treated like any other asset on marriage breakdown. This will enable couples to achieve a balance between current assets and future retirement income when dividing their property.

4.53 Results of a study based on ABS income data suggests that many women at present will derive little or no benefit from superannuation at the point of retirement. Breaks from paid work, especially during a woman's twenties will reduce many women's retirement incomes from superannuation to below the present value of the age pension. The scenario worsens where a woman begins contributing to a super fund after age 40, but even where contributions start after age 30 they will derive only minimal benefit in comparison to the age pension.

4.54 As all present compulsory retirement-income savings schemes are dependent on individual contributors' paid-employment profiles (and wage levels) it is this intrinsic link that affects women employees' ability to gain comparable retirement income to male employees.<sup>65</sup>

4.55 Recent Australian Bureau of Statistics figures suggest that the rates of participation in superannuation are converging. In August 1999, 89 % of employees received superannuation as a benefit in their main job. The proportion of males who received superannuation increased from 87% in August 1993 to 90% in August 1999. In comparison, the proportion of females receiving superannuation as an employment benefit increased from 82%, in August 1993 to 87% in August 1999.<sup>66</sup>

4.56 The issues surrounding women and superannuation are complex and will require careful planning between government and industry to arrive at a solution which caters for the needs of women and their patterns of work disadvantage and assists in providing for their needs in retirement.

### **Motor Vehicle Sales and Repairs**

4.57 Historically there has been an image of the automotive industry in association with outdated customer relations particularly pertaining to female customers.<sup>67</sup> This is an image of which the industry is well aware and Industry associations have been active in encouraging their members to address the changes in attitude required to capitalise on a new and burgeoning market:

We also know statistics reveal that women influence better than 40% of the buying decisions in the new and used car sales arenas and yet, astonishingly, there are salesmen who are still to learn that choosing a car is not an intimidating factor to the modern women.

Those who fail to understand this fact will discover to their sorrow that when arrogance is exceeded by ignorance they alienate themselves from the opposite sex and in so doing create a division between the two that will cost them the reward she was prepared to pay: MONEY.<sup>68</sup>

4.58 Evidence gathered in relation to the motor vehicle sales and repair industries has tended to confirm women's anecdotal experience of stereotypical customer service. New South Wales and Queensland have both commissioned research which indicates that the automotive industry has problems dealing with female customers. A study undertaken in New South Wales during 1996/1997 indicated that the area of motor vehicle service and repairs was problematic for women and in Queensland the Office of Fair Trading similarly found that 20 per cent of their complaints received by women related to the motor vehicle industry.<sup>69</sup>

4.59 A study of almost 4000 women car buyers across New South Wales, Queensland, Tasmania, South Australia, Western Australia and the Northern Territory by NRMA in March 2000 found that:

- 51% of the respondents did not enjoy the car buying experience;
- 24 % said the sales person did not understand that the buying decision was theirs;
- 20% felt they were treated in a sexist and patronising manner; and
- 20% thought they had paid more for their car than a male would have.<sup>70</sup>

4.60 Other research indicates that the problem is not just one of perception. A study undertaken by research conducted by Martec Australia and Test Purchasing Australia in 1994 found that:

Despite the widely accepted industry practice of offering prospective buyers a test drive...only 41 per cent of women were offered test drives without prompting and a further 37 per cent were offered a test drive, but only after a specific request by the consumer.<sup>71</sup>

4.61 The economic consequences of alienating women customers are significant . Research has found that women comprise close to 70% of buyers in the small to medium car market and constitute 40% of new car buyers. Women are therefore a very important component of the new car market. In addition, women also exercise significant influence over the purchasing decisions made as a family. *The Way Ahead*<sup>72</sup> report cites research

which has found that women are influential in 80% of family purchase decisions. This is also likely to have an impact on the sales and repair sectors of the automotive industry, as more women will be involved in making decisions about repairing and servicing a family car, or will be solely responsible for repairing and servicing their own vehicle.

***Women as Consumers – Motor Vehicle Project***

4.62 Consumer and Business Affairs Victoria (CBAV) is currently represented on a national working party examining ways in which service can be improved to women by the motor vehicle industry. The project, entitled the Women as Consumers – Motor Vehicle Project, was initiated by Queensland through the national Ministerial Council on Consumer Affairs. In August 1999 the Ministerial Council agreed “to support a national approach and the participation of states and territories in a working party to gather/assess data and develop strategies to improve services to women consumers by the motor vehicle industry”.<sup>73</sup>

4.63 The motor vehicle industry was selected for a number of reasons. Firstly, the purchase of a motor vehicle and commitment to its maintenance usually represents the second biggest financial commitment a person makes. As more women own and are responsible for the maintenance of their car, it is becoming increasingly important to ensure that women receive fair treatment and value for money in their dealings with the motor vehicle industry.

4.64 Secondly, a number of state government agencies had already embarked upon research into the motor vehicle industry and had developed constructive alliances with the motor vehicle industry, consumer groups and women’s organisations. A national project focussing on the motor vehicle industry provided an opportunity to build upon these alliances. Thirdly, many members of the automotive industry have taken positive steps to address the issue of discrimination against women. A national project provided the opportunity to promote innovation by the automotive industry and challenge other industries to develop strategies to eliminate discrimination against women.

4.65 The project has three stages: research and analysis, identification and selection of pilot strategies, and implementation and evaluation. Stage 1 of the project has been completed and a report detailing the findings of Stage 1 of the project has been released. The

desired outcome of the project is a better informed and more equitable marketplace in which women consumers and industry members know their respective rights and responsibilities.

4.66 The initial phases of the research involved review of studies conducted into women's experience of interacting with the motor vehicle purchase, service and repair industries. The project group also conducted an audit of laws that regulate the motor vehicle purchase, service and repair industries in each Australian state and territory.

4.67 Victoria also analysed consumer complaints data received by CBAV and its funded community agencies, conducted a random file review, and engaged a market research company to conduct a telephone survey amongst 500 women in metropolitan Melbourne and rural Victoria.

***File review***

4.68 A study of 20 files, representative of complaints received from women in relation to motor vehicles was undertaken to examine common problems faced by women. These files were selected within the date range 1 May 1999 and 30 April 2000. These 20 complaints were lodged over a variety of products in relation to vehicles, including:

Repairs & Servicing (5)

Sales & Purchase of Motor Cars (13)

Manufacturers Warranties - New Car (2)

Information is recorded in the table below (Table 4.2) as it was identified in the correspondence regarding the complaint.

4.69 Comments included "(a) mechanic appeared at work and attempted to intimidate me and threatened not to leave until getting his money...a male friend arrived at the shop...eventually (he) had to throw the mechanic out of the premises", " I found his tone very threatening" and "the assistant was patronising and uncompassionate." None of the comments related directly to women's experience of discrimination.<sup>74</sup>

**Table 4.2: Complaints made by females to CBAV (motor vehicles)<sup>75</sup>**

<b>Problem with:</b>			
Unsatisfactory Workmanship – 6	Non – English Speaking Background	3	problems with quality of service
Defective goods	Difficulty with Sales/Service staff	6	
Purchase of Car – RWC	Pressured by Sales Staff	3	
Purchase of Car – General	Dispute with Sales/Repair Staff	4	
Warranty	Vehicle Finance	2	
Unsatisfactory Performance of Car	Vehicle Transfers	3	
Unavailability of Spare Parts	Closure of Business	1	

**Market research**

4.70 Most participants in the project chose to administer surveys developed by New South Wales. As indicated above, Victoria decided to commission market research instead of administering a written survey. Given the different methodology, sampling method and method of analysis, some caution must be used in attempting to compare the Victorian results with the national data. Nevertheless, both the motor vehicle service and repair survey used by a number of jurisdictions and the market research commissioned by Victoria asked respondents about their level of satisfaction with their most recent service. Nationally, the level of satisfaction was 86% and in Victoria the figure was 89%. In Victoria, 84% of women were satisfied with the car buying experience.<sup>76</sup>

4.71 The Consumer Law Centre Victoria (CLCV) has suggested that any conclusion that marketplace discrimination, or the perception of it, is less in Victoria than in other states should be arrived at with caution. Whilst based upon the questions used in the Quadrant survey (for NSW, Qld., Tas., SA, WA and NT), the questions in the Newspoll survey (for Victoria) asked women “Thinking about the people you dealt with the last time you were

buying, servicing or repairing a car. Were you satisfied or not satisfied with the way you personally were treated by the people from whom you last bought a new or second hand car, or by whom you had a car serviced or repaired?”<sup>77</sup> It is the view of the CLCV that the Victorian results under-reported the incidence of marketplace discrimination due to the general nature of the question asked.

4.72 Unlike the national survey, the research conducted by Victoria did not prompt respondents about their experience of discrimination. Instead, women were asked why they were not satisfied with the treatment they received. Some of these responses indicated that women’s dissatisfaction stemmed from the fact that they were treated differently because they were women. The Victorian research indicates that 13% of women surveyed were unhappy with the treatment they received when they last bought a car. Of this 13%, approximately one in five stated that they believed they were treated badly because they were female.<sup>78</sup>

4.73 The research study included comments made by women who felt they had been poorly treated because of their gender. One woman stated “I was judged very poorly because I was a woman. I was a target. As a target they thought I didn’t know anything about cars, but I do.” Another woman stated “I was treated as a non-person. I literally stood for 10 minutes while the sales people chatted amongst themselves. Because I was a woman on my own they glanced at me and looked away. I got the impression they were waiting for my husband to come in...I felt humiliated.” One participant, who described male car salespeople as having an attitude towards female car buyers that is different to male car buyers, said “I intend to find a way of buying my next car without having to deal with these sort of male car salesmen.”<sup>79</sup>

4.74 Similar findings emerged in relation to motor vehicle service and repairs. Approximately one in ten female respondents who had had their cars serviced or repaired were not satisfied with the service they received. Of this number, 22% said that they were treated badly because of being female. Some of the comments made by Victorian women who participated in the research included, “I felt that they (motor vehicle repairers) were sexist. They wouldn’t give me the same information they gave my husband. I found it offensive.” Another woman said, “there wasn’t enough attention by the service manager. I

feel they talked over me because I was a woman. I'll never return there or buy another Mazda.”

4.75 The survey results also indicated that women tended not to make complaints in relation to concerns that they had about motor vehicles and a number of reasons for avoiding complaint were given:

- lack of time;
- the fact that they did not notice a problem at the time which subsequently become more serious;
- not confident that making a complaint would make any difference; and
- they were not confident in assuming that there was something wrong with their car.<sup>80</sup>

Other women felt more comfortable actually going back to the person who they had bought the car from or that had actually done the service or the repair, as opposed to making a formal complaint or contacting an agency.<sup>81</sup>

### ***Options for the future***

4.76 Stage 2 of the Women as Consumers project involves each State and Territory, working in partnership with industry and other relevant organisations, conducting a stocktake of existing resources and initiatives to improve the level of service provided to women customers. This stocktake will assist in identifying areas of unmet need. From this, an action plan will be developed which identifies policies and strategies to ensure that women receive a fair, equitable service.

4.77 *The Way Ahead*<sup>82</sup> report identifies a number of options for the future that could be considered in developing an action plan. These options are grouped under three key strategies:

- Changing the perceptions and attitudes of the motor vehicle industry towards women;
- Enhancing women's capacity to deal equitably with the motor vehicle industry; and
- Establishing processes to protect women consumers in their dealings with the motor vehicle industry.

4.78 The CLCV has found *The Way Ahead Report* is particularly useful as it builds upon previous Australian research.<sup>83</sup> Thus it is able to make comment about developments over

time. Whilst noting that the overall findings are "generally positive,"<sup>84</sup> the Report notes that "some results are cause for concern and indicate an unacceptable rate of customer dissatisfaction."<sup>85</sup> It also notes that the results:

...indicate that not a great deal has changed in relation to how women are treated since research first began in 1994. This is despite the significant clout women now exercise as consumers in the motor vehicle industry and the considerable efforts the industry is making to capture this lucrative and growing segment of the new car market.<sup>86</sup>

These problems of reality and perception have been recognised by government, industry and community organisations in a variety of ways.

4.79 The Victorian automotive industry has already developed some strategies to improve the representation of women in the motor vehicle industry. The first of these is WinA (Women in Automotive), a Victorian women's automotive network auspiced by the Victorian Automobile Chamber of Commerce. WinA aims to recognise women as an integral part of the automotive industry; provides a forum which recognises the different needs of women within the automotive industry; and to raise the profile of women within the industry, thus enhancing the image of the overall automotive industry. WinA has been involved in the *Women as Consumers – Motor Vehicle Project* and a representative of WinA has been invited to join the project steering committee.

4.80 The Industry has also been pro-active in encouraging a larger number of female employees. According to Australian Bureau of Statistics figures, in the motor vehicle retailing industry approximately 79 per cent are male. In the motor vehicle services area, which includes fuel retail, electrical services, smash repair, tyre retail and auto repair, 76 per cent are male.<sup>87</sup>

4.81 In 2000 General Motors Holden sought a special anti-discrimination exemption to allow it to advertise for women-only sales positions to enable them to specifically recruit female sales staff. An existing Holden sales consultant, Jane Welsh, noted in an article discussing Holden's application, "It is a very male dominated industry...and women do perhaps feel more at ease with me...As more and more women enter the industry I think we'll become less of a novelty."<sup>88</sup>

4.82 Similarly, Ford Australia President, Geoff Polites, stated in a speech at the 2000 Australian Automobile Dealers Association Convention, “We cannot sustain a system that doesn’t provide a warm and respectful welcome for all customers, or an environment in which they don’t feel totally comfortable.”<sup>89</sup>

4.83 CBAV in conjunction with the Victorian Automotive Chamber of Commerce (VACC) has developed materials to enhance women’s capacity to deal with the motor vehicle industry. *The Way Ahead* report found that 43% of respondents identified ‘better customer service’ as a way of preventing the problems they experienced in dealing with the motor vehicle service and repair industries. CBAV has developed a brochure on customer service tips for motor vehicle repairers. This brochure seeks to improve relations between vehicle repairers and women customers. This brochure was launched in March 2001. CBAV has also produced a booklet entitled ‘Better Car Deals’, which was sponsored by the VACC. It contains information on buying a new or used car, tips for dealing with repairers, and provides advice on basic car maintenance. Women are widely featured in the booklet, which has been mailed to 500 women’s organisations.

4.84 Another publication produced by CBAV and the VACC provides the opportunity for women in the automotive network to make comment and is designed to provide guidelines for industry to improve customer service relations. It is titled ‘Stay in tune with your customers’ and again it is a publication that is intended for wide circulation among VACC members and the industry in general.<sup>90</sup>

4.85 The type of guidelines provided in this publication are intended to assist business, to explain their pricing mechanisms, to encourage open communication with the consumer, and to encourage open communication, if there is a need to vary the price of a repair or service, so that both the business and the customer know where they stand.<sup>91</sup>

4.86 In conclusion the CLCV has pointed to the existence of the NSW Motor Vehicle Repair Industry Council complaints scheme, which provides a redress mechanism for consumers who believe they have suffered gender based marketplace discrimination, or if they are dissatisfied with some other aspect of a service transaction as a possible model for a similar scheme in Victoria.<sup>92</sup>

***Recommendation 16:—That the Victorian Automotive Chamber of Commerce in collaboration with consumer groups, the industry as a whole and Consumer and Business Affairs Victoria, continue to address issues of gender stereotyping and discrimination in the marketplace.***

## **Domestic Building**

4.87 The Building Act 1993 established the Building Control Commission to oversee the regulation and administration of building control in Victoria. The Commission's primary responsibility is to ensure that legislative amendments create an environment which sustains cost efficient, flexible and globally competitive reforms.

4.88 The Commission exercises this responsibility through implementing building regulations locally and working closely with the Australian Building Codes Board (ABCB) at the national level. The ABCB, a joint initiative of all levels of Australian government, is responsible for developing and managing a nationally uniform approach to technical building requirements, embodied in the Building Code of Australia (BCA).

4.89 The Building Control Commission also investigates complaints and audits Registered Building Practitioners. The functions of the Investigations and Audit section include:

Investigating complaints

Conducting performance audits of Registered Building Practitioners

Enforcing building orders referred to the Commission by private building surveyors

Coordinating domestic inspections in relation to domestic building disputes

Advising the Commissioner on matters relating to applications for the termination of appointments of private building surveyors.

4.90 The Commission investigates offences against the Building Act 1993 and Building Regulations 1994. Offences under the Act are largely breaches of building and planning standards.

4.91 The Commission does not investigate complaints relating to contractual disputes such as failing to complete building work in the time specified in the contract, workmanship issues or issues of customer service.

4.92 The Consumer and Business Affairs Victoria (CBAV) is responsible for enforcement of the Domestic Building Contracts Act 1995. CBAV has a separate section for complaints and inquiries concerning building and related industries

4.93 In the evidence presented by CBAV to the Committee, complaints were separated into the following seven categories—

- building and construction;
- clothing;
- credit and finance;
- food and beverages;
- hairdressing;
- vehicle—repairs and servicing; and
- dry cleaning

4.94 In its submission to the Committee CBAV did not mention domestic building as being a concern in relation to marketplace discrimination. On the figures provided to the Committee, only 28% of complainants to CBAV in this area were female. CBAV was unable to specify the nature of complaint but it is reasonable to assume that the majority of these complaints would have related to breach of contract and quality of workmanship.

4.95 Where callers contact the inquiries call centre at CBAV and identify discrimination in the provision of a good or service as an issue, they are referred to the Equal Opportunity Commission Victoria (EOCV) for assistance. CBAV does not currently keep statistics on the number of telephone inquiries that are referred to the EOCV. Similarly, the Equal Opportunity Commission Victoria did not provide the Committee with any data on cases resolved at conciliation concerning domestic building.

4.96 In a dispute with a builder about domestic building work the Victorian Civil and Administrative Tribunal (VCAT) - Domestic Building List was formed to resolve disputes between owners, builders, sub-contractors and/or insurers. Complaints received by Consumer and Business Affairs Victoria that do not find resolution are referred to VCAT. The Domestic Building List offers a mediation service and if mediation is unsuccessful the matter may proceed to a hearing. However, in a complaint concerning marketplace discrimination the dispute would more appropriately be referred by the Equal Opportunity Commission to the Anti-Discrimination List of VCAT. VCAT, in evidence to the Committee reported that the incidences of dispute concerning marketplace discrimination were extremely low and although accurate figures were unavailable there had been very few if any concerning domestic building.

## Endnotes

- <sup>1</sup> Australian Bankers' Association, *Code of Banking Practice*, <http://www.bankers.asn.au/>
- <sup>2</sup> Minutes of Evidence, Ms V. Redding, (Bank of Melbourne) and Ms A. Ellis (Westpac), 4 June 2001
- <sup>3</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>4</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>5</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>6</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>7</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>8</sup> Commonwealth Office of the Status of Women-  
[http://osw.dpmc.gov.au/content/policy/labour/small\\_business.html](http://osw.dpmc.gov.au/content/policy/labour/small_business.html)
- <sup>9</sup> Yellow Pages Australia. (1994). *Small Business Index: A Special Report on Women in Business*. Yellow Pages Australia, July.
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- <sup>10</sup> Borzi, A. (1994). *The Gender Finance Gap*. Working Paper. Sydney: Borzi, Smythe Pty. Ltd., May.
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- <sup>15</sup> Still, L.V. & Guerin, C.D. (1990). *Self-Employed Women: The New Social Change*. Report to the New South Wales Women's Advisory Council, January.
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- <sup>17</sup> Flinders University of South Australia. (1996). *Women in Small Business: A Review of Research*. Small Business Research Program. A report prepared for the Department of Industry, Science & Tourism. June.
- <sup>18</sup> Still, L. V. & Timms, W. (1997), *Women and Small Business in Australia: Barriers to Growth*, A Report Prepared for the Office of the Status of Women in the Department of the Prime Minister and Cabinet, August.
- <sup>19</sup> Ms M. Crooks, Executive Director, Victorian Women's Trust, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>20</sup> Minutes of Evidence, Ms V. Redding, (Bank of Melbourne) and Ms A. Ellis (Westpac), 4 June 2001
- <sup>21</sup> Minutes of Evidence, Ms V. Redding, (Bank of Melbourne) and Ms A. Ellis (Westpac), 4 June 2001
- <sup>22</sup> Australian Law Reform Commission Report No 69 Part II, *Egity before the Law: Women's Equity*
- <sup>23</sup> McDonald, G. (1991) *Women and Credit in the Australian Banking Industry*, Women in Credit Conference, Melbourne, March 1991, quoted at page 240 Australian Law Reform Commission Report No 69 Part II, *Egity before the Law: Women's Equity*
- <sup>24</sup> Fehlberg, B., (1997) *Money and Marriage: Sexually Transmitted Debt in England*.
- <sup>25</sup> Australian Banking Industry Ombudsman, *Report on Relationship Debt*, Report No 22, September 1999.
- <sup>26</sup> Australian Banking Industry Ombudsman, *Report on Relationship Debt*, Report No 22, September 1999.
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- <sup>27</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.

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- <sup>30</sup> Australian Banking Industry Ombudsman, *Report on Relationship Debt*, Bulletin No 22 1999
- <sup>31</sup> Mr C. R. M. Neave, Australian Banking Industry Ombudsman, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>32</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
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- <sup>34</sup> Ms J. Lawton, Financial and Consumer Rights Council of Victoria, *Public Hearings*, Melbourne – 12 February 2001.
- <sup>35</sup> PRIVACY ACT 1988 SECTION 18H
- <sup>36</sup> PRIVACY ACT 1988 SECT 18K
- <sup>37</sup> PRIVACY ACT 1988 SECT 18N
- <sup>38</sup> Australian Securities and Investments Commission, *Submission to the Review of the Code of Banking Practice*, September 2000.
- <sup>39</sup> Report of the Expert Group on Family Financial Vulnerability, *Good Relations High Risk*, February 1996
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- <sup>41</sup> Report of the Expert Group on Family Financial Vulnerability, *Good Relations High Risk*, February 1996
- <sup>42</sup> Viney, R. (2001) Review of the Code of Banking Practice, *Issues Paper*, RTV Consulting Pty Ltd.
- <sup>43</sup> Viney, R. (2001) Review of the Code of Banking Practice *Final Report*, RTV Consulting Pty Ltd. Final Recommendation 50 p 60
50. The Code should contain provisions which require:

- A bank to advise the guarantor that the guarantor can refuse to enter into the guarantee, that there are financial risks involved and that the guarantor should obtain independent legal advice;
- A warning notice similar to the Universal Consumer Credit Code (UCCC) notice to appear directly above the signature of the guarantor to reinforce the verbal warning on any guarantee not regulated by UCCC;
- A bank to ensure that unless it is demonstrably impracticable to do so, the guarantor must sign the guarantee in the presence of the principal debtor;
- A guarantor to be given information and advice at least one day before signing the guarantee unless the guarantor has received independent legal advice; and
- A bank to provide a guarantor on request with full statements of the guaranteed account or accounts and copies of any applicable facility documents, securities, guarantees, credit related insurance products and any notices previously given to the principal debtor and the times within which any such document is to be provided shall be modelled on UCCC section 163(2).<sup>43</sup>

<sup>44</sup> Finances Working for Women, Report on Outcomes and Action Required, Department of Fair Trading & Department for Women, December 1999

<sup>45</sup> Finances Working for Women, Report on Outcomes and Action Required, Department of Fair Trading & Department for Women, December 1999

<sup>46</sup> CONSUMER CREDIT (VICTORIA) ACT 1995, (UCCC Part 4, Division 3)

<sup>47</sup> Finances Working for Women, Report on Outcomes and Action Required, Department of Fair Trading & Department for Women, December 1999

<sup>48</sup> Finances Working for Women, Report on Outcomes and Action Required, Department of Fair Trading & Department for Women, December 1999

<sup>49</sup> Finances Working for Women, Report on Outcomes and Action Required, Department of Fair Trading & Department for Women, December 1999

- <sup>50</sup> Department for Women & Department of Fair Trading (1999), *Finances Working for Women, Report on Outcomes and Actions Required*.
- <sup>51</sup> Foster, Allyson, *Do Women Pay More?*, Consumer Law Centre Victoria, IPR publishing, 1997 at pp 38-41.
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- <sup>57</sup> Viney, R. (2001) Review of the Code of Banking Practice, *Issues Paper*, RTV Consulting Pty Ltd.
- <sup>58</sup> Onyx, Dr J. & Watkins, A. (1996) *Why women do not plan their retirement*, Research Paper No 2, Association of Superannuation Funds of Australia.
- <sup>59</sup> Australian Bureau of Statistics, *Australian Social Trends*, 4102.0 1999 pp98 & 108-109.
- <sup>60</sup> Australian Bureau of Statistics, 6203.0 Labour Force, Australia, 23 February 2001
- <sup>61</sup> Onyx, Dr J. & Watkins, A. (1996) *Why women do not plan their retirement*, Research Paper No 2, Association of Superannuation Funds of Australia.
- <sup>62</sup> Seventeenth Report of the Senate Select Committee on Superannuation: Super Broken Work Patterns  
Canberra 1995, p7
- <sup>63</sup> Reynolds, F., Robertson, M. & Bennett, R. (1997) *Towards Economic Security for Older Women*, Australian Women's round Table
- <sup>64</sup> The Family Law Legislation Amendment (Superannuation) Bill 2000
- <sup>65</sup> Donath, S. (1998) *The Continuing Problem of Women's Retirement Income*, Paper presented at 7<sup>th</sup> Australian Women's Studies Association Conference, University of South Australia.
- <sup>66</sup> Australian Bureau of Statistics, *australi Now- Labour, Superannuation*  
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- <sup>68</sup> Ince, F. (1995), *Principle of Equality, Auto Industry Australia*, November 1995
- <sup>69</sup> Ms Kristen Murray Consumer and Business Affairs Victoria, Hearing 9 October 2000
- <sup>70</sup> NRMA *Women Car Buyers Survey* Results, Quadrant Research Services, March 2000 as reported in *The Way Ahead: Women and the Motor Vehicle Industry*, National Working Party comprised of representatives from Departments/ Offices of Women's Policy and Fair Trading for the Ministerial Council on Consumer Affairs, August 2000 at 9.
- <sup>71</sup> Martec Australia and Test Purchasing Australia, *Women as Customers in Australian Franchised Auto Dealerships*, April 1994 at 33 reported in *The Way Ahead: Women and the Motor Vehicle Industry*, August 2000.
- <sup>72</sup> *The Way Ahead: Women and the Motor Vehicle Industry*, National Working Party comprised of representatives from Departments/ Offices of Women's Policy and Fair Trading for the Ministerial Council on Consumer Affairs, August 2000.
- <sup>73</sup> Consumer and Business Affairs Victoria, *Submission*, March 2001.
- <sup>74</sup> Consumer and Business Affairs Victoria, *Submission*, March 2001.
- <sup>75</sup> Consumer and Business Affairs Victoria, *Submission*, March 2001.
- <sup>76</sup> Consumer and Business Affairs Victoria, *Submission*, March 2001.
- <sup>77</sup> Newspoll Market Research *Women as Consumers Study*, June 2000.
- <sup>78</sup> Consumer and Business Affairs Victoria, *Submission*, March 2001.
- <sup>79</sup> Consumer and Business Affairs Victoria, *Submission*, March 2001.
- <sup>80</sup> Ms Kristen Murray Consumer and Business Affairs Victoria, Hearing 9 October 2000
- <sup>81</sup> Ms Kristen Murray Consumer and Business Affairs Victoria, Hearing 9 October 2000
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- <sup>83</sup> Previous examples include Martec Australia and Test Purchasing Australia, *Women as Customers in Australian Franchised Automotive Dealerships*, Melbourne 1994 and Foster, A. *Do Women Pay More?*, Consumer Law Centre Victoria, November 1997.

<sup>84</sup> *The Way Ahead: Women and the Motor Vehicle Industry*, National Working Party comprised of representatives from Departments/ Offices of Women's Policy and Fair Trading for the Ministerial Council on Consumer Affairs, August 2000.

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<sup>86</sup> *The Way Ahead: Women and the Motor Vehicle Industry*, National Working Party comprised of representatives from Departments/ Offices of Women's Policy and Fair Trading for the Ministerial Council on Consumer Affairs, August 2000.

<sup>87</sup> Ms L. Yilmaz, Manager, Industrial Relations, Victorian Automobile Chamber of Commerce, Public Hearings, 12 February 2001.

<sup>88</sup> Hudson, F., "Wanted – women to sell cars," *Herald Sun*, 12 April 2000 at 7.

<sup>89</sup> Polities, Geoff, *Address to Australian Automobile Dealers Association National Convention*, 9 June 2000.

<sup>90</sup> Ms L. Yilmaz, Manager, Industrial Relations, Victorian Automobile Chamber of Commerce, Public Hearings, 12 February 2001.

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<sup>92</sup> Consumer Law Centre, Women's Legal Centre & Women's Trust, *Submission* February 2001



<b>Name</b>	<b>Position</b>	<b>Organisation</b>
Ms Mary Archibald	Private Citizen	
N. Frawley	Private Citizen	
Ms Marilyn Beaumont	Executive Director	Women's Health Victoria
Ms Leyla Yilmaz	Manager, Industrial & Employee Relations	Victorian Automobile Chamber of Commerce Dry Cleaning Institute of Victoria Consumer Law Centre Victoria, Women's Legal Service & the Victorian Women's Trust
Ms Robyn Henderson	Director General	Department for Women, NSW
Ms Sandra Campitelli	General Manager	Hairdressing and Beauty Industry Association Consumer and Business Affairs Victoria
Mr Timothy Piper	Executive Director	Australian Retailers' Association
Ms Kate Parker	Policy Officer	Department for Women, NSW
Ms Michelle MacDonald	Membership and Promotions Manager	YWCA Victoria
Ms Jane Nash	Head of Government and Regulatory Affairs	ANZ Banking Group Limited
Ms Ann Sherry	Chief Executive Officer	Bank of Melbourne



**Monday 9<sup>th</sup> October, 2000**

Consumer and Business Affairs Victoria

Mr. Denis Fitzgerald, Assistant Director, Policy and Information;

Ms Dianne Bryans, Manager, Assessment and Analysis Branch, Consumer Services and  
Compliance Division;

Ms Kristen Murray, Policy Officer.

**Monday 20<sup>th</sup> November, 2000**

Victorian Civil and Administrative Tribunal

Mr Michael Levine, Deputy President, Civil Claims List

Ms Anne Coghlan, Deputy President, Discrimination List

**Monday 11<sup>th</sup> December, 2000**

Consumer Law Centre

Ms Catriona Lowe, Senior Policy Officer, Consumer Law Centre

**Monday 12<sup>th</sup> February, 2001**

Australian Banking Industry Ombudsman

Mr Colin Neave, Ombudsman

Dry Cleaning Institute of Victoria

Mr Michael Meere, Chief Executive Officer

Mr R. Bancroft, National President

Ms J. Joel, Member

Financial & Consumer Rights Council of Victoria

Ms Jenny Lawton

Victorian Automobile Chamber of Commerce

Ms Leyla Yilmaz, Manager, Industrial Relations

Victorian Women's Trust

Ms Mary Crooks, Executive Director

Women's Legal Service

Ms Allyson Foster

**Monday 5<sup>th</sup> March, 2001**

Hairdressing and Beauty Industry Association

Sandra Campitelli, General Manager

**Monday 26<sup>th</sup> March, 2001**

Australian Retail Association Victoria

Mr Timothy Piper, Executive Director

Ms L. Hurley, Marketing Officer.

**Monday 4<sup>th</sup> June, 2001**

Westpac and Bank of Melbourne

Ms V. Redding, Government Relations Manager, Bank of Melbourne

Ms A. Ellis, National Manager for Women in Business, Westpac

**Monday 15<sup>th</sup> October, 2001**

Edward Beale Salons

Mr Edward Beale, Director

Ms Ursula Prendergast, Personal Assistant to Mr Edward Beale

