

ANNUAL REPORT 1982

DIRECTOR
of
CONSUMER AFFAIRS

for the year ended 30 June 1982

Ministry of Consumer Affairs.



Looking after your interests.

A. Herla.

VICTORIA

Report

of the

DIRECTOR OF CONSUMER AFFAIRS

for the

Year ended 30 June 1982

*Presented to both Houses of Parliament pursuant to the provisions of
Section 8A of the Ministry of Consumer Affairs Act 1973*

MELBOURNE
F D ATKINSON GOVERNMENT PRINTER
1982

MINISTRY OF CONSUMER AFFAIRS



OFFICE OF THE DIRECTOR
500 BOURKE STREET
MELBOURNE, VIC. 3000

4th November 1982

The Honourable Peter Spyker, MP
Minister of Consumer Affairs
500 Bourke Street
MELBOURNE VIC 3000

Sir

ANNUAL REPORT 1981-82

Pursuant to Section 8A of the Ministry of Consumer Affairs Act 1973, I have the honour to present the eighth Annual Report of the Director of Consumer Affairs, for the year ending 30th June 1982, for presentation to both Houses of Parliament.

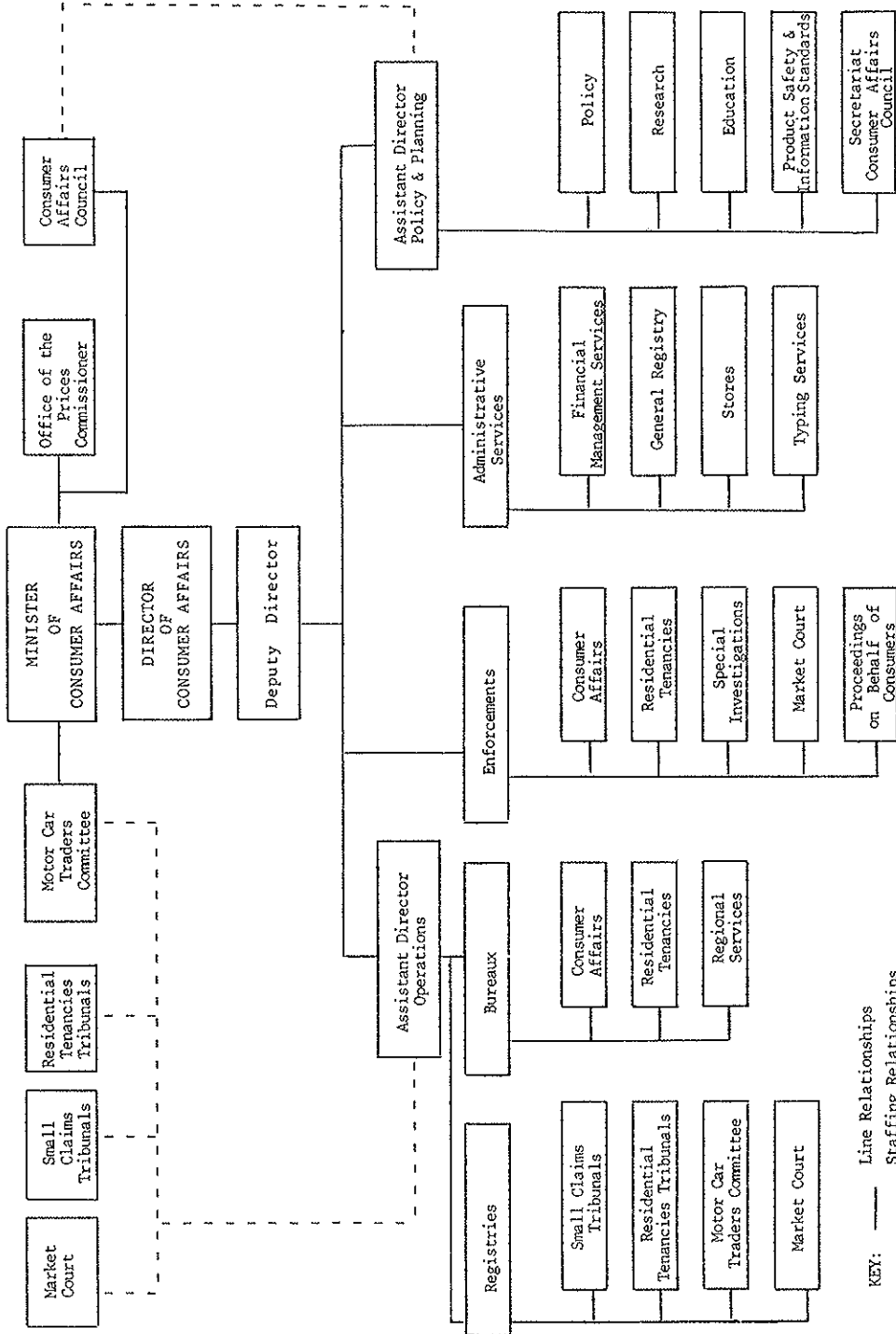
Yours sincerely

A handwritten signature in cursive script, appearing to read 'John O Miller'.

John O Miller
Director of Consumer Affairs

Encl

ORGANIZATION CHART
MINISTRY OF CONSUMER AFFAIRS



KEY: — Line Relationships
 - - - Staffing Relationships
 (Statutory Bodies Associated with the Ministry)

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PART 1PREAMBLE1.1.1 Introduction

In Victoria, 'Consumer Affairs', came into operation in 1965 as the Consumer Protection Act from which was created the then Consumer Protection Council. The title of the main consumer legislation was changed in 1974 to the Consumer Affairs Act. The Ministry of Consumer Affairs Act 1973 also came into operation in 1974, and the first Director of Consumer Affairs, Mr C N Geschke OBE, commenced in June of that year, when the Small Claims Tribunals also began operations. The Consumer Affairs Bureau had actually commenced operations in November 1970.

The Ministry of Consumer Affairs was separated from the Department of Labour and Industry, whose Secretary had been the Permanent Head, in January 1981.

The other main legislation for which the Ministry is now responsible concerns Residential Tenancies, as from November 9, 1981, and that relating to Petrol Marketing, which was proclaimed on January 27, and August 4, 1982.

In the period since my first report, the major new legislation dealt with has been the Residential Tenancies Act, requiring administration consequent on proclamation and the Fuel Prices Regulation Act and Petroleum Retail Selling Sites Act. Both these acts required a considerable effort in monitoring market developments and in legislative research.

Outline of this Report

- 1.1.2 Part 2 is concerned with another reporting innovation: case histories from the Ministry's files. It was considered that, in addition to the rather formal treatment accorded an accounting of the Ministry's work in the period under review, an informal yet factual explanation of typical situations would be of interest to consumers, particularly to students and teachers. As an educational aid, Part 2 illustrates not only the work of the Ministry, but the extent to which consumers should always be alert, not only in the sense of "buyer beware", but to their own capacity to engage in contracts for extensive expenditure in the future.

Part 3 deals with statistics. Part 4 refers to matters affecting consumers' interests, particularly industries and activities of note. Part 5 deals with Traders whose activities or attitudes warrant special mention. Part 6 contains brief concluding comments, including areas where legislative change is desirable. An addendum to the report is an important letter which the former Director of Consumer Affairs requested I include (p 251).

Part 1 of the report comprises a summary of the period together with comments on existing legislation and administration.

Summary

- 1.1.3 The main features of the activities since my last report to which I wish to draw to attention in this summary, relate to:

A. Contacts with the Community

By June this year the Ministry was experiencing a volume of contacts with the community which at an annual rate was in excess of 180,000 (better than the crowd at two VFL football finals!) and represented nearly one contact each year for every 20 Victorian residents. Measured against the 104 staff of the Ministry, this represents an average annual client contact approaching 2000 per staff member.

The Residential Tenancies legislation now creates over 8000 contacts per month with the community - and that in the short period since proclamation in November 1981, - whereas the long-standing consumer legislation is creating about 7000 contacts per month. Tenancy matters have thus already overtaken consumer matters, as measured by client demand for assistance.

The estimated contacts with the community for the whole Ministry for the period under review, are made up from the following:

Telephone enquiries from consumers	60,000
Telephone enquiries from tenants	19,000
Telephone enquiries from landlords	24,000
Interviews with tenants and landlords	7,000
Interviews with consumers	10,323
Written complaints from consumers	12,100

Written complaints from tenants	1,256
Written complaints from landlords	135
Small Claims Tribunals Hearings	2,423
Residential Tenancies Tribunals	
Hearings initiated by landlords	1,467
Hearings initiated by tenants	142

B. Costs to the Community

The net cost to Victoria's citizens of the operation of the Ministry for the year ended June 30, 1982 was \$1,686,616, representing about 42 cents per annum for each Victorian.

Total outlays were \$2,398,000. This amount was significantly reduced by contributions from the two main trust funds. These are the Motor Car Traders' Guarantee Fund administered by the Motor Car Traders Committee legislation, and the Residential Tenancies Fund, which is created out of interest earned on tenants' bonds deposited in the banking system. At June 1982, \$15,382,796 was deposited, earning interest to flow to the Residential Tenancies Fund.

When analysed by programs, a more useful method than the traditional functional accounting method, the total costs of the Ministry were calculated as follows:

Program Expenditure 1981/82

\$ 000's

<u>Consumer Affairs Programs</u>		1,404
Consumer Affairs Bureau	640	
Consumer Affairs Council	35	
Small Claims Tribunals	137	
Motor Car Traders Committee	422	
Enforcement	150	
Petrol Pricing	20	
<u>Residential Tenancies Programs</u>		893
Fair Rents Board	237	
Residential Tenancies Bureau	372	
Residential Tenancies Tribunal	224	
Tenants Advice Service	60	
<u>Research, Education and Information</u>		101
<u>Total All Programs</u>		<u>\$ 2,398*</u>

*Before recovery from specific purpose trust funds.

C. "Value for Money" - Direct Costs of Programs

In my first report, direct costs of programs were identified, and from actual transaction volumes, direct unit costs were calculated. It was pointed out then that such calculations were a useful measure: they

allow taxpayers, and governments, to assess the "value for money" provided by an agency such as consumer affairs; and from which management may monitor performance.

Consequently, trends over the last three years in the Consumer Affairs Bureau and the Tribunals can be gauged from the following figures:

CONSUMER AFFAIRS BUREAU

	1980	1981	1982
Direct Costs Only	\$329,586	\$366,645	\$405,663
Complaints	11,388	11,828	12,108
Direct Cost per			
Complaint	\$28.94	\$32.20	\$33.50
Index	100	113	116

SMALL CLAIMS AND RESIDENTIAL TENANCIES TRIBUNALS

	1980	1981	1982
Direct Costs Only	\$141,265	\$154,418	\$209,112
Hearings	2,699	2,236	3,449
Direct Cost per			
Hearing	\$52.34	\$69.06	\$60.62
Index	100	132	116

These tables reveal the productivity and cost effectiveness achieved in the Ministry in the handling of complaints and the resolution of conflict. Any operation in the private or public sector that contains unit cost increases within the current double digit

inflation rates is clearly rendering a unique service. The dedicated, enthusiastic staff of the Ministry are to be congratulated on these results. This is an especially praiseworthy performance because, in addition to 'routine' matters - and few consumer complaints are ever routine - staff of the Ministry, have since the last report, had to cope with a number of urgent 'ad hoc' enquiries of considerable interest to consumers, and in the year under review, both the ongoing and special studies referred to, were completed without any substantial increase in resources. As shown, in the last two years, unit direct costs have been contained to be within a total increase of 16%.

Some of the special studies engaged in by staff included the weekly monitoring of retail petrol prices, a study of the implications of UFF (Urea Formaldehyde Foam), monitoring of alcohol practices by VFL patrons and caterers, monitoring of food and drink and confectionery prices at public sporting events, examination of proposed show bag contents at the Royal Agricultural Society, a study of the implications of the alleged Barramundi fish substitution racket, and monitoring of beer prices during the recent strike. 1981/82 was an exceptionally busy and productive year for the Ministry of Consumer Affairs, and although consumer complaints tended to level off, planning and coping with residential tenancies and the petrol legislation presented a considerable challenge to the Ministry and its staff.

D. Phone Servicing

Shortly after his appointment as Minister, the Hon. Peter Spyker insisted that phone services and response times be improved. Whilst this has necessarily meant some reduction in services elsewhere within the Ministry, this desirable change now means that 6 phones are constantly available for new enquiries from the public; 4 on consumer matters and 2 on residential tenancies matters. Staff on these phones are now handling in excess of 100,000 phone calls per annum.

E. Trends in Consumer Complaints

Complaints made by consumers have begun to level off - a trend discernable in fact, several years ago. Actual written complaints increased by 2.4% in the year to 12,108, and the number of practices complained of increased from 15,205 to 15,572 - also an increase of 2.4% (the difference between letters of complaint and practices complained of is accounted for by the fact that quite often consumers complain of several undesirable trading practices in the one letter, for example, the terms of the contract and the quality of product purchased).

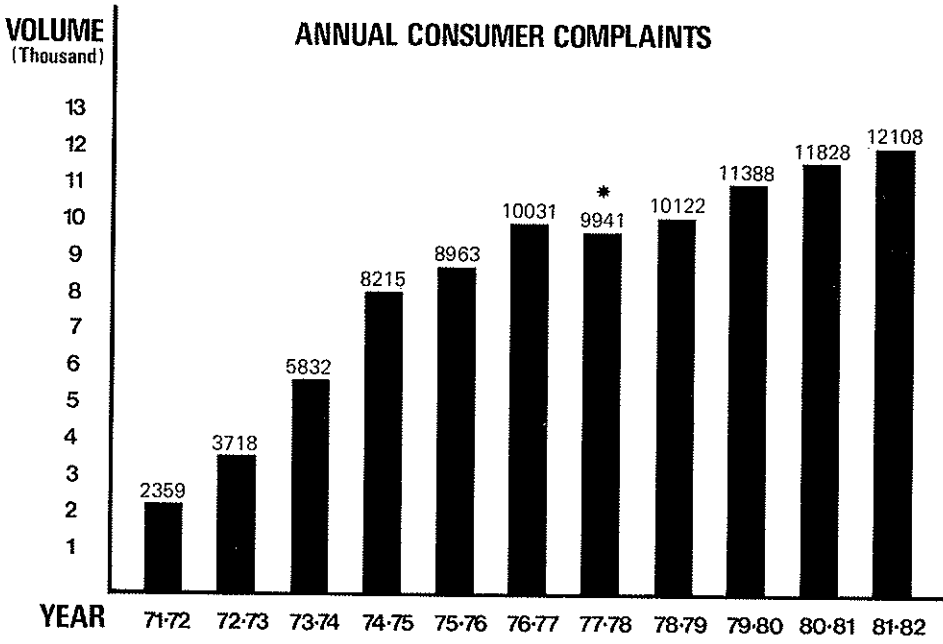
The actual annual volume of complaints since the inception of the Consumer Affairs Bureau, and the annual percentage change is shown below:

<u>Year</u>	<u>Complaints</u>	<u>Increase on Previous Year</u>
1972	2,359	-
1973	3,718	+ 58%
1974	5,832	+ 57%
1975	8,215	+ 41%
1976	8,963	+ 9%
1977	10,031	+ 12%
1978*	9,941	- 1%
1979	10,122	+ 2%
1980	11,388	+ 11%
1981	11,828	+ 4%
1982	12,108	+ 2%

*In 1978, a new procedure of accounting for complaints was introduced, resulting in a temporary 'decrease', but since then complaint volumes have increased by 22% in four years.

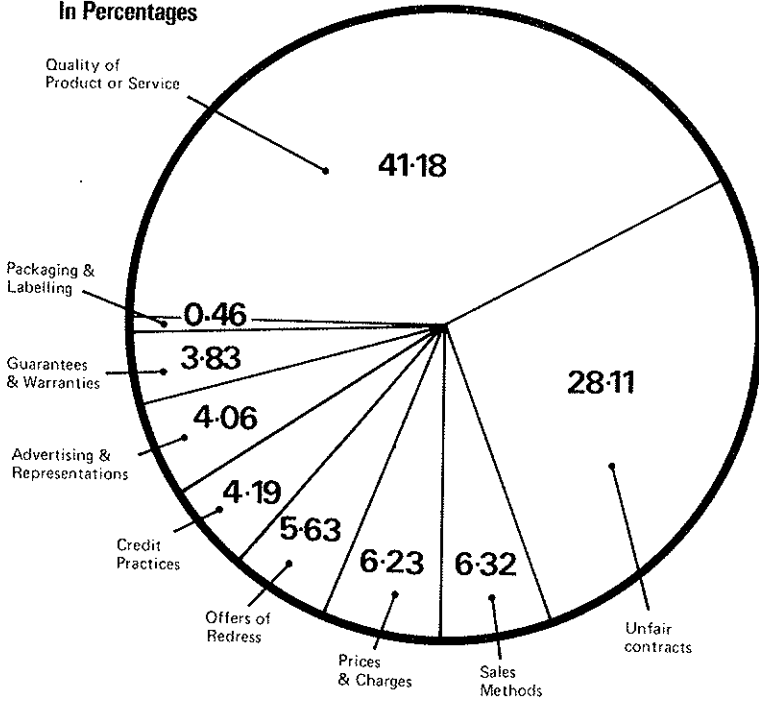
In the Small Claims Tribunals, there was an increase of 8.7% in claims determined, up from 2,236 to 2,432, whilst practices complained about increased by 12.4%, from 2,273 to 2,556.

The main movements of complaints, analysed by industry, together with practices complained of, are revealed in the accompanying charts.

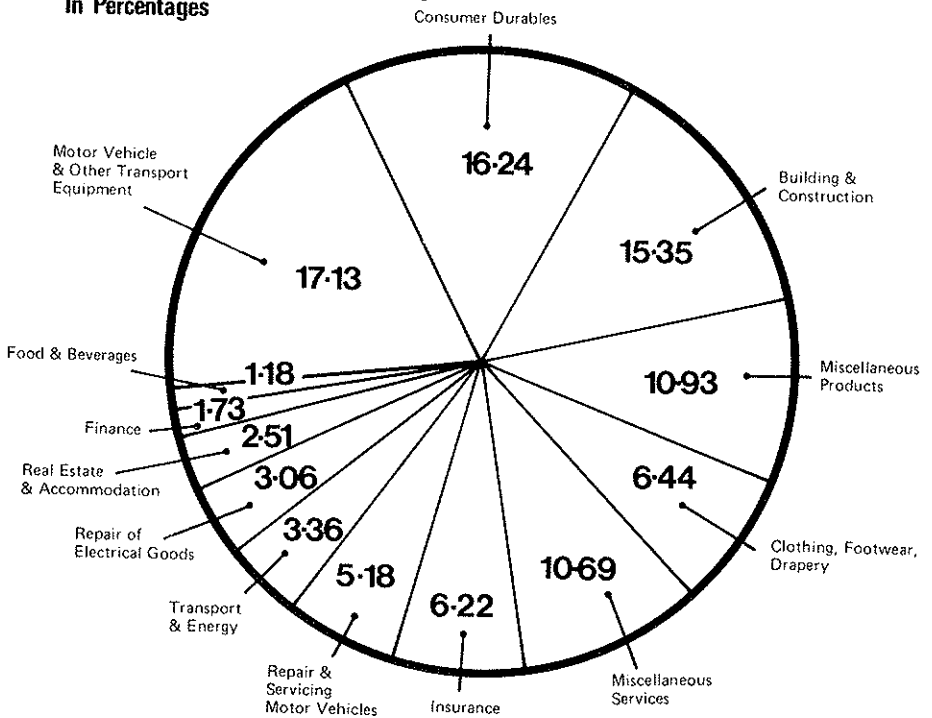


* Method of counting changed slightly from 1977-78.

Consumer Complaints 1981-82 Analysed by Nature of Complaint In Percentages

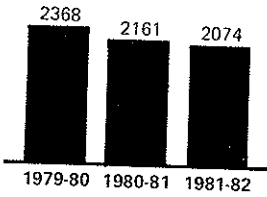


Consumer Complaints 1981-82 Analysed by Industry Groups In Percentages

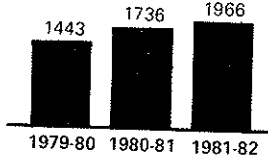


Consumer Complaints by Industry Groups

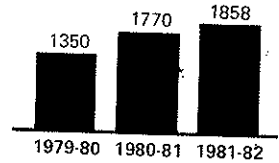
Motor Vehicle
& Other Transport
Equipment



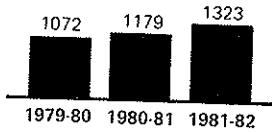
Consumer
Durables



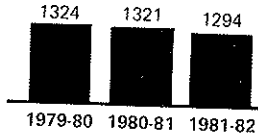
Building &
Construction



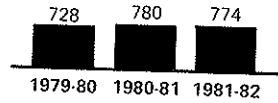
Miscellaneous
Products



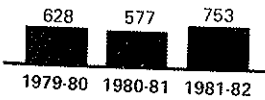
Miscellaneous
Services



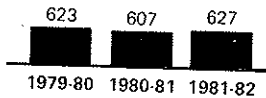
Clothing, Footwear,
Draperies



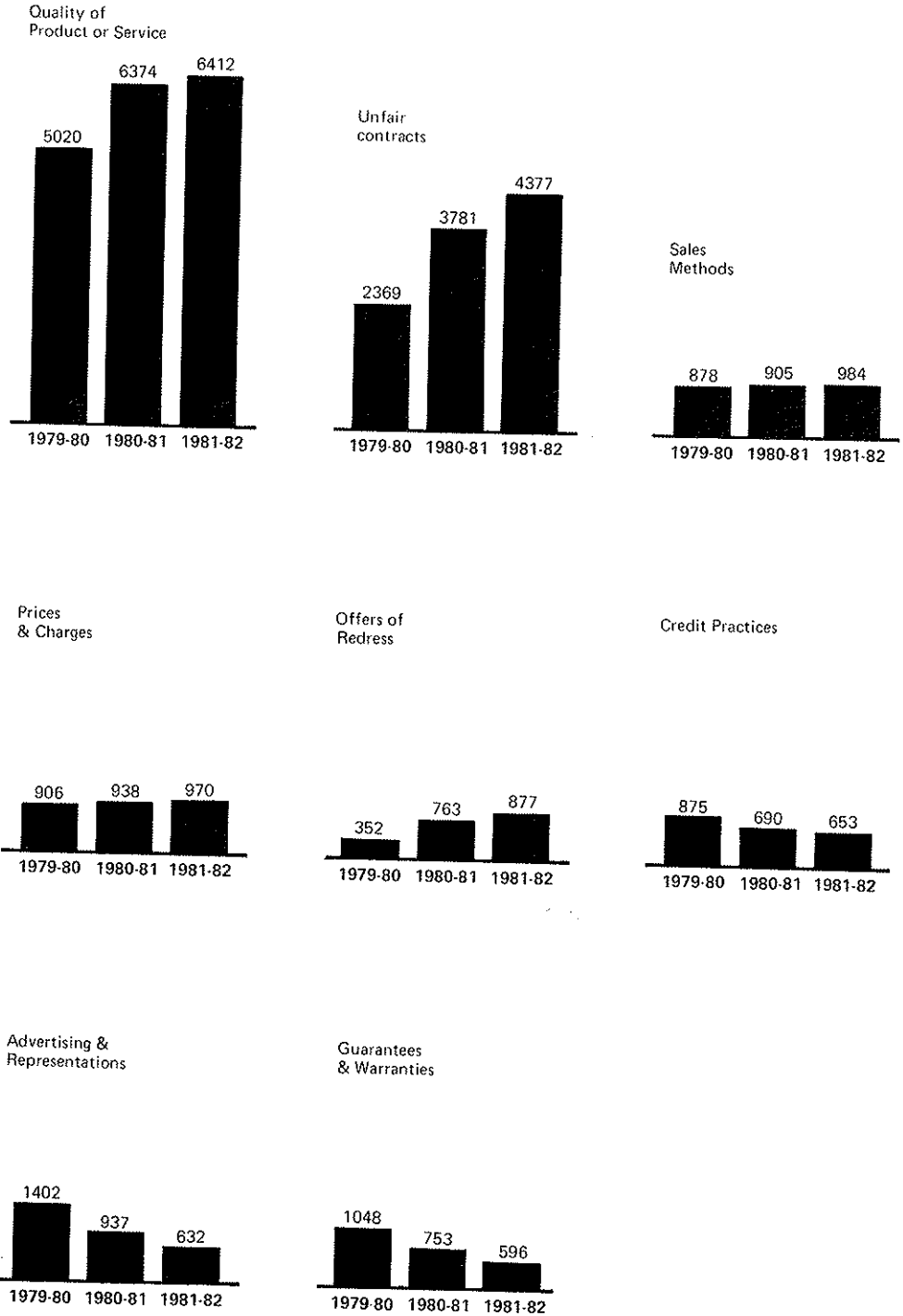
Insurance



Repair &
Servicing
Motor Vehicles



Consumer Complaints Against Traders Practices



It is pleasing to note the further reduction in Motor Vehicle complaints, on the other hand, complaints relating to consumer durables and to building and construction have increased quite markedly in the last two years, by 36% and 38% respectively.

As regards the practices of concern to consumers, quality of product and of service remains dominant at 42%, and the number of complaints concerning this category increased again, revealing in the last two years an increase of 28% in consumer complaints about quality.

Unfair contracts are clearly a major concern to consumers, and complaints about this problem now represent 28% of all complaints - having increased by an alarming 85% in the last two years.

A pleasing feature of the analyses of practices complained about is that those relating to advertising, and representations, and to guarantees and warranties have reduced over the last two years by 55% and 43% respectively.

On the other hand, consumers found that offers of redress by traders, following a complaint, were an area of growing concern - complaints in this area having increased by 149% over the last two years.

The overall significance of the trend in levels of complaints, is to suggest that traditional sources in need of assistance are stabilising; but it is the conviction of many in the Ministry that many needs are not being met -

particularly those of the underprivileged and those uncomfortable in conversations in English on the telephone or face to face in a high rise city building.

F. Residential Tenancies

The table below shows that the major issues tenants bring to the Residential Tenancies Bureau are Bonds, (including insurance) 28.5%, Rent 24.5%, Repairs and Maintenance 20.7%, Termination 12.1%, and Quiet Enjoyment 5.4%. Tenants have been using the Residential Tenancies Bureau more than have landlords, but the reverse is true of the Residential Tenancies Tribunals, where 91% of all applications were from landlords. The overriding issue which landlords brought to the Tribunals was possession, 83% of all cases.

An analysis of results of such Tribunal applications, reveals: applications withdrawn 43%, order granted by Tribunal 39%, application dismissed 14%, and settled at hearing 4%.

Residential Tenancies BureauComplaints Handled

	<u>Landlord</u>	<u>Tenant</u>	<u>Total</u>	<u>%</u>
Bonds (including insurance)	15	358	373	26.8
Rent	27	308	335	24.1
Repairs and Maintenance - General	14	243	257	18.5
Termination	40	152	192	13.8
Miscellaneous	13	65	78	5.6
Quiet enjoyment - including entry	-	68	68	4.9
Documentation complaints	2	29	31	2.2
Abandoned premises	23	8	31	2.2
Repairs and Maintenance - Urgent	-	18	18	1.3
Locks and security devices	1	4	5	0.4
Assignment and sub-letting	-	3	3	0.2
	<u>135</u>	<u>1,256</u>	<u>1,391</u>	<u>100.0</u>

G. Job Sharing and Local Offices

In anticipation of our response to the need to provide adequate and necessary services to consumers who are uncomfortable in discussing their problems over the phone or in a high rise city building, and who in any case are unable to contact the Ministry during working hours, it has become policy to open suburban shopfront-type offices. The first such office will be opened in Footscray shortly. It is hoped that additional offices will be opened in due course.

Staff to man these offices were recruited in late 1981 and commenced their training in February 1982. It was decided that "job-sharing" was the appropriate mode for such staffing, and the 8 full-time positions were filled by 16 part-time staff, each working 19 hours per week.

The response to the advertisements was excellent, and approximately 300 applications were received. Finally, 16 new staff were appointed, 11 females and 5 males. Although not a pre-requisite, it is interesting that 25 tertiary awards were held by the 16 new staff.

All in all, this was a clear indication that many talented people in the Australian community would prefer part-time employment in creative fields of work, and it is to be hoped that official recognition of permanent part time work can become a feature of employment in the Victorian Public Service. There appear to be no sound reasons why such valuable employees should be denied the working conditions normal to those who render public service as employees of the State.

H. Review of the Ministry

Shortly after being appointed, the Hon. Peter Spyker decided that a comprehensive review of the operations of the Ministry was necessary. Senior management agree that such a review could be very useful, particularly because of serious concern about resources, structure of the Ministry and the need for an examination of and probable change in the delivery of services, and of methods of working and handling consumer complaints.

The review is being carried out by officers of the Public Service Board, in conjunction with outside consultants competent in particular areas. A steering committee, under the chairmanship of Dr Ron Cullen, is liaising between the review team and the Minister, to confirm findings and hopefully initiate action.

I. Community Groups

Contacts have been maintained during the period with some of the community groups committed to assisting consumers and tenants. The Tenants' Advice Service were financially assisted at the rate of \$5,000 per month, to enable their advisory service to tenants to continue; this has recently been increased to allow for inflation, to an annual amount of \$66,000.

Representations were also made on behalf of the Consumer Credit Legal Service, so that urgently needed financial resources might be made available.

The assistance of all community groups, including the financial counsellors, the various local legal services and the citizens' advice bureaux is appreciated.

J. Resources

The provision of resources, both human and physical, remains a problem in the Ministry. It is no exaggeration to claim that Consumer Affairs has always

been under-resourced, and references to prior reports of the Director and of the Consumer Affairs Council illustrate this.

"... 59 (staff) is a figure which does not reflect the greatly enlarged task confronting the Ministry today ... There is a constant problem facing management in attempting to juggle priorities between satisfying the demands of consumers for immediate redress and taking longer term preventative action. Yet there is the lack of manpower and finance which would permit the Ministry to undertake very much of the more fundamental work of:

- . Research*
- . Policy recommendation*
- . Dissemination of information*
- . Education, especially liaison
with teachers and educational
institutions*
- . Liaison with traders.*

To a degree, the approach enforced upon the Ministry is then appropriately characterized as a band-aid approach."

(CAC Report 1980, pp 13 and 39)

"... staff ceilings and the unsatisfactory organisational issue has seriously prejudiced the operation of the Ministry since its inception ..."

(C N Geschke, Report 1980, p 10)

"... there is no 'slack' at all available in meeting existing commitments ... demands for service resulting from new legislation must therefore exceed capacity ... and disappointment in delivery of services will be experienced ..."

(J O Miller, Report 1981, p 6)

Discussions are currently underway so as to assist in both of the necessary areas - the Ministry is overcrowded, and the demand for service from the community is stretching our human resources to the maximum.

As a result, vital and quite urgent work in education, research, planning and policy formulation is continually being put aside because of the day to day pressures in coping with consumer, tenant and landlord complaints and problems and their need for information.

Occupational stress in the Ministry is not surprisingly, high, and in an attempt to alleviate this, three staff seminars have recently been held. The results emerging from these are encouraging.

It is also hoped that the review of the Ministry's operations and resources will recommend improvements in resource allocation. It should be noted that the two important sources of independent funding reduce quite markedly (32%), the costs of the Ministry which must be financed through Consolidated Revenue.

It should also be noted that the 1982-83 Victorian Budget provided a 29.3% increase in expenditure on Consumer Affairs, *"... reflecting the importance given to this area by the Government"*. (Budget Document No 4, page 14)

K. Part 5 - Traders Named

It is important that the community understand that the utmost care is taken before the decision to name a trader in Part 5 of this report - dealing with traders whose activities or attitudes warrant special mention - is taken.

Several levels of staff and management are collectively involved in this process, and the following factors influence this decision:

- (a) Volume of complaints; or
- (b) The nature of the complaints; or
- (c) The attitude of the trader to the attempts by the Ministry to resolve complaints on behalf of consumers.

The Ministry staff are well aware of the consequences that can be alleged to flow from the naming of a trader in this report; it is a fact that sometimes traders named in this report have already gone out of business, or may do so, thereby affecting employment.

Inevitably, this is due to poor management, and often very weak finances, both of which are often reflected in attitudes to consumers and the Ministry. It is a fact that those named in this and prior reports have a common factor of apparent unethical trading, often based on business incompetence, and the mistaken belief that bad ethics mean good business. This is never so.

Many traders have been helped by the Ministry's suggestions, and through the introduction of better complaint handling practices and procedures.

L. The Consumer Environment

It is clear that in these difficult economic times traders have in general attempted to be reasonable with consumers - this makes sense and is probably to be expected - and is reflected in only a marginal increase in complaints referred to earlier. But one worries about situations about which the Ministry never became aware.

However, it is necessary to consider the social and economic milieu in which consumers find themselves today; clearly the Ministry needs to continue to review its delivery systems, its educational and communications methods, and its accessibility to the whole community. There is a need for a stronger and wider legislative base (referred to in Part 6).

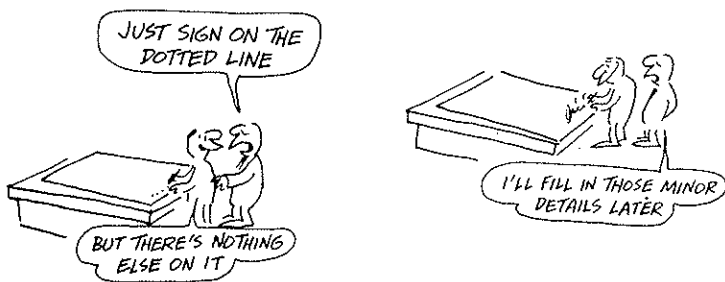
But there are issues which go beyond delivery systems and legislation. Is the consumer sufficiently on guard? Is the consumer aware of his/her rights? Is the consumer assertive enough, with persistence and courtesy so to achieve these rights? Is the market such that the consumer is never king, or is the market now so open and fair that competition and free markets are the

best protection for consumers? And what of advertising? Does self-regulation work? Are cultural patterns of consumption inbred, or insidiously induced? And what of nutrition, of drug promotion - nicotine and alcohol, of unfair contracts and consumer debt harassment? Where, if at all, should the lines be drawn? Should intervention increase, or should co-regulation, perhaps through the Market Court - by vigorous use of negative licensing techniques?

And should anybody and everybody be able to offer goods and services to the public behind the protective veil of the \$2 company?

Some of these issues cannot be resolved by legislation alone. Part 6 suggests the extent that some of them may be able to be resolved in this manner; however considerable and costly research is necessary before some of these questions can be answered, if at all.

Tandberg neatly warns consumers about unfair contracts ...



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LEGISLATION

1.2.1 The Ministry of Consumer Affairs is now responsible for the administration of the following Acts.

Act 6815 Disposal of Uncollected Goods Act 1961
 Act 6973 Building Contracts (Deposits) Act 1962
 Act 8276 Consumer Affairs Act 1972
 Act 8408 Motor Car Traders Act 1973
 Act 8442 Ministry of Consumer Affairs Act 1973
 Act 8486 Small Claims Tribunals Act 1973
 Act 9196 Market Court Act 1978
 Act 9151 Credit Reporting Act 1978
 Act 9514 Residential Tenancies Act 1980
 Act 9702 Fuel Prices Regulation Act 1981
 Act 9704 Petroleum Retail Selling Sites Act 1981

1.2.2 As well as the above-mentioned Acts, the Ministry will be responsible for the administration of the Credit Act, 1981 which passed through Parliament in December 1981. Two other Acts - Chattel Securities Act 1981 and the Goods (Sales and Leases) Act 1981 were passed at the same time and it is expected that the Ministry will be involved in the administration of these Acts also. Apart from the Goods (Sales and Leases) Act which came into operation on June 1, 1982, these Acts are yet to be proclaimed.

1.2.3 Goods (Sales and Leases) Act 1981

As mentioned above, the Goods (Sales and Leases) Act, 1981 which was introduced as part of the "Credit Package" came into operation in June, 1982.

1.2.4 This Act, which is an amendment of the Goods Act 1958 provides for a range of non-excludable terms which will be implied in all sales of goods and services worth up to \$15,000 and which are for personal, domestic or household use or consumption.

1.2.5 It is an offence under the new legislation for a seller of goods to exclude the following terms and conditions from a contract:

- . Right to Sell - a condition that the seller has the right to sell the goods, that the goods are free from encumbrances and that the buyer will enjoy quiet possession of the goods. These conditions are not implied if the seller intended to buy only a limited title and the buyer was aware of that fact.
- . Sale by Description - a condition that the goods will correspond with the description.
- . Sale by Sample - when goods are sold by sample, there is an implied condition that the goods will correspond with the sample, that there will be a reasonable opportunity to compare them with the sample, and they will be merchantable.
- . Sale in the Course of Business - where goods are sold in the course of business, there is an implied condition that they will be reasonably fit for that purpose.

- 1.2.6 There will also be implied conditions in contracts for services that:
- . The services will be provided with due care and skill and when the seller is in the business of providing services, a condition that the services will be fit for the purpose.
 - . Where the buyer makes known to the seller the purpose for which the services are intended, there is an implied condition that the services will be reasonably fit for that purpose.
 - . Where the seller demonstrates the services, there is an implied condition that the services will correspond with the demonstration, and be free of any defect rendering them unfit for the purpose intended.
- 1.2.7 Conditions to be implied in contracts for the sale of goods will also apply to contracts for the lease of goods and contracts excluding these new consumer rights will be void and a seller or contractor guilty of this can be fined up to \$1,000.
- 1.2.8 The new legislation is expected to involve an extensive re-writing of standard form contracts to comply with these provisions, as the new consumer rights have been expressly negated previously in many standard contracts.

1.2.9 Petroleum Retail Selling Sites Act, 1981

This Act which came into operation on January 27, 1982 was introduced in the interests of petrol resellers, who are tenants of landlord oil companies; tenants now have their rights to procure fuel from other sources confirmed.

1.2.10 Although the Trade Practices Commission (TPC) Guidelines for the operation of sites leased from oil companies gave the right to lessees to buy up to 50% of their supplies from alternative sources, there was no legislation in any State enshrining this guideline in statute. Furthermore, although the various leases between landlord oil companies and their lessee retailers give this right, it had been felt by many resellers that there had been practical difficulties put in their way in actually achieving in a workable manner the rights the TPC Guidleline confers.

1.2.11 It was considered that petrol resellers should have the opportunity to buy in a fair market, exercising, and having the right to exercise, business judgements in the decision as to the source of supply for 50% of their fuel purchases.

1.2.12 Clearly it is also in consumers' interests that petrol resellers buy from the most economic source.

1.2.13 Fuel Prices Regulation Act 1981

This Act was proclaimed and the Prices Commissioner, Dr Allan Fels appointed, in August 1982. It was considered that the wholesale price of petrol charged to resellers would be an effective control on margins, and hence the ultimate price to consumers. If the wholesale price is reasonable, it is highly likely that the price to consumers will be reasonable, "reasonable" being meant in comparison with Australia wide levels.

1.2.14 Victoria's two neighbouring States, South Australia and New South Wales, already have petrol price control. The Government considered that Victorian consumers should have similar protection.

1.2.15 This legislation enables the Government to achieve this objective. The initial intent was to use the capacity to apply price control at the wholesale level through fixing maximum prices and the Act provides for the appointment of a Prices Commissioner who may set wholesale and retail prices for any fuel declared. In the event, the Government has recently acted to protect retail and wholesale prices.

1.2.16 The Commissioner will be required to maintain secrecy as to the information divulged and will have the power to require production of financial books and records of those selling fuel either as wholesalers or resellers.

1.2.17 The Commissioner has the power to fix and declare the maximum price at which any fuel may be sold generally or in any part of the State or in any proclaimed area;

or declare the maximum price at which any such fuel may be sold by any person.

1.2.18 Amendments to Small Claims Tribunals Act

Only one amendment of the Small Claims Tribunals Act has occurred in the 1981/82 year and that was effective from January 5, 1982.

1.2.19 This amendment, the Small Claims Tribunals (Jurisdiction) Act, 1982, increased the jurisdiction of the Small Claims Tribunals from \$1,000 to \$1,500 and also provided that the Act now specifically includes contracts of insurance (excluding life insurance).

1.2.20 The amendment in relation to insurance matters was necessary as a direct result of the Supreme Court Appeal by RACV General Insurance Pty Ltd, which was covered in the 1980/81 Annual Report.

1.2.21 Credit Act

The Ministry will be responsible for the administration of the Credit Act 1981. This will involve the setting up of a Credit Tribunal. The Director will have the responsibility of enforcing the Act, as well as investigating complaints arising under the Act.

1.2.22 The Act is of a reformatory nature. The major reform is to reduce the plethora of forms of consumer credit to a Credit Sale or Credit Loan with one form of security being a goods mortgage.

- 1.2.23 There has been close and continuing liaison with the New South Wales Department of Consumer Affairs relating to submissions received from the public and industry in an endeavour to see that the legislation is uniform with that State.
- 1.2.24 Additional staff has been requested for the administration of this Act. The Credit Tribunal will require a Registrar who is a duly qualified legal practitioner, and administrative support staff will be necessary. Additional staff will be required to advise both industry and the public of their rights and responsibilities under the Act and to carry out investigation of licence application, objections, as well as investigate consumers' complaints. In the future it is envisaged that there may be a need for a Debt Counselling Service.
- 1.2.25 The Ministry has redeployed staff from other areas within the Ministry to work on the implementation of this vital legislation.
- 1.2.26 However, considering the complexity of the legislation, real progress in its implementation will not be made until sufficiently qualified staff are allocated to the Ministry.

REGISTRIES OF TRIBUNALS/COMMITTEES

- 1.3.1 Reference to the Organisation Chart of the report shows that the staff servicing the Small Claims Tribunals, the Residential Tenancies Tribunals, the Motor Car Traders Committee and the Market Court have been grouped as a separate section of the Ministry. At the same time the position of Executive Officer (Tribunals) has been created in order to ensure an appropriate control and integration of this section into the overall staffing structure of the Ministry.
- 1.3.2 Funding of the operations of this section is from three different sources. The Small Claims Tribunals and the Market Court are funded from general revenue; the Residential Tenancies Tribunals are funded from the Residential Tenancies Fund; and all aspects associated with the operation of the Motor Car Traders Act are funded from the Motor Car Traders' Guarantee Fund.
- 1.3.3 Despite these varied sources of funding, the staff servicing these independent statutory bodies is under the control of the Director of Consumer Affairs and has been placed within the overall staff and establishment ceilings of the Ministry.

SMALL CLAIMS TRIBUNALS

LOCATIONS OF SITTINGS

- 1.3.4 As stated in previous reports, hearings have been conducted in hearing rooms at the offices of the Ministry at 500 Bourke Street, Melbourne, and at other centres.
- 1.3.5 However, during the year 1981/82, there has been an increase in both frequency and number of hearings at other country and metropolitan centres. This has been brought about by liaison with the Residential Tenancies Tribunal, and both Tribunals have had hearings at the same location. This is facilitated as Referees of the Small Claims Tribunals are also Members of the Residential Tenancies Tribunal.
- 1.3.6 Hearings took place at the following centres outside Melbourne:

<u>Centre</u>	<u>Times Visited</u>
Bairnsdale	1
Ballarat	8
Benalla	4
Bendigo	8
Dandenong	10
Geelong	15
Horsham	2
Mildura	2

<u>Centre</u>	<u>Times Visited</u>
Morwell	10
Seymour	5
Springvale	16
Swan Hill	1
Warrnambool	3

- 1.3.7 There are now three full-time Referees and five part-time Referees holding appointments to both the Small Claims Tribunals and the Residential Tenancies Tribunal.

SECURITY ASPECTS OF TRIBUNALS

- 1.3.8 On 2 March 1982, a claim lodged against Warren Preston Anderson the proprietor of International Discounters of 183 Para Road, Greensborough, was being heard.
- 1.3.9 After hearing all the evidence the Referee began to sum up and it was apparent that Mr. Anderson was agitated and not happy with the prospect of the consumer's claim going against him. He interrupted proceedings by way of uttering profanities, and stormed out, slamming the door of the hearing room.
- 1.3.10 Action under Section 35(2) of the Small Claims Tribunals Act was initiated. On 9 June 1982, at the Melbourne Magistrates Court, Mr. Anderson was convicted on the charge and he was fined \$300 and ordered to pay \$113.50 costs.

- 1.3.11 The security of the Tribunals is extremely important and is a cause for concern to the Ministry. With the advent of the Residential Tenancies Tribunal, matters are coming to a head, with considerably more hearings on at the one time. The Residential Tenancies hearings - which are open to the public - can often be expected to be emotional affairs.
- 1.3.12 As a result, plans have been prepared by the Tribunals for better and more secure hearing rooms. These plans have been accepted by the Ministry and are currently under consideration by the Public Works Department.

RESIDENTIAL TENANCIES TRIBUNAL

WORKLOAD

- 1.3.13 The proclamation of the Residential Tenancies Act 1980 occurred on 9 November 1981. After only six months operation claims were being received at a rate of about 450 claims per month - an annual equivalent rate in excess of 5,400 claims.
- 1.3.14 As most Fixed Term Tenancy Agreements are to come under the legislation progressively in the course of the first full year of the operation of the Act, the annual rate of claims lodged is likely to increase to an estimated figure of 7,500 per annum by November 1982.

- 1.3.15 In addition to the processing of applications - a procedure which is strictly governed by the Residential Tenancies Act - staff members act as bench clerks at city, suburban and country hearings. Personal interviews amounting to 2,918 were given to landlords and tenants, and nearly 7,200 telephone enquiries were handled in the initial part year to 30 June 1982.

TRIBUNAL HEARINGS

- 1.3.16 Of 2,128 applications registered since 9 November 1980, 1,819 claims were heard in the same period. Applications brought by landlords account for over 90% of the total number, with tenant applications at slightly less than 9%. This would at first glance seem to indicate a disproportionate imbalance between the parties concerned, but the activities of the Tribunal need to be considered in conjunction with those of the Residential Tenancies Bureau. Tenants with enquiries or complaints usually seek initial advice from the Bureau, whereas landlords (often through an estate agent) in most cases make a direct application to the Tribunal for hearing. The Bureau is able, in a majority of cases, to investigate and resolve the tenant's complaints, and there is therefore no need to seek a determination from the Tribunal.
- 1.3.17 Overall, complaints from landlords still outweigh those from tenants, but there has been some evidence in the last few weeks of the period under review, of a greater willingness on the part of tenants to apply

to the Tribunal for redress of alleged grievances - hopefully reflecting an increasing awareness of the Tribunal's existence and function.

1.3.18 Over 75%, or 1221 of applications determined were from landlords seeking possession of premises, usually combined with a claim for rental arrears. Of these, over 43% (526) were withdrawn by the applicant, suggesting that either the landlord had already gained possession or the alleged breach which precipitated the application had been remedied. In 476 (68%) of the remaining cases, the landlord was granted possession of the premises and was entitled to have a Warrant of Possession issued: 229 of such warrants were issued.

1.3.19 In the vast majority of these cases, rental arrears was given as the principal cause of dispute rather than damage to property, causing nuisance or disturbance, and so on. It would seem that, although tenants' abuse of premises remains a problem in a small number of cases, tenants' financial difficulties and the consequent inability to meet rent commitments are more significant factors in determining the stability of residential tenancy agreements.

1.3.20 In analysing tenant applications, no one type of complaint predominates. Some of the more common grievances of tenants included disputes over return of bond monies, landlords' duties to carry out repairs, restriction of landlords' rights of entry to premises, declaration of excessive rent, and reduction of fixed term tenancy agreements.

- 1.3.21 Of the cases which were heard and determined during this period, over two thirds were successful and thus subject to orders, nearly 10% were settled between the parties, and 22% were dismissed. Of the total dismissals, less than half were due to the applicant's failure to attend the hearing to prosecute the case, or inability to prove the grounds of the application. The remainder (a total of 124 cases) were dismissed, either because they were outside the jurisdiction of the Act or because of irregularities in the service of necessary notices and documents.
- 1.3.22 One of the major problems has been that the applicant failed to allow additional time for postal delivery. A total of 69 cases were adjourned for various reasons: to allow parties to provide more evidence to support their claims, to arrange for witnesses to appear, and to allow time for negotiation in expectation of settlement.
- 1.3.23 Orders for Possession Granted:

	<u>Order Forthwith</u>	<u>Order Delayed</u>
Tenant Attended Hearing	42.5%	57.5%
Tenant Did Not Attend	90%	10%

All Warrants of Possession have been executed by members of the Police Force.

- 1.3.24 All reasonable efforts are made to ensure that the hearings are as informal and unintimidating as

possible to the parties concerned. Tribunal Members are conscious of the need to balance the demands of judicial propriety with an awareness of the fact that many of those who appear before them (particularly tenant/respondents) are wholly unfamiliar with the provisions of the Residential Tenancies Act and largely ignorant of their rights and duties under the Act. The respective parties are usually given every encouragement to attempt to resolve their differences amicably and thus obviate the necessity for the Tribunal to impose a final judgement. Of those cases in which both parties appeared or were represented, nearly a quarter were settled in this manner.

- 1.3.25 However, in spite of these attempts to make proceedings informal and to provide a forum for conciliation as well as arbitration, there remains a high degree of trepidation on the part of both tenants and landlords. Perhaps the feeling of anxiety is caused by the fact that most parties have a great deal at stake - i.e. a sizable amount of money or the roof over their heads. Whatever the reason, it is difficult to envisage any means of substantially allaying these very real fears, short of a comprehensive program directed towards educating interested groups and individuals as to the basic provisions of the Residential Tenancies Act and their implementation by the Tribunal. This may happen to some extent as a matter of course as each new tenant is given the statement of rights and duties prescribed by the Act. In addition, the many pamphlets and the telephone enquiry service provided by the Ministry must be considered to contribute to the education of both landlords and tenants.

LOCATION OF SITTINGS

- 1.3.26 Hearings took place in the following locations: city (1390), suburbs (78), country (351). In the country the following locations were visited for the purpose of holding hearings: Bairnsdale, Ballarat, Benalla, Bendigo, Cobram, Geelong, Horsham, Mildura, Morwell, Orbost, Redcliffs, Seymour, Tatura, Wangaratta, Warrnambool and Wodonga.

MOTOR CAR TRADERS COMMITTEE OFFICE

- 1.3.27 The Motor Car Traders Act 1973 was assented to on the 17 April 1973. The sections relating to the establishment of the Motor Car Traders Committee came into operation on 17 April 1973 and the remaining sections on 1 December 1974.
- 1.3.28 The Act came under the jurisdiction of the now defunct Chief Secretary's Department, and on the 25 October 1976, the Motor Car Traders Committee and relevant staff were transferred to the Ministry of Consumer Affairs.
- 1.3.29 On 1 January 1979, the Ministry of Consumer Affairs Act was amended to include the Motor Car Traders Act as an Act to be administered by the Ministry of Consumer Affairs.

1.3.30 During 1981, and as a result of the Ministry becoming a separate Government Department and acquiring additional responsibilities under new legislation, a review was undertaken by the Public Service Board of the Ministry's Management Structure.

1.3.31 The staff servicing the Motor Car Traders Committee (MCTC) were placed under the direction of the Assistant Director Operations, and, as mentioned above, a new position, Executive Officer (Tribunals), was created to co-ordinate and supervise the activities of the staff servicing the Committee.

1.3.32 These administrative changes together with the amendment in 1979 of the Ministry of Consumer Affairs Act, imposed on the Director the responsibility of administering and hence reporting accordingly on the operation of the Motor Car Traders Act. However, under Section 7A of that Act, the Committee is also required to report on its own activities.

1.3.33 As the staff servicing this office is administratively involved in almost all issues presented to the Committee, duplication of information made public is being avoided by limiting further comment to the following statistical information relative to the MCTC for the year under review:

Processing of new Applications Approved by the Committee	241
Processing of Notifications of Change in Circumstances on Existing Licences	366
Consumer Complaints Handled	727

Mechanical Inspections Conducted	109
Interviews with Licenced Applicants	348
" " " Traders Generally	374
" " Consumers	1018
" On Other Matters	139
Suspected Breaches of the Act Referred to the Enforcement Section of the Ministry	31

- 1.3.34 Under Section 15 of the Act the Director may object to the Committee issuing a licence to an applicant. During the year, one such objection was lodged with the Committee.
- 1.3.35 For administration of the enforcement sections of the Motor Car Traders Act see Section 1.5.
- 1.3.36 The functions which the Committee is empowered to perform under the Motor Car Traders Act are listed in Section 1.13.

CONSUMER AFFAIRS COUNCIL

- 1.3.37 As in past years, the Ministry has provided the administrative and secretarial support to the Consumer Affairs Council. As Council projects become more complex, there has been a recognition that it is often

impractical for busy Council members to conduct their own research. Increasingly, therefore, the Secretary to the Council has also provided research assistance and has become more fully associated with Council investigations.

RESIDENTIAL TENANCIES BUREAU

- 1.4.1 The major functions of the Residential Tenancies Bureau (RTB) are to receive and attempt to settle complaints from tenants and landlords and to provide advice on the operation of the Act.
- 1.4.2 Whilst in many respects the RTB is similar to the Consumer Affairs Bureau (CAB), there are some significant differences:
- the RTB is required under the Act to receive complaints from either party to a tenancy dispute;
 - the relationship between the RTB and Residential Tenancies Tribunal is much closer than the relationship between the CAB and the Small Claims Tribunals;
 - the RTB only deals with one area of complaints - tenancy disputes; and
 - the Residential Tenancies Act often sets out the steps required to settle disputes, which the RTB must follow in resolving complaints, whereas the CAB does not have such strict guide-lines.

- 1.4.3 On this latter point, it is interesting to note that many complaints can only be resolved by order from the Tribunal; for example, termination of agreements, awarding compensation, procedure for retention of bonds, etc. In fact, there are only three areas where the RTB has a direct role under the Act - excessive rent complaints, repairs, and abandoned goods. However, the RTB does attempt to resolve matters before they are referred to the Tribunal.
- 1.4.4 Because the Act deals with a very emotive area, i.e. 'a roof over a tenant's head', many complainants, both landlord and tenant, are extremely upset when they come to the RTB. These problems, as well as the complexity and newness of the Act, have put considerable stress on the investigating officers in the RTB. In some instances officers have been threatened with physical violence. This occurs particularly during field investigations and inspections of premises in the presence of either the landlord or tenant. To deal with such cases, the procedure adopted is that at the first sign of any physical threat from either a landlord or tenant, the officer obtains assistance from the nearest Police station.
- 1.4.5 In one case, the landlord was granted an order for possession, but the order provided that the landlord should give the tenant access to the premises to remove her belongings. The landlord refused to grant access so an investigating officer was despatched to meet with both parties on site.

- 1.4.6 Amongst threats from the landlord and colourful language from the female tenant, access was obtained and the tenant's belongings removed. The Police attended on request from the investigating officer, thus ensuring that no violence resulted from the landlord's threats.
- 1.4.7 The Ministry wishes to acknowledge the assistance provided by the Victoria Police who have readily agreed to accompany officers where violence has been threatened.
- 1.4.8 Investigating officers have certain duties under the Act, and threats of violence against officers carrying out their duties cannot be tolerated.
- 1.4.9 As well as being an emotive area, many Residential Tenancies problems require urgent action. In one case, for example, a tenant visited the Residential Tenancies Bureau at 9.30 a.m. complaining that she was to be evicted by the landlord at 10.00 a.m. on the same day.
- 1.4.10 An investigating officer accompanied the tenant to the premises and explained to the landlord that any eviction would have to be carried out in accordance with the requirements of the Residential Tenancies Act 1980. The landlord did not accept this advice, so to avoid any serious confrontation, the tenant returned to the Ministry with the investigating officer and made immediate application to the Tribunal. The case was listed for 2.15 p.m. that day.

- 1.4.11 From a complaint arising at 9.30 a.m. the matter proceeded to the Residential Tenancies Tribunal the same day at 2.15 p.m. - an efficient service made possible by the concern of the staff for the people who come to the Ministry for help.
- 1.4.12 The Tribunal adjourned the case for two weeks, during which time the tenant was able to find alternative accommodation.

- 1.4.13 The workload in the RTB since 9 November 1981 has been considerable and is reflected in the following table (period 9/11/81 - 30/6/82):

	<u>Landlord</u>	<u>Tenant</u>	<u>Total</u>
Complaints Received	N/A	N/A	1180
Interviews	1760	2347	4107
Telephone Enquiries	18093	17535	35628
Field Investigations	N/A	N/A	319

- 1.4.14 Complaints, by definition, are self-explanatory and come from both landlords and tenants. The RTB, where appropriate, endeavours to negotiate the settlement of such complaints and if that course of action is unsuccessful, advises the complainant on how to proceed to the Residential Tenancies Tribunal for determination of the dispute.
- 1.4.15 An interview is not necessarily a precursor to a complaint being lodged. Most interviews have been with landlords, tenants, solicitors and real estate agents seeking guidance on the provisions of the Residential Tenancies Act 1980.

- 1.4.16 Initially, telephone enquiries were mainly to seek copies of the Ministry's explanatory literature on the Act plus copies of the Agreement, Statement of Rights and Duties, and Condition Report.
- 1.4.17 Gradually the trend has changed, with more specific questions on the legislation being asked. The RTB endeavours to be of assistance on all such questions, but it must be borne in mind that ultimately the matter may have to be determined by the Residential Tenancies Tribunal.
- 1.4.18 The number of field investigations is likely to escalate as more tenancies come under the jurisdiction of the Act and both landlords and tenants become fully aware of their rights. The main areas involving the RTB in field investigations are: excessive rent complaints; repairs; abandoned goods; and matters specifically referred for investigation and report by the Residential Tenancies Tribunal or its Registrar.
- 1.4.19 In the future, it is anticipated that the Bureau will become heavily involved in security deposit (bond) disputes where the security deposit was taken after proclamation of the Act. At the moment most of these tenancies are still current so disputes as to the disbursement of the security deposits have not arisen. That situation will no doubt change as tenancies entered into since proclamation are terminated.
- 1.4.20 Table 8, Part 3, gives a breakdown of the complaints received from landlords and tenants by the RTB. The overall total is larger than the number of actual complaints received (1180) by the Bureau since one complaint may

involve more than one area of dispute. It is interesting to note that of the total matters referred to the RTB for investigation (1391) 90.2% were referred by tenants and 9.8% referred by landlords. This is almost the exact reverse of matters referred to the Tribunal, see paragraph 1.3.16 above, wherein the reasons for this imbalance have also been explained.

ENFORCEMENT SECTION

WORKLOAD

- 1.5.1 As at 1 July 1981, investigations were in progress on 124 files relating to alleged breaches of the legislation administered by the Ministry of Consumer Affairs. A further 262 investigation files on alleged breaches were created during the current year. These files originated from complaints and the Ministry's own monitoring of the market-place. A file may contain from one to in excess of 40 possible offences, or alternatively, preliminary investigation may show that no offence has occurred.
- 1.5.2 During the year 240 alleged breach files were finalised as compared with 215 in the year 1980/81. Details are:

	<u>1980/81</u>	<u>1981/82</u>
Prosecuted Successfully	18	21
" Unsuccessfully	-	-
Offence Established - Decision not to Prosecute	34	50
Warnings Issued	8	13
No Apparent Breach - Allegations Unjustified	103	52
Investigations Inconclusive Evidence Inadequate	33	86
Trader in Liquidation or Disappeared	13	8
Lapse of Time Prevented Prosecution	4	7
Section 64 Action Resolved by Reply	2	8
Referred to Trade Practices Commission	2	4
Referred to Other Departments	<u>6</u>	<u>4</u>
	<u>215</u>	<u>240</u>
	===	===

NOTE: The above figures relate to files, not to the number of offences disclosed.

- 1.5.3 The investigation of alleged breaches of the Motor Car Traders Act, in particular unlicensed trading and odometer tampering, still occupies a large proportion of the Enforcement Section's available time.

- 1.5.4 During the year, officers attached to the Enforcement Section carried out 1155 visits. Visits involved field investigations in the form of interviews with traders, inspections of premises, documents and exhibits, discussions with other Government departments, the serving of informations and subpoenas, and appearances in court.
- 1.5.5 The 21 investigations described in the previous table as "Prosecuted Successfully" resulted in the prosecution of 123 separate informations (compared with 162 in 1980/81) an average of 5.8 informations per file, compared with 9 in 1980/81. An analysis of these prosecutions is in Part 3.
- 1.5.6 A visit to Morwell by investigating officers of the Ministry of Consumer Affairs to check that motor car traders in Morwell were adhering to the provisions of the Motor Car Traders Act revealed that, similar to the Bendigo visit, (see Director's report for 1980/81) the majority of traders were not complying with the legislation.
- 1.5.7 As a result, a number of warnings were issued to offending traders, and a total of 51 charges were proven, resulting in \$3,170 in fines and costs against offending traders.
- 1.5.8 This would seem to indicate that similar visits will need to be continued in an attempt to have licensed motor car traders comply with legislation enacted in 1973 but which is still being ignored quite widely.

- 1.5.9 The proclamation of the Residential Tenancies Act has increased the scope of the section's activities, with 36 breach files being created in respect of that Act. At 30 June 1982, 13 of those files had been finalised but no prosecutions have yet been commenced. In the majority of matters investigated, any failure to comply with this Act could be attributed to ignorance rather than malice, and this must be expected with new and complex legislation. In some instances, however, the reason for not instituting prosecutions has been the failure of inspectors to locate offending tenants, or the unwillingness or inability of tenants to provide the evidence necessary for prosecution of landlords.
- 1.5.10 In addition to prosecutions, the Enforcement Section was involved in a number of other projects, including:
- 1) An enquiry into retail petrol pricing and marketing which contributed to the introduction of the Fuel Prices Regulation Act and the Petroleum Retail Selling Sites Act.
 - 2) The section continues to conduct weekly surveys of petrol prices in metropolitan and country areas. (The assistance of the Department of Labour and Industry officers in surveying country prices is gratefully acknowledged.) Recently, this survey has been carried out on a daily basis, and in early August this work was handed over to the office of the Victorian Prices Commissioner.

- 3) The section has been required to monitor the effect of restrictions on liquor being brought into VFL grounds, and of liquor sales during the beer shortages in May and June due to an industrial dispute at Carlton and United Breweries, the section also monitored prices and investigated complaints of profiteering by some traders.

UNLICENSED MOTOR CAR TRADERS

- 1.5.11 A motor car trader as defined in the Motor Car Traders Act 1973 is "a person who otherwise than in the capacity of an employee carries on the business (whether or not he carries on any other business) of trading in motor cars or holds himself out in any way as carrying on the business of trading in motor cars".
- 1.5.12 The Motor Car Traders Act 1973 further states in Part 1 Section 5 that "Unless the contrary is proved, a person who has bought, sold or exchanged more than six motor cars in any period of 12 months shall for the purposes of this Act be deemed to be a motor car trader".
- 1.5.13 It is apparently a common misconception that any person may buy, sell or exchange up to six cars each year without risk of contravening the Act. In fact Section 5 is a "deeming provision" that merely provides that where more than six cars are bought, sold or exchanged by a person within a 12 month period, then rather than the prosecution having to prove that the defendant is a trader, the onus is on the defendant to

establish that he or she is not a trader within the meaning of the Act. The fact that only six cars have changed hands does not in itself provide a defence. Evidence of only one sale could be sufficient to obtain a conviction.

1.5.14 The licensed motor car trader guarantees a clear title on each of his vehicles. He is obliged to provide a warranty on cars priced over \$1,000 (with the exception of vehicles designed for commercial purposes) and is subject to inspection by the Police and the Ministry of Consumer Affairs' officers. He is required to have authorised premises from which to trade, and this of course means considerable overhead costs which the backyarder would not incur.

1.5.15 The backyarder avoids all such responsibilities and considerably lowers the standing of the industry. In addition, the pitfalls which can result from a consumer purchasing a car from a backyarder are numerous, the most common being:

- a) representations that the car is a one owner car;
- b) no redress if any mechanical failure eventuates;
- c) risk of the odometer having been wound back;
- d) risk that the car is not roadworthy;
- e) risk that the purchaser does not obtain a clear title;
- f) risk that the car or parts thereof are stolen property.

- 1.5.16 There is sufficient evidence from various sources to indicate that backyarding is a widespread activity. In this respect, reference must be made to the previous annual report where evidence was produced that organised groups are involved in such backyard activities.
- 1.5.17 Backyarders acquire their cars from a variety of sources and dispose of them in ways which render detection difficult. The allegations which are made to the Ministry are usually in the form that there are a few cars parked in front of a private house with a 'For Sale' sign. Other allegations are that the classified advertisements show one and the same telephone number for two or three cars for private sale.
- 1.5.18 From this scant information the inspector must then produce sufficient evidence which will stand up in a court of law such as to be beyond any reasonable doubt. It is a process which is extremely difficult to execute, as well as being most time consuming.
- 1.5.19 There is evidence also that backyarders are often known to the staff of motor auction houses, wholesalers, and licensed motor car traders, as backyarders frequently purchase vehicles on a regular basis from only a few sources, and the licensed traders must bear some responsibility for these activities.
- 1.5.20 An investigating officer's report of an interview with a suspect backyarder reveals the attitude which such backyard traders have towards the law.

"Investigating Officer (I/O): What is your occupation ?

Trader: Unemployed.

I/O: Do you operate a business ?

Trader: I suppose I do.

I/O: What is that business ?

Trader: I try to sell used cars.

I/O: Is that a registered business ?

Trader: No, it's a hobby - an income earning hobby.

Later

I/O: How many vehicles have you sold to the public in the 12 month period ending today ?

Trader: I don't know. Possibly 12 to 15, could be even 30 or 50. I really don't know.

I/O: Do you keep records of any vehicles sold by you to the public ?

Trader: No.

Later

I/O: Are you aware that it is an offence under the Motor Car Traders Act 1973 to engage in the sale of motor vehicles to the general public without holding a current motor car trader's licence ?

Trader: I know that you have got to have a licence to sell second-hand cars in a car yard, but I'm not a second-hand dealer, I'm only trying to sell cars from home.

- I/O: From what sources do you obtain your motor vehicles which are then sold to the general public ?
- Trader: I go to the auctions - A and B (naming two prominent auction houses).
- I/O: Any local dealers ?
- Trader: No.
- I/O: What of X or Y ? (Naming two prominent licensed motor car traders.)
- Trader: I bought cars from them about a month ago. I dealt with them on and off over the last 15 months.

AND LATER

- I/O: Is there anything further that you wish to add ?
- Trader: I have advertised five in the last month or so and I've only sold one. Just because I've advertised them in the last month doesn't mean that I'm selling them all."

ODOMETER TAMPERING

- 1.5.21 Odometer tampering, a practice that is nothing short of deliberate fraud, is widespread and difficult to prevent. A purchaser's best protection against this practice is his or her own caution and alertness. It is also essential that a prospective purchaser should always check the history of a car with previous owners before purchase.

- 1.5.22 Investigating officers who have examined allegations that cars were sold with wrong odometer readings believe the practice of tampering with odometers to be so prevalent that it is likely most used cars sold would have an incorrect record of the distance travelled.
- 1.5.23 Unlicensed trading and odometer tampering usually go hand in hand, but the latter is by no means confined to backyarders. Failure by traders to comply with the Motor Car Traders Act in notifying transfers of registrations, probably to avoid paying transfer fees, is a serious obstacle to enforcement of legislation prohibiting the tampering of odometers.
- 1.5.24 The practice of odometer tampering is fraudulent and to the detriment of the community. Investigations reveal more and more frequently that those who indulge in such practices are well organised and often involved in other serious criminal activities.

TRAINING

- 1.5.25 No formal training programs were conducted in the section during the year under review, but at the time of writing this report, two officers of the section were attending an Investigation Course conducted by the Detective Training School of the Victoria Police.
- 1.5.26 The course is of four weeks duration and the experience of the three officers of the section who have graduated from previous courses is that the training offered is of great assistance in the development of techniques

of investigation appropriate to the ever changing demands imposed on the section.

PROCEEDINGS ON BEHALF OF CONSUMERS

- 1.5.27 Part 1A of the Consumer Affairs Act allows the Director of Consumer Affairs with the Minister's consent to institute or defend actions on behalf of consumers. The Act specifies also two prerequisites. The Director must be satisfied that the consumer has a course of action or a good defence, and that it is in the public interest to institute such proceedings on behalf of the consumers.
- 1.5.28 The Director's previous report referred to an action instituted to recover damages arising from a motor car accident which an insurance company refused to pay. That action has been settled out of court in the consumer's favour.
- 1.5.29 The previous report also referred to a matter in which ministerial approval had been obtained in order to recover for the consumer money payable under a Consumer Credit Insurance indemnity. Proceedings have now been instituted in that matter.
- 1.5.30 In four other matters the Ministry has defended proceedings against consumers. One matter has been settled; three are still proceeding.

- 1.5.31 Part 1A of the Consumer Affairs Act can be looked upon as an appropriate tool to prevent unscrupulous traders intimidating individual consumers by threatening court action irrespective of whether there is a good cause of action or not. On the other hand, the Ministry is anxious to ensure that it does not usurp the services provided by Legal Aid. Each case is therefore examined closely, especially to ensure that proceedings are in the interest of the public.

MARKET COURT

- 1.5.32 There were no sittings of the Market Court during the year.
- 1.5.33 However, one case that is currently under investigation is in the final stages of preparation and a decision will be made in the near future as to when proceedings are to commence.

COUNTRY SERVICES

REGIONAL OFFICES/MOBILE UNIT

- 1.6.1 The Regional Services Unit of the Ministry of Consumer Affairs continued to operate country services over the year covered by this report. This service is well received by all sections of the community throughout regional Victoria.

- 1.6.2 The service is operated by a staff member who attends one of the five regional offices at Geelong, Ballarat, Bendigo, Wangaratta and Traralgon on the first day of the week. It is then supplemented by use of a mobile unit which visits cities and townships throughout the region. A list showing locations and frequency of visits is included in Table 11 (Part 3).
- 1.6.3 Unfortunately, due to staff ceilings, difficulty in replacing staff, and use of mobile unit for other promotions, certain areas of the State have not been visited as regularly as it is desired.
- 1.6.4 The following table shows the activities of the staff of the mobile unit:

<u>Regional Offices</u>	<u>1980/81</u>	<u>1981/82</u>
Interviews conducted	732	880
Alleged breaches investigated	2	1
Discussions at traders' premises re complaints	91	27
Talks to schools, services and community organisations, trader groups, media interviews etc.	20	21
Complaints taken	167	215

<u>Country Towns</u>	<u>1980/81</u>	<u>1981/82</u>
Number of visits to country towns	137	103
Interviews conducted	568	1303
Alleged breaches investigated	7	3
Discussions at traders' premises re complaints	137	105
Talks to schools, service and community organisations, trader groups, media interviews etc.	78	130
Complaints taken	52	96

1.6.5 It is interesting to note that although the number of visits made by the mobile unit during the year under review was less than during 1980/81, far more interviews were conducted, because the larger rural centres were visited on a more regular basis.

1.6.6 The Ministry appreciates the valuable assistance of local welfare networks, including Citizens Advice Bureaux, in developing a greater awareness of the mobile unit's visits.

1.6.7 The continued support and co-operation given by local welfare groups, Citizen Advice Bureaux, local media, councils, etc., is appreciated by the Ministry.

1.6.8 Law Week

During the period covered by the report, the Ministry's mobile unit was used in the Melbourne metropolitan area as a part of the Law Week activities being manned by Ministry staff and volunteer solicitors, who were available to give a wide range of advice on consumer and other legal matters.

1.6.9 Residential Tenancies

With the introduction of the Residential Tenancies Act, on November 9, 1981, the mobile unit was also successfully used at many locations around metropolitan Melbourne in co-operation with local Councils in publicising the new Act and acquainting both landlords and tenants with its requirements. The following list shows the suburbs visited by the unit during this period:

St Kilda
Hawthorn
Prahran
Malvern
Richmond
Collingwood
Northcote
Port Melbourne
Broadmeadows
Essendon
Brunswick
Sunshine
Laverton
Werribee
Dandenong
Oakleigh
Caulfield
Mordialloc
Frankston

1.6.10 All these areas were considered to be high level tenancy areas and the response by the public in most areas, was very good.

SUBURBAN OFFICES/SHOP FRONTS

- 1.6.11 All people are consumers irrespective of whether they are well educated high income earners or unemployed migrants, who speak little English. They are consumers whether they live in middle class areas of Melbourne or working class areas. The aim of the Ministry is to be available to all consumers.
- 1.6.12 With the establishment of the Country Services some years ago, with five regional offices and the mobile van, country consumers have been receiving a special service from the Ministry.
- 1.6.13 In the very near future, the Ministry proposes to extend this personalised service into suburban Melbourne with the establishment of a number of suburban/shop front offices.
- 1.6.14 The rationale behind the development of these offices is the belief that services of the Ministry should be available to the vast majority of consumers. For a variety of reasons, many consumers who have genuine consumer problems are unable or unwilling to complain in writing or visit the Ministry's office in the heart of the business district.
- 1.6.15 It is intended that these offices will be open on some nights during the week and also on Saturday mornings to assist consumers who are unable, because of work, to attend during 9 - 5 hours.

- 1.6.16 To staff these offices, the Ministry was fortunate to gain the services of 16 part-time employees who commenced duty with the Ministry in February, 1982.
- 1.6.17 At this stage, these part-time staff members have completed an intensive training program and are continuing with "on-the-job" training within the Ministry, and await assignment to these offices.
- 1.6.18 Negotiations are continuing with Public Works Department for the allocation of suitable shop front offices. It is anticipated that the first office will be opened in the very near future.

CONSUMER/TRADER EDUCATION

- 1.7.1 Education of both consumers and traders has again played a major role in the Ministry's activities although manpower problems have severely restricted the development of programs.
- 1.7.2 The Ministry now has two positions in its Education Section, however the senior education officer has been accepted for part-time employment in the Bureau (see para 1.6.16). Unfortunately the Ministry is unable to fill the consequent vacancy in the education section because the guidelines for permanent part-time employment have not been finalized, and whilst the senior education officer has been heavily involved with the training course run for part-time staff, the Ministry has been unable to advertise her position.

- 1.7.3 The Ministry of Consumer Affairs would like to acknowledge the work by the senior education officer, Mrs. Geraldine Kassim-Lakha, whose work was often hampered by lack of resources.
- 1.7.4 The other position of assistant education officer was filled towards the end of the period covered by this report. This officer has commenced negotiations with the Education Department with a view to including consumer education in primary schools. It is also hoped that during the next year a regular series will be prepared for newspapers, especially the suburban and regional press.
- 1.7.5 As mentioned in the last report, the implementation of the Residential Tenancies Act in November, 1981, placed considerable demands on the education section, and a series of newspaper advertisements were prepared and published before and immediately after commencement of the Act.
- 1.7.6 As well as newspaper advertising, representatives of the Ministry attended and spoke at a number of major seminars on the Act run by the R.E.S.I., and Estate Agents Board.
- 1.7.7 The rights and duties of landlords and tenants were outlined in the following booklets/pamphlets prepared by the Ministry.

- . You and the New Residential Tenancies Act
- . Tenancy Agreements to which the Act applies
- . Rents
- . Security Deposits (Bonds)
- . Termination of Agreements
- . Gaining Possession of Premises Occupied Without Consent
- . Abandoned Goods
- . Prescribed Premises

Within 6 months of proclamation of the Act, 140,000 copies of the booklet "You and the New Residential Tenancies Act" had been distributed through various channels and 30,000 of each of the other seven pamphlets.

- 1.7.8 It is hoped to have the booklet, "You and the New Residential Tenancies Act" available in a number of other languages besides English.
- 1.7.9 Apart from the booklet and pamphlets concerning Residential Tenancies, no new brochures were issued during 1981/82. However, the demand for printed material from schools, community groups and the general public remained at a high level, necessitating the reprinting of all pamphlets. With the co-operation of Film Victoria, an animated film, Buyer Beware, was developed during the year. The film is about to be released.

1.7.10 The following addresses and talks were given:

	<u>1980/81</u>	<u>1981/82</u>
Trade and Professional Groups	31	31
Educational Institutions	30	25
Migrant Groups	4	2
Community Groups/Service Clubs	45	18
Church Associations/Parent Groups	<u>11</u>	<u>21</u>
	<u>121</u>	<u>97</u>

1.7.11 As well as talks and addresses, staff of the Ministry took part in many T.V. and radio programs in metropolitan and country areas.

EDUCATION OFFICERS MEETING

1.7.12 In February, 1982, the Ministry hosted a meeting of consumer education officers. This day and a half meeting, which was attended by representatives of all consumer affairs agencies throughout Australia, was an extremely important forum for the exchange of ideas, and experiences. Matters discussed at the meeting included consumer education in schools, disadvantaged consumers, adult consumer education, co-ordination of projects, materials and services etc.

POSTER COMPETITION - D.S.A.A.

- 1.7.13 The Ministry of Consumer Affairs supports the efforts by the Direct Selling Association of Australia (D.S.A.A.) to undertake a consumer awareness program in schools, at primary and post primary levels.
- 1.7.14 The program is to run with backing from member companies of the Direct Selling Association, involving substantial prizes for participating schools, pupils, and teachers.
- 1.7.15 The Victorian Commercial Teachers Association (V.C.T.A.) was approached to advise and assist because of their involvement with developing consumer education programs in secondary schools.
- 1.7.16 A pilot program has been launched in schools in two regions identified by the Education Department in Victoria, as a means of developing the operation of a possible State-wide program.
- 1.7.17 The V.C.T.A. has worked in the past with the Ministry and it shares with the Ministry a common concern regarding the development of effective consumer education programs in schools.

PRODUCT SAFETY

- 1.8.1 During 1981/82, the Ministry continued to receive reports of unsafe and hazardous products.
- 1.8.2 In Victoria, Part V of the Consumer Affairs Act "Safe Design and Construction of Goods" will allow a product to be banned only after a standard has been developed and the banning would only apply to products which do not comply with the standard. The development of a standard is usually a lengthy process and consequently Part V of the Act can be considered to be of limited application in relation to individual unsafe products which emerge on the market from time to time without any warning. With such products, speed is essential in order to prevent injury or death of unsuspecting consumers.
- 1.8.3 In the past, the Ministry has been reasonably successful in having hazardous products withdrawn from sale by negotiation.
- 1.8.4 However, after a wide ranging investigation of product safety, the Consumer Affairs Council considered that this situation was unacceptable and recommended that product safety legislation be enacted in Victoria which:
- (1) empowers the Minister and/or the Director of Consumer Affairs
 - . to ban the sale or supply of dangerous goods;
 - . to recall dangerous goods; and
 - . to set conditions of sale or supply on dangerous goods; and

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

- 1.8.5 Whilst the former Government accepted these recommendations, legislation was not prepared.
- 1.8.6 The new Government strongly supports the need for product safety legislation, and the Government Consumer Affairs policy provides in part that "... legislation will be enacted providing for the prohibition of sale of unsafe products ...".
- 1.8.7 A submission will be made to Cabinet in the very near future with a view to enacting appropriate product safety legislation in this State.

COMMONWEALTH/STATE CONSUMER PRODUCTS ADVISORY COMMITTEE

- 1.9.1 The Ministry has continued to be involved with the operation of the Commonwealth/State Consumer Products Advisory Committee (C.S.C.P.A.C.) and a representative of the Ministry attended a meeting of C.S.C.P.A.C. in Canberra in September, 1981 and the Ministry hosted a meeting in March, 1982.

- 1.9.2 C.S.C.P.A.C. comprises one member of each of the Commonwealth authorities involved in consumer matters and one member representing the Consumer Affairs authorities in each state/territory. The Committee also has a representative from the Standards Association of Australia, who acts in a consultative capacity.
- 1.9.3 This forum has again been most valuable in exchanging product safety information between states and in developing product information and product safety standards. These standards can then be incorporated in State and Federal legislation.
- 1.9.4 The major areas currently being considered by C.S.C.P.A.C. are:
- . product recall
 - . babies' dummies
 - . children's toys
 - . fibre content labelling of textiles
 - . products with down/feather filling
 - . items containing gold and silver

MOTOR VEHICLE BUILT DATE

- 1.9.5 It is interesting to note that after detailed consultations with C.S.C.P.A.C., the Federal Chamber of Automotive Industries (F.C.A.I.) published a "Uniform Code of Practice for Date of Manufacture of New Passenger Cars" in July, 1981. As a result of the development of this code, all new passenger vehicles

will have a "built date" permanently affixed to the vehicle. This date is not to be confused with the "compliance plate" which indicates if the vehicle complies with Australian Design Rules.

- 1.9.6 The "built date" shows the calendar month and year in which the body shell and power train sub-assemblies are conjoined and the vehicle is driven or moved from the production line.
- 1.9.7 The F.C.A.I. code was implemented during January, 1982 and will enable consumers to determine with some accuracy the "built date" of new passenger motor vehicles.

PRODUCT SAFETY/INFORMATION STANDARDS

- 1.10.1 There have been no new product safety/information standards promulgated during the year under review.
- 1.10.2 The survey on the understanding of the current flammability labelling of children's nightwear mentioned in the last report has now been completed, and the questionnaires have been analysed. The conclusions drawn from this survey are now being considered by C.S.C.P.A.C. members.
- 1.10.3 A final report will be issued in the near future.

MONITORING OF ADVERTISEMENTS BY HANDICAPPED PERSONS

- 1.11.1 The program which commenced in December, 1978 whereby the Ministry engaged under contract the services of seriously handicapped people to monitor radio, television and newspaper advertisements has continued during the year under review.
- 1.11.2 Information gathered is forwarded to the Ministry on a regular basis for investigation and, where appropriate, prosecution.

CREDIT REPORTING AGENCIES

- 1.12.1 During the year 1981/82, the Director received nineteen complaints on enquiries relating to records kept by Credit Reporting Bureaux.
- 1.12.2 In six of these cases, as a result of the ensuing investigation, records were amended.
- 1.12.3 Records were amended by deleting references to writs issued but not prosecuted; by entering particulars of judgements satisfied; separation of spouses' accounts and deletion of credit enquiries that were not bona fide, etc.
- 1.12.4 In another eight cases, the consumer wanted to discuss what was on his record and did not dispute entries after he had gained access to it.

- 1.12.5 In three instances, consumers were denied credit on grounds other than adverse credit reports, for example, over commitment.
- 1.12.6 In the remaining two cases, consumers objected to any records, even correct ones, being kept on them.
- 1.12.7 The necessity for the maintenance of credit records is recognized. They can provide the necessary information to credit providers to protect them from over committed consumers or those who will not or cannot pay their debts. Whilst those records are subject to security and the amount of information given by the bureaux is limited, no such control is exercised over the credit providers who are free to keep and disseminate information amongst themselves about consumers.

STATUTORY BODIES ASSOCIATED WITH THE MINISTRY

- 1.13.1 Currently there are four such bodies which rely on the Ministry to provide appropriate administrative and secretarial support.

CONSUMER AFFAIRS COUNCIL

- 1.13.2 The Consumer Affairs Council is an independent body appointed by the Minister with functions as follows:

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

1.13.3 The Director of Consumer Affairs and his deputy attend Council meetings in an advisory capacity. In accordance with the Consumer Affairs Act, the Ministry is obliged to give every assistance to the Council in carrying out its functions.

1.13.4 Whilst stressing the fact that the Council is an independent body, it is seen as a vital factor in the continuing evolution of consumer affairs in Victoria. A close and harmonious co-operation exists between the Council and the Ministry.

1.13.5 The Council prepares its own independent report to the Minister annually.

SMALL CLAIMS TRIBUNALS

- 1.13.6 The Small Claims Tribunals are now in the seventh year of operation. There are currently three full time and five part time referees, including a senior referee. The referees also serve as members of the Residential Tenancies Tribunals.
- 1.13.7 The referees of the Tribunals are appointed by the Governor-in-Council from the ranks of barristers, solicitors and persons qualified as Stipendiary Magistrates.
- 1.13.8 The Tribunals are serviced by a Registrar who supervises an administrative staff of four, one stenographer and one typist. Administrative matters relating to the Tribunals are discussed in Section 1.3.
- 1.13.9 The Small Claims Tribunals Act provides that decisions made by the Tribunals are final and binding on all parties to the proceedings. The only right of appeal is to the Supreme Court on the grounds that the Tribunals had no jurisdiction to take proceedings or that natural justice was denied.
- 1.13.10 It is necessary to maintain close liaison with the Tribunals as consumers have a choice whether to lodge a complaint with the Consumer Affairs Bureau or a claim with the Tribunals.

RESIDENTIAL TENANCIES TRIBUNALS

- 1.13.11 The Residential Tenancies Tribunals came into existence with the proclamation of the Residential Tenancies Act 1980 on the 9th November 1981.
- 1.13.12 The three full time and five part time referees of the Small Claims Tribunals have been appointed to serve on the Residential Tenancies Tribunals.
- 1.13.13 The Chairman of the Residential Tenancies Tribunals is Mr. M. Levine LL.B, who is also the Senior Referee of the Small Claims Tribunals.
- 1.13.14 The Tribunals are serviced by a Registrar. Administrative matters relating to the Tribunals are discussed in Section
- 1.13.15 The jurisdiction of the Tribunals is prescribed by Section 17, which states:

"Subject to this Act, the Tribunal has jurisdiction to hear and determine an application under this Act relating to any matter arising in relation to a tenancy agreement of premises situated in Victoria."

MOTOR CAR TRADERS COMMITTEE

- 1.13.16 The Motor Car Traders Committee is an independent body appointed by the Governor-in-Council under the Motor Car Traders Act 1973.

1.13.17 The functions of the Committee as stated in the Act are:

"to report upon any particular matter relating to trading in motor cars in Victoria referred to it for investigation and report by the Minister; and

generally to give effect to this Act by exercising such powers and performing such duties as are conferred or imposed on it by or under this Act."

1.13.18 The Committee is serviced by a separate section of the Ministry consisting of a staff of eight which includes the position of Secretary to the Committee. The staff of this section (as well as any other costs associated with the administration of the Act) is financed from the Motor Car Traders Guarantee Fund. Enforcement of the Act is carried out by the general prosecution section of the Ministry. (See Section 1.5)

1.13.19 The Committee prepares its own independent report to the Minister.

PART 2PageCASE HISTORIES FROM THE MINISTRY'S FILES

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PART 2CASE HISTORIES FROM THE MINISTRY'S FILESCONSUMER AFFAIRS BUREAUBUILDING AND CONSTRUCTION

- 2.1.1 A consumer purchased a house in 1968 from the State Electricity Commission who had previously used it for some 12 months as a display home. In 1976 the owner noticed a green substance exuding from the light switches. For the next five years the consumer tried to get the SEC and/or the cable manufacturer to accept responsibility for the continuing problem. Neither would accept responsibility.
- 2.1.2 Through the Ombudsman's office, the SEC advised that the cable used was of the standard laid down for house wiring at the time, and therefore the SEC could not be held responsible for the problem that had developed.
- 2.1.3 As a last resort, the consumer lodged a complaint with the Bureau and following negotiation with the cable manufacturer, an offer was made to supply, at no cost, sufficient cable to replace the lighting and power circuits in the installation.

HOME RENOVATIONS

- 2.1.4 On a Sunday afternoon drive, a consumer and his wife noticed the showroom of company X. Having given some little thought to remodelling their existing kitchen, they decided to stop at the showroom, look at the kitchens on display and get an idea of prices.
- 2.1.5 They were attracted to a particular kitchen design, and sought information on price from a showroom hostess. The hostess could not provide information on prices, but advised them that if they left their name and address, she would have a "designer" call at their home and discuss with them the potential of their home for a new kitchen. Thinking that no harm would be done, the consumers accepted the offer.
- 2.1.6 The "designer" called at the consumers' home at 8.00 p.m. and immediately set about selling "a kitchen to remember". The consumers really only wanted information which was not available at the showroom. In the complaint subsequently received, the following statement was made -
- "After four hours of sales talk, we signed the contract just to get the man out of the house".
- 2.1.7 Like many other consumers the Ministry sees, they had signed a contract they did not read, to construct a kitchen they did not really want, in a manner that would not last, with money they did not really have.

- 2.1.8 Fortunately, the Ministry was able to have the contract cancelled by negotiation on a technicality in the contract document.
-
- 2.1.9 In early November 1981, a consumer contracted with a company for the supply and installation of a kitchen. The contract price was \$7,680, with a delivery date of mid December 1981.
- 2.1.10 According to the consumer, the kitchen was installed in a rush just prior to Christmas. By the time the installation was done, the greater percentage of the contract price had been paid. Following the installation, the following faults were discovered:
- 6 cabinet doors were not of the same timber and hence of a different colour;
 - 90% of the ceramic floor tiles had superficial cracks and were unevenly laid;
 - wall tile grouting fell out and there was also a colour variation in the grout;
 - there were gaps between cupboards and adjoining walls.
- 2.1.11 The company undertook to rectify the defective work after Christmas and took the cabinet doors saying the doors would be re-sprayed to colour match. Subsequently, the company would not return the doors until the small balance of the contract price was paid, and refused to do anything regarding the other problems.

- 2.1.12 The company refused to negotiate with the Ministry and the dispute went to the Small Claims Tribunals.

CARPET

- 2.1.13 A consumer ordered carpet at a cost of \$3,000 and detailed exactly where she expected the joins to be. The carpet layer agreed, but when the job was completed, the joins were in totally different places and not as detailed by the consumer.
- 2.1.14 An inspector from the Bureau visited the premises and met the carpet layer. Eventually, it was agreed that the job would be re-done to the consumer's requirements and a new carpet supplied.

RADIO

- 2.1.15 A lady, recently widowed, decided to buy a ham radio rig at a cost of just over \$6,000. When it was set up and operating, the reception and general performance was poor and not good enough for proper use.
- 2.1.16 The manufacturers, a U.S. parent company, modified the design extensively. When complaints were received by the supplier, he attempted to improve the performance with three service calls, but all without marked success.

2.1.17 Despite attempts to fix it, the set continued to operate incorrectly, and after a period the consumer decided she wanted her money refunded.

2.1.18 After negotiations by the Ministry, a full refund was obtained.

TELEVISION

2.1.19 A lady living in a walk-up Housing Commission flat complained that her new television did not receive a good picture. She complained to the retailer and the manufacturer but in spite of service calls made by the manufacturer, a fault could not be found.

2.1.20 The Bureau contacted the manufacturer and more service calls were made. The television was tested by the manufacturer at their factory but a fault could not be found.

2.1.21 Eventually, the manufacturer claimed that the antenna at the flats was responsible for the poor reception. The Bureau contacted the Housing Commission maintenance section who tested the antenna and claimed that it was not at fault.

2.1.22 The Bureau discussed the matter with the manufacturer who eventually agreed to supply the consumer with a new television set. The consumer was then satisfied.

FOOTWEAR

- 2.1.23 A consumer tried on a pair of blue boots. The right foot fitting was a little tight and it was agreed that the bootmaker would manufacture a pair of boots to fit. It was also agreed that the colour would be black.
- 2.1.24 The consumer returned a few days later to pick up the shoes. She complained that the right foot was still a little tight, but the bootmaker explained to her that the leather would stretch. She paid the bootmaker \$160 for the boots.
- 2.1.25 Upon arriving home, she realised that the bootmaker had merely painted the original pair of these boots, black.
- 2.1.26 The bootmaker refused to make a refund until the Bureau became involved, when the bootmaker reluctantly agreed to pay the full amount by cheque.
- 2.1.27 Unfortunately the bootmaker's bank refused to honour the cheque. The Bureau reported the matter to the local Police, who then contacted the trader and the cheque was eventually honoured and satisfaction gained for the consumer.

MOTOR VEHICLES

- 2.1.28 A consumer purchased a panel van at the Government auctions. The vehicle was locked at the time of purchase and there was no indication of any mechanical defects.

2.1.29 The consumer arranged to have the car towed to a garage where it was found that there was a hole in the block.

2.1.30 After the Bureau's negotiation, the auction house decided to refund \$900 representing the cost of replacing the motor.

2.1.31 A consumer presented his vehicle to a garage for brake and clutch adjustments, plus the repair of a differential noise.

2.1.32 He was charged \$260, but on test driving the vehicle, he felt that the work had not been effected.

2.1.33 An independent mechanical report confirmed that no major work had been carried out, and following the involvement of the Bureau, he received a full refund of \$260.

INSURANCE

Motor Vehicle

2.1.34 A young woman owned a 1977 Mini Moke. Her husband was killed in an accident and the Moke was assessed as a total loss by the insurance company. The policy provided for replacement of the vehicle or the payment of the current market value.

- 2.1.35 The widow's father handled the claim, and it was settled with the insurance company replacing the 1977 Mini Moke with a 1972 Ford Escort.
- 2.1.36 After the release forms were signed, the solicitor handling the paper work relating to the estate felt that the claim had been settled unfairly.
- 2.1.37 The Bureau ascertained that the Moke had a current market value of approximately \$3,000 and the 1972 Ford Escort had a value of \$2,000.
- 2.1.38 Following approaches to the insurance company, the widow received an additional payment of \$750 - definitely a more equitable settlement.
-
- 2.1.39 Following an accident, a consumer's motor vehicle and caravan were both written off. He obtained a motor vehicle claim form from his broker, and at the same time he queried whether his caravan was insured. His broker contacted the insurance company who informed that both the car and the caravan were insured, and the consumer submitted two claim forms.
- 2.1.40 A week later he received a letter from the broker informing him that his motor vehicle claim would not be met as he had attempted to deceive the company by making a claim on the caravan when he was not entitled to do so. They were not prepared to meet either the caravan or the motor vehicle claim, and refunded his premium.

- 2.1.41 The consumer then approached a solicitor for assistance but after several months' negotiation, he was asked to pay \$250 for proceedings to commence in the Supreme Court. At this stage, the consumer decided to seek Bureau assistance.
- 2.1.42 The Bureau pointed out to the insurance company that the consumer had not intentionally intended to deceive, but was misinformed regarding the existence of an insurance policy on his caravan.
- 2.1.43 Eventually, the insurance company agreed to pay the claim, and the consumer received \$7,850, representing the full market value of his motor vehicle.
-
- 2.1.44 A six months comprehensive motor vehicle policy was taken out in September 1980 with the renewal date being 19 February 1981. The insured did not have sufficient funds to pay the premium of \$153 in February, so he decided to let the policy lapse, and eventually, on 27 April 1981, he paid the premium for a further six months, believing the policy would then expire on 27 October 1981.
- 2.1.45 On 20 August, his car was involved in an accident with four other vehicles. He admitted liability. When he lodged his claim, he was informed that his policy was dated six months from 19 February and that he was not insured and that the claim for approximately \$4,500 would be denied.
- 2.1.46 The Bureau argued on a moral basis, and eventually the insurance company agreed to meet the claim in full.

2.1.47 The question arises as to whether the insurance company would have met a claim if an accident had occurred between 19 February and 27th April 1981.

2.1.48 The motor vehicle insurance renewal was due on 26 April 1981, but because the insured was temporarily away from her normal address, she instructed a friend to pay the insurance company the appropriate premium on her behalf.

2.1.49 Unfortunately this was not done, and the car was involved in an accident on 9 May. The premium was finally sent to the insurance company on 11 May, but the claim was denied on the basis that the premium had not been received prior to the accident.

2.1.50 The Bureau was contacted by the consumer, and requested a statutory declaration giving full details concerning the mix-up regarding the non payment of the premium before the due date. Also, a bank statement was requested indicating that she had sufficient funds in her bank account to pay the premium of \$106. She also stated in her declaration that she had been insured with the particular company for eight years and had never lodged a claim before.

2.1.51 When this information was received, the Bureau contacted the insurance company, who then agreed to meet the claim. As the vehicle was a total loss, they paid the current market value of \$2,600 to the consumer.

Consumer Credit

- 2.1.52 Included in the terms of a hire purchase agreement was a premium for consumer credit insurance. Incorporated in this policy was cover for involuntary unemployment. The contract was over a period of 12 months.
- 2.1.53 Eight months after the contract was signed, the factory where the consumer was employed closed down, and she was retrenched.
- 2.1.54 The consumer then lodged a claim for two payments, which was the maximum allowable under the terms of the policy. However, the claim was rejected by the insurance company on the grounds that the insured had accepted a Widow's Pension instead of Unemployment Benefits, which was a stipulation on the policy.
- 2.1.55 The consumer had applied for the Widow's Pension on advice from the Department of Social Security. She was entitled to the Widow's Pension, and because the payment was higher and prompt payment was assured, she accepted the pension.
- 2.1.56 The Bureau contacted the insurance company and they agreed that it was a minor technicality and decided to meet the claim.

Household

- 2.1.57 A consumer paid an insurance premium to a broker on what he thought was an insurance policy which covered his house. The broker did not pass on the premium to

any insurance company, so no policy existed for the consumer although, all documents sent to the consumer from the broker were printed on an insurance company's letterhead.

- 2.1.58 The consumer made a small claim amounting to \$180 to the insurance company for some broken windows. As the company had never heard of the consumer or the policy he thought he had with them, they denied the claim.
- 2.1.59 The consumer approached the Bureau, who negotiated with the insurance company. The insurance company decided to pay the claim as a goodwill gesture, but insisted that the matter should be taken to the Small Claims Tribunals, so that the broker did not go completely free, and the premium was recovered.
- 2.1.60 This situation arose because of the lack of regulation and control over brokers' activities. Brokers can open shop, take premiums, and not forward them to insurance companies.

FINANCE

- 2.1.61 An elderly consumer on a Widow's Pension, was advised by her bank that there was an account in her name with a total savings of \$1,500. She was told that she should withdraw the money.

- 2.1.62 She informed the bank that she did not know of any account that would have accumulated \$1,500, and asked them to re-check. The bank then advised that the account definitely existed, so she withdrew the money and used it to connect the sewerage to her house.
- 2.1.63 Six months later, the bank advised her that there had been a mistake and she must repay the \$1,500.
- 2.1.64 After the consumer sought Bureau assistance the bank withdrew the demand for repayment.
-
- 2.1.65 There was a down-turn in the cartage business, with the result that a consumer fell behind in his lease repayments to a finance company. He made arrangements with a local garage to store the vehicle at no cost.
- 2.1.66 Within three months, the consumer had obtained enough money to repay the finance company the outstanding arrears as well as enter into a new agreement with reduced monthly repayments. He then collected his vehicle from the local garage.
- 2.1.67 He maintained his monthly repayments, but then he was informed by the finance company that he was \$920 in arrears. He made enquiries and was told that the \$920 represented storage costs at his local garage.
- 2.1.68 Further enquiries revealed that the local garage owed the finance company several thousands of dollars over other dealings, and when making payment to the finance company, the local garage deducted \$920. At no stage was the consumer informed of these charges by the

garage to the finance company. The finance company had simply taken it upon themselves to deduct the \$920 from the consumer's repayments.

2.1.69 After Bureau representation, the finance company acknowledged that the \$920 should not have been deducted from the consumer's account.

2.1.70 A pensioner went guarantor for his son on a vehicle priced at \$4,895. The vehicle was involved in an accident, declared a total loss by the insurance company and the current market value of \$2,400 was paid to the finance company. This left an outstanding balance of approximately \$2,700, and the finance company made strong demands to the pensioner for payment of the account.

2.1.71 The Bureau pointed out to the finance company that they should not have accepted the pensioner as guarantor. The finance company accepted \$400 as settlement of the account.

2.1.72 The finance contract commenced in April 1977 and the borrower was committed to 60 monthly instalments, each of \$157. After 20 payments, he became ill, unable to work, and was eventually placed on an invalid pension. The finance company and the borrower came to an arrangement whereby payments would continue at the reduced amount of \$100 per month. The invalid pensioner struggled, but he maintained 37 reduced payments.

- 2.1.73 The consumer came to the Bureau for assistance in renegotiating the financial payments of his commitment. As a result, the finance company acknowledged to the Bureau that the borrower had honoured all arrangements and had maintained an excellent account in view of his unfortunate circumstances. As a goodwill gesture, the finance company advised that they would not make any further approaches to the invalid pensioner for payments on the account, and an amount of \$2,200 was written off.

PROPERTY

- 2.1.74 A consumer contracted to purchase land shares, and had the forestry company plant and maintain trees on the land. The contract, being a terms contract, required the consumer to make monthly payments for a set period.
- 2.1.75 The consumer moved address and correspondence from the forestry company was returned marked "Left Address". After a considerable lapse of time, the consumer enquired of the company as to the balance of the account and was told that he had defaulted under the terms of the contract, one payment being short. The land and trees had been sold and no money would be refunded.
- 2.1.76 The consumer contended he had advised the company of his change of address, but he had only minimal proof.
- 2.1.77 On the balance of probability that such notice was given, the Bureau was able to negotiate a refund of half the monies paid by the consumer.

WEIGHT REDUCTION

- 2.1.78 A 75 year old consumer, suffering with arthritis, signed for an exercise and weight reduction course at a cost of \$680. After three sessions she realised that she could not cope with the course, which was aggravating her condition. She obtained a certificate from her doctor confirming that the course was completely unsuitable.
- 2.1.79 She requested a refund from the fitness centre, which was refused, but following Bureau intervention, a full refund was offered.

SMALL CLAIMS TRIBUNALS

- 2.2.1 A consumer contracted with a motor car trader for an 80,000 km. service which included checks for cylinder head cracks and water loss. The consumer was quoted a price of \$400, but upon picking up the car, he was given a bill for \$576.19, which he paid under protest.
- 2.2.2 On questioning the bill, the consumer was given the excuse that extra repairs were required. The consumer disputed that the extra repairs were necessary; and stated further that the cost of the extras was excessive, especially as he did not authorise the extras. He lodged a claim with the Tribunals.

2.2.3 The Referee found on the evidence from both parties that the claim was partially justified, and ordered the trader to pay \$80 to the claimant.

2.2.4 A consumer contracted with a motor car trader to install a reconditioned motor and repair a faulty clutch. After some negotiations, the agreed price was \$904.15, which the consumer paid.

2.2.5 After two days, the clutch failed and the vehicle was towed back to the trader's premises, where he effected the necessary repairs, and presented the consumer with a bill for a further \$99.85.

2.2.6 The consumer lodged a claim with the Tribunals and paid the \$99.85 into the Tribunals' Trust Account.

2.2.7 The Referee found on the evidence before him from both parties that the fault was unrelated to the work performed by the trader and dismissed the claim. He then directed that the \$99.85 held in trust be paid to the trader.

2.2.8 A consumer contracted with a hair care company to supply and fit a lady's wig. She paid a deposit of \$290 and was told it would take nine weeks to supply.

2.2.9 The wig was bald on top and a seam was showing, so the consumer sought a refund, which was not forthcoming. She lodged a claim with the Tribunals.

2.2.10 The Referee found on the evidence before him that the claim was justified, and ordered the trader to repay the \$290.

2.2.11 A consumer contracted with an insurance company for a motor vehicle insurance policy. A cover note was promised over the telephone and the premium was sent, but before the policy was signed, the consumer had an accident. As the insurance company denied liability, the consumer lodged a claim with the Tribunals.

2.2.12 The claim was settled before the Referee with the respondent issuing a policy effective from the date of the cover note and also paying \$1231 to the consumer.

2.2.13 Acting on an advertisement in a Melbourne weekly newspaper, a consumer contracted with a companion service to provide him with a wife. The consumer paid the quoted \$850 for the "guaranteed" service, but found it would cost him another \$1,200 in air fares to the Philippines, though the advertisement stated the ladies were living in Australia.

2.2.14 A claim was lodged with the Tribunals, and on the evidence before her, the Referee ordered the respondent to pay \$850 back to the consumer.

RESIDENTIAL TENANCIES BUREAU

2.3.1 A tenant who vacated premises when his co-tenant committed suicide received the following notice from the landlord's estate agent.

"We refer to your recent occupation of the above premises and set out herewith the costs relating to refund of bond and further monies owing by you.

Fumigation of Premises	\$105.00
Cleaning of premises	150.00
Removal of mattress	15.00
Cost to replace mattress	50.00
Rent payable in lieu of notice - rent paid to 13/2/82 to 24/2/82 being 11 days @\$55 pw (new tenants moved in on 25/2/82)	<u>86.42</u>
	406.42
Less bond originally paid and held in trust	<u>150.00</u>
Balance of monies owing to owner by tenant	<u>\$256.42</u>

As the tenant in the above flat, you are responsible for the clean and tenantable condition of the premises together with the required fortnight's notice to vacate. We appreciate that your reasons for vacating were most unfortunate, but as agents representing the owner, we have no alternative but to request payment of the above amount being \$256.42 to our office as soon as possible."

- 2.3.2 The tenant vacated the premises on the advice of the Police and the Health Inspector, the body not being discovered for approximately four days after death occurred because the two tenants led completely independent lives and with the surviving tenant being a shift worker, their paths did not cross that often.
- 2.3.3 The Residential Tenancies Bureau is now trying to negotiate a settlement, but if this is unsuccessful, the tenant will be advised to proceed to the Residential Tenancies Tribunals.
-
- 2.3.4 Following interviews with both the landlord and the tenant at the offices of the Residential Tenancies Bureau, an investigations officer visited the premises in question with the landlord, and a detailed report was compiled.
- 2.3.5 It was the investigations officer's opinion that the tenant had, through a combination of neglect and malicious action, severely damaged nearly every room in the house, and had also caused damage to the outside of the property.
- 2.3.6 Following the investigations officer's report, a Tribunal hearing was held and the landlord was awarded over \$900 in damages.
-
- 2.3.7 A tenant visited the Residential Tenancies Bureau at 9.30 a.m. complaining that she was to be evicted by the landlord at 10.00 a.m. on the same day.

- 2.3.8 An investigations officer accompanied the tenant to the premises, confronted the landlord and explained that any eviction would have to be carried out in accordance with the requirements of the Residential Tenancies Act 1980.
- 2.3.9 The landlord was not impressed with this advice, so to avoid any serious confrontation, the tenant returned to the Ministry with the investigations officer and made immediate application to the Residential Tenancies Tribunals. The case was listed for 2.15 p.m. that day. From a complaint arising at 9.30 a.m. the matter proceeded to the Residential Tenancies Tribunal the same day at 2.15 p.m. - an efficient service.
- 2.3.10 The Tribunal adjourned the case for two weeks, during which time the tenant moved out of her own accord.
-
- 2.3.11 A husband and wife from Brisbane separated, and the wife moved to Melbourne with the children as she thought employment opportunities would be better here. She entered into a six month's lease for a residence on the understanding that if things did not work out as she hoped, she could leave the premises early as long as she found new tenants.
- 2.3.12 Things did not work out as hoped, and she endeavoured to obtain new tenants. She made arrangements with prospective tenants, but they chose a nearby residence which was larger and cheaper than the one being rented by the woman.

- 2.3.13 Things then became heated between the landlord and tenant. He would not return the \$600 security deposit until she moved out and she would not move out until she received the money. She had an offer of employment in Brisbane and wanted to move out quickly.
- 2.3.14 After trying unsuccessfully to negotiate between the tenant, landlord and his solicitor by telephone, an investigations officer was sent to meet the parties on site to try and resolve the matter. He was met on site by the tenant and two male companions and the landlord. Despite a heated argument and threats from both sides, the investigations officer managed to reach a compromise of the tenant moving out and the landlord refunding \$550 of the \$600 security deposit.
-
- 2.3.15 In the short period of time that the Residential Tenancies Act has been in operation, there have been a number of occasions when investigations officers, whilst engaged in field investigations, have been threatened, either directly or indirectly.
- 2.3.16 It has been a matter of policy that at the first sign of physical threat, the investigations officers should proceed to the nearest Police station and request a Police officer to accompany them to the site to enable them to perform their duties without the risk of physical injury.
- 2.3.17 For example, in a case relating to an Order for Possession granted to a landlord, with part of that order requiring the landlord to grant access to the

premises to the tenant so that she could remove her belongings, the landlord refused to grant access.

- 2.3.18 An investigations officer was despatched to meet with both parties on site. Amongst threats from the landlord and colourful language from the female tenant, access was obtained, and the tenant's belongings removed. The Police attended on request, thus ensuring that no violence resulted from the landlord's threats.

-
- 2.3.19 A tenant complained that the landlord was holding her furniture in lieu of rent not paid following termination of the tenancy. Investigation revealed that the former tenant was occupying the premises in a semi-employment situation, paying rent but also being paid a wage.

- 2.3.20 Whilst there was some doubt as to whether this tenancy was actually covered by the Residential Tenancies Act 1980, the investigations officer involved arranged to meet the former tenant and landlord on site to thrash the matter out.

- 2.3.21 On arrival at the site the investigations officer was confronted by the landlord, her solicitor, the former tenant, her former husband and her current boy friend.

- 2.3.22 The ensuing argument as to who owned what of the furniture was problem enough, but the investigations officer almost needed to be a solicitor, boxing referee, and marriage guidance counsellor as well. Fortunately, sanity and the officer's coolness in the

crisis prevailed, and as amicable a solution as could be obtained was reached.

- 2.3.23 After a Residential Tenancies Tribunal hearing, a determination was brought down that tenants had to leave the property they were renting by a certain date, and that they could take all their belongings and reimburse the landlord after they vacated.
- 2.3.24 On the day that they were to vacate, a telephone call was received from the tenant alleging that the landlord had stolen some of their belongings and would not allow them to remove their refrigerator until the amount owed to the landlord was paid.
- 2.3.25 An investigations officer arrived at the premises and endeavoured to negotiate a peaceful settlement but was advised by the landlord that he would fight the investigations officer or anyone else who tried to move the refrigerator out.
- 2.3.26 It was necessary for the investigations officer to obtain the help of the local Police after the landlord started pushing the removalist around. The Police arrived and after the investigations officer explained that he was enforcing an order brought down by the Tribunal, the landlord relented and the furniture was removed.
-

RESIDENTIAL TENANCIES TRIBUNAL

- 2.4.1 A tenant in a block of flats made an application to the Tribunal to restrict the landlord's right of entry to the premises. Included in the application was a petition signed by 16 other tenants in the block of flats alleging that the landlord frequently entered their flats without permission, often in their absence, using his own keys. They further alleged that the landlord was cutting down many of the trees on the premises, thus destroying the overall character of the property.
- 2.4.2 Another tenant in the flats made a separate application on the same grounds.
- 2.4.3 The two applications were heard concurrently. At the hearing, the landlord admitted that the tenants' claims were true, and consented to an order restraining him and his agents from exercising a right of entry to the premises, except pursuant to the provisions of the Residential Tenancies Act.
-
- 2.4.4 A tenant served notice on his landlord to carry out repairs to the premises. When the landlord failed to effect the specified repairs within 14 days, the tenant, in accordance with the Residential Tenancies Act, requested that an investigation of the premises be made.

- 2.4.5 This was done by a Residential Tenancies Bureau investigations officer, and on receipt of the officer's report advising that the repairs were necessary, the tenant made an application to the Tribunal for an order directing the landlord to carry out the repairs.
- 2.4.6 Both parties appeared at the hearing, and after considering all the evidence, the Tribunal ordered the landlord to carry out the specified repairs, and directed the tenant to pay the rent into the Rent Special Account at the Tribunal until such time as the repairs had been carried out to the satisfaction of the Director of Consumer Affairs.
- 2.4.7 When the repairs had been effected, the landlord made application to the Tribunal for payment of the money held in the Rent Special Account.
- 2.4.8 An investigation of the premises revealed that the repairs had been carried out to the satisfaction both of the tenant and the Director of Consumer Affairs and the money was duly paid out to the landlord.
-
- 2.4.9 A landlord made application to the Tribunal for possession of the premises on grounds of arrears of rental of more than 14 days, the premises concerned being part of the landlord's farm.
- 2.4.10 The tenant did not appear at the hearing, and after proving his application, the landlord was granted an order for possession and compensation for arrears of rental.

- 2.4.11 Two days later, the tenant applied for a review of the Tribunal's determination on the grounds that he did not receive notice of the hearing and was unaware of any proceedings against him. This application was granted and the original order was suspended pending a further hearing of the matter.
- 2.4.12 At the re-hearing of the landlord's application, it was discovered that the tenant operated a Riding School from the rented premises (with the consent of the landlord) and that there existed a financial arrangement between the two parties regarding the agistment of horses on the property.
- 2.4.13 Section 6 of the Residential Tenancies Act provides that the Act does not apply to a tenancy agreement when the rented premises include land used for grazing, or when there is a contract of employment between the two parties, and consequently, the landlord's application was dismissed for lack of jurisdiction.
-
- 2.4.14 A landlord applied to the Tribunal for compensation for damage caused by the former tenant to carpets, windows, wallpaper and furniture in the rented premises.
- 2.4.15 At the Tribunal hearing attended by both parties, the landlord gave evidence that despite a clear direction from the landlord's agent, the tenant allowed a window in the unit to remain open during a storm, thereby causing the window to break.

2.4.16 The Tribunal accepted this evidence and was also satisfied that the tenant was negligent in the way he cared for the carpet, thereby causing damage. Consequently an order for \$360 was made in favour of the landlord, being compensation for the tenant's wilful damage to the rented premises.

2.4.17 When a couple entered into a tenancy agreement, they mentioned to the landlord's estate agent that there was a problem with ant infestation in some of the rooms at the rented premises, and that they would not move in until the ants were exterminated. The agent suggested that the tenants use an insecticide in an attempt to dispose of the ants, an action which met with only limited success. After several suggested remedies had failed to eliminate the problem, the tenant requested that the landlord take action. Some work was carried out, involving blocking the ants' route of entry, but although this alleviated the situation, the tenants remained dissatisfied.

2.4.18 After contacting the Residential Tenancies Bureau for advice, the tenants applied to the Tribunal to be released from the tenancy agreement on the grounds that the premises were unfit for occupation.

2.4.19 At the hearing, evidence was presented that professional pest control would be required. However, the landlord's agent, whilst agreeing that the ants constituted a health hazard, explained that the owner could not afford to meet the cost of professional treatment. The Tribunal determined that the premises were in fact unfit for occupation, and ordered the

landlord to refund all rent, bond and stamp duty paid by the tenant.

- 2.4.20 A tenant served notice on his landlord to carry out repairs to fireplaces, windows and front fence of the premises, and approached the Residential Tenancies Bureau for an inspection.
- 2.4.21 As a result of that inspection, the landlord agreed to repair the windows and the front fence, leaving the fireplaces as the only issue of dispute. The landlord was prepared to install gas or electric heating, but the tenants claimed that they had been led to believe that the open fireplaces in the premises were all in operable condition. Consequently, they demanded either that the fireplaces be restored to their original condition or that the rental be reduced to offset increased heating costs, and made application to the Tribunal for an order to that effect.
- 2.4.22 At the hearing the parties were encouraged to settle their dispute, and after considerable deliberation, managed to arrive at a compromise which was acceptable to both parties. The landlord consented to pay \$55 compensation to the tenants, to restore the open fireplace in the lounge room to an operable condition, and to install wall furnaces in two other rooms. On that basis, the matter was marked as settled.
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PART 3STATISTICS AND TABLESTABLE 1Consumer Affairs BureauAnalysis of Consumer ComplaintsProduct/Service Classification - 1979/80 to 1981/82

	<u>1979/80</u>		<u>1980/81</u>		<u>1981/82</u>	
	Number	%	Number	%	Number	%
<u>Food and Beverages</u>						
Food Products	97	.85	100	.84	97	.80
Beverages	36	.32	32	.27	30	.25
Other	8	.07	23	.19	16	.13
	<u>141</u>	<u>1.24</u>	<u>155</u>	<u>1.31</u>	<u>143</u>	<u>1.18</u>
SUB TOTAL						
<u>Clothing, Footwear and Drapery</u>						
Clothing	417	3.66	421	3.56	428	3.53
Footwear	205	1.80	213	1.80	167	1.38
Accessories	36	.32	84	.71	125	1.03
Drapery	37	.32	38	.32	48	.40
Trousseau	20	.18	2	.02	3	.02
Other	13	.11	16	.13	9	.07
	<u>728</u>	<u>6.39</u>	<u>774</u>	<u>6.54</u>	<u>780</u>	<u>6.44</u>
SUB TOTAL						

Consumer Durables

Electrical Goods etc.

Washing Machines, Dishwashers	91	.80	105	.89	112	.93
Drying Cabinets						
Stoves	55	.48	70	.59	78	.64
Refrigerators and Freezers	92	.81	153	1.29	153	1.26
Television	81	.71	101	.85	101	.83
Air Conditioners	42	.37	85	.72	103	.85
Heaters	71	.62	104	.88	110	.91
Small Appliances	45	.39	62	.52	65	.54
Radio, Hi-Fi, etc.	127	1.11	153	1.29	167	1.38
Other	62	.54	127	1.07	93	.77
Used Electrical Goods etc.	55	.48	25	.21	4	.03
Furniture	303	2.66	318	2.69	373	3.08
Furnishings						
Carpets and Other Floor Coverings	178	1.56	207	1.75	293	2.42
Curtains and Blinds	110	.97	110	.93	98	.81
Hard Floor Coverings	48	.42	46	.39	57	.47
Other	10	.09	7	.06	13	.11
Hardware and Kitchenware	68	.60	56	.47	130	1.07
Other	5	.04	7	.06	16	.13
	<u>1443</u>	<u>12.67</u>	<u>1736</u>	<u>14.68</u>	<u>1966</u>	<u>16.24</u>
SUB TOTAL						

Repair of Electrical Goods etc.

Washing Machines, Dishwashers, Drying Cabinets	120	1.05	116	.98	91	.75
Stoves	29	.25	12	.10	11	.09
Refrigerators and Freezers	78	.68	78	.66	67	.55
Television	98	.86	106	.90	90	.74
Air Conditioners	12	.10	18	.15	10	.08
Heaters	37	.32	15	.13	10	.08
Small Appliances	31	.27	25	.21	16	.13
Radio, Hi-Fi, etc.	72	.63	61	.52	45	.37
Other	28	.25	24	.20	30	.25
	<u>28</u>	<u>.25</u>	<u>24</u>	<u>.20</u>	<u>30</u>	<u>.25</u>
SUB TOTAL	505	4.43	455	3.84	370	3.06

Motor Vehicle and OtherTransport Equipment

New Motor Vehicles	640	5.62	529	4.47	503	4.15
Used Motor Vehicles	1146	10.06	1087	9.19	1030	8.51
Parts and Accessories	205	1.80	176	1.49	186	1.54
Motor Bikes and Trail Bikes	48	.42	86	.73	93	.77
Other Transport Equipment:						
Caravans	95	.83	87	.74	83	.69
Boats and Outboard Motors	65	.57	54	.46	60	.50
Trucks	67	.59	57	.48	36	.30
Other	91	.80	77	.65	70	.58
Other	11	.10	8	.07	13	.11
	<u>11</u>	<u>.10</u>	<u>8</u>	<u>.07</u>	<u>13</u>	<u>.11</u>
SUB TOTAL	2368	20.79	2161	18.27	2074	17.13

Repair and Servicing of Motor Vehicles

Mechanical	402	3.53	400	3.38	411	3.39
Electrical	15	.13	4	.03	11	.09
Panel Beating	82	.72	80	.68	87	.72
Exchange Engines	63	.55	57	.48	67	.55
Towing/Storage	24	.21	17	.14	15	.12
Other	37	.32	49	.41	36	.30
	<u>623</u>	<u>5.47</u>	<u>607</u>	<u>5.13</u>	<u>627</u>	<u>5.18</u>
SUB TOTAL						

Building and Construction

New Home Construction	168	1.47	307	2.60	290	2.40
Extensions and Renovations:						
Concreting, Blockwork, Brickwork etc.	104	.91	140	1.18	239	1.97
Fences and Walls	51	.45	78	.66	68	.56
Carpentry	20	.18	23	.19	15	.12
Painting and Decorating	57	.50	59	.50	77	.64
Plumbing	101	.89	104	.88	87	.72
Electrical Work	31	.27	24	.20	27	.22
Roofing and Insulation	92	.81	122	1.03	110	.91
Cladding	96	.84	86	.73	72	.59
Other	167	1.47	230	1.94	155	1.28

(Cont) ...

Supply of Packages- Kitchens, Garages, etc.	130	1.14	171	1.45	194	1.60
Building Products	186	1.63	240	2.03	285	2.35
Swimming Pools	61	.54	85	.72	117	.97
Gardening	82	.72	95	.80	116	.96
Other	4	.03	6	.05	6	.05
	<u>1350</u>	<u>11.85</u>	<u>1770</u>	<u>14.96</u>	<u>1858</u>	<u>15.35</u>
SUB TOTAL						

Miscellaneous Products

Communications - Newspapers, Books, Periodicals etc.	251	2.20	211	1.78	216	1.78
Tools and Equipment	21	.18	32	.27	18	.15
Sporting Goods	67	.59	70	.59	63	.52
Jewellery, Watches and Clocks	266	2.34	329	2.78	329	2.72
Toys and Musical Instruments	56	.49	66	.56	74	.61
Photographic Equipment	61	.54	39	.33	39	.32
Chemical Products	60	.53	48	.41	96	.79
Animals, Pets and Livestock	37	.32	34	.29	27	.22
Other	253	2.22	350	2.96	461	3.81
	<u>1072</u>	<u>9.41</u>	<u>1179</u>	<u>9.97</u>	<u>1323</u>	<u>10.93</u>
SUB TOTAL						

Transport and Energy Services

Postal and Telephone Services	24	.21	27	.23	16	.13
Public Utilities and Fuel Supplies	131	1.15	121	1.02	93	.77
Travel	210	1.84	199	1.68	184	1.52
Other	98	.86	94	.79	114	.94
	<u>463</u>	<u>4.07</u>	<u>441</u>	<u>3.73</u>	<u>407</u>	<u>3.36</u>
SUB TOTAL						

Insurance

Life	67	.59	30	.25	50	.41
Travel	-	-	-	-	23	.19
Health	51	.45	37	.32	77	.64
Motor Vehicle	207	1.82	176	1.49	229	1.89
Fire	4	.03	6	.05	45	.37
Household	111	.97	158	1.34	202	1.67
Marine	6	.05	8	.07	12	.10
Consumer Credit	79	.69	55	.46	42	.35
Other	103	.90	107	.90	73	.60
		<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SUB TOTAL	628	5.51	577	4.88	753	6.22

Finance

Credit Cards	16	.14	8	.07	12	.10
Store Cards	18	.16	15	.13	13	.11
Chattel Mortgage	20	.18	5	.04	-	-
Lay-By	3	.03	7	.06	7	.06
Hire Purchase	196	1.72	139	1.17	75	.62
Lease	27	.24	4	.03	4	.03
Personal Loan	37	.32	20	.17	58	.48
Real Estate Mortgages	-	-	-	-	20	.17
Other	42	.37	66	.56	20	.17
		<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SUB TOTAL	359	3.15	264	2.23	209	1.73

(Cont) ...

Real Estate and Accommodation

Investment	12	.10	6	.05	10	.08
Purchase	135	1.18	109	.92	109	.90
Lease and Rental	173	1.52	205	1.73	98	.81
Short Term Accommodation	45	.39	48	.41	68	.56
Other	19	.17	20	.17	19	.16
	<u>384</u>	<u>3.37</u>	<u>388</u>	<u>3.28</u>	<u>304</u>	<u>2.51</u>
SUB TOTAL						

Miscellaneous Services

Professional Services	455	3.99	321	2.71	366	3.02
Semi-Professional Services	316	2.77	387	3.27	315	2.60
Household Services	367	3.22	356	3.01	333	2.75
Educational	37	.32	44	.37	33	.27
Entertainment, Restaurant, Catering	105	.92	101	.85	108	.89
Work at Home Schemes	6	.05	7	.06	6	.05
Other	38	.33	105	.89	133	1.10
	<u>1324</u>	<u>11.63</u>	<u>1321</u>	<u>11.17</u>	<u>1294</u>	<u>10.69</u>
SUB TOTAL						
<u>T O T A L</u> ...	11388	100%	11828	100%	12108	100%

NOTE:

Percentage sub-totals may not total exactly because of rounding of decimal places.

Consumer Affairs BureauTABLE 2Analysis of Consumer ComplaintsPractice Classification - 1979/80 to 1981/82

	<u>1979/80</u>		<u>1980/81</u>		<u>1981/82</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Advertising</u>						
Health and Safety					6	.04
Price					90	.58
Quantity					1	.01
Sponsorship, Approval					6	.04
Specification, Goods					139	.89
Nature of Services					9	.06
Free Gifts/Special					58	.37
Availability					16	.10
Conditions of Sale					29	.19
Other					11	.07
<u>Representations</u>						
Health and Safety					4	.03
Price					23	.15
Quantity					-	-
Sponsorship, Approval					1	.01
Specification, Goods					120	.77
Nature of Services					5	.03

(Cont) ...

Free Gifts/Special	10	.06
Availability	11	.07
Conditions of Sale	77	.49
Other	14	.09

Advertising and Representations

Other					2	.01	
	SUB TOTAL	1402	10.85	937	6.16	632	4.06

Packaging and Labelling

Safety Label, Instructions	4	.03	2	.01	5	.03	
Operating Instructions	20	.15	19	.12	22	.14	
Contents, Description of	17	.13	14	.09	12	.08	
Deceptive Packaging	5	.04	7	.05	6	.04	
Date of Manufacture on Packaging	7	.05	10	.07	4	.03	
Other	16	.12	12	.08	22	.14	
	SUB TOTAL	69	.53	64	.42	71	.46

Sales Methods

Unsolicited Product or Service	104	.80	59	.39	57	.37	
Door to Door Sales	114	.88	20	.13	21	.13	
Auctions	14	.11	7	.05	6	.04	
Mail Order Sales	301	2.33	338	2.22	707	4.54	
Overticketing	2	.01	-	-	3	.02	
Other	343	2.66	481	3.16	190	1.22	
	SUB TOTAL	878	6.80	905	5.95	984	6.32

Prices and Charges

Charge Above Quote	239	1.85	197	1.30	118	.76
Industry Pricing Policy	59	.46	16	.10	3	.02
Overcharging	472	3.65	634	4.17	681	4.37
Other	136	1.05	91	.60	168	1.08
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SUB TOTAL	906	7.01	938	6.17	970	6.23

Quality of Product or Service

Installation	109	.84	122	.80	246	1.58
Servicing or Repair	1561	12.08	1223	8.04	1169	7.51
Unavailability of Product, Component or Service	232	1.80	141	.93	70	.45
Unsafe or Hazardous Product or Service	68	.53	76	.50	80	.51
Unauthorised Repairs	38	.29	64	.42	59	.38
Defective at Purchase	1936	14.99	3711	24.41	2713	17.42
Defective after Purchase	677	5.24	387	2.54	1320	8.48
Damage to Consumer	327	2.53	570	3.75	530	3.40
Weight/Measure to Unpacked Goods	7	.05	5	.03	4	.03
Other	65	.50	75	.49	221	1.42
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SUB TOTAL	5020	38.86	6374	41.92	6412	41.18

Contracts

Harsh or Unconscionable Contracts	95	.73	157	1.03	216	1.39
Non Disclosure or Misrepresentation of Terms	291	2.25	740	4.87	667	4.28

(Cont) ...

Retention of Bond	121	.94	134	.88	56	.36
Other Landlord/Tenant Disputes	44	.34	26	.17	42	.27
Cancellation of Contract	472	3.65	706	4.64	550	3.53
Non Supply of Goods and Services	842	6.52	1153	7.58	2013	12.93
Non Performance of Contracts	349	2.70	595	3.91	671	4.31
Other	155	1.20	270	1.78	162	1.04
		<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SUB TOTAL	2369	18.34	3781	24.87	4377	28.11

Guarantees and Warranties

SUB TOTAL	1048	8.11	753	4.95	596	3.83
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Offers of Redress

Provision of Credit Note	33	.25	65	.43	66	.42
Provision of Replacement	1	-	6	.04	22	.14
Repair - No Replacement - Refund	76	.59	470	3.09	474	3.04
No Refund Policy of Seller	214	1.66	200	1.31	290	1.86
Insistence on Repair	12	.09	6	.04	9	.06
Other	16	.12	16	.10	16	.10
		<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SUB TOTAL	352	2.72	763	5.02	877	5.63

Credit Practices

Repossession	108	.83	56	.37	64	0.41
Debt Collection	145	1.12	173	1.14	120	0.77
Deposits or Lay-Bys	148	1.14	218	1.43	295	1.89
Incorrect Interest or Credit Charge	46	.36	29	.19	43	0.28
Over Commitment	41	.32	11	.07	16	0.10
Documentation Complaints	71	.55	14	.09	10	0.06
Credit/Insurance Rebates	121	.94	27	.18	35	0.22
Other	195	1.51	162	1.06	70	0.45
	<u>875</u>	<u>6.77</u>	<u>690</u>	<u>4.54</u>	<u>653</u>	<u>4.19</u>
SUB TOTAL	875	6.77	690	4.54	653	4.19
T O T A L	12919	100%	15205	100%	15572	100%

NOTES

1. Percentage sub-totals may not total exactly because of rounding of decimal places.
2. A number of classifications have been added as from 1st July, 1981.

Small Claims TribunalsTABLE 3Analysis of Claims Determined - Product/ServiceClassification - 1979/80 to 1981/82

	<u>1979/80</u>		<u>1980/81</u>		<u>1981/82</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Food and Beverages</u>						
Food Products	5	.18	4	.18	1	.04
Beverages	1	.03	-	-	-	-
Other	-	-	-	-	-	-
	<u>6</u>	<u>.22</u>	<u>4</u>	<u>.18</u>	<u>1</u>	<u>.04</u>
SUB TOTAL						
 <u>Clothing, Footwear and Drapery</u>						
Clothing	140	5.19	107	4.78	124	5.10
Footwear	63	2.33	36	1.61	33	1.36
Accessories	12	.44	5	.22	13	.54
Drapery	4	.15	11	.49	9	.37
Other	4	.15	10	.45	3	.12
	<u>223</u>	<u>8.26</u>	<u>169</u>	<u>7.56</u>	<u>182</u>	<u>7.51</u>
SUB TOTAL						
 <u>Consumer Durables</u>						
Electrical Goods, etc.						
Washing Machines, Dishwashers, Drying Cabinets	26	.96	30	1.34	13	.54
Stoves	8	.30	12	.54	6	.25

(cont) ...

Refrigerators and Freezers	47	1.74	35	1.56	28	1.16
Television	38	1.40	16	.71	18	.74
Air Conditioners	5	.18	16	.71	16	.66
Heaters	30	1.11	32	1.43	24	.99
Small Appliances	8	.30	4	.18	3	.12
Radio, Hi-Fi etc.	11	.41	25	1.12	22	.91
Other	31	1.15	21	.94	6	.25
Used Electrical Goods etc.	3	.11	8	.36	23	.95
Furniture	116	4.30	56	2.50	91	3.75
Furnishings:						
Carpets and Other Floor Coverings	103	3.81	59	2.64	85	3.51
Curtains and Blinds	48	1.78	40	1.79	31	1.28
Other	16	.59	8	.36	3	.12
Hardware and Kitchenware	6	.22	6	.27	8	.33
Other	20	.74	16	.71	15	.62
	<u>516</u>	<u>19.12</u>	<u>384</u>	<u>17.17</u>	<u>392</u>	<u>16.18</u>
	SUB TOTAL					

Repair of Electrical Goods etc.

Washing Machines, Dishwashers, Drying Cabinets	32	1.18	26	1.16	18	.74
Stoves	1	.03	5	.22	3	.12
Refrigerators and Freezers	10	.37	8	.36	14	.58
Television	7	.26	12	.54	19	.78
Air Conditioners	5	.18	2	.09	6	.25

(Cont) ...

Small Appliances	1	.03	-	-	-	-
Radio, Hi-Fi etc.	12	.44	6	.27	9	.37
Other	8	.30	6	.27	5	.21
	<u>87</u>	<u>3.22</u>	<u>70</u>	<u>3.13</u>	<u>82</u>	<u>3.38</u>
SUB TOTAL						

Motor Vehicles and Other Transport Equipment

New Motor Vehicles	41	1.52	23	1.00	37	1.53
Used Motor Vehicles	216	8.00	182	8.10	125	5.15
Parts and Accessories	67	2.48	41	1.80	36	1.49
Motor Bikes and Trail Bikes	8	.30	11	.40	6	.25
Other Transport Equipment:						
Caravans and Campervans	21	.78	17	.70	8	.33
Other	45	1.67	30	1.30	25	1.03
Other	12	.44	10	.40	1	.04
	<u>410</u>	<u>15.19</u>	<u>314</u>	<u>14.04</u>	<u>238</u>	<u>9.82</u>
SUB TOTAL						

Repair and Servicing of Motor Vehicles

Mechanical	231	8.56	163	7.20	182	7.51
Electrical	19	.70	13	.50	20	.83
Panel Beating	38	1.41	35	1.50	27	1.11
Other	38	1.41	42	1.80	41	1.69
	<u>326</u>	<u>12.08</u>	<u>253</u>	<u>11.31</u>	<u>270</u>	<u>11.14</u>
SUB TOTAL						

Building and Construction

New Homes	17	.63	37	1.60	47	1.94
Extensions and Renovations:						
Concreting Blockwork, Brickwork, etc.	82	3.04	85	3.80	83	3.43
Fences and Walls	30	1.11	34	1.52	38	1.57
Carpentry	19	.70	14	.63	27	1.11
Painting and Decorating	35	1.30	33	1.48	33	1.36
Plumbing	65	2.41	74	3.31	63	2.60
Electrical Work	21	.78	19	.85	22	.91
Roofing and Insulation	31	1.45	23	1.03	26	1.07
Cladding	11	.41	3	.13	18	.74
Other	94	3.48	74	3.31	92	3.80
Supply of Packages - Kitchens, Garages, etc.	65	2.41	43	1.92	33	1.36
Building Products	45	1.67	37	1.65	81	3.34
Swimming Pools	23	.85	25	1.12	36	1.49
Gardening	28	1.03	27	1.21	29	1.20
Other	18	.67	19	.85	23	.95
		<u>584</u>		<u>21.64</u>		<u>651</u>
SUB TOTAL	584	21.64	547	24.46	651	26.87

Miscellaneous Products

Communications - Newspapers, Books, Periodicals etc.	8	.30	7	.31	4	.17
Tools and Equipment	2	.07	3	.13	-	-

(Cont) ...

Sporting Goods	18	.67	27	1.21	20	.83
Jewellery, Watches and Clocks	41	1.52	44	1.97	70	2.89
Toys and Musical Instruments	14	.52	7	.31	8	.33
Photographic Equipment	8	.30	8	.36	5	.21
Chemical Products	1	.03	3	.13	8	.33
Animals, Pets and Livestock	16	.59	25	1.12	10	.41
Other	10	.37	31	1.39	22	.91
SUB TOTAL	118	4.37	155	6.93	147	6.07

Transport and Energy Services

Post and Telephone Services	17	.63	-	-	-	-
Public Utilities and Fuel Supplies	13	.48	7	.31	13	.54
Travel	103	3.82	85	3.80	37	1.53
Other	3	.11	18	.80	48	1.98
SUB TOTAL	136	5.04	110	4.92	98	4.04

Insurance 42 1.56 13 .58 25 1.03

Finance 9 .33 4 .18 4 .17

Real Estate and Accommodation:

Investment	1	.03	-	-	-	-
Purchase	1	.03	1	.04	1	.04
Lease and Rental	-	-	-	-	-	-
Short Term Accommodation	4	.15	1	.04	8	.33
Other	10	.37	2	.09	5	.21
SUB TOTAL	16	.59	4	.18	14	.58

Miscellaneous Services

Professional Services	33	1.22	51	2.28	48	1.98
Semi-Professional Services	44	1.63	50	2.24	70	2.89
Laundry and Dry Cleaning	69	2.56	44	1.97	74	3.05
Other Household Services	44	1.63	43	1.92	68	2.81
Educational	1	.03	4	.18	5	.21
Entertainment, Restaurant, Catering	23	.85	9	.40	13	.54
Other	12	.44	8	.36	41	1.69
	<u>226</u>	<u>8.37</u>	<u>209</u>	<u>9.35</u>	<u>319</u>	<u>13.17</u>
SUB TOTAL						

T O T A L ... 2699 100% 2236 100% 2423 100%

NOTE

Percentage sub-totals may not total exactly because of rounding of decimal places.

Small Claims Tribunals

TABLE 4

Analysis of Claims Determined - PracticeClassification - 1979/80 to 1981/82

	<u>1979/80</u>		<u>1980/81</u>		<u>1981/82</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Advertising and Representations</u>	26	.87	20	.88	79	3.09
<u>Packaging or Labelling</u>	5	.17	-	-	-	-
<u>Sales Methods</u>	4	.13	7	.31	2	.08
<u>Prices or Charges</u>						
Charge above Quote	43	1.44	22	.97	62	2.43
Overcharging	164	5.51	127	5.59	96	3.76
Other	115	3.86	57	2.51	23	.90
SUB TOTAL	357	11.99	233	10.25	181	7.08

Quality of Product or Service

Installation	151	5.07	41	1.80	22	.86
Service or Repair	343	11.52	840	36.96	1281	50.12
Unavailability of Product, Component or Service	132	4.43	129	5.67	192	7.51
Unsafe or Hazardous Product or Service	143	4.80	35	1.54	5	.12
Unauthorised Repairs	14	.47	10	.44	14	.55
Defective at Purchase	79	2.65	47	2.07	111	4.34
Defective after Purchase	836	28.08	622	27.36	213	8.33

(Cont) ...

Damage to Consumer's Property	216	7.26	113	4.97	131	5.13
Weight or Measure of Unpacked Goods	-	-	1	.04	-	-
Other	437	14.68	95	4.18	121	4.73
	<u>2351</u>	<u>78.97</u>	<u>1933</u>	<u>85.04</u>	<u>2090</u>	<u>81.77</u>
SUB TOTAL						

Credit Practices

Repossession	4	.13	1	.04	1	.04
Debt Collection	-	-	1	.04	-	-
Deposits and Lay-Bys	57	1.91	24	1.06	72	2.82
Exorbitant or Incorrect Interest or Credit Charges	1	.03	-	-	1	.04
Over Commitment	-	-	-	-	-	-
Documentation Complaints	-	-	-	-	-	-
Rebates (Credit and Insurance)	10	.34	2	.09	18	.70
Other	21	.71	13	.57	1	.04
	<u>93</u>	<u>3.12</u>	<u>41</u>	<u>1.80</u>	<u>93</u>	<u>3.64</u>
SUB TOTAL						

Contracts

Harsh and Unconscionable Contracts	-	-	-	-	3	.12
Non Disclosure and Misrepresentation of Terms	4	.13	1	.04	1	.04
Retention of Bonds	-	-	-	-	1	.04
Other Landlord/Tenant Disputes	-	-	-	-	-	-
Disputes Concerning Cancellation of Contracts	20	.67	18	.79	5	.20

(Cont) ...

Non Supply of Goods and Services	52	1.75	11	.48	17	.67
Non Performance Within a Reasonable Period	15	.50	8	.35	10	.39
Other	20	.67	7	.31	3	.12
	<u>111</u>	<u>3.73</u>	<u>45</u>	<u>1.98</u>	<u>40</u>	<u>1.56</u>
SUB TOTAL						

Guarantees and Warranties

Statutory	1	.03	-	-	1	.04
Express Warranties	4	.13	-	-	14	.55
Other	10	.34	1	.04	1	.04
	<u>15</u>	<u>.50</u>	<u>1</u>	<u>.04</u>	<u>16</u>	<u>.63</u>
SUB TOTAL						

Offers of Redress

Provision of Credit Note	4	.13	-	-	1	.04
Provision of a Replacement	2	.07	-	-	3	.12
Repair - No Replacement or Refund	2	.07	1	.04	-	-
No Refund Policy of Seller	24	.81	19	.84	14	.55
Insistence that Consumer Pay for Repair	9	.30	-	-	27	1.06
Other	9	.30	-	-	10	.39
	<u>50</u>	<u>1.68</u>	<u>20</u>	<u>.88</u>	<u>55</u>	<u>2.15</u>
SUB TOTAL						

T O T A L ... 2977 100% 2273 100% 2556 100%

NOTE

1. Percentage sub-totals may not total exactly because of rounding of decimal places.
2. A number of classifications have been added as from 1st July, 1981.

TABLE 5

AUSTRALIAN AND VICTORIAN CONSUMER COMPLAINTS STATISTICS - 1980/81

PRODUCTS AND SERVICES COMPLAINED ABOUT	NUMBER		PERCENTAGE	
	AUST	VIC	AUST	VIC
Purchase of Used Motor Vehicles	7200	1087	9.9	9.2
Motor Vehicle Repairs and Servicing	4396	607	6.1	5.1
Purchase of New Motor Vehicles	2302	529	3.2	4.5
Other Motor Vehicle Products	3802	545	5.2	4.6
Electrical Goods - Purchase and Repair	8154	1440	11.2	12.2
Home Construction, Extension, Renovation	6940	1173	9.6	9.9
Other Home Improvements	4025	599	5.5	5.1
Entertainment, Travel, Recreation	4220	644	5.8	5.5
Real Estate, Accommodation	4005	388	5.5	3.3
Furniture, Furnishings	4692	751	6.5	6.3
Insurance	3256	577	4.5	4.9
Finance and Other Credit Services	1760	264	2.4	2.2
Clothing, Footwear, Drapery	3776	774	5.2	6.6
Professional Services	1658	321	2.3	2.7
Semi-Professional and Other Services	6457	1000	8.9	8.4
Food, Beverages, Tobacco	1270	155	1.8	1.3
Miscellaneous Products	4626	974	6.4	8.2
T O T A L	72539	11828	100%	100%
<u>REASONS FOR COMPLAINT</u>				
Unsatisfactory Quality of Product or Service	37696	6374	46.1	41.9
Unfair or Unfulfilled Contracts	16386	3781	20.1	24.9
Guarantees and Warranties not Honoured	5425	753	6.6	4.9
Misleading Representation/Advertising	4929	937	6.0	6.2
Excessive Prices/Charges	5856	938	7.2	6.2
Unfair Credit Practices	4304	690	5.3	4.5
Unfair Sales Methods	3597	905	4.4	6.0
Offers of Redress	2990	763	3.7	5.0
Unsatisfactory Packaging/Labelling	521	64	0.6	0.4
T O T A L	81704	15205	100%	100%

TABLE 6

AUSTRALIAN AND VICTORIAN CONSUMER COMPLAINT STATISTICS - 1981/1982

PRODUCTS AND SERVICES COMPLAINED ABOUT	NUMBER		PERCENTAGE	
	AUST	VIC	AUST	VIC
Purchase of Used Motor Vehicles	6635	1030	9.9	8.5
Motor Vehicle Repairs and Servicing	3236	627	4.8	5.2
Purchase of New Motor Vehicles	2191	503	3.2	4.2
Other Motor Vehicle Products	3336	541	5.0	4.5
Electrical Goods - Purchase and Repair	7432	1356	11.1	11.2
Home Construction, Extension, Renovation	6061	1140	9.0	9.4
Other Home Improvements	4075	720	6.1	5.9
Entertainment, Travel, Recreation	3742	684	5.6	5.7
Real Estate, Accommodation	3879	304	5.8	2.5
Furniture, Furnishings	4473	848	6.7	7.0
Insurance	3369	753	5.0	6.2
Finance and Other Credit Services	1457	209	2.2	1.7
Clothing, Footwear, Drapery	3582	780	5.3	6.4
Professional Services	1442	366	2.1	3.0
Semi-Professional and Other Services	5837	1043	8.7	8.6
Food, Beverages, Tobacco	1007	143	1.5	1.2
Miscellaneous Products	5452	1061	8.1	8.8
T O T A L	67206	12108	100%	100%
<u>REASONS FOR COMPLAINT</u>				
Unsatisfactory Quality of Product or Service	33685	6412	43.9	41.2
Unfair or Unfulfilled Contracts	17082	4377	22.3	28.1
Guarantees and Warranties not Honoured	5104	596	6.6	3.8
Misleading Advertising	2801	366	3.7	2.4
Misleading Representations	1512	266	2.0	1.7
Excessive Prices/Charges	4726	970	6.2	6.2
Unfair Credit Practices	4001	653	5.2	4.2
Unfair Sales Methods	4461	984	5.8	6.3
Offers of Redress	2754	877	3.6	5.6
Unsatisfactory Packaging/Labelling	545	71	0.7	0.5
T O T A L	76671	15572	100%	100%

TABLE 7

AUSTRALIAN AND VICTORIAN CONSUMER COMPLAINTS STATISTICS

PRODUCTS AND SERVICES COMPLAINED ABOUT	Vic. Complaints as a Percentage of Aust. Totals	
	1981/82	1980/81
Purchase of Used Motor Vehicles	15.5	15.1
Motor Vehicle Repairs and Servicing	19.4	13.8
Purchase of New Motor Vehicles	23.0	23.0
Other Motor Vehicle Products	16.2	14.3
Electrical Goods - Purchase and Repair	18.2	17.7
Home Construction, Extension, Renovation	18.8	16.9
Other Home Improvements	17.7	14.8
Entertainment, Travel, Recreation	18.3	15.3
Real Estate, Accommodation	7.8	9.7
Furniture, Furnishings	19.0	16.8
Insurance	22.4	17.7
Finance and Other Credit Services	14.3	15.0
Clothing, Footwear, Drapery	21.8	20.5
Professional Services	25.4	19.4
Semi-Professional and Other Services	17.9	15.5
Food, Beverages, Tobacco	14.2	12.2
Miscellaneous Products	19.5	21.1
T O T A L	18.0	16.3
<u>REASONS FOR COMPLAINT</u>		
Unsatisfactory Quality of Product or Service	19.0	16.9
Unfair or Unfulfilled Contracts	25.6	23.1
Guarantees and Warranties not Honoured	11.7	13.9
Misleading Advertising	13.1	19.0
Misleading Representations	17.6	19.0
Excessive Prices/Charges	20.5	16.0
Unfair Credit Practices	16.3	16.0
Unfair Sales Methods	22.1	25.2
Offers of Redress	31.8	25.5
Unsatisfactory Packaging/Labelling	13.0	12.3
T O T A L	20.3	18.6

TABLE 8
RESIDENTIAL TENANCIES BUREAU
COMPLAINTS HANDLED

	Landlord	Tenant	Total	%
Documentation Complaints	2	29	31	2.2
Bonds (including insurance)	15	358	373	26.8
Rent	27	308	335	24.1
Repairs and Maintenance - Urgent	-	18	18	1.3
Repairs and Maintenance - General	14	243	257	18.5
Termination	40	152	192	13.8
Quiet Enjoyment - Including Entry	-	68	68	4.9
Locks and Security Devices	1	4	5	0.4
Assignment and Sub-letting	-	3	3	0.2
Abandoned Premises	23	8	31	2.2
Miscellaneous	13	65	78	5.6
T O T A L	135	1256	1391	100%

The overall total number of complaints, 1391, is larger than the number of actual complaints received (1180) by the Residential Tenancies Bureau, since one complaint may involve more than one area of dispute.

TABLE 9 RESULTS OF APPLICATIONS TO RESIDENTIAL TENANCIES TRIBUNAL FROM 9/11/81 TO 30/6/82

APPLICANT	TYPE OF APPLICATION	APPLICATION WITHDRAWN	SETTLED AT HEARING	APPLICATION DISMISSED	ORDER MADE BY TRIBUNAL	TOTAL APPLICATIONS
L A N D L O R D 91.2% of all applications	S. 127 POSSESSION OF PREMISES	526	52	167	476	1221 (83.2%)
	S. 105 COMPENSATION	10	9	12	83	114 (7.8%)
	S. 111 ABANDONED PREMISES	8	1	3	53	65 (4.4%)
	S. 23 GENERAL DISPUTE	3	2	8	13	26 (1.8%)
	S. 77 RETENTION OF SECURITY DEPOSIT	2	1	1	11	15 (1.0%)
	OTHER APPLICATIONS	6	--	7	13	26 (1.8%)
	SUB-TOTAL (1)	555 (37.8%)	65 (4.4%)	198 (13.5%)	649 (44.3%)	1467 (100%)
T E N A N T 8.8% of all applications	TYPE OF APPLICATION	APPLICATION WITHDRAWN	SETTLED AT HEARING	APPLICATION DISMISSED	ORDER MADE BY TRIBUNAL	TOTAL APPLICATIONS
	S. 23 GENERAL DISPUTE	18	18	10	14	60 (42.3%)
	S. 105 COMPENSATION	6	11	13	22	52 (36.6%)
	OTHER APPLICATIONS	4	5	4	17	30 (21.1%)
	SUB-TOTAL (2)	28 (19.7%)	34 (24.0%)	27 (19.0%)	53 (37.3%)	142 (100%)
	TOTAL (1 & 2)	583 (36.3%)	99 (6.1%)	225 (14.0%)	702 (43.6%)	1609 (100%)

TABLE 10Residential Tenancies Bureau

Complaints Received: 1180

Interviews and Telephone Enquiries at Ministry Office:

	<u>Landlords</u>	<u>Tenants</u>	<u>Total</u>
Interviews	1760	2347	4107
Telephone Enquiries	<u>18093</u>	<u>17535</u>	<u>35628</u>
	<u>19853</u>	<u>19882</u>	<u>39735</u>

Residential Tenancies Tribunal

Claims Lodged: 2128

Claims Heard: 1819

Interviews and Telephone Enquiries Handled by Staff:

	<u>Landlords</u>	<u>Tenants</u>	<u>Total</u>
Interviews	N/A	N/A	2918
Telephone Enquiries	5856	1334	<u>7190</u>
			<u>10108</u>

NOTE: Figures from 9/11/81 (commencement of Residential Tenancies Act) to 30/6/82.

TABLE 11Country Centres Visited by Mobile Unit1st July, 1981 - 30th June, 1982

<u>City or Township</u> <u>Visited</u>	<u>Number of Visits</u>	<u>Persons</u> <u>Interviewed</u>
Ararat	3	26
Bacchus Marsh	1	3
Bairnsdale	5	94
Beechworth	1	3
Benalla	1	9
Bright	1	4
Camperdown	3	19
Casterton	2	9
Castlemaine	2	18
Charlton	1	11
Colac	5	57
Daylesford	1	11
Dimboola	1	6
Echuca	3	28
Foster	2	10
Hamilton	6	65
Horsham	2	32
Kerang	3	25
Kilmore	1	3
Kyneton	1	5

(Cont) ...

Leongatha	2	15
Mansfield	2	11
Maryborough	2	26
Mildura	3	156
Portland	5	46
Puckapunyal	2	8
Robinvale	3	25
Sale	5	142
Sea Lake	1	3
Seymour	2	12
Shepparton	1	14
Stawell	2	15
St. Arnaud	2	12
Sunbury	1	8
Swan Hill	3	28
Terang	2	17
Warracknabeal	2	29
Warragul	1	22
Warrnambool	9	214
Wodonga	3	34
Wonthaggi	2	15
Wycheproof	1	1
Yarram	2	12
TOTAL	<u>103</u>	<u>1303</u>

TABLE 12Analysis of Prosecutions

	<u>Convicted</u>	<u>Withdrawn</u>	<u>Dismissed</u>	<u>Total</u>
<u>Consumer Affairs Act 1972</u>				
<u>Section</u>				
13 (1)	3	-	1	4
15	3	-	-	3
36	<u>-</u>	<u>1</u>	<u>-</u>	<u>1</u>
	6	1	1	8
<u>Motor Car Traders Act 1973</u>				
<u>Section</u>				
14	4	-	-	4
26	45	-	-	45
29	2	-	-	2
40	73	1	-	74
41 (1a)	<u>3</u>	<u>-</u>	<u>-</u>	<u>3</u>
	127	1	-	128
Total Informations Heard:	<u>133</u>	<u>2</u>	<u>1</u>	<u>136</u>

NOTE: These figures cannot be compared to those given in the Enforcement Section as the latter relates to files, while those listed in this appendix relate to individual breaches, and there may be a number of breaches in any one file.

TABLE 13List of Publications prepared by the MinistryPamphlets:

Buying a Car
Hire Purchase
Carpets
Electrical Appliances
Funerals
Household Removals
Directory of Consumer Assistance
Be Sure Before You Sign
Small Claims Tribunal
Customer Dissatisfaction Reporting Systems
Case Studies & Teachers' Notes
Booklet - 'Consumer Rights' (available in 8 other languages)
You and the New Residential Tenancies Act
Tenancy Agreements to which the Act applies
Rents
Security Deposits (Bonds)
Termination of Agreements
Gaining Possession of Premises
Occupied Without Consent
Abandoned Goods
Prescribed Premises
Yellow Pages Guide to Better Buying

Newsletters:

Use of Credit Notes
Owner-Drivers - Job Opportunities
Lay-By Guidelines
The Market Court
Introduction Agencies

Information Sheets

Do It Yourself Home Checklist
Door to Door Sales
Door to Door Sales Tricks
Pyramid Selling & You
Mail Order
Second Hand Vehicle Check List
Motor Car Traders Act
Ministry of Consumer Affairs - Functions
Consumer Protection Legislation in Victoria
Contract Sale Note - House Purchases
Goods Sales and Leases Act

Poster:

"Be a Responsible Consumer"
(available in English and 6 other languages)

The following documents as prescribed by Regulations are also available

Standard Residential Tenancy Agreement
Statement of Rights
Condition Report

TABLE 14Location of Offices

Ministry of Consumer Affairs
500 Bourke Street
Melbourne 3000

Consumer Affairs Bureau	
General Enquiries -	Telephone 602 4288
Buying Advice (Used Cars) -	Telephone 602 8188

Small Claims Tribunals	
General Enquiries -	Telephone 602 8204

Motor Car Traders Committee	
General Enquiries -	Telephone 602 8199

Residential Tenancies Tribunal	
General Enquiries -	Telephone 602 4288

Residential Tenancies Bureau	
General Enquiries -	Telephone 602 8140

Consumer Affairs Council	
Enquiries -	Telephone 602 8114

Suburban Office

Footscray Suburban Office
20 Droop Street
Footscray 3011

Regional Offices

Ballarat Regional Office	
Public Offices	
Level 2	Telephone
Cnr. Mair & Doveton Streets	Ballarat 37 0666
Bendigo Regional Office	
Public Offices	Telephone
Hargreaves Street	Bendigo 43 8866
Geelong Regional Office	
New State Offices	
4th Floor	Telephone
Cnr. Fenwick & Little Malop Sts	Geelong 26 4500
Traralgon Regional Office	
Public Offices	Telephone
72 Hotham Street	Traralgon 74 6000
Wangaratta Regional Office	Telephone
Cnr. Ovens & Reid Streets	Wangaratta 21 6344

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PART 4MATTERS ARISING FROM THE INVESTIGATION OF
COMPLAINTS AND REFERENCES TO THE MINISTRYRETAIL INDUSTRYINTRODUCTION OF ELECTRONIC CHECKOUT SYSTEMS
INTO SUPERMARKETS

- 4.1.1 A large number of submissions from various consumer and community groups and individual persons continued to be received on this subject by the Ministry. All the submissions contained one common theme, namely that individual item pricing is indispensable to consumers and that consumers must have access to information on which to base informed purchases.
- 4.1.2 The submissions were unanimously of the opinion that the elimination of item pricing will:
- lead to a decline in price awareness,
 - make comparison shopping difficult,
 - facilitate deceptive price manipulation,
 - lead to consumers being charged the same price for old and new stock,
 - create difficulties in checking checkout charges.

- 4.1.3 Some consumers have also expressed dissatisfaction with the shelf price procedures, many of which they believe to be inadequate, non-uniform and which do not contain sufficient information.
- 4.1.4 With the removal of item pricing, adequate shelf pricing becomes a crucial necessity.
- 4.1.5 The retailing industry has heralded this new technology as an important cost saving innovation. The new equipment has demonstrated potential improvements in inventory operations, checkout productivity, price accuracy and information processing.
- 4.1.6 The industry has also argued that the retention of item pricing is not required and to do so would outweigh any cost benefits resulting from the introduction of electronic checkout systems.
- 4.1.7 In November 1980, the Ministers of Consumer Affairs established a working party comprising South Australia (convenor), New South Wales, Victoria, the Commonwealth, and the National Standards Commission to examine all issues relating to the introduction of such systems into supermarkets.
- 4.1.8 The main thrust of the working party was to encourage the Australian Retailers Association - Food Division to develop an effective code of practice for the

introduction and operation of the electronic checkout systems.

- 4.1.9 The code has now been finalised by the Australian Retailers Association and was issued in June 1982. Its aim is to enable the retail grocery industry to be self-regulating in the use of electronic checkout systems. Furthermore, the intention of the industry was that the code specify practices which should be the alternative to legislation requiring price marking of individual items in scanning stores. The Australian Retailers Association is hopeful that this code will be fully and satisfactorily implemented by the end of 1982.
- 4.1.10 The central issue has thus become the retention of individual item pricing.
- 4.1.11 The major features of the Australian Retailers Association code are that shelf labels, checkout operation and customer receipt tapes must conform with required standards. Procedures have also been set for the making of price changes to ensure that the price in the computer memory matches the price shown on the shelf; the Australian Retailers Association claims these will be strictly enforced.
- 4.1.12 A copy of the code can be obtained from the Australian Retailers Association - Food Division, P. O. Box C158, Clarence Street, Sydney.
- 4.1.13 Over the last eighteen months, officers of the Ministry of Consumer Affairs have visited the self-

service stores which have introduced the new technology. They have observed that in some stores genuine attempts were made to comply with the code: in others the shelf displays and shelf pricing left a lot to be desired.

4.1.14 The Ministry of Consumer Affairs is encouraging the efforts of the retail industry towards effective self-regulation. However, it cannot and will not abdicate its general responsibility to consumers - and specifically in the area of electronic checkout systems - its responsibility is to ensure that consumers are not disadvantaged through the introduction of electronic checkout systems when accompanied by the abolition of item pricing.

4.1.15 Clearly it is still early days in the introduction of electronic technology to retailing. Developments will be watched very carefully, but it may be prudent that legislation be enacted by which item pricing can be introduced for all or some lines in supermarkets, should the interests of consumers so warrant due either to non adherence to the code or to the ultimate demonstration that the code itself provides inadequate protection to consumers.

LAY-BY SALES

4.1.16 The Ministry of Consumer Affairs has constantly received a number of complaints relating to lay-by sales. The nature of the complaints revealed that

there is not a uniform approach to lay-by sales by the various retailers.

- 4.1.17 Consequently some time ago the Ministry issued lay-by guide-lines which were distributed to all interested parties suggesting the adoption of a number of principles. The guide-lines served as a useful means of regulating this kind of sale.
- 4.1.18 Towards the end of the year under review, the Ministry received a number of complaints and petitions from the public on the grounds that Target Australia Pty. Ltd. intended to stop lay-by sales in its Broadmeadows' store.
- 4.1.19 As it became obvious that this service was appreciated by consumers, the Ministry made representations to the company to retain lay-by sales in its stores.
- 4.1.20 The company's policy was to remove lay-by sales as they were very costly and operated against the company's objectives of keeping all operations cost competitive.
- 4.1.21 The major areas of costs involving lay-by sales were stated to be:
- (a) Direct wage costs - sometimes it requires at least three staff in the lay-by areas;
 - (b) Indirect wages in accounting and administration sections;

- (c) Financial costs of storing items and providing storage facilities;
- (d) Requirements for special stationery and wrapping;
- (e) Additional equipment, such as cash registers to handle lay-by transactions.

4.1.22 However the Ministry's attitude was that it was undesirable to remove a service which was most welcome to consumers, and which was considered essential by many low income consumers, and thus that lay-by should not be withdrawn. Consequently appropriate representations were made to the company; nevertheless the outcome was disappointing and lay-by facilities were discontinued.

4.1.23 Market forces will hopefully demonstrate to some retailers that it is both prudent and reasonable to retain some form of special retailing so as to assist the financially less well off consumers in the community.

PACKAGING INDUSTRY

MODEL LEGISLATION ON DECEPTION IN PACKAGING

4.2.1 Under the Consumer Affairs Act 1972, the Victorian Ministry has powers to proclaim by regulation a number of controls relating to packaging. No such regulations have as yet been proclaimed. However

the Victorian Ministry is participating on the Standing Committee on Packaging (SCP), chaired by the National Standards Commission and set up in order to ensure that uniformity of packaging regulations is achieved on an Australia-wide basis.

- 4.2.2 Membership of the SCP consists of Weights and Measures bodies in all States. In Victoria, Weights and Measures comes under the administration of the Local Government Department.
- 4.2.3 Close co-operation has been achieved with that Department and especially with the Victorian Weights and Measures Branch, and the advice of the Superintendent and his staff on all technical matters relating to packaging is once more gratefully acknowledged.
- 4.2.4 The deliberations of the SCP have progressed steadily throughout the year. As the proposed legislation would have far reaching effects on a large number of industries depending on packaging to market their products, extensive discussions took place through the SCP Consultative Committee in order to ensure that the proposed legislation would not cut across the technical requirements and basic marketing conventions of such industries.
- 4.2.5 It is the Ministry's attitude that such legislation would have to be practical in its application and that an acceptable balance between consumer protection from deception in packaging and cost to industry in complying with any requirements would have to be achieved.

4.2.6 The SCP have so far issued three documents for public scrutiny which are obtainable from the National Standards Commission in Sydney:

- Model Act on Deceptive Practices in Packaging,
- Model Regulations for Controlling Deceptive Practices in Packaging, and
- Standard Techniques of Measurement of Packages.

BUILDING INDUSTRY

NEW HOME CONSTRUCTION - HOUSE BUILDERS' LIABILITY ACT

4.3.1 In the last report it was noted that -

"... it is becoming increasingly apparent that the public do not know of the protection that is afforded by the Act or the procedure required to make a claim."

4.3.2 That report went on to identify a particular problem, namely the lack of awareness by owners of the notice provisions of Sections 918K and 918L of the Act.

4.3.3 These sections currently provide that:

- (1) in the case of a defect, the guarantor body and the registered builder must be notified, in writing, within the first twelve months from the issue of the Certificate of Occupancy; and
- (2) in the case of major defects, the guarantor body and the registered builder must be notified, within three months of becoming aware of the major defect.

4.3.4 These provisions are not practicable. The householder usually deals with the builder and in accordance with accepted commercial practice, accepts that it is sufficient if he has notified the builder of the defects. If, for example, a consumer purchases a television set, he normally makes any claim under the warranty to the retailer, and the Ministry sees no reason why such a practice should not be accepted in the Housing Industry.

4.3.5 Cases have been reported to the Ministry where a consumer has reported defects to the builder, and over a period of time, attempted through negotiation with the builder to have the defects rectified. As a last resort the consumer has complained to the guarantor body, only to find he is out of time.

4.3.6 The Government has now decided to review the House Builders' Liability Act.

- 4.3.7 The Ministry has advised the Department of Local Government of the areas of the Act which the Ministry believes should be changed or amended, and it will be making further input at the appropriate time.
- 4.3.8 It is important to note that in the past twelve months the Ministry received similar complaints to those outlined above.
- 4.3.9 Additionally, many more enquiries and complaints were handled by Ministry staff on the telephone or at personal interviews. Until the Act is amended and the public educated as to the terms, conditions and limitations of the Act, Ministry staff will continue to be taxed in answering enquiries from the public.

LIQUIDATIONS AND BANKRUPTCIES

- 4.3.10 The year under review saw a record number of both large and small companies finding themselves in the hands of liquidators and sole traders facing bankruptcy actions. Where consumers had a contract with a registered builder for the construction of a new home, they were protected financially, even though they experienced inconvenience while a company's financial records were sorted out.
- 4.3.11 This relatively satisfactory situation in the new home area certainly did not apply to the home renovation field, where companies, partnerships and sole

traders operate under no form of legislative control. In a number of cases, Ministry staff in investigating consumers' complaints regarding unfinished work, found that the trader had simply closed his doors and walked away, leaving not only the consumers unhappy, but more often than not, material suppliers, to whom many many thousands of dollars were owing, and employees in the lurch.

- 4.3.12 With some operations, it should have been evident many months before the liquidation or bankruptcy that the trader had considerable financial problems. For too long the Ministry has been hearing a small section of the business community saying "I am not a crook, I'm just a poor financial manager". (See Part 6.)

BUILDING CONTRACTS (DEPOSITS) ACT

- 4.3.13 Since the Ministry took over the administration of this Act it has launched a number of successful prosecutions for breaches of the terms of the Act.
- 4.3.14 For the Act to operate effectively in the domestic construction area, it requires amendment to include specialised renovation fields, such as kitchens, bathrooms, swimming pool installations and heating and cooling installations.
- 4.3.15 The Building Contracts (Deposits) Act is seen as a measure of protection for consumers in that it limits

the maximum deposit payable on a building or renovation type contract to the sum of \$500, unless an agreed amount above that limit is paid into a joint trust account.

- 4.3.16 The Ministry believes that the intention of the Act was to apply to the specialised fields already mentioned above, but the provisions are ambiguous. As a result, it is recommended that the Act should be amended to clearly apply to these areas.

RESIDENTIAL BUILDING DISPUTES TRIBUNAL

- 4.3.17 Building complaints have always made up a relatively large proportion of overall complaints received by the Ministry. Such complaints relate to the construction of new homes, renovations and additions. Many complainants also expressed dissatisfaction with the decisions made by the approved guarantors under the House Builders Liability Act as well as with other dispute handling mechanisms, such as arbitration and litigation.
- 4.3.18 Complaints on arbitration were concerned with allegations of industry bias, the incompetence of arbitrators and the lack of detail in awards. The growing cost of arbitration, which in many instances can outweigh the actual award, was a further source of discontent.
- 4.3.19 Complaints concerning litigation also centred on the question of cost, the long time usually taken before judgement was given, and the overall procedure of

obtaining legal representation, producing technical evidence, etc.

- 4.3.20 The growth in renovations, or additions to residential dwellings, has, apart from the requirements of Building Regulations, been without any form of regulation. It is evident from complaints that the home renovation industry has attracted a number of traders with little expertise and financial backing. To pursue such a trader through a court of law would again be futile.
- 4.3.21 In order to bring relief to the problems outlined above, it was necessary to develop a quick and efficient method of resolving such building complaints. This could be done through the Small Claims Tribunals whenever a claim did not exceed \$1,500 in value; however most building complaints exceeded this limit.
- 4.3.22 In May 1980, the Minister of Consumer Affairs together with the Minister for Local Government agreed that the Director of Consumer Affairs in conjunction with the Building Industry should develop a framework for an alternative dispute handling mechanism attuned to the special characteristics of the Building Industry.
- 4.3.23 The Director of Consumer Affairs convened an informal working party made up of industry bodies, the approved guarantors under the House Builders Liability Act, the Local Government Department and the Ministry of Consumer Affairs.
- 4.3.24 At the time of writing this report, the working party has finalised a discussion paper which the Minister issued for comment to all interested parties.

4.3.25 The paper discussed the Residential Building Disputes Tribunal under five main headings:

1. Jurisdiction of the Tribunal

- a) The Tribunal will concern itself with matters where a contract provides that some person (the builder) contracts to construct, alter or add to a dwelling house or any building appurtenant to a dwelling house for some other person ("some other person" excludes corporations).
- b) The Tribunal will be an alternative to the arbitration reference in Sections 918K and 918L of the Local Government (House Builders' Liability) Act. Further, where agreement cannot be reached as to either the mechanism or, in the case of arbitration, the arbitrator, reference will be made to the Tribunal. If either party to a dispute makes application to the Tribunal, the issue in dispute shall not be justiciable at any time by a court or by a tribunal of any other kind.
- c) The jurisdiction of the Tribunal is to be limited to a total claim of \$5,000 in the case of contractual disputes and by the Local Government (House Builders' Liability) Act, Sections 918K and 918L, in the case of disputes arising under that Act.
- d) No contract or agreement made or entered into shall operate to annul or vary or exclude the right of a contracting party to make application to the Tribunal.

2. Composition of the Tribunal

The Tribunal is to be composed of a Chairman (legally qualified) and an Advisor (person experienced in building, selected from the industry panel). In regard to disputes having a monetary claim within the definition of a "small claim" (Small Claims Tribunals Act 1973) the Chairman will/may sit alone.

3. Access to the Tribunal

Application to the Tribunal can be made by either of the contracting parties and by either the owner or the guarantor in the case of disputes under the Local Government (House Builders' Liability) Act.

4. Legal Representation and Costs

- a) Legal representation for disputing parties in a contractual dispute will be at the discretion of the Tribunal Chairman and this discretion will only apply to disputes over the monetary limit of a "small claim". Disputing parties in a dispute within the terms of the Local Government (House Builders' Liability) Act have the right to legal representation over the monetary limit of a "small claim".
- b) The Tribunal is to be empowered with discretionary powers in relation to limited costs and disbursements in relation to matters before the Tribunal.

5. Funding of the Tribunal

Funding of the Tribunal is to be based on the user cost principle - funded by either a scale or flat fee per application. Some Government funding would have to be available in relation to administrative costs including the remuneration of Tribunal Chairman and Advisor.

TRAVEL INDUSTRY

DEFAULTING AGENTS

- 4.4.1 Since the last annual report, travel agents have continued to default on their financial obligations to consumers. The attention of the Ministry has been drawn to three agencies where monies held on behalf of consumers for travel have been used for paying off past debts and for the running expenses of the agencies. Two of these agencies are documented later in the report. (See Section 5.10.)
- 4.4.2 The industry continues to suffer because of individuals who have entered it with little business knowledge and no ethics. The "biscuit tin" trust accounts mentioned last year are still alive and well.

- 4.4.3 The Australian Federation of Travel Agents (AFTA) is still working on a "Consumer Protection Fund" and it appears some material progress has been made in implementing the scheme. Discussions have taken place between the Ministry and AFTA.
- 4.4.4 However, this fund in itself will not resolve the problem as not all travel agents are members of AFTA, and it is the non members who, in the main, cause the problem.
- 4.4.5 Consumers are therefore warned that they should deal only with recognised travel agents and their membership of AFTA will enable some protection through the fund.

TRAVEL INSURANCE

- 4.4.6 The matters raised in the past are still of concern to consumers. It is an indictment on the insurance industry that in 1982 policies are still being issued as a result of advertising brochures that do not list all the details of the policy and its exclusion clauses.
- 4.4.7 For instance, how many people would be aware that a number of insurance companies that issue travel insurance will not meet claims resulting from travel through certain countries.
- 4.4.8 Sometimes such information is not available until the consumer has paid the premium and received the policy.

"THE TOUR LEADER"

- 4.4.9 Failure of the industry to accept responsibility for consumers' problems unfortunately continued this year.
- 4.4.10 In one instance a passenger travelled on a group tour to South East Asia. On the first stage of her tour, she was handed various documents by another passenger who had received them from the representative of the tour company at Melbourne Airport. Amongst the documents was printed material indicating that the first passenger was the tour leader for the group of thirty-four.
- 4.4.11 This was the first occasion that the passenger knew she was anything other than a normal tour party member - she had paid the full price for the tour.
- 4.4.12 Escorting thirty-four passengers through South East Asia, organising hotels and air ticket check-ins, luggage collection and despatch co-ordination, room allocation and generally assisting the group, is no mean task.
- 4.4.13 The consumer was a remarkable person and coped with the difficult situation she found herself in to the point where on her return she received letters from other party members thanking her for the task she had carried out.
- 4.4.14 On her return, she approached the tour company, who failed to provide her with an explanation of what had occurred.

- 4.4.15 The Ministry received a document from the company concerned indicating that the consumer's name had "been picked at random from the names on the list". Staff at the company have not shown any degree of responsibility towards resolving this matter.

UNSCRUPULOUS AGENTS

- 4.4.16 Some unscrupulous agents are taking advantage of ethnic minorities.
- 4.4.17 In one instance, a non English speaking migrant had been signed up by a travel agent at two separate financial institutions for personal loans in order to fly friends in from South America. Neither financial institution was aware that more than one personal loan was involved in putting together the necessary finance to pay for the tickets.
- 4.4.18 When the tickets went missing in South America, the travel agent failed to provide advice to the consumer on how to resolve the problem and left him with \$5,000 worth of personal loans to pay off. The consumer had no air tickets and no hope of a refund.
- 4.4.19 Fortunately the Ministry of Consumer Affairs was able to bring into operation the correct procedure for a refund, and following negotiations, the matter was brought to a satisfactory conclusion.

COMPENSATION FROM AIRLINES

- 4.4.20 The Warsaw Convention is an international treaty (of which Australia is a signatory) defining set limits of compensation for death and personal injury in cases of aviation accidents. It also defines compensation limits for lost or damaged baggage. The treaty applies to international carriers flying into and out of Australia.
- 4.4.21 A limit of \$58,000 exclusive of legal fees and costs applies to compensation to be paid per passenger injury or death.
- 4.4.22 Carriers within Australia are subject to the Civil Aviation (Carriers Liability) Act 1959. A limit of \$45,000 applies to compensation per passenger injury or death under this act.
- 4.4.23 Neither the treaty nor the act have been amended for several years. Consumer rights to claim for compensation have been eroded because of the inflationary effect over the years, and it is well past the time that realistic limits of compensation could again be set.
- 4.4.24 The Ministry received a steady stream of complaints in relation to lost or pilfered airline baggage. Such problems are inevitable considering the massive security problems at international airports. The complaints are not so much an expression of outrage at the event occurring, but rather at the minimal levels of compensation offered by the airlines. Under the Warsaw

Convention a limit of \$US20 per kilogram to a maximum of twenty kilograms (\$US400) applies.

- 4.4.25 While the onus must lie with passengers to insure if they intend to carry valuables in their luggage, the absence of realistic limits to non insured baggage seriously affects passengers.

PACKAGE TOURS TO BALI

- 4.4.26 The Ministry frequently receives complaints relating to travel, and package holiday deals in particular. These often prove to be a great disappointment to consumers who have been misled by the extravagant claims on advertising brochures.

- 4.4.27 In one particular instance, the Ministry received a complaint enclosing a petition signed by sixty-one people. This involved their dissatisfaction with one particular club which promised:

"The cheapest air fare to Bali plus best value accommodation/meals".

- 4.4.28 The membership fee for this 'club' was \$10 per person, thus making available the very cheap air fare of \$546 return to Bali. The accommodation package, at the cheapest price of \$100 per week per person, promised to provide -

"Lodge accommodation, breakfast and dinner".

- lack of safety and civility provided by ski tow operators,
- delays in purchasing tickets,
- lack of refunds when tows were out of operation,
- lack of refunds for accommodation when access to the mountain was impossible,
- dangerous lack of snow grooming,
- poor quality and excessive price of taxi services.

4.5.3 The complaints arose during the best snow season for twenty years, and on the Ministry's initiative, a meeting was held with representatives of the various resort management committees in an attempt to gain improved conditions for the 1982 season.

4.5.4 As agreed at this meeting, all letters of complaint have been forwarded to the relevant tourist area management committees for resolution, and this co-ordination appears to be working well.

4.5.5 Many committees stressed that there had been trying weather conditions in 1981, but expressed the desire for improvement of the resorts for skiers and for the benefit of tourism in general.

4.5.6 In acknowledging that various matters were not as they should have been during 1981, the Mount Hotham Alpine Resort management committee commissioned an

4.4.29 While it would be apparent that these prices represent budget travel and thus fairly modest accommodation would be likely, the standard of some of the accommodation was described as "absolutely disgusting", and in one particular case as -

"... a tiny filthy hovel with virtually no water. The stench made my wife physically ill ..."

4.4.30 Other complaints related to specific claims made in a glossy brochure provided. These misleading claims obviously caused consumers to expect far different conditions from those they actually experienced, and caused their holidays to be spent in an atmosphere of discomfort and frustration, as well as incurring additional expense purchasing basic items they found they required.

4.4.31 The Ministry is continuing to investigate this matter as at 30th June 1982.

SKIING

4.5.1 Last year's annual report discussed the dissatisfaction of skiers with facilities and services provided at snow resorts in Victoria.

4.5.2 Numerous complaints had been received by this Ministry and by other agencies criticising the following areas:

- Ski lift prices, especially for children and families,

independent report on slope development and snow grooming by a senior officer of the National Parks Service. A considerable sum has been set aside in the budget for slope development, and consultation has been held with the Country Roads Board for better access to the resort. The proprietor of the ski tow company introduced a new advanced design snow grooming machine in 1982.

- 4.5.7 At Mount Buller the ski lift companies suffered some public complaints in what was a difficult season, but it is apparent that they are trying to provide service.
- 4.5.8 The National Parks Service continues to increase the performance of the lift and slope system at Mount Buffalo.
- 4.5.9 With regard to prices for ski tows, the Ministry has suggested that an independent body should set prices. This concept is supported by the Victorian Ski Association and the Mount Hotham Alpine Resort Committee, and this will be one of the areas of concern to be considered by the Government Ski Industry Working Party Council.

BANKCARDVARIATIONS TO CONDITIONS OF USE

- 4.6.1 On the 1st November 1981, the following amendment to Bankcard Conditions of Use was introduced.

"You are responsible for credit extended by your bank to you or to any additional Bankcard holder you have nominated. You will be required to pay your bank the amounts shown on all sales and cash advance vouchers arising from the use of Bankcards issued on your Bankcard account and the amounts of any cash advances charged to your Bankcard account arising from the use of any automatic teller machines operated by your bank whether or not sales or cash advance vouchers are issued or are signed by you or an additional card holder. However if a mail or telephone order or other unsigned sales voucher, is not authorised by you or by an additional card holder the bank will consider an application made by you for reversal of the relevant debit made to your Bankcard account."

- 4.6.2 The change was made in the light of the extension of the Bankcard scheme to cover telephone as well as mail ordering facilities, which may be offered by Bankcard merchants with the approval of their own banks.

- 4.6.3 It was considered that this variation provided inadequate protection for a card holder against fraudulent use of the Bankcard for mail and telephone orders or other unsigned transactions.
- 4.6.4 Whilst a card holder clearly has a duty to look after his Bankcard, the card holder has the security of a document requiring signature which can be compared with the signature on the card with transactions made over the counter. He also has a limitation of liability under the Conditions of Use in the event of loss of the card.
- 4.6.5 This security could be upset by telephone ordering. For example, a shop assistant in a store where a card holder has transacted business has potential access to the holder's name and card number. Also other shoppers may observe the name and number, and there is still the hazard of a lost card. Thus possibilities exist by which abuse of the telephone ordering system can be arranged.
- 4.6.6 It was believed that the banks' intention was to make the merchant liable in cases of fraud unless it could be proved that the card holder had been mischievous.
- 4.6.7 In the view of the Ministry and all other consumer affairs agencies throughout Australia, the new Condition 6 did not convey this intention, especially by the use of the words
- "... the bank will consider an application ... for reversal of the relevant debit made to Bankcard account".

4.6.8 Because of this concern which was clearly conveyed to Bankcard, Condition 6 was again amended in May 1982 to read:

"6. You are responsible for credit extended by your bank to you, or to any additional Bankcard holder you have nominated. You will be required to pay to your bank -

- * the amounts shown on all sales and cash advance vouchers arising from the use of Bankcards issued on your Bankcard account;

- * the charges set out in the schedule to these conditions;

and whether or not sales or cash advance vouchers are issued, or are signed by you or an additional card holder -

- * the amounts of all mail and telephone orders authorised by you or any such additional Bankcard holder to be charged to your Bankcard account; and

- * the amounts of any cash advances charged to your Bankcard account arising from -

- * use of an automatic telling machine card issued to you;

- * use of an automatic telling machine card issued to another person who is authorised to operate on your Bankcard account.

YOU SHOULD IMMEDIATELY NOTIFY YOUR BANK OF ANY UNAUTHORISED MAIL OR TELEPHONE ORDER ON YOUR BANKCARD ACCOUNT TO ENABLE YOUR BANKCARD ACCOUNT TO BE CORRECTED."

- 4.6.9 The Ministry considers that this new amendment more adequately conveys the real position.
- 4.6.10 It is further understood that the banks' original intention that a merchant would be liable in the case of fraudulent use of a card by a third party is to be enforced.

HEARING AIDS

- 4.7.1 Over the past year, the Ministry has received ten complaints relating to hearing aids. However since the majority of people seeking hearing aids are elderly and not disposed to complain, the Ministry believes that this dissatisfaction may only be the tip of the ice-berg.
- 4.7.2 Although most of the complaints lodged with the Ministry were resolved, unnecessary distress was caused to the complainants.

- 4.7.3 By far, the most pressing problem in the industry is the fact that any person can sell hearing aids, and at present there is no need for formal qualification, training or competence.
- 4.7.4 For example, in one complaint lodged with the Ministry, a consumer responded to advertising placed in her letter-box and after tests by a hearing aid company, was supplied with an aid at a cost of \$450. Subsequently she saw her general practitioner and specialist who cleaned wax from her ears. In the view of the specialist, the hearing aid was not required and her hearing was being impaired by the build-up of wax.
- 4.7.5 Complaints of this type and other complaints received by the Ministry seem to indicate a need for controls in this industry.

MOTOR VEHICLE INDUSTRY

NEW VEHICLES

- 4.8.1 In the 1980 annual report, reference was made to an apparent change of attitude by manufacturers regarding mechanical and paint problems after the expiration of the contractual warranty period.

- 4.8.2 Prior to 1980, it was usual for some manufacturers to refuse to assist consumers after the new vehicle warranty period had expired. However, by 1980 it was apparent that a trend had developed whereby several manufacturers were offering generous assistance towards the rectification of mechanical or paint faults that perhaps could have originated from manufacture.
- 4.8.3 This trend has continued and it has almost reached the stage where it is the normal practice for manufacturers to offer generous assistance in the rectification of faults that have occurred outside the warranty period.
- 4.8.4 It is no longer the owner's responsibility to prove that a fault was attributable to some negligence during manufacture, and rarely do manufacturers claim that "the vehicle was manufactured to the limits of the technology available at the time of production".
- 4.8.5 The few occasions on which a manufacturer refuses assistance is where an owner has not serviced or maintained his vehicle in accordance with the manufacturer's instructions or when it is apparent that the vehicle has been misused or abused.
- 4.8.6 Some examples of manufacturers offering assistance when the fault has occurred outside warranty are as follows:
1. A four year old vehicle developed rust. The consumer obtained a quote for \$360 from an independent panel beater. The manufacturer offered \$300 as compensation.

2. The motor blew up in a vehicle which had done 50,000 km. The consumer had owned the vehicle since new, but he did not contact the manufacturer. Instead he organised the repair at a cost of \$3,857. The manufacturer was then approached, the damaged motor was examined, and although definite conclusions could not be reached, it was probable that the fault could have been attributed to a manufacturing fault. At least the manufacturer could not prove otherwise, and as a goodwill gesture, \$3,000 was refunded to the consumer.
3. A water leak developed in a five year old vehicle and cost \$100 to rectify. The manufacturer examined the vehicle and decided to compensate the consumer \$70 as a goodwill gesture.

4.8.7 It is important to restate that such offers of assistance are made as goodwill gestures.

4.8.8 When making representations on behalf of consumers, the Ministry cannot always argue that the failure definitely relates to a manufacturing defect. Rather, the consumer's complaint is presented in the context of the expected lifespan of a component, or paintwork, under normal use. The consumer's case is usually strengthened when it is established that the vehicle has been maintained in accordance with the servicing procedures set out in the manufacturer's manual.

- 4.8.9 It is also pleasing to report that Ministry officers have maintained co-operative lines of communication with all manufacturers. This is of considerable assistance in the resolution of complaints. The Ministry is also quickly informed of any recall program that the manufacturer intends or has instigated.
- 4.8.10 Such co-operation between the Ministry and the manufacturers is one of the reasons why there has been a decrease in the number of complaints generated by franchised dealers.
- 4.8.11 Franchised motor car traders are very conscious of the manufacturer's emblem displayed at their dealership, as too is the manufacturer. It is pleasing to report that in the year under review, franchised dealers co-operated with the Ministry in resolving complaints.
- 4.8.12 However, if the situation arises where a dealer generates too many complaints and is not prepared to take the necessary internal action to prevent the complaints, an avenue available to the Bureau is to refer the complaints to the manufacturer or distributor.
- 4.8.13 Although a manufacturer cannot dictate to an independent franchise dealer, he can certainly suggest that remedial action be taken to ensure that the dealer operates legally and ethically, as befits the image of a franchised dealer.

COMPLAINTS AGAINST TRADERS

- 4.8.14 The downturn trend in the number of motor vehicle complaints has continued. This satisfying trend has been attributable to many factors, but probably the most important relates to a genuine desire by the motor vehicle industry in general to improve its image.
- 4.8.15 In past years, the motor vehicle industry has been subject to unsavoury media reporting, and in the main, such criticism was justified.
- 4.8.16 The poor image of the industry was created by traders who would do anything to sell a motor vehicle. A quick sale was all too important, without any regard to the consumer's ability to repay. Blatant misrepresentation to consumers and finance companies, back trading, fictitious deposits, minus equity deals, and extreme sales pressure were all part of the industry and generated many complaints to the Ministry, hence the poor image of the motor car trader.
- 4.8.17 It is not exactly certain when the industry decided to do something about its image, but the improvement was noticeable in 1980, became obvious in 1981, and continued to improve during the year under review.
- 4.8.18 The genuine desire by the industry to improve its image has a lot to do with the reduction in the frequency of the more serious complaints.

- 4.8.19 Complaints will always arise in such a dynamic and competitive industry, but the number is down, and more importantly, the gross misrepresentation and "stitching up" of consumers has not been so prevalent.
- 4.8.20 The Ministry can certainly take some credit for this because of its efforts to educate both consumers and traders. Whilst consumer education is important, a more immediate effect is achieved if the traders re-shape their policies, soften their hard-sell tactics, and attend to repairs without relying on a strict interpretation of the statutory warranty.
- 4.8.21 Goodwill is important to the successful existence of a trader. One unhappy customer can counteract an expensive advertising program.
- 4.8.22 As a result, the Ministry continually advises traders to adopt a more conciliatory approach when handling dissatisfied consumers. It is not unusual for a trader to contact the Ministry and seek advice as to how he should handle a particular problem. This in itself is a reflection of the co-operative lines between traders and the Ministry, and furthermore, it is an indication that the Ministry's objective of promoting a fair market-place is actually working.

TRADING PRACTICES"Just Looking"

- 4.8.23 Consumer education has increased consumer awareness and this has also contributed to the reduction in the number of complaints. Despite these efforts, there are still times when a consumer is his own worst enemy.
- 4.8.24 For example, it is interesting to note the number of times the phrase "just looking" appears in consumer complaints.
- 4.8.25 "Just looking" says the consumer when approached by a salesman, and when that consumer visits the Ministry wanting to cancel a contract and he is asked by the inspector "Why did you go to a car dealer ?" the response is "I was just looking".
- 4.8.26 It is true that some people have no intention of buying a motor vehicle on a particular day. They might consider a purchase in the near future, or they might not have savings to buy a car, and they are surprised when a dealer offers to supply the finance with repayments to suit. Some consumers are only interested in the value of their own car, and when given a figure far in excess of its real worth, they become tempted.
- 4.8.27 In one instance, a man decided to walk through a car yard while his wife went shopping in the supermarket over the road. Some two hours later, the couple took

their groceries home in a later model car. Upon checking their finance, they realised that they could not afford the vehicle, but the dealer was not interested in cancelling the contract. The dealer eventually resolved the dispute only because the couple were genuine in that they had not discussed, at any stage, a vehicle purchase prior to their shopping expedition.

4.8.28 In another case, a consumer visited a spare parts department of a dealership with the intention of buying a headlamp for his 1974 model vehicle. He returned home four hours later with a 1979 model vehicle and minus his bank book. He had signed all contracts, including a bank withdrawal form, for the changeover figure.

4.8.29 The Ministry considers it a most undesirable practice when dealers have available bank withdrawal forms and persuade consumers to hand over their bank books with a signed withdrawal form. A few dealers claim they are providing a "convenient service" for their customers. Fortunately some dealers, following discussions with the Ministry, have agreed to refrain from providing this questionable service.

Pressure Selling

4.8.30 Despite the attempts made by the industry to clean up its image, high pressure selling still features in complaints received by the Ministry. Dealers spend a

considerable amount of money on advertising in the press, radio or television. The objective of this advertising is to attract buyers into the yard. It is then the responsibility of the salesman to make sure that a sale is made.

- 4.8.31 If the dealer principal is prepared to spend money on advertising, he then expects his sales staff to sell vehicles. In this regard, there is some pressure on sales staff to perform, especially when "head counts" are made of the number of prospective buyers who visit the premises.
- 4.8.32 Some consumers are gullible and will not question any aspect of the purchase. Others are not as naive but do eventually succumb under the subtle pressure exerted by sales staff.
- 4.8.33 The pressure applied can take various forms. Generally speaking, the common denominator appears to be to negate or counteract any reason the consumer may raise as to why he cannot buy a vehicle.
- 4.8.34 One of the first questions asked of the prospective buyer is how much he can afford to spend. At the same time, he is also told to disregard any price that appears on the vehicles. From that point on, price is not discussed until after the consumer has made a selection. More often than not, the final price is far in excess of the consumer's original intention. When he objects, it is usual for him to be referred to the dealer's accountant, who in reality

is only the finance and insurance clerk. Weekly repayments are only quoted in the form of "You can afford \$30 per week, can't you?". If the consumer still objects, efforts are made to tell him that he is saving at least \$15 per week in petrol costs (if relevant), and will gain additional savings because mechanical repairs will not be necessary.

- 4.8.35 If the consumer resists because he would like to discuss the purchase with his wife, the salesman will query why he cannot make the decisions on his own, "Aren't you the head of the house?".
- 4.8.36 The same applies when a young person hesitates because he wants to speak to his parents before signing a contract. The salesman may then remind the young consumer that the Government allows 18 year olds to vote, and he also asks "Aren't you old enough to make up your own mind?".
- 4.8.37 Some consumers are too nice, and feel obligated to make a purchase because the salesman has been very co-operative. For instance, the consumer upon seeing an advertisement may telephone a dealer and the dealer makes arrangements to collect him from his residence, or place of employment, and drive him to the car yard. If nothing suitable is found, the salesman will take the consumer to a wholesaler, or auction house. During all this time, the salesman is very friendly and the consumer feels some

obligation to make a purchase. Not many consumers are prepared to simply thank the salesman for three or four hours trouble and not make a purchase.

- 4.8.38 A consumer's interpretation of pressure can be quite different to that understood by the dealer or the Ministry. The examples outlined could not be interpreted as high pressure selling as it was during the 1970's.
- 4.8.39 Consumers are not forced to sign contracts. The option remains for them to simply get up and walk out of the sales office, but the Ministry understands that sometimes consumers can be tempted and imposed upon beyond their ability to resist.

"COMPLAINT OF THE YEAR"!

- 4.8.40 In May 1976, a consumer bought a new HJ Holden Kingswood under hire-purchase involving 48 repayments, each of \$177.93.
- 4.8.41 When he completed his obligation to the finance company in May 1980, he had paid a total of \$8,540.64.
- 4.8.42 In October 1981, he approached a dealer with the intention of trading in his Kingswood on a brand new vehicle. He was given a trade-in allowance of \$3,462 and he also paid \$600 deposit. A new hire-purchase contract was signed, and he was committed to 60 repayments each of \$209.07. He was completely satisfied with this deal.

- 4.8.43 However, within a couple of days he noticed two faults with his new vehicle. It had a slight oil leak and the differential made an "unusual noise".
- 4.8.44 He immediately returned to the dealer and asked for the transaction to be cancelled and for the return of his Kingswood. He was completely disillusioned with the quality of the new vehicle. His Kingswood had given him trouble-free motoring for five and a half years, and as far as he was concerned, "You should not have to put a spanner on a new vehicle". The dealer then pacified the consumer and made arrangements to attend to the minor faults.
- 4.8.45 A fortnight later, as arranged, the consumer presented his new vehicle to the Service Department. He was still upset that his new vehicle had mechanical faults, a situation that had never occurred with his Kingswood. He was convinced that his five and a half year old Kingswood was in better mechanical condition than this new vehicle.
- 4.8.46 He left the Service Department and approached the Used Car Manager seeking the whereabouts of his Kingswood. The vehicle was displayed for sale and the consumer wanted to trade his vehicle on the Kingswood. The company policy was that they would not allow consumers to repurchase trade-ins.
- 4.8.47 However, in this case the consumer was adamant - he wanted his Kingswood. Several hours later he left

the dealership in the Kingswood. He had traded in the new car on the Kingswood.

- 4.8.48 As well as having his Kingswood back, he had signed a hire purchase contract involving 48 repayments each of \$189.95, or more explicitly, it was going to cost him \$9,117.60 over four years to pay for the Kingswood.
- 4.8.49 Originally in May 1976 he had contracted to make 48 payments at \$177.93 for the Kingswood. He completed his obligation and had now contracted for 48 payments at \$189.95 for the same vehicle.
- 4.8.50 The Ministry attempted to negotiate on the consumer's behalf, and after protracted negotiations, two alternatives appeared to be available. First, arrange a new vehicle, or second, adjust the repayments on the Kingswood to a more acceptable figure.
- 4.8.51 The consumer was given time to think over these alternatives, finally decided to accept the Kingswood, and he signed a revised contract with 48 payments of \$138.43.

CARAVAN INDUSTRY

- 4.9.1 The Ministry continues to receive a significant number of complaints covering various aspects of the Caravan Industry.

- 4.9.2 For the year under review, complaints again cover the whole spectrum of trading and undoubtedly point to the need for the industry to place its house in order.
- 4.9.3 One matter of particular concern relates to complaints from those consumers who have purchased caravans for permanent accommodation. This is a growing trend which may be attributable to the high cost of conventional methods of housing.
- 4.9.4 Some consumers have complained that their caravans leak water, some fittings are shoddy, and the standard of manufacture is not at all what they were led to believe it was.
- 4.9.5 Whilst the standard of construction of dwellings in Victoria is covered by the Uniform Building Regulations which ensure that certain materials and procedures are of a required standard, a consumer who purchases a caravan for permanent accommodation must rely solely on the manufacturer's ability to build a unit of merchantable quality.
- 4.9.6 It would appear that a standard for manufacturing caravans and associated items, such as annexes, should be developed and adopted by the industry, and enforced by Local Government authorities where a caravan is placed on a permanent site.
- 4.9.7 At the time of writing this report, this and other matters have been the subject of discussions with

the Caravan Trade Industry Association and the Caravan Manufacturers Association.

MAIL ORDER TRADING

- 4.10.1 Until now the voluntary codes for mail order trading of the Australian Direct Marketing Association and the Media Council have operated in the main with little apparent impact on the volume of consumer complaints.
- 4.10.2 In Victoria, the number of complaints has risen from 185 (1.5%) received in 1978 to 338 (2.2%) in 1981. With the collapse of the Riley McKay Group, it is expected that the level of complaints will be even higher.
- 4.10.3 Complaints concerning mail order trading fit the following categories:
1. Non delivery of goods;
 2. Delays in supplying goods and no advice from traders about the reason;
 3. Goods received are not as advertised;
 4. Fundamental terms of the deals are unclear; and
 5. Traders are unresponsive to complaints and are difficult to deal with because of the use of a

box number with no means of follow up through an address or by telephone.

4.10.4 The Ministry warns consumers at least to take the following steps if they must buy through mail order trading.

1. Do some comparison shopping - find out if the merchandise is available locally. If it is, is the cost the same or is it cheaper than the mail order product ?
2. Add in the cost of postage and extra charges, such as shipping, handling, and sales tax and Customs Duty for overseas merchandise (this can have the effect of increasing the original price by up to a factor of 3).
3. Consider the advantages of receiving the item immediately and having the vendor nearby if problems develop.
4. Check the advertised claims. Are they advantageous ? Is the price ridiculously low compared to local stores ? Check the description of the product carefully, and if you send for it, keep a copy of the advertisement or catalogue from which you ordered.
5. Find out if there is a guarantee. Read it carefully. Does it offer you money back if you are not satisfied ?
6. Check the time limit on delivery. Be careful if no time limit is offered.

7. Ask the company for more details of the product or guarantee if you have any doubts about either.
-
- 4.10.5 If a decision is made to go ahead with a mail order, consumers should -
 - (a) Make sure their name and address are clearly marked on the order form;
 - (b) Keep a copy of the order form and any letters sent to the mail order firm;
 - (c) Never send cash - pay by cheque or money order so that a record exists of payment; and
 - (d) Check the order immediately after receiving it. If it is not what is ordered, return the merchandise for an exchange or refund.
 - 4.10.6 In Victoria, the Consumer Affairs Act 1972 prohibits the advertising of goods for sale or the provision of services where a post office box number is the only address shown. It is necessary for such an advertisement to show the name and address of the person or business placing the advertisement.
 - 4.10.7 Mail order firms depend upon their ability to advertise in the press. When a firm such as the Riley McKay Group fails, newspapers, magazines, advertising agencies and others are often left with considerable unpaid accounts. It is therefore believed that the Media Council has a vested interest in enhancing the enforcement of its mail order advertising standards.

- 4.10.8 As the problems associated with mail order sales are a national problem, a decision was made at a recent meeting of Officers of Consumer Affairs that the Trade Practices Commission and Department of Consumer Affairs in New South Wales would represent all agencies at discussions with the Media Council of Australia.

SWIMMING POOL INDUSTRY

- 4.11.1 For a variety of reasons the number of people installing swimming pools is increasing.
- 4.11.2 Unfortunately, this expanding market has created keen competition within the industry, with resultant consumer complaints about sales pressure, misleading information, delays in construction and rising costs.
- 4.11.3 The complaints received during the year have all related mainly to concrete in-ground pools, and in particular, delays in construction.
- 4.11.4 It was pleasing to note that the industry generally acted in a responsible and reasonable manner. However, it was necessary for the Ministry to approach two companies in view of the number and nature of complaints received against them. These companies have undertaken to correct the problems which gave rise to the complaints, and their performance will be closely monitored in the future to ensure that the undertakings are fulfilled.

- 4.11.5 During the year, the Ministry participated in a review of the Australian Standard Contract for Supply and Construction of a Swimming Pool (AS 2160C-1978). The review will result in amendments to the contract, which should make it clearer and more equitable to the contracting parties.
- 4.11.6 The continuing co-operation of the Swimming Pool Association of Victoria was of great assistance to the Ministry. The efforts of the Association in self-regulation and public education deserve appropriate praise.

INSURANCE INDUSTRY

- 4.12.1 In previous reports, the Ministry has been critical of the Insurance Industry on a number of issues, including exclusion clauses in travel insurance and consumer credit insurance; the averaging procedure used in household insurance; surrender value of life insurance; and so on.
- 4.12.2 The cause of many such complaints is the general lack of information given to consumers, and many policies are totally incomprehensible to an average consumer. For example, in the report for the year ended 30th June 1977, it was noted that -

"... investigation has revealed that because of the cost involved, some companies will not

automatically issue a policy document, but will only supply one on request".

- 4.12.3 The need for the provision of better information to consumers was a major subject discussed with the Insurance Council of Australia at a meeting between representatives of the Council and consumer affairs agencies throughout Australia, held in June 1982.

EARTHQUAKE INSURANCE

- 4.12.4 In past reports, the Ministry has commented on the general lack of information given to consumers.
- 4.12.5 At approximately 7.30 a.m. on Monday 17 June 1981, an earth tremor occurred with an epicenter located some 48 km. south east of Lorne, registering 5.3 on the Richter Scale. The metropolitan area recorded 3 on the Richter Scale.
- 4.12.6 It is perhaps worth noting that since 1847, Victoria has experienced 113 recorded earthquakes, of which 19 had a magnitude of 5 or above on the Richter Scale, certainly nothing to compare with areas around San Francisco in the United States.
- 4.12.7 This earthquake gave rise to a number of complaints to the Ministry from consumers who claimed that their homes had been damaged by the tremor but the insurance companies involved denied the claims on the ground that the damage was caused by substandard and faulty

workmanship in their homes. The company further advised that at least a magnitude of 6 on the Richter Scale is normally required to provide damage in homes.

- 4.12.8 The Ministry is not aware as to whether or not the damage was caused by the earthquake. This is a matter of fact which has to be established, but the number of consumer reports to the Ministry again emphasises the lack of information given to consumers. In no case investigated by the Ministry did the insurance policy state that an earthquake, to be recognised as causing damage, must have a magnitude of 6 on the Richter Scale.

MOTOR VEHICLE INSURANCE -
COMPREHENSIVE AND THIRD PARTY ONLY

- 4.12.9 There has been an increase in complaints involving the reluctance of insurance companies to accept liability on claims which appear to be valid.
- 4.12.10 Perhaps the disputes arise because of a general toughening up attitude of insurance companies. Motor vehicle insurance is very competitive and premiums have remained stable, whereas claims experience, together with the costs of materials and labour, are continually on the increase.
- 4.12.11 What in the past would appear to be a valid claim and would be processed for settlement without any delay would now be thoroughly checked, and if there is any

suspicion about the claim, then the company, whilst not denying liability, will wait until the insured makes the next move. His choices are to seek the services of a solicitor or the Ministry of Consumer Affairs.

- 4.12.12 In one particular case, a consumer advised the Ministry that he left his car outside his residence at approximately 10.00 p.m. Some four hours later, he was awoken by the police to be told that his car had been found 200 metres down the street, smashed into a brick wall. The police also informed him that there had been similar incidents that evening, and they thought that a gang of thieves had been attempting to steal motor vehicles.
- 4.12.13 He lodged a claim with his insurance company under his Third Party Only policy (fire, theft, property liability only) and was subsequently advised that his claim would be denied on the basis that the car had been vandalised; that is, someone had broken in, released the hand-brake and the car rolled down the hill. Accordingly, because it was vandalised, it did not fall within their conditions of a stolen vehicle.
- 4.12.14 The question arose as to what is considered to be a stolen vehicle, and to clarify the point, the Ministry contacted the police, who advised that whilst the car had not travelled far from the insured's premises, they had still reported it to the Stolen Car Squad and as such it was treated as a stolen car.

- 4.12.15 The insurance company reluctantly agreed to meet the claim which involved \$1,500.
- 4.12.16 In another example, a consumer had Comprehensive Insurance cover on his two trucks and a caravan with the same company. A fire destroyed all the units, and he submitted a claim for \$9,500.
- 4.12.17 The insurance company refused to meet the claim on the grounds that the insured had not revealed on his Motor Vehicle Insurance Proposal Form the fact that he had a house fire some two years earlier.
- 4.12.18 When questioned as to why he had not informed the insurance company of this fire, the insured stated that he was not specifically asked questions in relation to any other than details concerning his motor vehicles. In other words, the insurance company wanted information on their proposal relating to previous claims whether household, contents, personal accident, or any other form of insurance, including motor vehicle, notwithstanding the fact that their proposal forms were headed "Proposal for Motor Vehicle Insurance" and "Proposal for Caravan Insurance". The company denied the claim because of non-disclosure.
- 4.12.19 The proposal asked the following questions:
- "Have you had a motor vehicle accident ?
- Have you made a claim under a Motor Vehicle Insurance Policy ?
- Have you been refused insurance or had a policy cancelled ?

Have you been convicted or fined for any traffic offence ? "

Name of driver

Description of accident/claim/traffic offence

- 4.12.20 The Ministry quite rightly pointed out that because of the questions asked on the proposal form, the company could deny virtually every claim they wished as it was probable that all clients would have had some type of insurance claim and some could have had an insurance policy cancelled.
- 4.12.21 This matter was eventually settled with the consumer agreeing to accept \$7,000. The insurance company did not admit liability and stressed that \$7,000 was a goodwill gesture only, but at the same time they agreed to give serious consideration to reviewing their proposal forms.
- 4.12.22 A consumer's Comprehensive Motor Vehicle Policy commenced in August 1981 when he paid \$254 to his broker who then arranged the cover with an underwriter. The consumer duly received the policy from the insurance company.
- 4.12.23 On 9 October 1981, he was involved in an accident, and when he visited his insurance broker with the intention of lodging a claim, he was informed that the policy had been cancelled by the insurance company from 1 October 1981, that is eight days prior to the

accident. The consumer had not been advised of this cancellation, and hence he lodged a complaint with the Ministry.

- 4.12.24 The Ministry made enquiries with the underwriter, only to be informed that all policies introduced by this particular insurance broker had been cancelled from 1 October 1981. Apparently the activities of the broker were under suspicion and the underwriter had decided to cancel all policies introduced by the broker from 1 October 1981.
- 4.12.25 The underwriter also advised the Ministry that they had left the responsibility of informing all policy holders of the cancellations with the broker. Considering that the underwriter distrusted the broker, it seemed rather ridiculous that the broker could be relied upon to notify all policy holders of cancellations.
- 4.12.26 Following further discussions with the Ministry, the underwriter advised "We should have contacted individual policy holders directly and we are willing to reinstate this particular policy ... furthermore, it was an object lesson for us, and now we will write to all policy holders advising of the cancellations".

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PART 5

TRADERS WHOSE ACTIVITIES OR ATTITUDES

WARRANT SPECIAL MENTION

BUILDING AND HOME RENOVATIONS

WESTERN FASCIA DISTRIBUTORS PTY. LTD.

Directors: Marjory Anne Axford
Russell Charles Manning
Donald Graeme Smith

- 5.1.1 Western Fascia Distributors Pty. Ltd. was a company engaged in roofing and cladding of homes. It was set up by a bankrupt Wayne Axford. He installed his wife and father-in-law as directors. As a bankrupt he could not be a director nor appear to control the company, however, he was the active force in it and did the selling together with itinerant speciality salesmen. One such salesman was a Mr. R. Rendell, whose only address was care of the West Footscray Post Office.
- 5.1.2 A typical complaint against Western Fascia Distributors is best illustrated by the following precis of a statement made to the Victorian Police by a consumer who later contacted the Ministry.

"On Sunday 15 March (1981) my husband and I signed an order form with the company to extend and add two rooms to our house. Mr. Lewis first came to my home on Tuesday 10 March when my husband was at work. Mr. Lewis returned the following Tuesday when my husband was at home and we informed him what we wanted. Mr. Lewis went outside and measured the area and when he returned he quoted a completion price of \$5,850. We told Mr. Lewis we did not have that type of money and he told us not to worry as the company had a finance company that could fix up all the money.

We requested time to think about it and Mr. Lewis returned on 15 March and my husband and I agreed to have Western Fascia Distributors Pty. Ltd. do our required alterations. My husband and myself signed an order form which stated the work to be done and the total price. He also put a price of \$192 per month as our repayment to the finance company. He did not inform me or my husband that we could back out of the contract before the expiration of ten days. Neither my husband nor I contacted Mr. Lewis - the first time I heard of his company or him was when he came to my door.

The following Wednesday Mr. Axford and a representative from a finance company came to our home. These two arrived about 5.30 p.m. when my husband was home and we worked out a finance agreement in which his company would lend us enough money to repay some other smaller debts and pay for the improvements. In the contract we put up our house as

security as we owned it. We contracted to borrow \$15,000 which included all the interest under six years. When we signed the finance contract the man from the finance company told us we both had to sign the cheque for home improvements, and we did. He told us we would then have to give this cheque to Wayne, which we did. He took the cheque and told us he would be down in a fortnight to start the job. Both men then left and I have not seen or heard of Wayne since."

- 5.1.3 It is extremely unlikely that either the above consumers or the other victims of Mr. Wayne Axford will hear from or see him again.
- 5.1.4 In this case, as in several others, Mr. Wayne Axford with the aid of a representative of a finance company received full payment for a job which had not started, and in the circumstances was highly unlikely to start. The consumers find themselves in the position of having the finance company pursuing them to meet the terms of the loan repayments.
- 5.1.5 Complaints have been received by the Ministry in which Mr. Axford in association with a finance company has obtained payment for jobs not done. In attempting to resolve these complaints, the Ministry will try to ensure that the finance company recognises the influence of its representative on the consumer, and the unsatisfactory, if not unsavoury, practices which result when they allow people like Messrs. Axford, Lewis or Rendell to introduce clients.

SPACETIME SEAMLESS FLOORING

Proprietor: Kevin Miller

- 5.1.6 During the year under review, 22 consumers complained that a chemical coating applied to various flooring areas in their homes had begun lifting and they had been unable to get the proprietor, Mr. Kevin Miller, to return and rectify the fault. More recently, consumers have been unable to contact him at all.
- 5.1.7 Investigations by the Bureau revealed that Kevin Miller and his sons had left their addresses in Burwood and Tullamarine and moved to Adelaide to commence business under the name of Flint Rock. The South Australian Department of Public and Consumer Affairs was advised, and they are monitoring the activities of Mr. Miller.
- 5.1.8 It was also discovered that Kevin Miller had previously operated in Queensland and New South Wales under the name of Glamour Shell, and had left those States with complaints against him unresolved.
- 5.1.9 It is apparent that Kevin Miller and his sons have no concern for consumers; they deliberately misrepresent products to consumers, knowing full well that in a few months the product or the application would prove to be defective and by that time they would no longer be around to rectify the mess they have caused.

- 5.1.10 Consumers are warned to be extremely wary of any trader offering their services for this type of work and are advised to check previous jobs carried out over a long period of time by a trader.

MOTOR VEHICLE INDUSTRY

ROBERTS OF KEW PTY. LTD., 343 HIGH STREET, KEW

Directors: Robert Wangman
Hans Borkovic
Herbert Robert Bilke

- 5.2.1 An 84 year old TPI pensioner and his 68 year old asthmatic wife were advised by their doctor to travel north to a warmer climate. They owned an '81 Subaru Leone (4,806 kms.) and it was their intention to trade it on a campervan type vehicle.
- 5.2.2 In early May 1982 they visited Roberts of Kew Pty. Ltd. where a director of the company, Mr. Robert Wangman, showed them a used Toyota Lite Ace Van. Mr. Wangman assured the elderly couple that the Lite Ace could be converted into a campervan. A contract was signed on 10 May 1982. The price of the van was \$10,000 and the trade in allowance on the Subaru was \$6,500. The balance of \$3,500 was to be paid within three months. They were told that the conversion would commence immediately and the van would be delivered within a week. Reluctantly they allowed

Mr. Wangman to keep their Subaru and their belongings were transferred into a loaned vehicle.

- 5.2.3 Within a few days the company that was to effect the conversion advised Mr. Wangman that the job could not be done. It was not until approximately two weeks later that Mr. Wangman eventually informed the consumers that the conversion could not be effected.
- 5.2.4 They then asked for the return of their Subaru. Mr. Wangman refused, claiming that it was not his way of doing business. The consumers claimed that they asked Mr. Wangman on several occasions for the return of the Subaru but despite their repeated protests, Mr. Wangman showed them other vans.
- 5.2.5 According to the consumers, they were eventually talked into signing a contract for the purchase of a Toyota Campervan (50,191 kms.) priced at \$10,998 with a trade in allowance of \$7,000 on their Subaru. The contract was dated 10 May, although it was signed on 27 May. It was agreed that the balance of \$3,998 would be repaid in four monthly instalments, commencing one month from the date of the contract (10 May 1982).
- 5.2.6 After arriving home, the elderly couple realised that they had been "conned". The campervan was too big for the wife to handle and it did not fit in their carport. They knew that Mr. Wangman had talked them into buying a vehicle that was not suitable. They returned the van but they were informed that it was too late: the van was theirs.

- 5.2.7 The consumers then wrote to Mr. Wangman explaining that the van was unsuitable and they requested the return of the Subaru. The response was a telephone call from Mr. Wangman demanding the first instalment of \$1,000. The consumers said they would not make any payment. By this stage the consumers had also realised that they had paid an exorbitant price for the campervan. Another dealer and the RACV had valued the unit at \$6,000 and \$5,700 respectively.
- 5.2.8 The consumers decided to hide the campervan and not pay the \$3,998 owing. They were prepared to negotiate on the outstanding balance. On the other hand, Mr. Wangman did everything possible to locate the van. He hired a private investigator, involved the Police, threatened legal action, and generally harassed the elderly couple.
- 5.2.9 After about six weeks, the consumers could not withstand the pressure any longer - "we were at the end of our tether" - and their health was seriously affected. They decided to end the dispute and pay the outstanding balance of \$3,998. Mr. Wangman wanted a bank cheque, which was duly paid on 20 July 1982 and a receipt issued. As far as the elderly couple were concerned, the whole ugly affair was now finished. Unfortunately, the Bureau's representations on their behalf were unsuccessful.
- 5.2.10 The consumers then proceeded to trade in the camper-van for a smaller version with another dealer. To everybody's amazement, a tow truck picked up the Toyota Campervan on 29 July.

- 5.2.11 Mr. Wangman had authorised a towing firm to collect the unit because he said he had incurred costs during the dispute and he was now not prepared to release the campervan until the consumers paid the full costs. The Bureau considered the consumers had paid the full purchase price and Mr. Wangman had stolen the campervan. Mr. Wangman claimed costs of \$2,000 which he later reduced to \$500.
- 5.2.12 The Bureau contacted the private investigator who acted for Mr. Wangman. He said that he was not charging Mr. Wangman for the investigation, he did it "as a favour". He considered that Mr. Wangman was being most unreasonable. In fact, it was the private investigator who recommended to the elderly couple that they keep the campervan hidden and continue to refuse to pay the \$3,998.
- 5.2.13 The Police would not charge Mr. Wangman for their assistance, and neither the consumers nor the Bureau received letters from Mr. Wangman's solicitors. So to what costs was Mr. Wangman referring ?
- 5.2.14 Eventually Mr. Wangman relented and withdrew his claim for the costs, and the campervan was returned to the consumers.
- 5.2.15 Mr. Wangman's attitude to the elderly couple has been deplorable. He has shown contempt for the Bureau, has been careless with the truth, and extremely unco-operative. The Bureau warns consumers to be cautious if they intend dealing with this belligerent individual.

JOMARSAL PTY. LTD.TRADING AS AUTOVILLE QUALITY USED CARS, 652 SYDNEY ROAD, COBURG

Directors: Mario Paul Salvo
Sarah Salvo
Joseph Salvo

- 5.2.16 From the type of complaints received by the Bureau against this trader, it appears that Autoville specialises in high performance vehicles which have special appeal to young consumers.
- 5.2.17 There is no doubt that extreme pressure has been exerted by the representatives at Autoville to finalise transactions. It also appears that Autoville has adopted the unethical practices reminiscent of the industry during the 1970's. Some examples of consumers' complaints about this dealer's tough approach to sales are illustrated below.
- 5.2.18 A young consumer left his watch as a deposit on a \$5,500 used vehicle. It was made perfectly clear that should his father not approve of the transaction, the deal would be cancelled and his watch returned.
- 5.2.19 Following discussions with his father it was decided not to proceed. His father believed that the vehicle was unsuitable, over-priced, and besides, there was

a family friend who could assist with a vehicle purchase elsewhere. It does not really matter why the father would not approve, the important point was that the contract was conditional upon the father's approval.

5.2.20 Prior to returning to Autoville to advise them of the cancellation, the consumer visited his bank to cash a cheque he had obtained from the private sale of his previous car. He obtained \$4,500 from the bank. He wrote:

"Then I went to Autoville Used Cars to tell them I did not want the car and to get my watch back. The salesman said I cannot do that, that if it is the finance that bothered me he will get the money for me. I told him that I had \$4,500 on me and money is not the reason for not wanting the car. The salesman told me to show him the money; when I took the money out of my pocket he took it off my hand. I told him "What are you trying to do", and he said "Don't worry, I will give it back. I just want to show it to my boss". Then he came back to the office I was in with his supposed boss and the boss started writing a receipt for my money. I told them to return my money as I do not want the car. Then the two people started yelling at me and told me that if I did not sign the papers, that I will lose my \$4,500, and that they will get whatever amount of money I needed. These are the circumstances which I signed the finance papers."

5.2.21 Another complaint also involved the approval of a third party. The young consumer had chosen a HQ Holden and he drove it away with the intention of

obtaining approval or otherwise from his friend. He also left his own vehicle at the front of Autoville's yard. This was to be used as a trade-in.

5.2.22 His friend advised him not to proceed with the purchase and when he returned to Autoville approximately 20/30 minutes later, he was told he must continue with the transaction as he had signed a legally binding contract. In other words, the dealer had completely disregarded any undertaking regarding the approval of a third party.

5.2.23 The consumer then attempted to gain possession of his own vehicle but it was now parked in the middle of the yard surrounded by other cars. He asked for the keys, and he was told that the keys had been taken home for the night by the boss and that he must buy the car. The consumer then noticed that his keys were still hanging on a board in the office. When he made a move to retrieve them, "the salesman grabbed them and put them in his pocket".

5.2.24 Autoville like to "deliver" or dump vehicles at a consumer's residence. For example, a consumer went to Autoville with the intention of obtaining a credit check as he was contemplating a purchase in the near future. He signed some papers, and when he rang the dealer two days later, as arranged, he was told that finance had been accepted and that he now owned a 74 Cortina. The consumer was not prepared to buy this vehicle, and he was a little surprised when Autoville "delivered" the vehicle to his home the following afternoon. A game of volley ball then commenced with the keys being thrown to and fro over the front fence.

- 5.2.25 A young consumer from the country purchased a 74 Torana for \$5,540 with the understanding that warranty repairs would be effected by the local GMH dealer in the consumer's town.
- 5.2.26 When he took the vehicle to the GMH dealer, he was informed that it was in poor mechanical condition and required extensive repairs. The consumer then telephoned Autoville and asked them if they would be prepared to buy back the vehicle. Autoville agreed to re-purchase the vehicle for \$5,000.
- 5.2.27 The consumer immediately came to Melbourne and visited Autoville, only to be told that the re-purchase figure was now \$4,500. He complained, and reminded the dealer of the telephone conversation. Autoville then dropped the figure to \$4,000 and wrote a cheque for this amount. Before accepting the cheque, the consumer complained again that it was unfair treatment, so Autoville reduced the amount by an additional \$500 to \$3,500. In other words, every time the consumer complained, Autoville reduced the figure by \$500.
- 5.2.28 In this particular case the dealer was under no obligation to buy back the vehicle, but they did offer \$5,000 over the telephone. Furthermore, as the vehicle required extensive mechanical repairs, Autoville saved themselves money by not having to pay for warranty.

- 5.2.29 The Consumer Affairs Bureau has achieved redress in a number of complaints against this dealer but has found Autoville to be one of the few dealers not prepared to maintain co-operative lines of communication with the Bureau. Their harsh treatment of consumers and their use of a bullying type of sales pressure represents an image the Motor Vehicle Industry can well do without.

TRUCK SALES

FERGUSON TRUCK SALES PTY. LTD.

Directors: Gregory Ian Ferguson
Ann Therese Ferguson

- 5.3.1 In previous annual reports of this Ministry the activities of truck sales companies who also make offers of employment have been mentioned. It appears that this activity is still quite prevalent and many prospective owner-drivers have travelled down this "road to ruin".
- 5.3.2 A company which has come to the attention of the Ministry is Ferguson Truck Sales Pty. Ltd., previously of 1393 Sydney Road, Fawkner, now of 442 Barry Road, Broadmeadows. This company advertises in the daily papers as follows:

"COURIERS

MALE AND FEMALE

Posns now exist for reliable persons over the age of 23 yrs who feel they would be capable of becoming an owner operator. The approved applicant will be trained for the position with an existing operator.

The posn is very well paid with a lge. reputable transport Co. We offer full assistance with fin. for the purchase of these late mod. fully warranted vans.

For further info. Tel.309-7393.
LMCT 3410"

- 5.3.3 People who respond to this advertisement and approach the company, are sold a vehicle and employment is organised with a transport company.
- 5.3.4 One particular complaint received against this company relates to a consumer who answered an advertisement for a truck and subsequently purchased it for \$10,200. The truck was sold with a one month warranty. Documents for the sale described it as an 8 tonne tray truck. In fact the vehicle had a capacity of 6.85 tonne. It was also in poor mechanical condition and when it was returned for warranty repair, only a token effort was made by Ferguson Truck Sales to rectify the faults.

- 5.3.5 The trader then claimed that the engine and clutch had been overhauled prior to the purchase, but when the Ministry requested confirmation of the repairs, the trader could not provide it.
- 5.3.6 The vehicle subsequently suffered total mechanical failure, resulting in loss of work for the purchaser and repair costs totalling in excess of \$6,000. The misrepresentation by the company as to the carrying capacity of the truck also aggravated the situation.
- 5.3.7 The Ministry was able to establish that the truck was purchased by Ferguson Truck Sales for \$1,500. Mr. Ferguson claimed that he had spent a further \$3,000 modifying it, however he could not, or would not, provide evidence of this expenditure. It is interesting to note he did not mention any amount for mechanical overhaul or repairs.
- 5.3.8 Even if his figures are accepted, the total amount expended by Ferguson Truck Sales was \$4,500. It was then sold for \$10,200 to the unsuspecting owner-driver. This would appear to be a tidy profit.
- 5.3.9 Despite attempts by the Ministry, this dispute could not be resolved for the purchaser, who subsequently suffered a loss of \$6,000 plus two months loss of work.
- 5.3.10 The Ministry again emphasises the warnings given in previous reports: individuals must do their homework if they intend to involve themselves in the trucking/owner-driver business; they should be wary of companies offering vehicles and work; they should carefully

consider the on-going costs; they should check the market value of the vehicle they intend to purchase; and finally, they must have the unit thoroughly checked by an independent automotive engineer.

CARAVAN INDUSTRY

TIM HALL CARAVANS PTY. LTD.

Directors: Albert Keith Hall
Gunetta Anne Hall

- 5.4.1 Tim Hall Caravans Pty. Ltd. was a retail outlet for caravans. The company also sold caravans on consignment. In August 1981 the directors of the company declared themselves bankrupt.
- 5.4.2 A pensioner had requested Mr. Hall to sell her caravan on consignment. It was agreed that an attempt would be made to sell the caravan for \$9,000 and Mr. Hall would retain 10% of the selling price as his commission. The pensioner had made some enquiries as to the progress of the sale and at one stage Mr. Hall had informed her that he had a buyer who had paid a deposit on the caravan and would pay the balance when he sold his house. However, when Mr. Hall declared himself bankrupt, one of his creditors, a finance company, claimed the pensioner's caravan and eventually sold it to another party.

- 5.4.3 The result was that the pensioner lost her caravan and did not obtain any money from its sale. The solicitors acting on her behalf are not too optimistic about reaching a satisfactory conclusion.
- 5.4.4 Another pensioner had purchased a caravan and contracted with a finance company to make repayments for seven years. She was experiencing difficulty in managing the repayments, so she asked Tim Hall Caravans to consider selling the caravan on consignment and paying off her finance company. Tim Hall Caravans made monthly payments to the finance company on behalf of the pensioner, but then Mr. Hall and the caravan "vanished". The caravan cannot be located and the finance company continues to press the pensioner for the monthly repayments.
- 5.4.5 A young couple had a pay-out figure of \$3,200 to a finance company. Mr. Hall said that he could sell the caravan for \$5,500, pay the finance company and retain \$300 as his commission. The consumer wrote:

"On or about the 7 July 1981 I contacted Mr. Hall by telephone and enquired if our van had been sold. He told me that things were very quiet at that time and that he had prospective buyers coming up from Traralgon on the next week-end, or the following week-end and that he would contact us when the van was sold. On 17 July I drove past Tim Hall Caravans and we saw that our van was still in the yard. On 31 July we then attended Tim Hall Caravans and upon our arrival at the yard we noted that it was completely bare of all caravans and that there was a sign on the padlocked front gate to the effect that the yard was closed due to

illness. I have no idea where our van is at present and I have had no further contact with Mr. Hall."

5.4.6 The Ministry has received nine complaints relating to consignment transactions following which the consumers lost their caravans. The Police have listed 32 charges against Mr. Hall for theft and deception.

5.4.7 This situation highlights the dangers to consumers when they place their goods on consignment. It also emphasises the need for a system that determines a clear title whenever a transaction between a consumer and a trader takes place. Furthermore, the Ministry considers that the Caravan Industry, through its representative body, should take steps to get its own house in order.

INSURANCE

MUTUAL ACCEPTANCE (INSURANCE) LTD.

5.5.1 During the year under review the Ministry received 23 complaints against Mutual Acceptance Ltd. in relation to the unfair rejection of house contents, building and personal property claims, as well as unacceptable delays in the handling of the claims.

5.5.2 Consumers have complained that their numerous approaches to Mutual Acceptance were met with various excuses as to why their claim had not been paid.

- 5.5.3 These excuses ranged from the file being lost, administrative changes, changeover of staff and incompetence of other staff in the organisation. After a lengthy period on this 'merry-go-round' the consumer would then be informed that Mutual Acceptance had denied liability either on very flimsy grounds or by following the letter rather than the spirit of the policy document.
- 5.5.4 One example of a consumer being put on the 'merry-go-round' is best illustrated in a case where a consumer's frying pan caught fire, resulting in damage to the kitchen. The consumer contacted Mutual Acceptance, and after explaining the circumstances, he requested a claim form, only to be informed that "accidental damage was not covered". The consumer's sister then rang to clarify the matter and was given the same answer.
- 5.5.5 The consumer then contacted the Consumer Affairs Bureau for advice. An investigator telephoned the company on an unofficial basis and was told that no claim could be lodged.
- 5.5.6 The consumer then formally lodged a complaint with the Bureau and the same investigator contacted the Mutual Acceptance Claims Manager who advised that the claim was covered under the terms of the policy, and the information previously relayed was given by new staff who were not certain of the interpretation of the policy in this matter.

- 5.5.7 A case which illustrates the unreasonable attitude adopted by this company concerns a consumer who took out a personal property insurance cover in addition to a property contents policy.
- 5.5.8 The consumer and his wife were dining in a restaurant when she realised that her handbag had been stolen. A claim was lodged with Mutual Acceptance for the loss of a Glomesh purse \$32.50, a handbag \$27 and a set of keys \$21.95. There was also \$130 in cash in the purse.
- 5.5.9 Mutual Acceptance then advised the consumer that the \$20 excess on the policy would be applied to each of the items stolen, and they would not meet the cash claim as the policy only covered cash stolen from the consumer's residence. Thus instead of receiving \$81.45 less \$20 excess, Mutual Acceptance forwarded a cheque for only \$21.45.
- 5.5.10 The Consumer Affairs Bureau approached Mutual Acceptance on the consumer's behalf, but they were adamant that the excess would apply on each article. The consumer was then forced to lodge a claim in the Small Claims Tribunals. However sanity prevailed before the hearing and Mutual Acceptance finally decided to apply the \$20 excess to the total value of the purse, handbag and the keys.
- 5.5.11 This statement received from a consumer best illustrates his and other consumers' feelings towards Mutual Acceptance:

"With reference to our complaint against Mutual Acceptance Company. Upon receipt of your card, this firm has now -

after five months, suddenly decided to find our file and pay on it. The \$230 will not cover replacement of our floor but we have decided to accept it and change companies immediately as we are deeply concerned about the overall insurance of our whole house and contents. I am sure there are many people being held at risk by this firm, and some action should be taken against them."

- 5.5.12 It is worth noting that Mutual Acceptance has since ceased to accept new proposals for general insurance and is only paying out claims and servicing current policies.

SWANN INSURANCE LTD.

- 5.5.13 Swann Insurance Ltd., incorporated in Queensland, underwrites Consumer Credit Insurance (CCI). Briefly, CCI is taken out by a consumer to cover his monthly repayments to a particular finance company in case he is unable to work because of illness or accident.
- 5.5.14 In November 1977, a consumer entered into a loan contract involving 60 monthly payments each of \$161. The loan contract included a CCI premium paid to Swann Insurance Ltd.
- 5.5.15 The relevant part of the consumer's policy read:

"Bodily injury ... resulting in total disablement from engaging in or attending to employment as certified by a legally qualified medical practitioner other than the insured, so long as such medical practitioner shall certify that such total disablement continues."

- 5.5.16 In October 1980 he was involved in a motor vehicle accident which resulted in a spinal disc injury. He lodged a claim with Swann Insurance who made the appropriate payments to his finance company.
- 5.5.17 In April 1981, Swann Insurance arranged for their own doctor to examine the consumer. The doctor confirmed that the consumer was totally disabled and payment should continue to the finance company. In October 1981, another examination was arranged by Swann Insurance, but on this occasion the medical report stated "You are no longer totally disabled from employment and would therefore be fit to be gainfully employed in a range of duties and in a variety of occupations". Swann Insurance then denied any further liability on the grounds that the consumer was not totally disabled.
- 5.5.18 On the other hand the consumer's own doctor certified that the consumer was definitely unemployable because he was unable to sit or stand for more than an hour at any one time without resting (lying down).
- 5.5.19 The matter ultimately was settled in the Small Claims Tribunals and it was held that the consumer was entitled to the continuance of the payments as a legally qualified medical practitioner had certified that he was unfit for work. The company therefore could not rely on the report of its own appointed

medical practitioner to the exclusion of a contrary opinion.

- 5.5.20 The reference to "total disablement" in the policy wording can have wide connotations. Other insurance companies have similar policy wordings but from the Bureau's experience Swann Insurance appears to be the only company applying a harsh and unfair interpretation to the "total disablement" reference.
- 5.5.21 Another example of Swann Insurance applying a harsh and unfair interpretation to their policy wording occurred in the previous year. A 62 year old painter was declared unfit for work because of a painful right shoulder. Swann Insurance made payments to his finance company for a period of twelve months, then arranged for their own doctor to examine the consumer. In the doctor's opinion, the consumer was fit for numerous duties not involving constant use of his right arm and hand above shoulder level, and he was no longer totally incapacitated from employment.
- 5.5.22 The insurance company conceded that the consumer had a painful right shoulder and accordingly he could not perform duties which required him to constantly use his right arm and hand above shoulder level. However they were adamant that he was "fit for numerous duties not involving constant use of his right arm and hand above shoulder level".
- 5.5.23 The Bureau argued that the consumer had followed a physical occupation (painting) all his working life,

and it would be unreasonable for Swann Insurance to expect him to perform other duties at 62 years of age. Also, it would be inconceivable that anyone would employ a person who could not adequately use his right arm and hand, as well as being on Invalid Pension.

- 5.5.24 It is unfortunate that Swann Insurance Ltd. adopt such a hard line towards genuine claims. A CCI policy is designed to protect the consumer. Swann Insurance have disregarded the spirit of the policy and relied on harsh and unfair interpretations to avoid their liability.

RETAIL BUSINESSES

CARPET RETAILERS

- 5.6.1 During the year under review two large retailers of carpets ceased trading. In both instances, consumers lost substantial deposits, up to 50% of the purchase price.

- 5.6.2 Those traders were:

Old McDonalds Carpet Stores,
Carpet Shed Australia Pty. Ltd.

Both companies continued to trade and advertise right up to closing their doors.

Old McDonalds Carpet Stores

- 5.6.3 Old McDonalds Carpet Stores was a business name registered to F.M. Kinna Pty. Ltd. The directors of that company included John and Joan Lorych. Mr. Lorych was also a director of another company which ceased operations during the year: Merchant Kitchens.
- 5.6.4 In 1981/82 there were 48 complaints registered against Old McDonalds Carpet Stores. They were mainly concerned with slow delivery, large deposits, and ultimately no delivery of carpets.

Carpet Shed Australia Pty. Ltd.

Directors: Alan John Nolan
Gary Edward Breen
Peter John Breen
Edmund John Breen
Roger David Breen

- 5.6.5 This company generated 36 consumer complaints in the year 1981/82. These complaints related to faulty carpets, poor laying, delays in attending to faults, delays in delivery, and ultimately non delivery of carpets.
- 5.6.6 The company demanded large deposits, in the order of 50%, apparently in an effort to bolster up its cash flow deficiencies. One distinct feature of its financial operations was the use of promissory notes.

5.6.7 It must be stated that promissory notes should not be used in consumer transactions. They are primarily a device used in commercial transactions. Consumers who signed promissory notes with the company remain liable to pay on them to assignees, even though no carpet was ever delivered.

5.

COPPERART

5.6.8 Copperart is a business name owned by Second Mountain Gate Nominees Pty. Ltd.

5.6.9 The directors of that company are listed as:

Arnt Gerarous Van Roest
Amy Van Roest

5.6.10 The company sells copper and brass products from two shops, and by mail order, advertising in daily newspapers and national magazines.

5

5.6.11 Most problems for consumers arose when goods purchased were found to be faulty or damaged due to inadequate packaging by the trader in mail order deliveries. As well, several consumers complained that goods received were not as they had appeared in advertisements.

5

5.6.12 Consumers reported that their attempts to deal with the trader met with a denial of any responsibility on his part and a complete lack of co-operation. Letters and telephone messages were ignored, and sales assistants refused to divulge the manager's name or telephone

number. Those who actually made contact with Mr. Van Roest were met with a tirade of abuse and accusations that they had damaged the goods. Repairs, replacements, refunds were refused or, in several cases, articles supposedly repaired twice were returned to the consumer still not in working order.

5.6.13 In a typical example of poor customer relations by Copperart, a woman reported the unexpected hostility and rage that greeted her when she returned a fire screen which had fallen apart after she removed it from the package. She stated:

"I asked for my money back or some other goods to the value of \$49. He said this was quite impossible, that it would mess up his bookwork, and his boss would not allow it. I asked the man his name or the boss's name, but he refused. Later I discovered it was Mr. Van Roest. The man told me in no uncertain way that I had forced the screen and broken it. He got very irate and told me that I should have read the sign that said no exchange on sale items. When I asked where the sign was, he lifted up a sign advertising brass pots from under the back of his counter. When I refused to leave his shop until I got some satisfaction, he called the Police, saying he was going to sue me for being a nuisance and trespassing. I was at all times very polite to the man. Two Policemen came and advised me to take another screen. The shop assistant got another screen and this too fell apart just as mine had. Things were now getting out of hand and the proprietor was being very rude to the Police. To save any further embarrassment to myself and the Policemen, I took another screen simply to ease the tension."

- 5.6.14 Some consumers said that they had encountered this sort of abuse on several occasions. Those who mentioned contacting the Bureau were met with threats of being sued for "wasting the proprietor's time".
- 5.6.15 When there was intervention by the Ministry, most letters and telephone messages were ignored. On occasions, officers were aggressively informed that Mr. Van Roest did not like the actions of the Ministry, or the legislation. He insisted that complaints should not be forwarded to him as they were all completely unfounded.
- 5.6.16 There have been five hearings before the Small Claims Tribunals in regard to Copperart. In three cases the trader was ordered to pay the claimant the value of the product; in two of these, warrants were issued for recovery. One case was withdrawn as Copperart paid the claimant after the hearing was listed. Another case was withdrawn on the provision that the product was properly repaired by Copperart - this was not done until after a second hearing was listed.
- 5.6.17 The unco-operative attitude displayed by the representatives of Copperart towards consumers and the Ministry leaves a lot to be desired. Furthermore, from the complaints received at the Bureau, it is clear that Copperart have shown a reluctance to provide the after sales service that a consumer would expect from a reputable and ethical business.

FURNITURE REMOVALSLES BARNESTRADING AS QUEENSLAND REMOVALS AND STORAGE

- 5.7.1 The Manager of this company is Les Barnes. Its place of business is 25 England Street, Dandenong.
- 5.7.2 As one consumer stated:
- "With the large number of people moving to Queensland, many of them could be misled as to the efficiency of the company by hearing 'Queensland' in their name - as I was."
- 5.7.3 The number and type of complaints received by the Ministry since February 1982 indicate that Queensland Removals and Storage is neither an efficient nor trustworthy firm.
- 5.7.4 When consumers approach this firm regarding a removal, they are asked to pay the total price for removal and storage of goods in advance. They are told that delivery will be within a week to 10 days at most. Delivery does not take place when stated and consumers are stranded, waiting on their furniture and goods for periods of four to eight weeks.
- 5.7.5 The excuses frequently given for the delays are floods and broken down trucks. However it is not uncommon for a consumer to be told that the truck has been delayed en route when in fact the goods have not left

storage in Dandenong. Upon arrival, the goods are invariably in a poor state.

- 5.7.6 In a typical case, a consumer agreed to have her goods delivered in Queensland by the last week of May. The goods did not arrive and the consumer rang the trader repeatedly, only to be told the truck would arrive soon. After two weeks, the goods had still not left storage in Dandenong. When the goods finally left Dandenong the consumer was told the truck had broken down en route. The goods finally arrived 3½ weeks late, in a damaged condition. To quote the consumer:

"The furniture had obviously just been thrown into the truck. The damage was evident as soon as the back of the truck was opened."

- 5.7.7 Many of the consumers who contracted with Queensland Removals and Storage were elderly couples who had planned to spend their retirement in Queensland. Any move of residence is usually unsettling, but from the complaints received by the Ministry, it would appear that to deal with Queensland Removals and Storage is the prelude to a most traumatic experience.

RENTAL SERVICESRENT MART

Proprietor: Andrew Jones

- 5.8.1 Rent Mart is an organisation which purports to find accommodation for prospective tenants of houses and flats. An international organisation, its head office is in New Zealand. The parent body is known as Homelocaters. In Victoria, the business name is registered as Rent Mart.
- 5.8.2 The current scarcity of residential tenancies has created a lucrative market for organisations like Rent Mart.
- 5.8.3 Rent Mart claims that they are in the market only to provide an information service to house hunters. They do not guarantee availability of the premises sold to their clients. In their revised agreement they state:
- "Although diligent effort is made to keep listings current, no guarantee is made that listings are available when given holder."
- 5.8.4 This appears to be an escape clause for Rent Mart to sell:
- outdated, incorrect and misleading information;
 - any information which they can lay their hands on without checking for its validity and accuracy.

- 5.8.5 Rent Mart operates by selling policies to prospective tenants which are valid for four months at \$40, payable by Bankcard or cash. The rate for pensioners is \$35. They claim a policy can be used within the four months in Australia, New Zealand, Canada, USA, etc.
- 5.8.6 At the time of writing this report the Ministry has investigated 20 complaints against this organisation. Complaints usually reveal that policy holders have been told when making initial enquiries that Rent Mart possess listings of hundreds of vacant premises within the price range and area/areas of their preference. The following is an example of Rent Mart's advertisements which dominate the media columns.

"HOUSES! CALL NOW!!

Ivanhoe 3 br ph yd.....	\$95
Melton 3 br htr yd ph.....	\$85
Canterbury 4 br pets ok.....	\$80
Carnegie 3 br ph gge.....	\$75
Glen Iris kids pets ok.....	\$63
Maidstone ph pets ok.....	\$75
Brighton ph pets ok.....	\$60
Bentleigh ph carps yd.....	\$60
St. Kilda pets ok.....	\$75
Doncaster 3 br htr ph.....	\$80
Mont Albert ph yd.....	\$80
Malvern kids pets ok.....	\$85
Campbellfield 3 br yd.....	\$50

Kilsyth area kids pets ok.....\$75
 Glen Waverley gge pets ok.....\$85
 Watsonia area 3 br carps.....\$90
 Coburg 3 br kids ok.....\$65
 Mornington ph carps.....\$85
 Preston 3 br kids ok.....\$70
 Reservoir carps yard.....\$65
 Burwood 3 br ph gge.....\$80
 Sth Yarra 3 br gge.....\$63
 Moonee Ponds 3 br carps.....\$75
 Kingsbury cosy hse.....\$65
 Thomastown area 3 br.....\$75
 East Melb. area 3 br pets.....\$50
 Mitcham area carps yd.....\$60
 Sth. Melb. hse yd htr.....\$72
 Clayton area 3 br ph yd.....\$90
 Seaford area 3 br htr.....\$85

These and 100's others too
 all areas sizes and prices
 529 3722 till 9 RENT MART"

- 5.8.7 Once the money is paid, policy holders find that the information sold is outdated, incorrect, or misleading, and therefore totally useless.
- 5.8.8 Complaints have also been received from estate agents and home owners advertising their premises for rental that Rent Mart has obtained the information from newspapers without prior permission from the owners or estate agents. This practice has caused much embarrassment to policy holders who are first abused by the irate home owners and later rudely dismissed by Rent Mart when complaints are made about it.

- 5.8.9 Discussions with the proprietor, Mr. Andrew Jones, have not resulted in a decrease of complaints. Because of the sensitive nature of the business, i.e. shelter provision, consumers are looking for, and are entitled to, a professional service. They are not receiving it.

MAIL ORDER SALES

R.W.L. CLARK (QUEENSLAND)

TRADING AS:

JUNE TAYLOR, Box 318, Leichardt, QLD.

DON JEFFRIES, Box 533, Fortitude Valley, QLD.

GLENCO HOUSE OF ISIS, Box 533, Fortitude Valley, QLD.

SPACE OPTICS, Box 533, Fortitude Valley, QLD.

LISA DAWN, Box 533, Fortitude Valley, QLD.

VORCO FINANCIAL RESEARCH, Box 533, Fortitude Valley, QLD.

ASTRO ENTERPRISES, Box 315, North Brisbane, QLD.

LYDIA STALINAKSINE, HOUSE OF ISIS, Box 533, Fortitude Valley, QLD.

- 5.9.1 Consumers who deal with these traders who operate from Post Office Boxes in Queensland do so at their own risk, and face the distinct possibility of losing their money.

- 5.9.2 The Ministry of Consumer Affairs has received numerous complaints involving these companies, and Mr. Clark's attitude towards consumers is expressed succinctly, to say the least: "We will not give any money back nor will we guarantee our product" !
- 5.9.3 Regardless of Mr. Clark's ignorance of Trade Practices legislation, the Consumer Affairs Act and the Goods (Sales and Leases) Act, his attitude towards a fair market-place leaves a lot to be desired, and consumers would be wise to avoid this trader.

RILEY MCKAY PTY. LTD.

TRADING AS:

HARVEST HOUSE

POSTAL WAREHOUSE

OLD GENERAL STORE

NANCY KEAN GIFTS

THERMA SLIM 100

- 5.9.4 Riley McKay Pty. Ltd. went into liquidation on 30 November 1981, leaving hundreds of thousands of dollars worth of pre-paid mail orders unfilled.
- 5.9.5 The Ministry of Consumer Affairs received over 300 complaints from Victorian consumers concerning the firm's crash, and it is obvious that thousands of consumers around Australia have been affected.

- 5.9.6 The liquidators appointed claimed it would take months to sort out the affairs of the firm. Consumers have little hope of receiving any refunds.
- 5.9.7 The collapse of Riley McKay Pty. Ltd. is a warning to all who deal with mail order firms. It was obvious at the time the goods were advertised that the company did not have the stock available to meet reasonable demand, and furthermore, that it was not likely that stock would ever be available.
- 5.9.8 Consumers must be wary of ordering from any mail order firm which cannot supply goods by return mail.

TRAVEL AGENTS

TRAVEL ARRANGEMENTS

- 5.10.1 Mr. George Zonnios traded as Travel Arrangements of 9 Chester Street, Oakleigh and 23 Oxford Street, Oakleigh.
- 5.10.2 Mr. Zonnios took money from intending travellers and failed to provide them with the services they required. In one instance, a refund cheque issued by Mr. Zonnios was dishonoured. Undertakings given to the Ministry that money would be refunded to a consumer have also been broken.
- 5.10.3 Mr. Zonnios has now disappeared and it appears he has taken in excess of \$20,000 for air tickets he has not provided.

DELHI EXPRESS TRAVEL PTY. LTD.

5.10.4 Delhi Express Travel Pty. Ltd. was registered as a company on 25 August 1980. The directors of the company are listed in their latest return to the Corporate Affairs Office as:

Mr. Ramish Chandler,
Mr. Naresh Kuman,
Ms. Marie Bernadette de Georgio.

5.10.5 It is believed that Messrs. Chandler and Kuman were holding only Visitor's Visas for admission to Australia while they managed the company, which deals directly with the public as well as operating as an airline ticket wholesaler to other travel agents.

5.10.6 The company's practice is to fly travellers to Kuala Lumpur, or Singapore, from Melbourne by using regular airline tickets. Passengers are issued with a voucher for exchange in South East Asia for an on-going airline ticket from there to Europe. This issue of a voucher leaves passengers with no security if problems arise in South East Asia when attempts are made to exchange it for a regular airline ticket.

5.10.7 In some instances travel plans were altered by the company's representative with little or no warning to the traveller, and too often these new travel

arrangements resulted in a number of passengers finding themselves in distressing circumstances when attempting to transit through Moscow to Europe. It would appear that incorrect information was given to passengers concerning their requirements for a visa to transit through the USSR.

- 5.10.8 Delhi Express Travel Pty. Ltd. does not operate a trust account and has a substantial record of dishonouring cheques. Because of the financial record of this company and problems associated with its travel arrangements, consumers are advised to look elsewhere to obtain cheap air fares to Europe.

PART 6

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PART 6CONCLUDING COMMENTS6.1.1 Legislation Changes

It is clear from a reading of this report that a strengthening of Victoria's consumer protection laws is necessary.

6.1.2 A feature of the Governor's speech at the opening of the current Parliament was that the Government intended to introduce appropriate fair trading laws to protect Victoria's consumers. This announcement was welcomed alike by staff of the Ministry and consumers.

Considerable thought has been given to this matter, and these issues are under review at the present time.

6.1.3 Certain trading practices should be forbidden and penalties increased so that real deterrents to unethical and unfair trading practices are introduced. A fair market is a productive market.

6.1.4 The vital area of misrepresentation is being actively researched at the Minister's request by the Consumer Affairs Council.

6.1.5 With regard to product safety, Victoria is isolated from the other states and the Commonwealth. Neither the Director of Consumer Affairs nor the Minister can order the withdrawal from sale of dangerous or otherwise unsafe products (except for food which in this respect is not within this Ministry's jurisdiction - falling under the Health Regulations).

- 6.1.6 The principles which should be embodied in suitable product safety legislation are being worked upon at the present time.
- 6.1.7 The definition of services in the recently proclaimed Goods (Sales and Leases) Act must be broadened to include contemporary usage of the term services. This review is also already underway.
- 6.1.8 It is suggested that the scope of the Small Claims Tribunals should be extended to cover claims of up to \$3000, and that this amount should then be indexed annually by regulation.
- 6.1.9 The current review of the Ministry referred to earlier will, it is hoped, make recommendations regarding "the legislative chamber", i.e. legislation which might be administered by the Ministry although presently handled elsewhere, eg Goods (Sales and Leases) Act. An area of concern at present relates to the duplication of legislation between the Motor Car Traders Act legislation and the Consumer legislation, resulting in consumers being able to engage in costly duplication of efforts. To some extent the present legislation encourages some unnecessary duplication and even competition between units within the Ministry.
- 6.1.10 There is a need for further review of the Residential Tenancies legislation where both policy and drafting issues have arisen in the period since proclamation. It is also suggested that the surplus arising in the

Residential Tenancies Fund being the difference between earnings and costs of administration could usefully be diverted to those in the public housing sector or to tenants in distress. Supplementation of spot purchases of long standing protected tenants' freeholds would also be a useful application of such funds.

6.1.11 Occupationally Licensed Groups

It is necessary to restate again the comments made in my first report ...

"Occupational groups whose members hold licences obtained from the State giving exclusive rights to practice and to be described particularly, are very special groups in our society. Competition from unlicensed persons is not allowed.

There is no public examination of disciplinary procedures by other than boards set up for these purposes - generally comprising members only - and, particularly in the professions and semi-professions, these costly qualifications have been obtained at public expense.

The professions - the 'monopolies of competence' - based on monopolies of knowledge gained through access to publicly funded higher education, demonstrate little accountability to the public. Only one profession - the Law - has a Lay Observer

*on disciplinary matters, and it is a matter of concern that this practice is not already quite widespread.**

It is also to be regretted that the jurisdiction of the Market Court does not extend to any of these occupational groups for whom special licensing arrangements exist or who have set up their own disciplinary procedures.

The unique conditions of the Victorian Market Court, where in appropriate circumstances what is virtually negative licensing may apply, appear to make it a particularly appropriate setting for claims to be heard against professional and semi-professional people in actions brought on behalf of consumers by the Director of Consumer Affairs."

*The Australian Society of Accountants has now also acted in this important area.

6.1.12 Insurance Brokers and Travel Agents

It is clear that there is a widespread community and industry support for the notion of appropriate licensing and wider surveillance of brokers and travel agents. These two important areas have been neglected at the Commonwealth level with the inevitable result that States are being forced to consider ad hoc arrangements. Australia is one nation and it is in the interests of business and consumers that sensible and consistent and Australia-wide legislation be introduced for control of

these activities so as to provide consumer protection and a fair market place. Ethical, competent brokers and agents are constantly under threat from a small fringe of unethical and incompetent traders.

6.1.13 The \$2 Corporate Veil

It is clear that the present system whereby anybody can commence dealing with the public, and in so doing enjoy the luxury of limited liability behind a \$2 corporate veil, is open to abuse. Under present conditions consumers have little protection from the unscrupulous and the incompetent.

6.1.14 Australia must develop practical procedures so that fair trading is ensured in the market place; this just cannot be achieved whilst the \$2 company can flourish.

6.1.15 A further complication is that of the widespread linking of the \$2 company with a discretionary trust, such that the consumer in effect has no idea with whom one is dealing, nor is it feasible to so discover easily.

6.1.16 Consumer Deposits

A tightening up of the provisions under which consumers pay substantial deposits is obviously needed. All deposits above a fixed percentage of say 5% of the selling price should preferably be placed in an audited Consumers' Deposits Trust Account with heavy penalties for violation thereof.

6.1.17 National Study; the \$2 Company

However, it appears that something further is needed. The ramifications of possible action in this sensitive area are considerable. The implementation of a national study of the consequences and necessary protection for consumers dealing with \$2 companies is highly desirable. It is in fact urgent, as the revelations of this report concerning loss of consumer deposits confirm. Safeguards for consumers, employees (and trade creditors) could include:

- * Compulsory insurance of all debts;
- * In the case of fraud or liquidation, recourse to be available to *the personal assets of directors and their families, either directly or indirectly controlled*;
- * Minimum paid-up capital of say \$10,000 to be introduced for any company dealing with the public. Whilst this may be thought restrictive, it is obvious that substantial personal risk should be made on commencing business, so that it is not only employees, consumers and trade creditors who are at risk;
- * Limitation of the ratio between shareholders' / directors' loans to the company and issued capital, such that, for example, \$100,000 could not be loaned to a \$2 company by shareholders and directors; such loans could be limited to 25% of paid up capital;

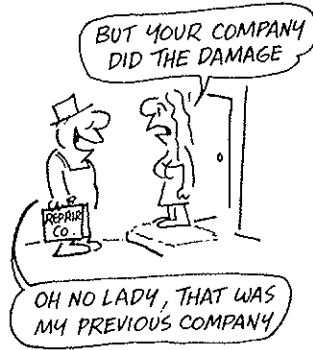
- * Uncalled capital - available to consumers and creditors from shareholders - to be always double the required paid up amount.

6.1.18 Clearly, considerable and extensive research will be necessary to arrive at workable criteria, so as to protect consumers, and at the same time encourage enterprise based on fair trading and a fair market. Tandberg's perception is rather accurate! (See page 246)

6.1.19 Trader Co-operation

A report such as this tends to highlight negative aspects. Not enough can be said in such a report of the positive achievements of the many traders who co-operated with the Ministry and consumers once the difficulties had been explained. It must be made clear that consumer complaints reflect but a tiny proportion of all consumer transactions. The Ministry's conviction and experience is that nearly all traders desire to be honest and ethical. Were this not so, the Ministry could not cope with the resultant volume of complaints. A large number of all complaints received are due to trader incompetence rather than dishonesty. Fortunately, only a very small number of traders appear not to conform to the desirable pattern of attempting to be both honest and competent.

The Corporate Veil ...



(Reproduced with the permission of Edward Arnold
(Australia) Pty Ltd.)

6.1.20 Delivery of Services

It is necessary to emphasise the need to continuously review the method of delivery of services. My comments of last year are still relevant.

"Changes in methods of operation within the Ministry are now required. Their introduction is now being planned - these include the office localisation programme, job sharing for some new staff, extended office hours, and an emphasis on access for all the ethnic groups in the community; office localisation will include establishment of 'shop front' offices in the suburbs and in the country.

More widespread translation of consumer information booklets produced by the Ministry is necessary and will be achieved.

These changes are needed so that consumers who most need help, and who cannot cope on the phone and in high rise city offices, can have a local, more personalised and conveniently available service."

6.1.21 Other Services

In the year under review, it is clear that the Ministry has had little opportunity to achieve the objective of moving away from its 'complaint base'. The Ministry tends to be dominated by complaints, and under-

resourcing has limited the opportunities to prepare alternative strategies for helping consumers. The development of the areas of policy, research, education and community information, particularly in conjunction with alternative delivery programs, could allow the Ministry to take a more positive and fundamental role in improving consumer protection in Victoria.

6.1.22 But the necessary fair market and fair trading cannot be cheaply obtained - and to some extent the Ministry will need to be "stood on its head" in order to deliver the quality of service, research and education, vigorous enforcement and surveillance, and policy development Victoria's consumers are entitled to.

6.1.23 I believe this report shows that the additional resources necessary to achieve these objectives can be entrusted to the Ministry.

6.1.24 Acknowledgements

The Ministry's staff have received considerable support from each of the four Ministers under whom they worked in the years 1981 and 1982 - Hon J H Ramsay, Hon H Storey, QC, Hon Jack Ginifer and Hon Peter Spyker. Deep sympathy was extended to the late Jack Ginifer's family by all the staff on the occasion of our former Minister's sad and tragic death in July 1982, having been Minister of Consumer Affairs for only 32 days.

6.1.25 It seems likely that the action of Hon Peter Spyker in initiating the current review of the Ministry will prove

a watershed decision in Consumer Affairs in Victoria, ranking with the establishment of the Council in 1965, the Consumer Affairs Bureau in 1970, and the establishment of the independent Ministry in 1981.

- 6.1.26 I also wish to thank on behalf of consumers, tenants and staff, the various community groups who have so willingly co-operated with the Ministry during the year.
- 6.1.27 Acknowledgement with thanks is made to Edward Arnold (Australia) Pty Ltd for their permission to reproduce several Tandberg cartoons from their recently released publication 'Buying Power' by Helen Wellings.
- 6.1.28 I congratulate Andrew Lachowicz, Phil Coman and Glen Carleton on their recent promotions to positions of greater responsibility as Deputy Director and Assistant Directors respectively, of the Ministry. Their loyal assistance and also that of the entire staff of the Ministry is very much appreciated.



John O Miller
Director of Consumer Affairs

Melbourne
4th November 1982

ADDENDA

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**Ombudsman
Victoria, Australia**

Telephone: 67 7151
67 7152
67 7153
67 4317

Office of the Ombudsman
Fifth Floor
406 Collins Street
Melbourne, 3000

31st December, 1981.

Mr. J.O. Miller, A.O.,
Director of Consumer Affairs,
Ministry of Consumer Affairs,
500 Bourke Street,
MELBOURNE. 3000.

Dear Mr. Miller,

I refer to the Annual Report of the Director of Consumer Affairs for the year ending 30 June 1981, and note that in paragraph 1.1.2, it was stated that the Director of Consumer Affairs reported to the Permanent Head or his Deputy of the Department of Labour and Industry.

This was not the case; the Ministry of Consumer Affairs Act did not provide for the Director to report to anybody other than the Minister. The failing was that the Director was given authority and responsibility, but the Secretary of the Department of Labour and Industry controlled the purse strings and the personnel in the Ministry were under him as Permanent Head. This was an entirely unsatisfactory situation, and although criticised by Sir Henry Bland in his Report on the Public Service and by the Management Review Programme, Research and Special Projects Division of the Public Service Board, continued causing considerable frustration and severely inhibiting the progressive initiatives of the Ministry. Staffing, budgetting and legislative enforcement measures also suffered because of the unwarranted interference and obstructive attitudes that occurred.

May I request that a correction be published in your next Annual Report?

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Norman Geschke', written over a horizontal line.

(Norman Geschke)
OMBUDSMAN

List of Publications prepared by the Ministry

Pamphlets:

Buying a Car
Hire Purchase
Carpets
Electrical Appliances
Funerals
Household Removals
Directory of Consumer Assistance
Be Sure Before You Sign
Small Claims Tribunal
Customer Dissatisfaction Reporting Systems
Case Studies & Teachers' Notes
Booklet - 'Consumer Rights' (available in 8 other languages)
You and the New Residential Tenancies Act
Tenancy Agreements to which the Act applies
Rents
Security Deposits (Bonds)
Termination of Agreements
Gaining Possession of Premises
Occupied Without Consent
Abandoned Goods
Prescribed Premises
Yellow Pages Guide to Better Buying

Newsletters:

Use of Credit Notes
Owner-Divers - Job Opportunities
Lay-By Guidelines

The Market Court
Introduction Agencies

Information Sheets:

Do It Yourself Home Checklist
Door to Door Sales
Door to Door Sales Tricks
Pyramid Selling & You
Mail Order
Second Hand Vehicle Check List
Motor Car Traders Act
Ministry of Consumer Affairs - Functions
Consumer Protection Legislation in Victoria
Contract Sale Note - House Purchases
Goods Sales and Leases Act

Poster:

"Be a Responsible Consumer"
(available in English and 6 other languages)

The following documents as prescribed by Regulations are
also available

Standard Residential Tenancy Agreement
Statement of Rights
Condition Report

Location of Offices

Ministry of Consumer Affairs
 500 Bourke Street
 Melbourne 3000

Consumer Affairs Bureau	
General Enquiries -	Telephone 602 4288
Buying Advice (Used Cars) -	Telephone 602 8188

Small Claims Tribunals	
General Enquiries -	Telephone 602 8204

Motor Car Traders Committee	
General Enquiries -	Telephone 602 8199

Residential Tenancies Tribunal	
General Enquiries -	Telephone 602 4288

Residential Tenancies Bureau	
General Enquiries -	Telephone 602 8140

Consumer Affairs Council	
Enquiries -	Telephone 602 8114

Suburban Office

Footscray Suburban Office
 20 Droop Street
 Footscray 3011

Regional Offices

Ballarat Regional Office

Public Offices

Level 2

Cnr. Mair & Doveton Streets

Telephone

Ballarat 37 0666

Bendigo Regional Office

Public Offices

Hargreaves Street

Telephone

Bendigo 43 8866

Geelong Regional Office

New State Offices

4th Floor

Cnr. Fenwick & Little Malop Sts

Telephone

Geelong 26 4500

Traralgon Regional Office

Public Offices

72 Hotham Street

Telephone

Traralgon 74 6000

Wangaratta Regional Office

Cnr. Ovens & Reid Streets

Telephone

Wangaratta 21 6344

Ministry of Consumer Affairs.



Looking after your interests.