

chapter 2 **A review of the literature**

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The focus of this literature search has been on TPA-related matters of relevance to Indigenous communities throughout Australia, rather than on broader issues concerning Indigenous communities and their engagement in business activities (which has already been widely explored in CAEPR literature). To this end the literature identifies a number of issues of importance in assessing TPA-related matters, mainly in remote communities. These are:

- structural impediments, location and transport costs
- store quality, range of goods, and its health implications
- the multiple roles of stores
- governance and capacity building
- commerce and culture
- Indigenous-specific ACCC investigations
- poor consumer information
- specific Indigenous consumer issues
- access to banking facilities
- book-up
- international best practice.

Finally, the chapter concludes by outlining some emerging research issues.

Background

There has been little rigorous research on the issue of competition and fair trading in relation to Indigenous people in Australia. Historically, perhaps, there has been a tendency to see many Indigenous communities as operating beyond the market. Certainly this is the case in terms of the physical distance of most remote Indigenous communities from major metropolitan centres (Levitus 2001). There has also been a degree of institutional distancing, in that specific Indigenous institutions (such as community stores) have been established which allow a high level of community control over trade. These institutional structures may also show a willingness on the part of Indigenous consumers to tolerate inefficiency associated with what has sometimes been regarded (perhaps erroneously) as a natural monopoly.

Self-determination and land rights legislation

Some of the factors that have influenced developments in the modern policy era and especially since the early 1970s, when the overarching policy of self-determination was introduced, have included growth in the Indigenous community sector, with many community businesses being community owned and controlled. In addition, the progressive introduction since the 1970s of land rights legislation in many jurisdictions, and particularly in remote regions, has provided traditional owners of land a right to restrict (or limit) the entry of commercial or private sector interests. A variety of institutional trading forms have developed with the predominant type being the community-owned not-for-profit corporation, frequently operating as a charitable organisation, often with public benevolent institution (PBI) status.

Historically, such developments have not been uncontested, especially in situations where the traditional owners of Aboriginal land have been able to exercise a degree of control over trading enterprises located on their lands. At times there has been an uncomfortable accommodation between traditional owners, as a sub-group, and consumers (Aboriginal and non-Aboriginal) more generally. To some extent, such institutional arrangements have not been conducive to external intervention, even in the face of consumer complaint, because consumers are often members of the incorporated community store board. In other situations the trader has been a state instrumentality, often with a community services obligation and subsidy (see e.g. Arthur 1990 on IBIS stores in the Torres Strait). Or the trader has been a private sector interest but with an unequal patron–client relationship with consumers (for example, in the pastoral zone where Aboriginal communities have been located on excisions from non-Aboriginal owned pastoral leases).

Absence of competition

Absence of competition and the associated costs for consumers have received wider public policy attention in the broader 'National Competition Policy' framework since the Hilmer Report (1993). To some extent, the absence of competition, especially in remote communities, has been based in part on their remoteness and invisibility from wider public scrutiny. It has also been assumed by many writers that the diseconomies of small scale (owing to small community size) and associated high transport costs explained reported differences in the prices of remote store-bought commodities when contrasted with prices in capital cities or larger urban situations.

Cost of living

It is interesting from this perspective to note that a concerted effort to establish the cost of living at remote Indigenous communities has been largely limited by an absence of statistical information. In particular, there have been few, if any, studies that have rigorously examined Indigenous expenditure patterns and set these against income. This contrasts with data on the wider Australian community provided by the Australian Bureau of Statistics' (ABS) regular Household Expenditure Survey (HES). From its establishment in 1990, CAEPR has on a number of occasions made cases to the ABS to include an Indigenous identifier in the HES so that any particularities of Indigenous expenditure could be assessed (see Altman 1992; Altman et al. 1997; Altman & Taylor 1996; Smith 1991a*, 1991b*).¹

Without such information it is difficult to assess the overall economic impact of price differentials on Indigenous consumers. Indeed the literature suggests that while researchers have alluded to these differentials there has been little attempt to break data down into analysable components such as structural factors (e.g. freight costs), inefficient store practices, unconscionable conduct and cultural practices which may hinder commercial objectives.

Self-provisioning

Opportunities exist in some situations for people to switch between purchased commodities and services and self-provisioning. This is again a contested area of research and one that is largely limited, in the literature, to discussions of foodstuffs. Some researchers suggest that in remote communities over 90 per cent of foods are purchased (Lee, O'Dea & Mathews 1994*), others argue that in some contexts the proportion might be as low as 50 per cent (Matsuyama 1991*). Some

¹ * next to a reference indicates that it appears in appendix 1 as a published reference (p. 108), whereas † next to a reference indicates that it appears in appendix 1 as an unpublished reference (p. 147).

governmental investigations and reports have been premised on assumptions about high levels of reliance on store-bought goods (e.g. the Legislative Assembly of the Northern Territory's *Inquiry into Food Prices in the Northern Territory* 1999*).

These assumptions are, however, based on estimates and generalisations that date back to the late 1970s and mid-1980s (see Cutter 1978; Fisk 1985*; Young 1984*). Part of the inconsistency stems from the diversity of ecological, geographic and economic circumstances that remote communities face, for example whether people live in townships, town camps or outstations, coastal or desert locations, and whether they live near regional centres and have access to vehicles. There has been a tendency in policy discussions to largely overlook the value (in terms of imputed income and/or consumption patterns) of informal economic activity (Altman & Allen 1992; Altman et al. 1997; Smith & Roach 1996).

Community stores and financial services

There is no comprehensive information on Indigenous expenditure patterns and therefore on issues such as the adequacy of income for meeting basic nutritional dietary requirements. It is therefore not surprising that debates about the effect of monopoly (absence of competition) and consumer interests have tended to focus on two broad areas:

- the apparently inefficient nature of community stores (although again, little effort has been made to differentiate between high prices that are explicable in terms of structural factors as opposed to either inefficiency or unconscionable practice)
- the inefficiency and then absence of financial services in remote communities (more recently).

To generalise somewhat, it is probably fair to say that historically the first issue was linked primarily to debates about Indigenous health status in the 1980s. The second was linked to the consequences of the deregulation of the Australian financial system, and its effect primarily on non-Indigenous people in regional Australia in the 1990s. Interestingly, the economic decline in regional Australia in the 1990s has more starkly highlighted for policy makers some of the issues that Indigenous communities have grappled with for decades.

Major findings

The major findings from this literature search are presented as the annotated bibliography (appendix 1), and this chapter which is an analytical summary of the material contained in the bibliography. The annotated bibliography includes a brief description and critical analysis of the value of the research to this project's terms of reference. Each entry provides a number of key words and also demarcates the jurisdiction where research was undertaken.

While an attempt has been made in developing the bibliography to comment on the overall quality of research undertaken, it is recognised that issues associated with competition and consumer protection are often a by-product of research primarily undertaken on other issues, it is therefore not appropriate to be overly critical. For example, many of the studies that comment on the lack of competition in the retail sector at remote Indigenous communities, and associated problems of consumer exploitation, have been undertaken from the perspective of health and access to healthy dietary options.

The major findings from the literature are presented under key subheadings, which are interrelated. For example, location and transport costs are associated with structural features of remote communities; and these are then linked with health issues, and so on.

Structural impediments, location and transport costs

Structural features may explain the high prices charged in remote localities. These include restrictions on competition (i.e. closed markets); the nature of enterprises (not for profit and potentially inefficient); and the small populations of many isolated Indigenous communities and associated diseconomies of small scale (Legislative Assembly of the Northern Territory 1999*).

A major focus of many studies contained in the literature has been the high prices found at remote community stores. This is an issue that is patently obvious to researchers and visitors to these communities. Higher prices are often assumed to be indicative of the remoteness of many Indigenous communities and the additional impost on prices due to transportation costs (note that while frequent reference is made to Indigenous communities, most are in fact mixed and also have non-Indigenous residents and consumers).

There is a general consensus in the literature that costs associated with remoteness exacerbate prices in remote communities. This is generally documented with reference to a basket of goods. Young (1984*) conducted the most comprehensive study of community stores in the early 1980s. Young's research ranged from the Kimberley to Cape York and south to the Pitjantjatjara lands where she collected comparative data on prices at a number of stores. Others have undertaken similar

studies, for example Crough and Christopherson (1993*) in the Kimberley (see also Leonard et al. (1998*) in Cape York; Sullivan et al. (1987*) in the Kimberley; Tregenza & Tregenza (1998*) in Central Australia).

Each of these studies compares the price of a basket of goods in remote Indigenous communities with prices at nearby or distant urban centres. For example, Sullivan et al. (1987*) show that in some Kimberley communities a basket of goods costs 45 per cent more than it would in Perth. Recently in the Northern Territory the Legislative Assembly (1999*) has inquired into high food prices at remote communities. As a result, the Northern Territory Government's Territory Health Services (2000*) now collects information on prices for a basket of goods at a number of community stores and compares them with prices in Darwin and other regional Northern Territory centres.

Most of these studies raise more issues than they address and have methodological shortcomings in that they engage in analysis based on incomplete data sets. In particular:

- there is an assumption that store expenditure reflects household expenditure and in the absence of HES data there is little attempt to quantify other expenditures
- given that geographic remoteness is identified as a key determinant of marginal cost, there is little attempt to actually isolate the transport cost component of marginal cost (as distinct from just quoting freight charges) vis-à-vis other factors like small markets, inefficiency, poor management practices, and so on.

There is limited effort to contrast costs associated with remoteness (transport costs and costs associated with attracting suitably qualified staff) with a range of factors that may reduce the costs associated with remote stores, like low or non-existent commercial rentals or the economic benefits of monopoly and the high market concentration of consumers.

Focus on how affordable a 'healthy' basket of goods are does not look at Indigenous consumers' actual consumption patterns. Tregenza and Tregenza (1998†) and the Northern Territory Government (2000*) did some work on designing a basket of goods to meet the health needs of a family. While useful for nutritional analysis, it does not indicate what people are actually consuming or how much they are paying for a more representative basket of goods.

There is an assumption that high prices at stores have serious implications on the standard of living of Indigenous people in remote communities. In particular, Tregenza and Tregenza (1998†) note that people are probably unable to eat a healthy basket of goods as their food costs would exceed an average family of six's income from welfare payments. However, the relationship between income and affordability of goods has rarely been rigorously tested.

Earlier research, for example by Harrison (1991*), who worked with the Tiwi, challenges the point of view that income levels are an issue. Harrison was of the view that there is sufficient income to purchase healthy food. Rowse et al. (1994*) show that children do not lack cash for shopping (contra Musharbash 2000*); it is just that they spend it on food with poor nutritional value. A review of information on Indigenous expenditure patterns by Smith (1991a*) indicates a disproportionate Indigenous expenditure on the basics of food and non-alcoholic beverages. However, since then there have been efforts to increase Indigenous payment for housing and rental and this has extended demands on Indigenous household incomes.

Store quality, range of goods, health implications

Health researchers have generated much of the literature about high prices in remote Indigenous community stores. The standard argument is that currently a high proportion of dietary intake is store-based (most often the figure quoted is 90–95 per cent). Consequently it is argued that there is a need for a supply of healthy food as well as consumer education about what food is nutritious. This work is challenged by researchers such as Harrison (1991*) who suggests that there are more complex cultural reasons for poor nutrition, beyond the supply of food at stores. In addition, other researchers such as Meehan (1982*), Altman (1987c*) and Matsuyama (1991*) argue that there is a far greater contribution to diet from subsistence (non-market) activities than the 5–10 per cent that is generally reported.

The focus of Meehan's, Altman's and Matsuyama's research was Arnhem Land outstations rather than townships or communities formed of Indigenous people who may have been displaced from their traditional hunting areas. However, given improved road communications and networks between town and country it is possible that people in some regions may be less reliant on stores for foodstuffs than is assumed in mainstream health research (Altman & Johnson 2000*).

The impetus for the recent Northern Territory Legislative Assembly Inquiry (1999*) was the view that cost influences dietary choice and health status, a view replicated in research on prices at stores undertaken by the Northern Territory Government (1995*, 2000*), Queensland Health (1995*) and Taylor and Westbury (2000*). In addition, the inquiry was established to examine the perception that prices in remote community stores were higher than properly functioning markets would dictate.

In relation to health matters, there is a body of research that reports that many stores in fact cross-subsidise nutritious foods such as fresh fruit and vegetables to ensure that they are relatively cheap (Young 1984*). For example, Wells (1993*) notes that ALPA stores have mixed objectives of competitive pricing and nutrition, with priority given to the cross-subsidising of healthy foods. Similarly Goto (1999*)

provides interesting information on gross expenditure at the Maningrida Progress Association store in Maningrida, but provides limited analysis of how prices are determined. Store policies such as cross-subsidisation are expressions of the stores' two-fold roles as both commercial enterprises and community services, roles discussed in greater detail below.

The multiple roles of stores

The absence of other commercial institutions and service providers in remote communities means that stores often take on multiple roles. This is especially the case with stores that have been established as charitable organisations or social clubs and thus have a commitment to return any profits for community benefit. For example, a store will operate as the bank and the post office because otherwise such services would not exist (Altman 1987a*). In addition, the literature emphasises the role of community stores as the provider of essential services, such as food and drink and banking services, particularly to elderly and less mobile members of remote communities. Writers such as Young (1984*) argue that the essential services provided by stores include retailing, banking and social operations which fulfil social economic and educational functions and ensure the physical wellbeing of the community.

The multiplicity of services provided by community stores creates difficulties and tensions in the attempt to run commercially viable enterprises: each additional function increases the costs of running a store, and can place enormous pressures on management and staff (Bagshaw 1993*). Young (1982*, 1984*) provides a thorough account of the multiple roles of stores in the 1980s, although more recently, following the introduction of the Rural Transaction Centre Program, there has been a trend towards greater diversity in service delivery agencies. Whether this will mean that stores will no longer have to provide such a multiplicity of functions remains to be seen.

A problem that is often identified with stores is that there is a high turnover of management and staff (Bonner 1988*). This can be linked to problems associated with a multiplicity of functions. One of these functions can be the use of the store as a source of employment and training for Indigenous staff, which may have negative impacts on efficiency and thus on price levels. There is also a view that having a store which also functions as a bank can be negative (see below) especially in situations where shopkeepers hold bank books, and now credit cards and EFTPOS cards (Centre for Australian Financial Institutions 1998*).

Economists like Stanley (1985*) have viewed stores as enterprises that might potentially facilitate community economic development. The Government of Western Australia (1994*) highlights the fundamental tensions in running a store as a community service or commercial enterprise (as does Young 1984*). The authors of this government report offer some technical solutions to problems such as

inaccurate billing (or meeting cultural obligations by undercharging kin) and pilfering (see also Bagshaw 1993*; George 1996*), some of which have been adopted in the better managed stores.

Commerce and culture

The cultural context within which stores are established combined with their corporate structure often creates enormous pressure for them to operate in a way that is not strictly commercial (Bagshaw 1982*). This issue is linked to the multiplicity of roles that stores play (as outlined above) and raises the question: are stores about culture business or money business (Martin 1995*)? Or as the Legislative Assembly of the Northern Territory (1999*) asked, are these commercial or social enterprises? When stores are not privately owned, as is generally the case, the distribution of store profits is a problematic area. Young et al. (1993*) address this issue in relation to ALPA and find that the financial arrangements made ('for the benefit of the community') between ALPA, community councils, traditional owners and the community itself can be complex and confusing.

The tension between the commercial and the social is reiterated in much of the literature, and seems to afflict community stores irrespective of their location and governance structure. It is a dilemma that is addressed indirectly in matters such as alcohol sales (Martin 1998*), cross-subsidisation of healthy food (McMillan 1991*) and the meeting of cultural obligations both by consumers and store staff (Bagshaw 1993*; Young 1987*, 1995*). This issue is closely related to the governance of stores.

Governance and capacity building

Store management is of crucial significance to Indigenous competition and consumer matters. The Legislative Assembly of the Northern Territory's Inquiry into Food Prices (1999*) lists four different models of store management and draws out the implications for cost structure, and thus prices, which flow from each of these models. Central to this analysis is the understanding that governance structures can have major implications on the prices faced by Indigenous consumers in remote communities. Similarly, George (1996*) notes that while good management can have a positive effect on store pricing, poor management can result in the incurring of debts which are then paid for with higher prices. George concludes that while retail pricing policy is usually set by store management, there are a few factors most likely to influence it. These include the indebtedness of the community, community council intervention, reliance on external advice for retailing practice, and mismanagement which results in wholesalers withdrawing from stores or charging higher fees based on the riskiness of the operation.

In relation to capacity building, even in the 1980s there was a view that Indigenous people needed to get involved in management (Ellanna et al. 1988*). In

the US context, Henson and Nathan (1998¹) suggest that running stores is an important element of Native American empowerment. Young et al., (1993²) criticise ALPA for inadequate involvement of Aboriginal people in management, but their view is based on a somewhat uncritical acceptance of Aboriginal perspectives. From such a perspective, Pearson (2000³) advocates Indigenous control over community enterprises, including stores.

Much of the discussion of 'capacity building' focuses on Indigenous management without clearly highlighting the nature of impediments and barriers, or addressing how cultural inhibitors may be overcome. Young (1981⁴, 1982⁵) raises issues about Indigenous capacity to manage stores but there has been limited progress in employing Indigenous store managers in the last 20 years. Much discussion is rhetorical. In addition, there is also an inadequate focus on the question of how governance can impact on the operations of stores, and on the need to train Indigenous boards in matters of corporate governance, especially in situations where board members are also powerful figures in the community. For example, it is not unusual for board members to believe that all responsibility rests with management rather than with the board. Taylor and Westbury (2000⁶) highlight how important it is for boards to work with management.

Indigenous-specific ACCC investigations

As already mentioned, publicised ACCC investigations in Indigenous communities to date include: the **Norwich, Colonial and Mercantile Mutual Insurance** investigations (1992), the **Collier Encyclopedias** investigation (1995), the **Saunders Sons and Associates Pty Ltd** investigation, the **Baldwin's Tractor and Truck Wreckers** investigation (1999) and the **IBIS** investigation (2000). The insurance investigations concerned the misleading and unconscionable provision of insurance policies to Indigenous people located in remote communities. The conduct involved misrepresentations and inadequate explanation of policies before purchase, and a general failure to assess the needs of policyholders. In many cases the policies sold were 'highly inappropriate for the individuals concerned' (Trade Practices Commission (TPC) 1994: 2). In addition, the TPC (now the ACCC) noted that '[t]he agents appear to have sold policies that generated the greatest commission, rather than the most appropriate benefits to policyholders' (TPC 1994: 2).

Misrepresentations made to Indigenous people during the sales of policies included: that the purchase of an investment policy was necessary because the government would not provide pensions for people when they retired, and that the purchase of a personal superannuation policy was 'compulsory' (TPC 1994). In response to TPC litigation each of the insurance companies involved refunded policy-holders' premiums with interest. Moreover, Colonial Mutual agreed to pay \$715 000 into a trust fund for the consumer education of Indigenous people and Norwich agreed to fund the employment of a community consumer adviser (discussed in greater detail below).

In the Collier Encyclopedias investigation the companies, Family Educational Publishers Pty Ltd and Lyscard Pty Ltd, admitted that they used high-pressure sales techniques resulting in breaches of the TPA. The sales of Collier encyclopedias occurred mainly to Aboriginal consumers located in Ngukurr, Naiyu Nambiyu (Daly River), Borroloola, Elliot, Tennant Creek and Alice Springs. Encyclopedia salespeople were found to have engaged in unconscionable, and misleading and deceptive conduct, and to have made false representations that consumers would get a gift following their purchase. Following TPC investigations the companies involved agreed to offer full refunds for the purchased encyclopedias. In the Saunders investigation a referral and pyramid selling scheme which targeted Aboriginal communities was stopped following Commission intervention. Under the scheme, Saunders claimed that members of the scheme could obtain a car to the value of \$10 000 if they paid \$200 to join, and also introduced others to the scheme.

In the Baldwin's Tractor and Truck Wreckers investigation, it was found that the company attempted to induce a competitor to provide Tia Tuckia, an Aboriginal community in South Australia, with an inflated quote for repairs because Baldwin's had already quoted for the job and did not want to be undercut. Following ACCC investigations Baldwin's admitted that its conduct breached the TPA. Baldwin's also agreed to a court enforced undertaking to:

- never engage in price fixing conduct again
- perform 65 hours of free labour for Tia Tuckia
- pay the ACCC's investigation costs
- apologise in writing to Tia Tuckia and the Aboriginal and Torres Strait Islander Commission
- publish an apology in *The Koori Mail*, a publication circulated nationally among Aboriginal and Torres Strait Islander communities.

Finally, the ACCC brought an action against IBIS for a breach of the price exploitation provisions of the TPA. IBIS operates 14 general stores in the outer Torres Strait Islands and a large supermarket on Thursday Island. ACCC investigations showed that, following the introduction of the GST, prices of some goods at IBIS stores had increased by more than 10 per cent, with the price of some items, including those which should have been GST-free, increasing by 22 per cent. Following ACCC investigations IBIS offered the communities in which it operates refunds and a one-month 5 per cent discount on all grocery items. In addition IBIS placed notices in its stores apologising for its pricing mistake and undertook to institute a trade compliance program to ensure that its future conduct is less likely to contravene the Act.

The seven investigations outlined above seem to indicate that Indigenous people in remote communities may be particularly vulnerable to misleading practices, and

that people or corporations operating in these areas should be particularly aware of their obligations under the TPA. Part IVA of the TPA deals with unconscionable conduct. Under s. 51AA dealings will be held to be unconscionable if one party is at a special disadvantage with respect to another party, and the other party takes advantage of this (*Blomley v Ryan* (1956) 99CLR362, *Commercial Bank of Australia v Amadio* (1983) 151CLR497).

Indigenous people do not, however, constitute a particular class of 'special disability' with respect to unconscionable dealings. The culmination of a series of factors does, however, operate to ensure that a higher standard of probity should exist for transactions that take place with Indigenous people in remote communities. Such factors include low levels of education, literacy and consumer awareness (Amadio), as well as remoteness and the lack of an ability to get independent legal advice (Insurance investigations, Collier Encyclopedias investigation). The conclusion of the TPC in the Collier Encyclopedias investigation was therefore that the companies involved:

took advantage of their stronger bargaining position in relation to the consumers who were in disadvantaged circumstances as persons from non-English speaking backgrounds, living in remote communities with limited education, limited ability to understand written and spoken English and limited exposure to legal dealings and high pressure salesmen.

In conclusion, while the publicised investigations about Indigenous consumers and the TPA are limited, the investigations that do exist indicate that the law can work to protect Indigenous consumers against breaches of the TPA.

Poor consumer information

In the literature there is a general view that Indigenous people, and particularly those in remote communities, are not aware of their consumer rights (see Aboriginal Consumer Education Project 1994^{*}; Dee 1991^{*}; Department of Fair Trading 1998^{*}; Dodson 1995[†]). Disadvantage and poor literacy (Department of Industry, Science and Tourism (DIST 1997^{*}) as well as limited access to information about finance and cost of finance (HRSCEPPA 1999^{*}) are key barriers to Indigenous consumers exercising their consumer rights. Cultural Perspectives (1998[†]) also suggests that Indigenous people's poor understanding of consumer rights may be coupled with the cultural practice of being non-confrontationist (the public setting of the shop) and this can make them vulnerable to exploitation.

Consumers need to be aware of the TPA and the obligations it imposes on businesses before they can take action if there has been a breach. This is recognised in the ACCC's *Corporate Plan and Priorities 2001–02* which states that the ACCC seeks to achieve compliance with the TPA through, among other things, consumer education (ACCC 2001a: 8). The insurance investigations demonstrated that there may be a very low degree of understanding amongst Indigenous people

about their consumer rights, and the responsibilities of businesses in providing goods and services. A low level of Indigenous consumer awareness is evident in the settlement with Norwich Insurance company which included, amongst other things, five year funding for the employment by the Wujal Wujal Aboriginal Community Council of an adviser to assist people with consumer problems (TPC 1994: 1). It remains to be seen whether Indigenous peoples' awareness of their consumer rights has increased since these investigations took place in 1993–94.

One way of generating a better understanding of their rights is through education. There is enormous variability in the quality of information available to Indigenous consumers. Marks (1995*) argues for culturally informed provision of consumer education, without expanding on this point to describe what such a strategy might consist of. The authors of the *Grin and bear it* report (Aboriginal Consumer Education Project 1994*) recognise that orally based information media such as workshops or contact with Aboriginal liaison officers may be the most appropriate means of consumer education.

There is some evidence to suggest that Indigenous consumers may be brand loyal and so not responsive to some forms of consumer education (McMillan 1991*). Experience from ALPA suggests that the relative inelasticity of demand relating to some items may mean that Indigenous people could fall prey to exploitative pricing on some goods (McMillan 1991*). However, this evidence can be contrasted with that of Scrimgeour et al. (1994*) who found that education strategies can influence people into making healthier choices, and Wells (1993*) expresses the view that people respond quickly to advertising for particular products.

Specific Indigenous consumer issues

The literature identifies a number of key areas in which Indigenous consumers are vulnerable, and which raise implications for the TPA. These areas include:

- **Taxi services**—the literature contains allegations that taxi drivers overcharge for services to town camps around Alice Springs (Commonwealth Ombudsman 1997*). It has also been noted that taxi drivers often hold onto bank key-cards (Westcombe 1998*) which may indicate the presence of a structural monopoly.
- **Alcohol purchasing**—the Commonwealth Ombudsman (1997*) notes instances of Indigenous people being overcharged for alcohol.
- **Monopoly selling**—there are accounts of Indigenous customers being prevented from shopping at other retail outlets because of their dependence on book-up which may be a reflection of a market structure that inhibits competition (Commonwealth Ombudsman 1997*).
- **Used-car dealers**—there is evidence of cars being sold at prices significantly above market rates to Indigenous customers (Commonwealth Ombudsman

1997*). Mechanical repairs for cars have also been identified as being priced at above market rates for Indigenous consumers (Cultural Perspectives 1998†).

- **Book-up practices** (see discussion below).
- **Door-to-door sales**—the TPA investigations detailed above indicate that Indigenous people may be particularly vulnerable to representations made by door-to-door salespeople.

Areas identified by the literature raise implications for the TPA both in terms of market structures that inhibit competition, and of unconscionableness. While overcharging for goods and services is not a TPA issue, evidence that overcharging is directed towards Indigenous consumers may be suggestive of a relationship of vulnerability consistent with unconscionableness. However, it must be remembered that Indigenous consumers do not constitute a class of 'special disability'. If it can be shown under s. 51AA that the Indigenous consumers involved in these transactions are at a special disadvantage with respect to the business involved, and the business has taken advantage of this, then the transaction will be unconscionable. Similarly, it may be that the factors to be considered in assessing unconscionableness, as outlined in s. 51AB(2), are present in some of these transactions. Finally, the research identified in these areas seems to indicate that potential Indigenous consumer difficulties stem from both unconscionable practices and monopolistic market structures. It may therefore be that regulatory solutions should not just consider the education of Indigenous consumers but also structural reform to address issues of market failure.

More general consumer issues are also identified within the literature. For example, Aboriginal people are sold items that do not suit their needs because it is assumed that they will not complain (Cultural Perspectives 1998†) or being refused service at stores after complaining about high prices (Srivastava 1998*). However, in all of this material little attention is paid to the cultural practices that may inform the choices Indigenous people make about where they shop, or how they consume. Thus there is little analysis of how or why these exploitative practices are taking place, beyond the statement that they occur.

Access to banking facilities

Following the rapid deregulation of the Australian financial system it is perhaps not surprising that a great deal has been written in recent times on issues associated with banking and access to consumer banking facilities. Banking services are increasingly being considered essential services in rural and remote communities (HRSCEFPA 1999*; McDonnell & Westbury 2001). In the context of a rapidly changing Australian financial sector, evidence is emerging about the declining availability of banking and financial services in rural and remote Australia (HRSCEFPA 1999*; McDonnell & Westbury 2001). The removal of banking services from remote and rural communities has particular implications for the relatively

large and increasing Indigenous population of these communities. Further, the trend from cheque-based to electronic-based welfare payments will further compound these problems (Westbury 1999*). Problems associated with Indigenous people moving from cheque to electronic-based welfare payments are being addressed in part by a pilot banking project being conducted by Tangentyere Council in Alice Springs (*Land Rights News* 2001*).

Providing access to credit is viewed by some writers as a means for breaking out of 'the poverty trap' (Stegman 1999). In addition to the problems caused by the general removal of banking services from rural and remote Indigenous communities, Indigenous people may face further barriers to accessing credit. Indigenous entrepreneurs can face problems in accessing loans if they have a limited credit history and no collateral (McDonnell 1999*). Many Indigenous households are impoverished and lack savings, Commonwealth and state legislation prohibits the use of communal Aboriginal land as collateral, and Indigenous people have few employment opportunities in rural areas from which to earn income and accumulate equity (ATSIC 1998: 22–3).

Additional barriers to the provision of credit are that Indigenous communities often lack the infrastructure needed to support banking and financial services and that there is a high cost in both delivering and accessing financial services in remote communities (Westbury 1999*: 13). Moreover, some Indigenous entrepreneurs lack the technical literacy to access the range of electronic, telephone and Internet-based banking and financial services that are available. Cerexhe (1998*) highlights the point that financial literacy training for Indigenous people is urgently required.

It is clear that there is a lack of competition in the provision of banking services to many rural and remote communities, with the major banks withdrawing banking services from these regions. Some writers suggest that the provision of electronic banking services may provide a solution to this problem (Leonard et al. 1998*; Walker et al. 1997). However, Singh (1999*) and Westbury (2000*) note an Indigenous cultural preference for face-to-face banking, a preference that would not be met through the provision of electronic services.

Finally, the lack of access to normal banking facilities has resulted in other institutions like stores and art centres to become alternate credit facilities (Matsuyama 1991*). While stores and other institutions are clearly providing much needed banking services, the provision of these services by informal, unregulated providers can create relationships between banking service providers and Indigenous consumers that are open to abuse. In addition, the provision of banking services by community stores must increase the cost structure of those stores, which, in turn, may increase the prices paid by all Indigenous consumers.

Book-up

Book-up is the practice of running up a tab (or book) with a store or merchant. The literature suggests that book-up is a common system of credit provision in regional and remote community stores. Traditionally the security provided on book-up has consisted of stores or merchants having welfare cheques sent to them directly, and operating 'book-up' arrangements, whereby they cash cheques on the basis that the proceeds will be used to buy supplies or pay off part of a book-up loan. This practice is described by the Commonwealth Banking Ombudsman:

There are instances of storekeepers in remote areas in town being the address point for Department of Social Security (DSS) cheques. In some instances this has created a 'capture' situation in that Aboriginal customers are extended a line of credit and storekeepers insisted on signing over DSS cheques to meet accumulated debts. This had led to exploitative pricing of goods by some storekeepers and customers being prevented from purchasing elsewhere ... It appears that social problems are not simply a factor of insufficient or poorly distributed income but also the fact that a significant proportion of income is 'ripped off' (1997^{*}: 11–12).

More recently, as Indigenous people have been switching to electronic banking there is evidence that some storekeepers and other book-up merchants are holding onto key cards and/or PIN numbers as security for book-up loans (Renouf 2001[†]).

Researchers such as Renouf are concerned by cases of book-up where stores are keeping key cards and/or PIN numbers (Renouf 2001[†], Aboriginal Consumer Education Project 1994^{*}; Commonwealth Ombudsman 1997^{*}). Renouf (2001[†]) argues that the use of key cards as a form of security constitutes exploitation of the consumer's lesser bargaining power because, in part, consumers do not have access to other financial services. There are also numerous accounts of Indigenous customers being prevented from shopping at other retail outlets because of their dependence on book-up (Commonwealth Ombudsman 1997^{*}). In addition, fees charged by book-up providers are often exorbitant.

One interpretation of book-up practices is therefore that they result in exploitation of Indigenous consumers' lesser bargaining position and as such may be unconscionable. For example, in accordance with the factors specified in s. 51AB (2) it could possibly be argued that an Indigenous consumer who enters into a book-up arrangement, who has low level of literacy and education (s. 51AB(2)(a)), and who is pressured into using book-up arrangements on the basis that there are no other financial services available to them and they were hungry and needed food (s. 51AB(2)(b)), and who is required to leave their key card and PIN number as security (s. 51AB(2)(c)) may be the victim of unconscionable conduct. This is particularly so if the fees charged for book-up are exorbitant compared with the fees charged for other financial services (s. 51AB(2)(d)). This last point, however, rests on the problematic assumption that Indigenous consumers—particularly those in remote areas—have access to credit from other financial sources. Another possible interpretation of book-up is that it provides an essential service to

Indigenous people who otherwise would not have access to credit. It is therefore possible that in some cases book-up has the potential to benefit Indigenous consumers.

Renouf (2001[†]) outlines many of the complexities involved in book-up. For example, it can operate as a symbiotic relationship and can be a source of free credit especially in community-owned stores that charge no interest (see Cerexhe 1998^{*}; Srivastava 1998^{*}). The complexities associated with the use of book-up by Indigenous consumers demonstrates the need to identify and analyse any TPA implications in a culturally informed way that addresses the question of why Indigenous people continue to participate in relationships which are, or have the potential to be, exploitative. This question will be taken up in forthcoming research.

Book-up as a practice clearly has a cost for stores in terms of administration of the book-up system and bad debts. For example, Sullivan et al. (1987^{*}) note that book-up was largely eliminated in the Kimberley due to the large debts it incurred to the communities. Young (1984^{*}) notes the problems that book-up creates for store management and some of the ways in which the effect of such problems can be minimised. Finally, Taylor and Westbury (2000^{*}) see book-up as a double-edged sword. On the one hand community members are guaranteed access to foodstuffs and store owners are guaranteed reimbursement, but on the other hand it can perpetuate welfare dependency and provide little incentive for people to develop skills in operating in the cash economy.

International best practice

Our attempts to interrogate international published literature have been largely unsuccessful, possibly owing to the project time frame and our interrogation methods. One reason for the lack of international material could be that such research as it exists is focused on regional rather than Indigenous-specific issues.

The international comparative material that we have found is of two types. First, researchers in North America dealing with the practices of enterprises and stores in Indian and Inuit communities have reached similar conclusions to Australian researchers. For example, Henson and Nathan (1998[†]) suggest that greater involvement in store management is a means to economic empowerment and Ketilson and MacPherson (2001^{*}) highlight structural, locational and scale-related issues that undermine store effectiveness in Canada.

Second, some Australian researchers, most notably Young (1987^{*}, 1995^{*}) and Young et al. (1993^{*}) compare the Australian and North American experience, and demonstrate the many similarities in competition issues between 'northern' remote regions on both continents. Such similarities can include high structural costs, harsh environments, lack of competition, lack of capital, and cultural norms that may undermine conventional business practice.

Interestingly, we were not able to locate overseas literature that looks at the Australian situation from an overseas comparative perspective.

Emerging research issues

A key issue emerging from the literature is that as consumers, Indigenous people, especially in remote communities, are disadvantaged both in terms of the prices they pay for goods (and services) and their consumer rights awareness. Much of this disadvantage is structural—reflecting high relative welfare dependence and poverty; and poor socioeconomic status reflected in low educational levels, poor literacy, poor housing and poor health.

Much of the existing research is under-theorised and lacks analytical and methodological rigour. So, while transport costs are highlighted as a major cause of price differential, there is no clear-cut research that demonstrates its actual impact; instead final retail price is often provided as proof per se of high transport costs when many other factors could contribute to high prices. There is, for example, surprisingly little analysis of store mark-up policy, cross-subsidisation, the not-for-profit corporate structure of many community stores or other factors that might influence prices. Some of the most detailed research, for example by Young (1984*), is in need of updating owing to very different conditions in remote communities today (e.g. better communications, greater competition, and easier travel to competitors outside the community).

Some of the existing mechanisms which can monitor store prices such as those put in place by the Northern Territory Government's 'market basket survey' provide a potentially useful mechanism for the external monitoring of store performance. Unfortunately, individual store survey results are not readily available (owing, perhaps, to concerns about commercial confidentiality) and it is unclear if store management boards receive the feedback on relative store performance which would assist capacity building (as distinct to store managers, who often collaborate in data collection).

Several fundamental issues that dominate economic policy debates more widely, especially from the 1990s onward, appear to be generally overlooked in the literature. First, there is the issue of competition. A brief pilot study by Altman at Maningrida in July 2001 suggests that intra-community competition in the retail sector and extra-community competition in barge transport is having an influence not just on reducing prices but also on improving the quality of services. Countering the potential appeal of competition as an agent of change, are issues associated with economies of scale: there is a need to contrast the potential benefits of each.

A second issue is that of corporate structure. There is a perception in the literature reviewed (and in some government policy) that it is Indigenous engagement with the private sector that is most at risk of exploitation and that the profit motive is somehow linked to unconscionable practice. While there is some reference to Indigenous rent seeking behaviour and unacceptable practices like 'pilfering', these are largely understated as issues for rigorous research. The potential inefficiency associated with not-for-profit corporate structures is similarly under-researched, as is the potential for joint venturing to be an efficient corporate model.

As elsewhere in Indigenous policy there is some tendency to mix policy goals at the community, government and regulatory levels. Hence there is a recognition that suppliers of goods and services at remote Indigenous communities may pursue multiple goals and may even be funded to do so, for example, as employment training schemes or as emerging enterprises. In addition, in a cross-cultural setting all consumers may not be equal, for example some may have special rights and privileges based on customary entitlements that are locally sanctioned but that may disadvantage other consumers. This is part of the reality of contemporary Indigenous community politics and a part of the tension in articulation with the wider Australian society and its institutions.

Most of the literature deals with competition and consumer protection issues coincidentally, being primarily focused on other issues such as the effect of high store prices on health status or the development potential of community stores as enterprises. Much of the research is somewhat anecdotal, describing the store situations sometimes in great detail, but explaining store (and other service delivery) inefficiency in general terms of locational and cultural factors rather than absence of competition or poor governance. Too much of the literature is either detailed and narrowly focused on a particular community, or else wide-ranging but lacking in empirical detail. This suggests that a regional focus, such as that undertaken by CAEPR in central Australia as part of the next stage of this project, might be desirable: it will provide a more comprehensive 'regional' analysis of the issues facing Indigenous consumers.

Finally, discussion of specific consumer issues in the available literature is of limited value. Little attention is paid to the cultural practices that may inform the choices made by Indigenous people about where they shop, or how they consume. There is little analysis of why or how possibly exploitative practices are taking place. A key emerging area of research is therefore the need to identify and analyse prospective breaches of the TPA in a culturally informed way that addresses the question of why Indigenous people continue to participate in relationships which are, or have the potential to be, exploitative.