

# CAV in context

Consumer Affairs Victoria (CAV) is the Victorian Government's leading consumer protection agency, working towards the vision of "Confident Consumers, Protected Communities".

Consumer Affairs Victoria's primary strategy is to help make markets work better, by providing services to, and engaging with, both consumers and business. Markets that are competitive, efficient and fair work in the interests of consumers and the general community.

Within this context, Consumer Affairs Victoria pursues the following seven strategic priorities:

- identify and address current and emerging marketplace issues
- ensure that existing marketplace interventions are effective and efficient
- target issues of concern to vulnerable and disadvantaged consumers
- provide leadership in alternative dispute resolution
- strengthen compliance and enforcement
- strengthen education and information services, and
- modernise the organisation.

The core business functions of Consumer Affairs Victoria are to:

- provide information and advice to consumers, tenants, traders, landlords and the Government on consumer and tenancy issues
- educate consumers and traders on their rights and responsibilities, and changes to the law
- seek to reduce disputes between consumers and traders and tenants and landlords
- ensure compliance with consumer laws
- promote product safety
- regulate the consumer environment through licensing and registration, and
- promote accurate trade measurement.

The organisational structure of Consumer Affairs Victoria serves the achievement of these priorities and performance of these key functions.

The organisation is headed by the Director of Consumer Affairs, whose powers and functions in terms of various pieces of legislation are set out in detail elsewhere in this Report. Five branches of Consumer Affairs Victoria reported directly to the Director as at year end.

The Program Development and Evaluation Branch provides services to the Minister for Consumer Affairs and the Director. Branch functions include development, review and evaluation of consumer policies and programs, and provision of strategic planning support. The Branch undertakes public reviews of consumer legislation, prepares bills for the legislation program, and produces business plans.

The Compliance and Enforcement Branch is responsible for ensuring that traders comply with the law, and for taking enforcement action where there is serious and/or systemic conduct causing detriment to consumers. The Branch oversees compliance and enforcement activities in relation to licensed occupations, product safety and trade measurement, as well as dealing with general issues such as misleading and deceptive conduct, and failure to supply goods and services as agreed.



**Dr David Cousins**  
**Director**  
**Consumer Affairs Victoria**



**Paul Myers**  
**General Manager**  
**Program Development**  
**& Evaluation**



**Peter Hiland**  
**General Manager**  
**Compliance & Enforcement**



**Stephen Devlin**  
**General Counsel**  
**Consumer Affairs Victoria**



**Lois Goodes**  
**Manager**  
**External Relations**

The External Relations Branch (which was re-structured during the year), co-ordinated stakeholder interaction including the Community Program, the Indigenous Consumers Unit, and the Bilingual Program (later the Multicultural Consumers Unit). The Branch also provided strategic media and executive services.

The Corporate Resources Branch of the organisation is responsible for finance (including trust fund management), grant program contracts, evaluation and supervision, residential bonds, business information system administration and support, and business unit human resources support.

The Education and Information Branch develops and manages education programs and public information, including marketing and publicity strategies relating to matters of concern to consumers.

The Deputy Director of Consumer Affairs Victoria has overall responsibility for activities and outputs of the majority of the operational branches of the organisation, as well as supporting or delegating for the Director on a variety of organisational, strategic, priority and Departmental matters. The following branches reported to the Deputy Director as at year end.

The Corporate Projects Branch brings together the expertise of various projects officers, and plans and coordinates cross-organisational responses to emerging issues and organisational priorities.

The Registration Branch deals with the registration of business names, incorporated associations, co-operatives and limited partnerships, and processes certain applications relating to retirement villages. The Registration Branch receives and processes registration applications and updates of registration information, and deals with clients via a public counter, mail, fax, and an online transaction service.

The Dispute Resolution Branch offers conciliation and mediation services to the public, aimed at empowering parties to resolve disputes between themselves. In specific circumstances, proceedings will be instituted or defended on behalf of members of the public.

The Enquiries Branch offers information services to the public, in particular through the provision of a Statewide enquiries line, email, and face-to-face advice at Consumer Affairs Victoria offices.

The Regional Operations Branch (which came into existence during the financial year) develops and administers the full range of operational processes affecting regional services, and informs the development of policy and legislation, corporate strategy, and business and operational planning, in relation to delivery of Consumer Affairs Victoria's core services across all regional areas of Victoria.

The Licensed Occupations Branch provides support services to the Business Licensing Authority (BLA), a statutory body. The Branch conducts licence application processes in respect of specific occupations which are required by law to be licensed or registered, and investigates applications on the BLA's behalf.



**Warwick Knight**  
**General Manager**  
**Corporate Resources**



**Chris Noone**  
**General Manager**  
**Education & Information**



**Geoff Browne**  
**Deputy Director**  
**Consumer Affairs Victoria**



**Anne Cousins**  
**Acting General Manager**  
**Corporate Projects**



**Andrew Levens**  
**General Manager**  
**Registration**

The Liquor Licensing Branch provides services to the Director of Liquor Licensing (a statutory appointee) in support of that office's activities in deciding liquor licence applications and determining appropriate licensing conditions.

In addition to the BLA and the Director of Liquor Licensing, mentioned above, Consumer Affairs Victoria provided support services or otherwise worked with, the following statutory bodies and corporations during 2004-05:

- the Motor Car Traders' Guarantee Fund Claims Committee
- the Consumer Credit Advisory Committee
- the Estate Agents Council
- the Prostitution Control Act Ministerial Advisory Committee
- the Consumer Utilities Advocacy Centre
- the Housing Guarantee Fund Limited, and
- the Patriotic Funds Council.

To further enable achievement of its objectives, Consumer Affairs Victoria is also involved in a network of relationships with government and non-government agencies, at State and Federal levels.

Consumer Affairs Victoria is a business unit of the Department of Justice. As such, the organisation, through its core business functions, plays a role in the Department's contribution to three key Whole of Victorian Government outcomes:

- safe streets, homes and workplaces
- building cohesive communities and reducing inequalities, and
- promoting rights and respecting diversity.

In this way Consumer Affairs Victoria contributes to the Victorian Government vision for 2010 that Victoria will be a State where:

- innovation leads to thriving industries generating high quality jobs
- protecting the environment for future generations is built into all Government activities
- communities are caring and safe, and opportunities are fairly shared, and
- all Victorians have access to the highest quality health and education services throughout their lives.

The legislation administered by Consumer Affairs Victoria, and the activities undertaken by the organisation in this regard, are primarily directed to assist Victorian consumers. However, many businesses operating in Victoria also operate interstate, and markets are frequently national in character. Thus it is essential that solutions to consumer problems take full account of national implications. As much uniformity as possible is desirable across jurisdictions in legislation and its administration, so as to minimise business compliance costs and maximise business and consumer understanding of the law. Consumer Affairs Victoria as far as possible applies a national perspective in developing policy solutions to marketplace problems. The result is that the organisation seeks to lead other agencies to adopt appropriate measures to enhance consumer protection, in key areas, resulting in a network of relationships between Consumer Affairs Victoria and various interstate and Federal agencies.

Consumer Affairs Victoria is active in the Ministerial Council on Consumer Affairs (MCCA), and the Director is represented on the Standing Committee of Officials of Consumer Affairs (SCOCA).



**Neil Taylor**  
*General Manager  
Dispute Resolution*



**Steven Scodella**  
*General Manager  
Enquiries*



**Simon Willshire**  
*General Manager  
Liquor Licensing*

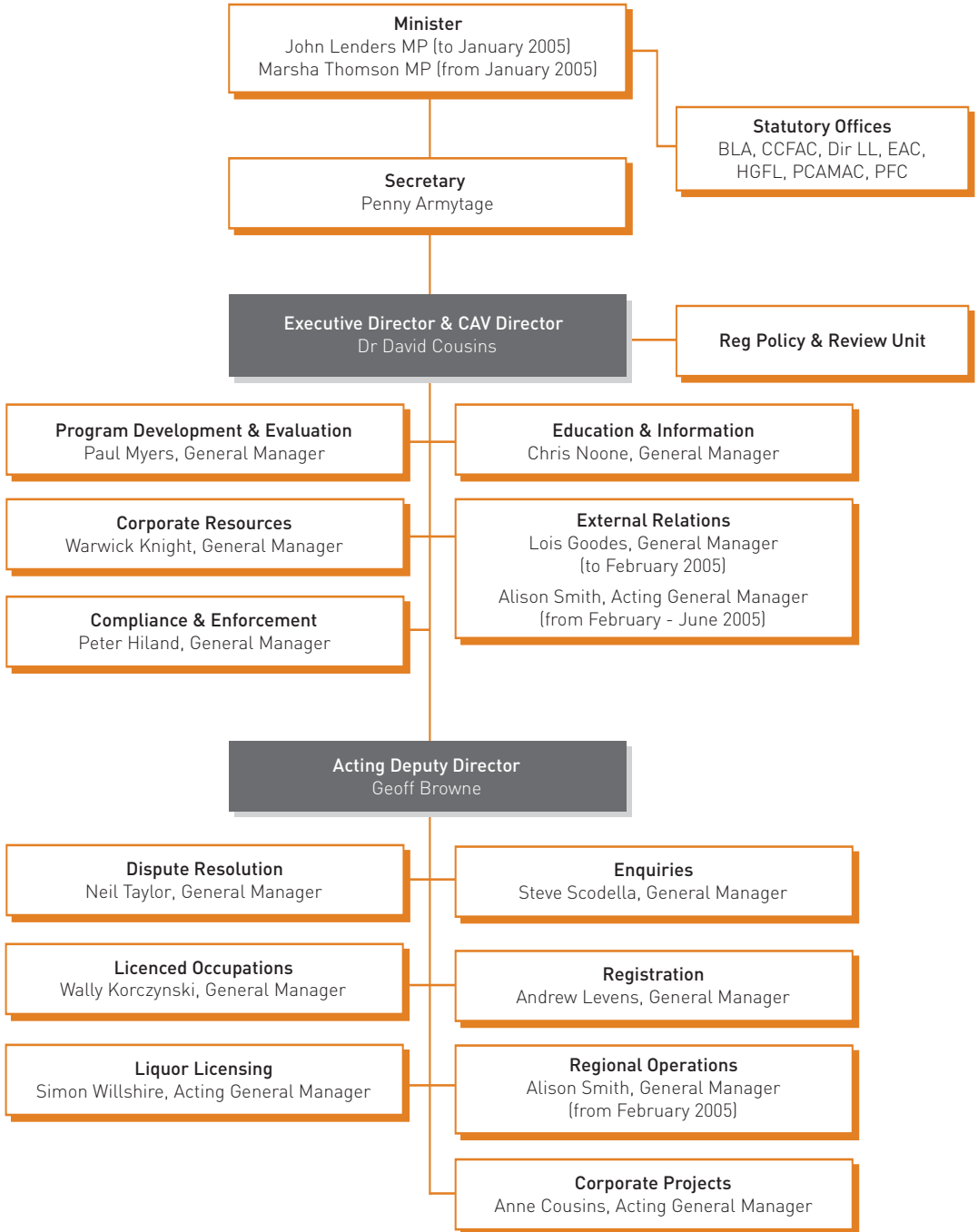


**Wally Korczynski**  
*General Manager  
Licensed Occupations*



**Alison Smith**  
*General Manager  
Regional Operations*

# Consumer Affairs Victoria 2004-05



# The year in review

2004-05 was a typically busy year for Consumer Affairs Victoria.

The organisation's strategic approach in pursuing its objectives, and responsiveness to marketplace developments, led to changes in the way certain functions are performed, as well as the introduction of several new functions. With respect to some of the organisation's core functions, it was a case of "doing the same, only more of it", while other activities were de-prioritised.

These changes to what we do and how we do it gave rise to significant structural changes during 2004-05.

## New service delivery model

The re-positioning of Consumer Affairs Victoria as the first point of reference for all Victorian consumers and tenants seeking assistance with consumer and tenancy issues led to changes in the way the organisation's core services (enquiries, and conciliation and mediation) were delivered in 2004-05. Aside from the necessary changes in resourcing to enable delivery of services across a broader market, procedures and systems were updated to enable service delivery to vulnerable and disadvantaged consumers (previously primarily serviced by non-governmental agencies funded by Consumer Affairs Victoria).

The organisation adopted recommendations made in a report by Mr Johan Scheffer MP, entitled *The Way Forward*, that it consider expanding delivery of core services into regional areas of Victoria, and as a result a pilot regional office and mobile service were introduced in the North Eastern region. Following implementation of the pilot, a decision was taken to implement the regional service delivery model throughout Victoria, and a Regional Operations Branch was established to administer this process. There was a concomitant de-prioritisation on funding of non-governmental community agencies.

Concurrently, a community education program aimed at informing communities about the new service delivery model and re-positioning Consumer Affairs Victoria as all Victorians' first port of call for consumer and tenancy advice, was piloted in the Eastern metropolitan region. This led to the establishment of a Community Education Unit within the Education and Information Branch of the organisation. The pilot, which was reviewed quarterly, was successful, and as at year end full implementation of the program was planned.

Preparations were also made for the transfer of the government financial counselling service from the Department of Human Services to the Minister for Consumer Affairs, on 1 July 2005.

## Compliance and enforcement

Increased attention was given to securing compliance with consumer legislation through engagement with traders and specific sectors of industry.

The introduction of amendments to the compliance and enforcement provisions of the *Fair Trading Act 1999* and full implementation of Consumer Affairs Victoria's *Compliance and Enforcement Policy Guidelines* enhanced the organisation's capacity to pursue this strategy, and the administrative and civil enforcement outcomes obtained during 2004-05 reflect its effectiveness.

The impact of criminal prosecutions was maximised through the strategic prosecution of non-compliance with fair trading requirements in particular sectors.

Consumer Affairs Victoria led the nation in the seizure of dangerous consumer goods, and several permanent ban orders were made during the year on the recommendation of the organisation.

Continued focus on a compliance strategy in relation to unfair contract terms in three priority areas yielded pleasing results. Most companies with which Consumer Affairs Victoria engaged agreed to revise or remove terms considered unfair.

A total of \$2,105,059 was recovered for consumers through conciliation and mediation.

## **Legislative review**

The organisation participated in the review of eight Acts, two sets of regulations, and the entire regulatory framework in relation to consumer credit, with the aim of ensuring that legislation is current and effective.

## **Consumer education**

Over two million education and information publications and forms were distributed to consumers over the financial year. Evaluations of education campaigns concluded that the methodologies employed were effective in achieving targets set in individual campaigns. In one of the campaigns, the use of concerted media monitoring and a direct marketing strategy (Victorian government firsts) led to the reduction of distribution costs from 2003-04 to 2004-05 by around two thirds.

## **Issues-based projects**

Significant work was done to understand and respond to consumer issues raised by emerging technologies such as mobile phone ring tones, third generation mobile phone services, pay TV, phone cards, online auctions, and so-called spyware. Consumer Affairs Victoria also released a consumer protection strategy for the 2006 Commonwealth Games to be held in Melbourne.

## **Licensing and registration**

During the year Consumer Affairs Victoria processed over 1,800 license applications and 90 permission applications in respect of licensed occupations, and over 16,000 liquor licensing applications. The organisation received more than 100,000 enquiries relating to entities required by law to be registered, reflecting an increase in demand for registration services.

## **National policy focus**

During 2004-05, Consumer Affairs Victoria continued to participate actively in the development of national policy in relation to several issues. The organisation is chairing a Ministerial Council on Consumer Affairs (MCCA) steering committee exploring the possibility of a national trade measurement framework, and successfully lobbied for tabling of the issue of national consumer research capacity, before the Standing Committee of Officials of Consumer Affairs (SCOCA) and MCCA. The organisation also advocated a nationally consistent approach to unfair contract terms.

A report was commissioned by Consumer Affairs Victoria (on behalf of SCOCA) on the potential for greater national harmonisation in the regulation of estate agents, and the organisation hosted its second National Credit Conference, in addition to contributing to a further 11 national working parties, committees, and groups.

## Key achievements 2004-05

- Successfully piloted new service delivery model
  - opened pilot regional branch office and mobile service in Wangaratta
  - successfully piloted community education program in Eastern metropolitan region
  - changed method of delivery of enquiries and dispute resolution services
- Achieved and exceeded Treasury target for grade of service for government call centres
- Increased levels of service to vulnerable and disadvantaged consumers
  - almost 150% increase in volume of calls to Indigenous Consumers Unit
  - established enquiries lines for speakers of five languages most frequently used, after English
- Increased number of consumer complaints referred for conciliation and mediation in 2003-04, by a further 5%
  - 7% improvement on resolution rate as against 2003-04
  - amount recovered on behalf of consumers increased to around \$2.1 million
- Pursued unfair contract terms legislation enforcement strategy in relation to mobile phone, vehicle hire and fitness centre contracts, resulting in most individual companies agreeing to revise or remove terms considered unfair
- Led the nation in the volume of dangerous consumer products seized (nearly 50,000)
- Participated in reviews of eight Acts, two sets of regulations, and entire regulatory framework in relation to consumer credit
- Implemented an increasingly strategic approach to compliance and enforcement, resulting in
  - more than \$350,000 in court fines secured
  - over 70 prosecutions, injunctions and disciplinary actions concluded
  - over 70 civil actions conducted
- Responded to emerging issues in relation to new technologies (mobile phone ring tones, third generation mobile phone services, pay TV, phone cards, online auctions, and spyware)
- Released a strategy in relation to consumer protection for the 2006 Commonwealth Games
- Distributed over 2 million publications and forms to consumers and tenants
- Processed in excess of 16,000 liquor licensing applications
- Received more than 100,000 registration enquiries
- Received and investigated over 270 trade measurement complaints, conducted inspections at over 5,300 premises, tested/inspected nearly 22,000 instruments, issued 87 infringement notices, issued 99 warning letters for minor breaches of legislation, and prosecuted several clear breaches of legislation
- Hosted the Fair Trading Compliance Conference
- Published guidelines to business on compliance with fair trading requirements
- Worked on developing a disability strategy
- On a national level:
  - chaired a MCCA steering committee exploring the possibility of a national trade measurement framework
  - successfully lobbied for tabling of the issue of national consumer research capacity, before SCOCA and MCCA
  - advocated a nationally consistent approach to unfair contract terms
  - commissioned a report on the potential for greater harmonisation in the regulation of estate agents, nationally, on behalf of SCOCA
  - hosted the second National Credit Conference
  - contributed to a further 11 national working parties, committees, and groups

# Introduction

The *Fair Trading Act 1999* sets a benchmark for fair trading in Victoria, and is the State's primary consumer protection statute. Its provisions apply to all businesses operating in Victoria.

The Act regulates general trading conduct, terms of consumer contracts, product safety, and particular forms of selling (telemarketing, e-selling, door-to-door sales, and lay-by). Consumer Affairs Victoria is responsible for the administration of this Act, as well as several pieces of industry-specific legislation, the provisions of which operate in addition to those of the *Fair Trading Act 1999*.

A full list of the Acts administered by Consumer Affairs Victoria as at 30 June 2005 is contained in **Appendix 1**. These Acts together (including relevant regulations) are referred to in this Report as "the consumer legislation".

The statutory powers and functions of the Director of Consumer Affairs Victoria are set out in the *Fair Trading Act 1999*, and can be summarised as follows:

- advise persons of their rights and obligations
- receive and deal with complaints
- monitor compliance
- prepare and publish guidelines in relation to operation and enforcement of the consumer legislation and relevant regulations
- investigate breaches
- prosecute such breaches
- institute and defend proceedings
- encourage the preparation and use of codes of practice in industry
- propose codes of practice to the Minister of Consumer Affairs for promulgation as regulations
- investigate and research matters affecting the interests of purchasers and suppliers
- report on these investigations to the Minister
- educate and inform people on fair trading issues, and
- perform any other function conferred on the Director by legislation.

Many of the specific powers provided for in the Act extend to other pieces of legislation administered by Consumer Affairs Victoria, including the Consumer Acts (listed in Schedule 1 to the *Fair Trading Act 1999*), and the *Credit (Administration) Act 1984* and Credit Acts (together called "credit legislation" in this Report).

The Director's functions under the credit legislation include:

- receiving and investigating complaints, and giving advice, in relation to credit
- keeping the credit legislation under review
- conferring and exchanging information with peers in other States and Territories, and
- taking proceedings for offences against the credit legislation.

## Legislative developments

A priority for Consumer Affairs Victoria has been to ensure that the consumer protection legislative framework is modern – that is, deals with marketplace problems in effective, efficient and least costly ways. As a result, the *Fair Trading Act 1999* is frequently amended and updated.



In 2001, two new sections were added to the Act, proscribing unconscionable conduct by suppliers (such as abuse of uneven bargaining power or the exerting of undue influence) in relation to small business consumers. The effect of these changes was to extend certain types of protection previously only available to individual consumers, to small business consumers as well.

2003 saw two waves of changes to the Act. In the first set of amendments, sections were introduced to provide relief from unfair terms in consumer contracts. The Director's powers of enforcement in relation to the conduct of suppliers and business licence holders were enhanced, and the existing provisions concerning pyramid selling schemes were improved. The amendments also clarified that advertisers of consumer goods and services (with certain exceptions) must provide physical addresses so that they can be contacted if necessary. The power to make fixed term ban orders (expanding the existing powers to ban the supply of certain goods or services pending legal proceedings, or permanently) was introduced. The existing provisions relating to contact sales agreements were improved, imposing further duties on businesses engaging in contact sales methods, to protect consumers from harmful conduct commonly associated with such methods. The administration of small claims was brought under the operation of the *Fair Trading Act 1999*, and penalties for many of the offences under the Act were increased. Sections providing for specific conditions and warranties to be incorporated into consumer contracts were imported into the Act from the *Goods Act 1958*.

The second wave of amendments saw the introduction of provisions specifically regulating telemarketing agreements. In addition, refinements were made to some of the new sections which had been introduced earlier in the year, reflecting a focus on continual review and responsiveness.

In 2004, the Act was again amended, allowing for the application of the existing provisions proscribing unfair terms in consumer contracts, to some classes of consumer credit contracts, by the passing of regulations.

Later in the year, amendments were made to enhance the Director's powers in relation to ensuring compliance with the consumer legislation, and enforcing provisions where necessary. The amendments widened the range of legal remedies available to the Director, to allow for more flexibility in approach, and also refined existing powers.

## Exercise of Director's powers

The powers and functions of the Director are enacted to enable the achievement of the various purposes of the Act. The first five chapters that follow report on the activities undertaken during 2004-05 in pursuit of the following objectives set out in the Act:

- promotion and encouragement of fair trading practices, and fair and competitive markets
- protection of consumers
- regulation of trade practices
- provision for unfair terms in consumer contracts to be void, and
- provision for the safety of consumer goods and services, and the information to be provided with these.



# Consumer Affairs Victoria Annual Report 2004-2005

Report to the Minister for Consumer Affairs  
for the year ended 30 June 2005



*Marsha Thomson MP  
Minister for Consumer Affairs*

Ordered to be printed November 2005  
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## Department of Justice

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**Director  
Consumer Affairs Victoria**

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Marsha Thomson MP  
Minister for Consumer Affairs  
80 Collins Street  
MELBOURNE VIC 3000

Dear Minister

### Annual Report 2004-2005

I present to you my report on the activities and operations of Consumer Affairs Victoria for the year ended 30 June 2005.

The document has been prepared in satisfaction of section 102 of the *Fair Trading Act 1999* and section 16 of the *Credit (Administration) Act 1984* for you to lay before each House of Parliament.

Yours sincerely

**DR DAVID COUSINS**  
Director



## Director's foreword

This Annual Report highlights the many achievements of Consumer Affairs Victoria (CAV) in 2004-05. During the financial year, CAV has built on and consolidated the directions set for it in recent years. Key themes have been empowering market participants, consumers and businesses to achieve appropriate outcomes, and the promotion of regulatory reforms. A strong focus has been to engage consumers and businesses proactively in both metropolitan and non-metropolitan regions.

The emphasis on ensuring effective enforcement of consumer laws was also maintained in 2004-05. This was assisted by the amendments to the *Fair Trading Act 1999* passed during the year. Broader enforcement powers were utilised to achieve quicker and fairer outcomes for consumers and, indirectly, for the majority of businesses adhering to consumer laws. The use of civil and administrative remedies was expanded and a number of major court and tribunal cases were launched. Considerable success was achieved in utilising the unfair contract terms provisions of the *Fair Trading Act 1999*. The emphasis on product safety and credit matters was also maintained, with a major review of credit issues announced by Minister Marsha Thomson MP toward the end of 2004.

In 2004-05 CAV made a significant contribution to the emerging debate over the future direction of consumer policy in Australia. An important development in this connection also was the involvement of the Productivity Commission in this debate, notably through a review of product safety. In addition, as part of its review of national competition policy, the Productivity Commission recommended a national review of consumer protection policy and administration. There are many steps being taken by the Standing Committee of Officials of Consumer Affairs and the Ministerial Council on Consumer Affairs to achieve effective consumer protection. Inevitably, however, these steps are piecemeal, slow to progress and lacking in overall coherence. A national review of consumer protection policy and administration is long overdue.

Such a review would need to examine the role and scope of consumer protection policy, and to consider the appropriate distribution of responsibilities between the Commonwealth, States and Territories and the institutional arrangements applying at the different levels of Government. At the State and Territory level, a significant issue is whether linking policy advice with regulation in agencies located within Ministerial departments is consistent with best practice regulation.

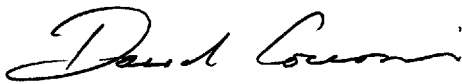
The role of consumer advocacy in promoting marketplace reforms also needs further consideration. During the year the Ministerial Council recognised the importance of consumer research, but did not go so far as to support the establishment in Australia of a body similar to the National Consumer Council in the United Kingdom.

I would like to acknowledge the strong support for the work of Consumer Affairs Victoria from the Secretary of the Department of Justice, Penny Armytage, other Executive Directors of the Department and staff of the Department.

I would also like to acknowledge the leadership and support of our two Ministers during the year: John Lenders (up until 21 January 2005) and Marsha Thomson. In September 2004, Minister Lenders tabled a Statement in Parliament indicating the direction and key recent achievements of Consumer Affairs Victoria.

CAV has also maintained throughout the year a close working relationship with the statutory bodies within the Consumer Affairs portfolio, and I acknowledge the ongoing contribution of these bodies.

As always, the staff of Consumer Affairs Victoria have shown great dedication in meeting the many demands placed on them and in advancing our consumer policy objective.



Dr David Cousins  
Director  
Consumer Affairs Victoria

# About this Report

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The 2004-05 Consumer Affairs Victoria Annual Report has been compiled in satisfaction of the Director's duty to report to the Minister of Consumer Affairs on the operation of the *Fair Trading Act 1999* and the *Credit (Administration) Act 1984* over each financial year. Reporting under the *Financial Management Act 1994* as it relates to Consumer Affairs Victoria, appears in the Department of Justice Annual Report.

The Report is also intended to be relevant, interesting and accessible to a wider audience, including external stakeholders and peer organisations. To this end, background information on Consumer Affairs Victoria, and its varied functions, has been included where appropriate.

**CAV in context** explains the relationship between Consumer Affairs Victoria on the one hand, and a network of related organisations and government agencies, on the other. The section sets out how the operations of Consumer Affairs Victoria relate to relevant Department of Justice and Whole of Victorian Government objectives, and how the organisation participates in the development of national policies and strategies relating to consumer issues.

**The year in review** gives a narrative overview of the operations of Consumer Affairs Victoria during the 2004-05 financial year.

The details of these operations are reported in the main body of the Report, which is divided into an **Introduction** and seven chapters.

The **Introduction** sets out the legislative framework within which Consumer Affairs Victoria operates.

The five chapters following reflect activities undertaken in pursuit of some of the stated objectives of the *Fair Trading Act 1999* (the main Act under which the organisation operates), namely:

- promotion and encouragement of fair trading practices, and fair and competitive markets
- protection of consumers
- regulation of trading practices
- provision for unfair terms in consumer contracts to be void, and
- provision for the safety of consumer goods and services, and the information to be provided with these.

Activities specifically in relation to credit are reported separately in the relevant chapters.

The sixth chapter gives an overview of the activities of the statutory bodies, corporation and appointee to which Consumer Affairs Victoria provided support services, during 2004-05. A summary of staff development initiatives during 2004-05 is provided in the seventh chapter.

A special feature on **Retirement villages** details the organisation's activities in relation to this sector in 2004-05, and demonstrates how the various functions of Consumer Affairs Victoria operate together to impact particular market sectors to promote efficient functioning.

The narrative section of the Annual Report concludes with **The year ahead**, setting out Consumer Affairs Victoria's responses to the challenges and successes of the 2004-05 financial year, and how these have informed plans and strategies for 2005-06.

In the **Appendices**, details of legislation administered, media releases generated, legal proceedings conducted, and financial administration, during 2004-05, are reported.

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# Promoting and encouraging fair trading practices, and fair and competitive markets

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		The <i>Fair Trading Act 1999</i> empowers Consumer Affairs Victoria to pursue the objective of promotion and encouragement of fair trading practices and fair and competitive markets, through several provisions falling into two main categories:
		<ul style="list-style-type: none"><li>• educating and informing business about statutory fair trading requirements, and</li><li>• securing compliance with, and enforcing, these requirements.</li></ul>
		Activities undertaken in this regard during 2004-05 included:
		<ol style="list-style-type: none"><li>1. increased partnership with the business community to facilitate voluntary compliance with fair trading requirements</li><li>2. an enhanced and refined approach to enforcement of fair trading requirements, aimed at further increasing the efficiency and effectiveness of this aspect of the organisation's functions</li><li>3. continued focus on trade measurement, at both State and Federal levels, and</li><li>4. implementation of the results of a review of the <i>Petroleum Products (Terminal Gate Pricing) Act 2000</i> to enhance competitiveness of the fuel market.</li></ol>

# 1 Facilitating voluntary compliance

When markets work well, both business and consumers benefit. Fairness and competitiveness are hallmarks of well-functioning markets, and an important part of Consumer Affairs Victoria's role is to facilitate voluntary compliance (by business) with the consumer legislation designed to ensure these.

This role is approached through:

- 1.1 providing guidance to business, on the law, and
- 1.2 encouraging continued and/or improved compliance.

## 1.1 KEEPING BUSINESS INFORMED

During the 2004-05 financial year, Consumer Affairs Victoria hosted the Fair Trading Compliance Conference, to inform business about changes to consumer legislation and how these would affect various sectors. Three industry guidelines on major changes to the *Fair Trading Act 1999*, published during the year for the same purpose, were launched at the Conference.

The organisation also funded a range of projects to facilitate the smooth introduction of two training courses for real estate practitioners, aimed at ensuring that practitioners attain the levels of competence required by the *Estate Agents Act 1980* (administered by Consumer Affairs Victoria).

Using intelligence gathered from the operations of each of its branches, and from interaction with other organisations at State and Federal levels, Consumer Affairs Victoria is able to identify trading practices that give rise to concern. Where appropriate, cross-organisational teams that bring together different skills within the organisation, are formed to develop and implement cohesive responses to these emerging concerns.

One issue addressed in this way during 2004-05 related to refund policies used in the retail sector. Developing an effective response to this issue involved monitoring, consultation, consumer and business education, and, following implementation of the strategy, evaluation of its effectiveness.

## INDUSTRY GUIDELINES ON THE FAIR TRADING ACT 1999

Industry guidelines on major changes to the *Fair Trading Act 1999* since its commencement were prepared and distributed during 2004-05. The three titles published were:

- *Preventing unconscionable conduct in trade or commerce against consumers or small businesses: Guidelines on the unconscionable conduct provisions of the Fair Trading Act 1999*
- *Preventing misleading and deceptive conduct in trade or commerce – An Australian standard on commercial behaviour: Guidelines on the false, misleading and deceptive conduct provisions of the Fair Trading Act 1999, and*
- *Unfair terms in vehicle rental agreements* (designed to assist vehicle rental operators, legal advisers and consumers to understand the requirements of the *Fair Trading Act 1999* in relation to their vehicle hire contracts – these were supplied to all Victorian vehicle hire operators on the Consumer Affairs Victoria database and were also discussed at a Victorian Automobile Chamber of Commerce – VACC – meeting).

The guidelines set out the meaning of the new provisions, their impact on business behaviour, and how businesses can ensure that they are complying.

## FAIR TRADING COMPLIANCE CONFERENCE

The Fair Trading Compliance Conference was held on 13 May 2005, and was attended by 140 delegates from ten different sectors of business across Victoria. Consumer Affairs Victoria's purpose in hosting the Conference was to facilitate enhanced compliance by informing delegates on changes to the consumer legislation introduced during the financial year by the *Fair Trading (Enhanced Compliance) Act 2004*.

The Conference was addressed by Minister Marsha Thomson MP, who discussed the strategic priorities of government in the area of consumer protection, and outlined the intention behind the legislative changes.

The program of events included updates on the latest developments in the proscription of unconscionable, misleading and deceptive conduct, and on unfair contract terms legislation in Victoria. Delegates were also afforded an insight into how the judiciary views the current legislation, and the enforcement action taken to date in the courts and the Victorian Civil & Administrative Tribunal (VCAT).

Keynote speaker Allan Asher (Member of the Board of the United Kingdom Office of Fair Trading, CEO of independent United Kingdom consumer advocate EnergyWatch and former Deputy Chairman of the Australian Competition and Consumer Commission – ACCC) provided an international perspective on the enhanced enforcement powers ushered in by the legislative changes, and a glimpse into the future of consumer law, based on developments in the United Kingdom and European Union.

In a panel discussion, representatives from impacted sectors of business probed the outcomes for their industries, and how their industries are likely to respond to ensure best compliance.

A second panel discussion amongst print and television media personnel investigated the role of the media in promoting and reporting on compliance with the new provisions.

## REAL ESTATE PRACTITIONER TRAINING

The *Estate Agents Act 1980* requires real estate practitioners to undergo mandatory training to ensure the attainment of a prescribed degree of professional competence in this sector to minimise the risk of consumer detriment.

During the 2003-04 financial year Consumer Affairs Victoria developed two training courses for real estate practitioners in line with these requirements, and delivery of the courses (overseen by Consumer Affairs Victoria) began in 2004-05.

Consumer Affairs Victoria funded a range of projects during 2004-05 to develop materials for learners and training organisations, in support of training delivery.

These included:

- materials developed in partnership with Victorian Education and Training Assessment Services – VETASSESS (reference materials for learners, facilitator guides, and banks of external examination questions)
- project-based competency assessment tasks, for delivery by training providers, and
- delivery and assessment guides, specifying Victorian content relevant to national units of competency in the new courses.

Funding of these materials promoted the consistency of delivery to the required standard, by some 18 approved training organisations across Victoria. Training began in January 2005 and is provided on an ongoing basis.

An education campaign was also addressed to mortgage brokers during this financial year.

The organisation also embarked on a project engaging with motor car traders, involving consultation, interpretation, reporting, designing business and consumer education strategies, and considering legislative review.

2004-05 also saw the roll-out of an extensive education campaign in relation to retirement villages, following the passage of legislation in April 2005. The campaign was targeted mainly at residents but included some business education components – details are reported in the **Special feature: Retirement villages** on page 80. The program will continue in 2005-06 as further measures are implemented.

## MORTGAGE BROKERS

During the second half of 2004 Consumer Affairs Victoria undertook a review of mortgage broker conduct in Victoria. This revealed less-than-satisfactory levels of compliance with the broker laws administered by Consumer Affairs Victoria. The findings gave rise to a series of consultations with the main broker peak bodies. As a result, Consumer Affairs Victoria – together with the Business Licensing Authority (BLA) – collaborated with the Victorian mortgage broker community to bring about a more systematic and well-informed compliance regime.

In January 2005 Consumer Affairs Victoria mailed a newsletter to mortgage brokers, advising them of various obligations under the *Consumer Credit (Victoria) Act 1995*, and enclosing a “Declaration of Eligibility to be Engaged in Finance or Mortgage Broking” form, to assist employers to determine whether individuals were disqualified or prohibited from mortgage broking. Individuals who are ineligible to practice as mortgage brokers under the Uniform Consumer Credit Code are required to lodge so-called “permission applications” to the BLA if they wish to act as brokers. During 2004-05, eight permission applications were received by the BLA, an indication that industry awareness of eligibility requirements has increased.

## REFUND POLICIES: WORKING WITH RETAILERS

The volume of enquiries received by Consumer Affairs Victoria in relation to refunds peaks every January as consumers encounter difficulties with returning unwanted Christmas gifts and goods bought in the January sales. For example, enquiries in relation to refunds more than doubled from December 2003 to January 2004. Based on analysis of the enquiries received, and anecdotal evidence suggesting that traders were confused about their refund rights and obligations, Consumer Affairs Victoria determined that it was necessary to raise awareness of statutory provisions relating to refunds and their application to everyday transactions, and to boost trader compliance. An education campaign directed at traders was implemented in 2004-05, and consisted of several phases.

### Monitoring

In the monitoring phase (June–September 2004) Consumer Affairs Victoria examined receipts issued by 122 companies to check whether refund policies printed on the receipts complied with requirements stipulated in the *Fair Trading Act 1999*. The exercise revealed general confusion among traders about their obligations under the implied warranties and conditions provisions of the Act. Only 29% of all receipts bearing refund policies accurately and intelligibly reflected consumers' rights. Highest non-compliance was found in the clothing, footwear and clearance centre sectors.

### Compliance

In November 2004, Consumer Affairs Victoria sent warning letters to all 43 non-compliant traders identified in the monitoring exercise. The response was positive, with traders eager to work with Consumer Affairs Victoria to clear up any ambiguities in their policies. Many traders, including some large national chains, implemented new refund policies following engagement with Consumer Affairs Victoria on this issue.

### Consultation and education

Building on intelligence obtained from the monitoring exercise, Consumer Affairs Victoria held a focus group with traders to gain an understanding of refunds policy issues from a trader perspective, and research which sorts of materials would be most useful in facilitating compliance.

The result was the creation of a refunds education kit, particularly targeted at the clothing, footwear and clearance sectors. The kit included:

- a brochure (published specifically for the purpose) on refunds law, together with case studies relevant to the sector
- a summary sheet for staff to refer to at point of sale
- a brochure on how to handle complaints effectively, and
- a copy of the Consumer Affairs Victoria refunds sign.

The kit was mailed out to 4,100 clothing, footwear and clearance retailers throughout Victoria in early December 2004. Media releases announced the launch of the kit both on the launch date and on Boxing Day (to coincide with the Boxing Day sales). The kit was also distributed to traders in the regional and metropolitan monitoring exercises (see related article on page 7).

Throughout the campaign, Consumer Affairs Victoria worked in partnership with the Australian Retailers Association Victoria (ARAV) to disseminate the kit and its key messages.

### Evaluation

The effectiveness of the education campaign was assessed through a telephone survey of retail outlet managers six months after implementation of the campaign.

The survey found that almost two thirds (62.6%) of the managers surveyed were able to recall the refunds education kit without prompting. Of these:

- 89% said that they had found the kit useful
- 74% reported that using the kit had improved their understanding of their rights and obligations in relation to refunds, and that they had kept it for future reference, and
- 70% had discussed the kit with their staff, or circulated it to their staff, extending the benefits of the kit beyond management, to points of sale.

## ENGAGING WITH MOTOR CAR TRADERS

### Consultation

During 2004-05, Consumer Affairs Victoria assisted in the conduct of the consultation on the *Motor Car Traders Act 1986* led by Mr Noel Pullen MP.

The general aims of the consultation were to:

- gain a better understanding of issues in relation to the Act
- assess the effectiveness of the Act in meeting the needs of consumers and traders (including an assessment of the Act's practical application), and
- work through some of the issues raised at the Motor Industry Forum held during the 2003-04 financial year under the auspices of Consumer Affairs Victoria and the VACC.

As part of the consultation process, focus group meetings were held in Preston, Frankston, Geelong, Bendigo, Ringwood, Wodonga, Traralgon and Warrnambool.

### Interpretation and reporting

At the end of the consultation process, Consumer Affairs Victoria assisted Mr Pullen to prepare a report to the Minister for Consumer Affairs on the issues raised by stakeholders. The report documented the views of stakeholders and made recommendations covering issues such as unlicensed trading, administration of the licensing scheme, dispute- and complaint-handling, online trading, and better protection for consumers. The report also outlined issues raised and views expressed during the various consultations. This report was presented to the Minister in December 2004, and released for public comment in January 2005.

As at year end Consumer Affairs Victoria was preparing a government response to Mr Pullen's report, in consultation with other government departments, and taking into account feedback received from the public.

### Education

Overall, the consultations highlighted the need for increased interaction with motor car traders, particularly with regard to their regulatory obligations. Consumer Affairs Victoria developed an education strategy for motor car traders in response to this need, with the aims of improving its relationship with the industry and better informing traders of their compliance obligations.

The strategy proposed a holistic range of education and information activities to effect real change within the industry. Some of the proposed initiatives are ongoing, and it is intended that others will be implemented over a two-year period.



## 1.2 ENCOURAGING BEST PRACTICE

In 2004-05 Consumer Affairs Victoria sponsored a retail excellence award under the auspices of ARAV, and continued a program of regional and metropolitan enforcement exercises begun in 2003-04. Both of these initiatives served to encourage best practice in relation to fair trading compliance.

### REGIONAL AND METROPOLITAN MONITORING

A program of regional and metropolitan compliance exercises begun during 2003-04 was continued in 2004-05. During 2004-05 compliance and enforcement officers visited Shepparton, the La Trobe Valley, Geelong and Ballarat, as part of a regional compliance monitoring program, completing in excess of 600 inspections. Each exercise was conducted over a week, and targeted the full range of trader conduct falling under the administration of Consumer Affairs Victoria, including trade measurement and product safety. The exercises included an education component, with staff distributing information kits on statutory requirements in relation to refunds and lay-by to local retailers, as well as answering queries from consumers and traders.

In addition, a number of enforcement outcomes followed these inspections. The exercise raised awareness of the presence of Consumer Affairs Victoria, and highlighted that non-compliance will be identified and acted upon.

### RETAIL EXCELLENCE AWARD

Now in its second year, the Consumer Affairs Victoria retail excellence award, recognising excellence in customer service, forms part of the Retail Night of Nights hosted by ARAV.

Through sponsorship of this award, Consumer Affairs Victoria increases awareness in the retail sector of the importance of adopting specific measures to ensure compliance with consumer laws, and highlights its role as a partner with business in helping to make markets work better.

During 2004-05, targeted promotion of the award was significantly increased in comparison to 2003-04, resulting in a 46% increase in entries submitted. As at year end initial assessments of submissions and compliance checks had been performed by Consumer Affairs Victoria, VCAT, and ACCC. Recommended category finalists were to be named by the judging panel, and winners identified on the basis of site visits and interviews. The winners were to be announced at the ARAV Retail Night of Nights, to be held on 27 July 2005.

## 2 Enforcing statutory requirements

In pursuing the objective of promoting and encouraging fair trading practices and fair and competitive markets, the use of assertive measures to secure compliance with statutory requirements is appropriate in certain circumstances. These circumstances range from laxness on the part of traders in fulfilling their fair trading responsibilities, to outright consumer exploitation. Given this wide spectrum of trader conduct that Consumer Affairs Victoria must address, a broad and sophisticated range of measures to be applied in response is required.

2004-05 saw:

- 2.1 the review of the legislative framework empowering Consumer Affairs Victoria to act against non-compliant traders, culminating in the introduction of significant legislative amendments to compliance and enforcement aspects of the consumer legislation
- 2.2 application of the new provisions to obtain quality compliance and enforcement outcomes, and
- 2.3 strategic criminal prosecutions.

	2004-05	2003-04
Value of fines issued in court	\$371,550	\$503,600
Value of Court Fund and VCAT penalties imposed	\$5,150	\$36,483
Value of costs orders obtained	\$33,434	\$48,284
Number of prosecutions, injunctions and disciplinary actions	72	79
Number of civil actions conducted	72	74
Number of parties signing enforceable undertakings	60	34
Number of infringement notices served	347	Not available
Number of information notices served	156	Not available
Number of substantiation notices served	9	Not available
Number of warrants executed	14	Not available

### Comparative data: compliance and enforcement outcomes 2004-05 and 2003-04

## 2.1 REVIEW OF COMPLIANCE AND ENFORCEMENT PROVISIONS

The *Fair Trading (Enhanced Compliance) Act 2004* came into effect in December 2004. The Act updates the legal framework for enforcing compliance with fair trading requirements, in line with an enforcement policy shift towards increased use of civil and administrative interventions, and away from unnecessary reliance on criminal prosecutions. The change in policy is aimed at:

- quickly stopping breaches, thereby preventing further consumer detriment
- obtaining redress for consumers affected by non-compliant trader conduct, and
- facilitating compliance by industry.

## 2.2 APPLICATION OF NEW PROVISIONS

### 2.2.1 Better information-gathering

The amendments introduced by the *Fair Trading (Enhanced Compliance) Act 2004* improved the Director's information collection powers, placing Consumer Affairs Victoria in a better position to monitor compliance with fair trading requirements.

### 2.2.2 Administrative enforcement

The amendments introduced by the *Fair Trading (Enhanced Compliance) Act 2004* enhance Consumer Affairs Victoria's ability to secure compliance with fair trading responsibilities, without recourse to the court system (which, while it is the most appropriate course of action in some instances, is unnecessary in many circumstances).

## CASE STUDY

### GROVE CONVEYANCING SERVICES

Grove Conveyancing Services was a partnership providing conveyancing services in the Geelong area. The business collapsed after allegations of misappropriation of funds, affecting a large number of consumers. Victoria Police and Consumer Affairs Victoria undertook investigations and Consumer Affairs Victoria coordinated caller information to relieve pressure on other government agencies such as the Land Registry and the State Revenue Office.

In order to secure evidence for use to protect consumer interests, Consumer Affairs Victoria seized 13,318 files from the offices of Grove Conveyancing Services under warrant. Victoria Police seized a further 168 files. Consumer Affairs Victoria catalogued the files, established an inquiry register, answered 396 enquiries, and returned 111 certificates of title and other security documents found in the seized files to their lawful owners. As at year end investigations were still underway, and Consumer Affairs Victoria had identified specific transaction files to be forwarded to Victoria Police for further action.

### 2.2.2.1 Enforceable undertakings

The *Fair Trading Act 1999* empowers Consumer Affairs Victoria to obtain undertakings from traders in relation to their conduct under consumer legislation. Before the amendments introduced by the *Fair Trading (Enhanced Compliance) Act 2004*, Consumer Affairs Victoria could obtain court orders compelling fulfilment of such undertakings only after they had been breached. This meant that traders could breach undertakings once, with impunity. The amendments enable Consumer Affairs Victoria to obtain undertakings on the basis that court orders are obtainable immediately. This means that breaches of undertakings are now subject to the consequences of contravention of court orders.

These amendments further enhance the effectiveness of obtaining undertakings, which offer advantages of speed and flexibility over formal court proceedings. The **Nike**, **EnergyAustralia** and **Body Bronze Glen Waverley** case studies give examples of how undertakings can be used to achieve several outcomes simultaneously.

Enforceable undertakings were accepted from 60 different parties during 2004-05. A full list of the enforceable undertakings obtained during 2004-05 is published in **Appendix 3**.

## CASE STUDY

### NIKE AUSTRALIA PTY LTD

In April 2005, Consumer Affairs Victoria received a telephone complaint concerning a clearance sale being held at the Melbourne Showgrounds by Nike Australia Pty Ltd (Nike).

On visiting the sale, Consumer Affairs Victoria determined that Nike was providing purchasers with receipts stating that no refunds or exchanges would be available on any of the products sold at the sale. Consumer Affairs Victoria was also concerned about internal promotional material stating that refunds and exchanges would not be offered, and about the fact that not all sale customers were being provided with receipts. Officers approached Nike management at the sale with these concerns, and made several subsequent visits to the sale to ensure that the conduct had ceased.

Following the sale, Consumer Affairs Victoria met with Nike management to seek redress for affected consumers, and to ensure that the conduct would not be repeated in the future. Nike made an undertaking accepting that its behaviour may have breached the *Fair Trading Act 1999*, agreeing not to repeat the conduct, and committing to publish an advertisement in the *Herald Sun*, advising consumers who might have been affected by Nike's conduct, of the correct position under the law.

## CASE STUDIES

### ENERGYAUSTRALIA

During 2004 a high number of complaints was received in connection with EnergyAustralia, a major Australian energy retailer selling electricity into Victorian households. Some of the allegations made were that door-to-door marketers had misrepresented certain terms and conditions of EnergyAustralia's contracts, had falsely claimed that they were government representatives, and had refused to leave customers' homes on request.

Consumer Affairs Victoria's investigations confirmed its initial view that EnergyAustralia's conduct was in breach of the *Fair Trading Act 1999*. The Director accepted an enforceable undertaking from the company in which it acknowledged that it and its agents had engaged in misleading or deceptive conduct, and had made false representations, in breach of the *Fair Trading Act 1999*. In the undertaking the company also committed to:

- offer customers who had been affected by the unlawful conduct the option of discounts, or returning to previous suppliers at no cost
- put in place compliance and training programs, approved by Consumer Affairs Victoria, for its staff
- take action against marketing contractors who had breached the fair trading provisions, and
- suspend its door-knocking activities until Consumer Affairs Victoria was satisfied that the company had done everything that could be expected to prevent future breaches of the consumer legislation.

Consumer Affairs Victoria and EnergyAustralia worked together to identify customers who had been affected by the unlawful conduct. As part of this process, EnergyAustralia contacted over 65,000 past and present customers, seeking feedback on their experience with the company.

### BODY BRONZE GLEN WAVERLEY

In February and March 2005 Freydin Corp Pty Ltd, trading as Body Bronze Glen Waverley, offered free tanning sessions on presentation of promotional offer cards. Consumer Affairs Victoria received a complaint from a consumer alleging that salon staff had refused to provide her with a free tanning session upon presentation of the card unless she purchased additional tanning sessions from the salon.

Consumer Affairs Victoria believed that, by refusing to provide the advertised free tanning session, Body Bronze Glen Waverley may have misled or deceived consumers, or made false or misleading representations in breach of the *Fair Trading Act 1999*.

Following negotiations with Consumer Affairs Victoria, Body Bronze Glen Waverley signed an enforceable undertaking:

- admitting that the conduct might have breached a number of provisions of the Act
- committing to provide a free tanning session to each customer who presented an offer card at the salon before 1 July 2005, or who had made any purchases on the offers advertised on the cards, during the promotion
- agreeing to publish a corrective advertisement in the *Waverley Leader* and to place an enlarged copy of the advertisement in the salon windows and reception area, and
- committing to promptly register the business name Body Bronze Glen Waverley in compliance with the requirements of the *Business Names Act 1962*.

### 2.2.2.2 Infringement notices

Infringement notices set out relevant statutory provisions, alleged offending trader conduct, and penalties payable. Notices are served by Consumer Affairs Victoria inspectors on traders believed to be in breach of their fair trading responsibilities. Traders have the option to pay the penalties specified, or challenge notices in court. Penalties under infringement notices are set at much lower levels than the maximum fines that can be imposed by the courts, but they are an effective tool for rectifying less serious breaches, as they can be implemented speedily, and at low cost both to traders and to Consumer Affairs Victoria.

As a result of the amendments ushered in by the *Fair Trading (Enhanced Compliance) Act 2004*, the number of Acts administered by Consumer Affairs Victoria that can be enforced by infringement notices has been increased.

### 2.2.3 Expanded civil enforcement powers

The amendments introduced by the *Fair Trading (Enhanced Compliance) Act 2004* have expanded the ability of Consumer Affairs Victoria to secure compliance with fair trading requirements and obligations imposed under other consumer legislation in civil proceedings. Most significantly, courts are now empowered to make mandatory (positive) injunctions – that is, injunctions that direct traders found to have breached statutory fair trading duties to remedy resulting consumer detriment. The amendments also extend the range of Acts under which Consumer Affairs Victoria is able to seek such injunctions. In addition, mandatory injunctions are now obtainable in all Victorian jurisdictions – from the Magistrates' Courts to the County Court and the Supreme Court of Victoria.

Since civil enforcement methods are often quicker than criminal proceedings and can yield more targeted and remedial outcomes, the expansion of their application offers significant strategic advantages in securing compliance. See the following case studies for examples.

A list of civil litigation conducted in 2004-05 appears in **Appendix 4**.

## CASE STUDY

### URBAN PROMOTIONS PTY LTD

Urban Promotions Pty Ltd (Urban Promotions) retails coupon books that offer discounts on goods or services provided by participating businesses. Over a five-year period, Consumer Affairs Victoria received over 75 complaints relating to the promotion of the coupon books by Urban Promotions.

Consumer Affairs Victoria applied to the Melbourne Magistrate's Court for an injunction against the company. After a three-day hearing, the Court ordered Urban Promotions to stop representing to consumers that they had been specially selected to receive benefits not available to other people when offering the voucher books for sale, falsely representing the extent of conditions that applied to the use of the voucher books, and making representations that discounts were available at local businesses where this was not the case.

## CASE STUDIES

### DIAMOND SECURITY DOORS & SCREENS

In March 2005 Consumer Affairs Victoria took enforcement action against Mr Michael Johnson, also known as Michael Kabaran, sole director of Merlin Financial Services Pty Ltd trading under the unregistered business name Diamond Security Doors & Screens (Diamond Doors).

Mr Johnson had placed newspaper advertisements offering to supply and install security doors and screens on private homes. Mr Johnson would call on customers by arrangement, give quotes and accept large deposits, and then fail to return to provide the goods. Customers would then try to contact Mr Johnson, without success. After receiving several complaints in this regard, Consumer Affairs Victoria investigated and, as a result of its findings, took action against this trader.

Interim injunctions were obtained against both Mr Johnson and Merlin Financial Services Pty Ltd, prohibiting the use of the unregistered business name Diamond Security Doors & Screens, and restricting Mr Johnson to operating on a cash on delivery basis only.

At the final hearing, the injunctions were confirmed, with the effect that Mr Johnson and Merlin Financial Services Pty Ltd were permanently restrained from accepting payment for the supply of goods or services until they had been provided. Mr Johnson was also ordered to provide full details of transactions he had entered into during a specified period, and to pay compensation to the 16 consumers who had suffered loss as a consequence of the breaches of the Act. In addition, both defendants were restrained from carrying on business under any unregistered business name.

Consumer Affairs Victoria obtained the permission of all the consumers in whose favour the compensation order had been made, to collect compensation on their behalf, concluded a 'payment plan' with Mr Johnson for payment of the compensation as well as the costs order that was made in favour of Consumer Affairs Victoria, and at year end was monitoring Mr Johnson's compliance with the payment plan.

### MARK LAWSON

Consumer Affairs Victoria received a complaint regarding Mr Mark Lawson, a mechanic, alleging that he was carrying on business as a motor car trader from his premises in Clayton South without being licensed to do so under the *Motor Car Traders Act 1986*.

Consumer Affairs Victoria investigated these allegations, executed a search warrant on Mr Lawson's premises, and seized sufficient evidence of his trading to support commencement of proceedings against him.

Consumer Affairs Victoria sought injunctive relief under the *Fair Trading Act 1999* based on breaches of the *Motor Car Traders Act 1986* rather than pursuing criminal prosecution.

On 8 February 2005 the Melbourne Magistrate's Court made orders directing Mr Lawson to cease trading, and to provide Consumer Affairs Victoria with details of the vehicles he had bought and sold during a specified period. This enabled Consumer Affairs Victoria to identify consumers who had suffered detriment.



## Update

### Livio Cellante, Astvilla Pty Ltd and Perna Pty Ltd

During 2003-04 Consumer Affairs Victoria investigated a complaint regarding the conduct of two companies (Astvilla Pty Ltd and Perna Pty Ltd) as well as an officer of both companies, Mr Livio Cellante (together referred to as the Cellante group).

Residential properties were offered for sale by the Cellante group in rural areas of Victoria, primarily to Melbourne-based consumers. When consumers contacted the Cellante group, arrangements were made for them to view the properties (always on Sundays, when local estate agents were closed). It was alleged that the Cellante group would urge consumers to conclude sales on the spot, by making representations as to the property market in the area, the popularity of the particular property, and so on.

Purchasers alleged that they would later discover that properties they had bought had been on the market for considerable periods of time, and for much lower prices than those they had paid. It was further alleged that the Cellante group, while they had represented themselves as sellers of the properties, had in fact purchased the properties at the much lower prices, after concluding sale agreements with purchasers.

Consumer Affairs Victoria, after investigation, formed the view that this conduct was unconscionable and misleading or deceptive, and in breach of provisions of the *Fair Trading Act 1999*. It sought injunctions against the Cellante group, to restrain them from employing these sales techniques in the future, and compensation for an affected consumer.

During the 2004-05 financial year the Magistrate's Court at Horsham found that the group had engaged in unconscionable conduct and misleading or deceptive conduct, granted injunctions restraining similar conduct, and awarded an affected consumer approximately \$30,000 in damages.

The matter was appealed to the Supreme Court, which heard argument from both sides. As at year end the Court was yet to hand down its decision.





## 2.3 STRATEGIC CRIMINAL PROSECUTIONS

During 2004-05, Consumer Affairs Victoria's *Compliance and Enforcement Policy Guidelines*, published in the previous financial year, were fully implemented. The *Guidelines* set out the organisation's strategic approach to investigations and enforcement action under the Act.

The effect of full implementation of the *Guidelines* on prosecution activities during 2004-05 has been that, while individual complaints were investigated and acted upon as appropriate, only those matters where breaches were blatant and repeated, and caused significant detriment, were targeted for prosecution. A list of the prosecutions concluded during 2004-05 appears in **Appendix 5**.

An example of the application of this strategy is the building prosecutions campaign conducted during 2004-05.

Following significant numbers of complaints, prosecutions were launched against several builders who were trading unregistered. The major criterion in deciding to prosecute these cases was the consumer detriment caused by the builders' conduct. Twenty-five companies and individual directors were prosecuted on a range of charges, including:

- misleading and deceptive conduct
- accepting excessive deposits
- failing to complete work as agreed
- trading under unregistered business names, and
- undertaking building work while unregistered.

All prosecutions were successful (at year end one matter was on appeal to the County Court) and a total of \$316,738 in fines, legal costs and compensation to consumers was ordered by the courts (see the **Joseph Capri** case study as an example of outcomes obtained).

Consumer Affairs Victoria sought to have these prosecutions extensively publicised, to educate participants in the building industry about their obligations under the relevant legislation.

### CASE STUDY

#### JOSEPH CAPRI

Joseph Capri was prosecuted by Consumer Affairs Victoria in September 2004 and convicted of a range of building offences giving rise to a total of 30 charges, including trading as an unregistered builder, demanding excess deposits and then failing to deliver the services for which he had been paid, engaging in misleading conduct, and trading using a series of unregistered business names.

He was fined \$49,000 on conviction and ordered to pay a total of \$15,535 in compensation to consumers and \$1,792 in legal costs to Consumer Affairs Victoria.

## Focus on credit and debt

2004-05 saw the continuation of legal cases relating to credit and debt, significant because they set precedent for the application of various aspects of the consumer legislation, to credit- and debt-related issues.

Consumer Affairs Victoria has also become concerned about consumers suffering from unfair and unlawful debt collection practices, following an increase in the volume of related enquiries and complaints. While credit providers are entitled to recover debts owing, the applicable legislation places reasonable limitations on the methods that may be employed to do so. Consumer Affairs Victoria has previously published detailed guidelines for debt collectors to assist them to comply with the law. Consumer Affairs Victoria has become concerned about aggressive debt collection practices by debt collection agencies. The organisation has also begun an extensive investigation into debt collection carried out by a credit provider specialising in motor vehicle finance, following evidence of systematic abuse of the law. This activity will continue into 2005-06.

## CASE STUDIES

### APPLICATION OF CONSUMER CREDIT CODE CIVIL PENALTY SCHEME

In late 2004 Consumer Affairs Victoria instituted civil proceedings against Geeveekay Pty Ltd and Geoffrey and Veronica Keogh (trading as Great Australian Dream Providers) in connection with 46 vendor terms contracts. Consumer Affairs Victoria sought, among others things:

- a declaration as to what documents actually comprise the credit contracts between the company and borrowers (the documentation provided to consumers is, in Consumer Affairs Victoria's opinion, so voluminous and complex that this itself is an issue requiring determination)
- a declaration that key disclosure requirements under the Uniform Consumer Credit Code (UCCC) (including those relating to applicable interest rates, fees and charges) have been breached, and
- imposition of civil penalties.

The credit providers applied to have the proceedings struck out on jurisdictional grounds, but this application was dismissed by VCAT in March 2005. In dismissing the application, VCAT held that Consumer Affairs Victoria had properly invoked VCAT's jurisdiction in instituting the proceedings, and that the credit providers had not established that the case alleged against them was misconceived. This finding clarified that the UCCC is applicable to conduct such as that alleged to have been perpetrated by the credit providers.

At year end the matter was continuing before VCAT.

Criminal proceedings are pending against Geeveekay Pty Ltd, in relation to the requirement under the *Consumer Credit (Victoria) Act 1995* that entities offering loans covered by the UCCC be registered as credit providers.

### MICRO LENDERS UNDER THE MICROSCOPE

In 2005, Consumer Affairs Victoria continued two claims originated against City Finance Loans and Cash Solutions (City Finance) before VCAT in 2003-04. Consumer Affairs Victoria alleged that City Finance had breached the Consumer Credit Code by charging very high interest on loans, but disguising this interest as 'fees'. Consumer Affairs Victoria also alleged that City Finance had engaged in unconscionable lending tactics by:

- targeting unemployed people, and those receiving social security payments and pensions, and
- in its loan documents, taking mortgages over cars and household possessions such as beds, chairs, tables and in some cases children's games, and providing that these could be repossessed on default.

Consumer Affairs Victoria claimed civil penalties from City Finance and also asked VCAT to consider whether City Finance should have its licence to provide credit removed. The matters were all being contested by City Finance and were still before VCAT at the end of the year.

### UNDISCLOSED SIDE AGREEMENT "NO GO" IN VCAT AND SUPREME COURT

Consumer Affairs Victoria started proceedings in VCAT against Australian Finance Direct (AFD), seeking a declaration that the company's pro forma contracts were in breach of four key disclosure requirements of the UCCC, in that actual credit amounts, actual interest rates, actual total amounts of interest charged, and actual method of calculation of interest, were not properly disclosed in contracts. In July 2004, VCAT found that the contracts did breach these key disclosure requirements, and that Consumer Affairs Victoria could apply for imposition of civil penalties.

As at year end the matter was subject to an appeal in the Court of Appeal, following a decision of the Supreme Court which modified the VCAT ruling.

## 2.4 PROBLEM TRADERS

Every year (and in some cases, over a period of several years) Consumer Affairs Victoria experiences high volumes of complaints in respect of particular traders. The organisation then targets compliance strategies towards these traders and, if necessary, enforcement action. Naming these traders can be a powerful tool in securing compliance, and also fulfils a consumer protection function.

In addition to those traders named in case studies elsewhere in this Report, the following traders' conduct gave rise to concerns during 2004-05.

### Kresta Blinds Ltd

Kresta is a high profile company specialising in the supply and installation of curtains and blinds. During the year under review, Consumer Affairs Victoria received 17 complaints alleging unfair trading practices on the part of Kresta, including:

- delays in supply
- incorrect and faulty products, and
- shoddy installations.

From the information provided by some complainants it is apparent that Kresta does not have an effective complaint-handling system. Kresta has been unresponsive to several attempts by Consumer Affairs Victoria to discuss and resolve complaints, leaving consumers with no alternative but to seek determination before VCAT.

### SaveDirect

During 2004-05 Consumer Affairs Victoria received a high volume of complaints regarding Y-Stress, trading as SaveDirect. The majority of complaints were received during December and February, in connection with electric scooters and miniature bikes. A few of these complaints were in relation to a Government decision which had the effect that some miniature bikes can no longer be used on public roads. However, the majority of complaints related to the non-supply of goods, or the supply of goods that were damaged or not of merchantable quality.

Consumers approached Consumer Affairs Victoria because they had had difficulties contacting Y-Stress, and/or had received poor customer service in relation to repairs, replacement and refunds: Y-Stress had advised consumers that they would not provide refunds, leaving frustrated parents without Christmas presents for their children.

Consumer Affairs Victoria investigators visited Y-Stress' premises and met with the company's directors, to raise a number of concerns regarding the conduct of SaveDirect.

Consumer Affairs Victoria conciliated the complaints, and consumers received refunds, repairs, or replacements of goods, as appropriate.

## Westside Car Sales

Over a six-month period during 2004-05, Consumer Affairs Victoria received 15 complaints alleging various problems in relation to sales of second-hand motor vehicles by Westside Car Sales. A number of these issues were conciliated, resulting in satisfactory outcomes for a number of consumers, and the dealer principal assured Consumer Affairs Victoria that he was concerned about the complaints, and requested that all complaints be brought to his attention.

However, in early 2005 investigators from Consumer Affairs Victoria attended at the trader's yard, and detected a number of regulatory breaches. As at year end Consumer Affairs Victoria was considering enforcement action against Westside Car Sales.

## Interstate Taxi Trucks

Consumer Affairs Victoria continues to receive complaints against Interstate Taxi Trucks Pty Ltd, whose director Mr Matthew Matysik is also associated with backload.com.au and Regal Removal Services. These companies are engaged in the removal of household goods throughout Australia, and allegations contained in complaints relate to:

- delivery of damaged property
- loss of property
- delays in collection and delivery of goods, and
- under-priced quotes.

Consumer Affairs Victoria is also concerned about the trader's poor levels of responsiveness to complaints from consumers and from Consumer Affairs Victoria itself.

As at year end, the organisation was examining the trader's standard form consumer contracts, to determine whether these contain unfair terms in contravention of the *Fair Trading Act 1999*.

## Wal Jones Real Estate

This agency was prosecuted by Consumer Affairs Victoria in 2002, for several regulatory breaches relating to administration of funds.

During 2004-05 Consumer Affairs Victoria received further complaints from landlords and/or body corporate members, against the agency.

The complaints commonly allege that the agency fails to:

- provide accurate accounting (including in relation to trust monies)
- account for deductions and other unexplained charges
- respond to telephone calls and correspondence, and
- promote good agency practice, generally.

The agency has responded to attempts to resolve complaints in a tardy, unclear, ambiguous, and dismissive manner. Consumer Affairs Victoria has sent the agency several warning letters, and at year end was exploring the possibility of further action against this trader.

## **TRADERS NAMED IN 2003-04 ANNUAL REPORT**

### **Furniture Galore**

In 2003-04, Consumer Affairs Victoria reported that it had received 30 complaints concerning Furniture Galore. During 2004-05, a further 90 complaints were received. On investigation, Consumer Affairs Victoria formed the view that:

- salesmen continually gave optimistic delivery dates in order to secure business (although on occasion delivery delays seemed genuinely unavoidable)
- quality checks on the furniture supplied (mainly imported and at the lower end of the market) were not performed before delivery, and
- the repair company with which the trader had an agreement was inefficient, resulting in delayed and/or ineffective repairs (the agreement has since been cancelled).

Although the trader has been co-operative with Consumer Affairs Victoria, its complaint-handling procedures during the period under review were not satisfactory. Consumer Affairs Victoria has met with senior management from Furniture Galore pursuant to determining appropriate enforcement action to be taken. This trader was also named in the Legislative Council by Minister Marsha Thomson MP, in April 2005.

### **Glenvill Pty Ltd (incorporating Glenvill Homes and Prentice Homes)**

Further complaints against this trader were received during 2004-05.

Consumer Affairs Victoria met with the director of Glenvill Pty Ltd in late 2004, and he committed to personally ensuring that complaints that had been raised with Consumer Affairs Victoria were resolved.

The volume of new complaints against this trader has declined significantly since this meeting. However, enforcement action in relation to some of the complaints received during 2003-04 and 2004-05 was under consideration at year end.

### **JG King Pty Ltd**

In 2003-04, Consumer Affairs Victoria received a series of complaints from JG King's customers about a range of building defects and issues of concern regarding complaints-handling processes.

Consumer Affairs Victoria had a series of meetings with JG King staff, including the Managing Director. The purpose of the meetings was to address the complaints and to encourage the development of an effective internal complaints-handling process. Consumer Affairs Victoria was pleased to note that subsequent to a meeting in June 2004, a significant reduction in complaints occurred. JG King has also established and documented internal complaints-handling processes.

Consumer Affairs Victoria seeks to work co-operatively with traders to address disputes and to promote fair trading practices, including robust internal complaints-handling systems. JG King has now addressed the issues of concern, effectively reducing the volume of complaints received by Consumer Affairs Victoria in relation to this trader.

### **Maax Spa Corporation Pty Ltd**

In 2003-04 Consumer Affairs Victoria reported that complaints against this trader had decreased during the financial year, and that the trader had gone into voluntary administration. However, the company continued to trade and (as related by the administrator) will be trading out of the administration in early 2006.

Consumer Affairs Victoria received further complaints regarding Maax Spa during 2004-05. Complaints alleged difficulties with:

- cancellation of contracts and refund of deposit monies
- poor workmanship and product quality
- lack of repairs, and
- lack of customer service.

The majority of the matters were resolved through discussions with the trader, and conciliation. The trader was a co-operative and willing participant in the conciliation process, and obtained valuable information as to how to continue to improve the business's internal customer service and business practices, and work towards eliminating customer complaints.

Consumer Affairs Victoria will continue to monitor complaints and enter into discussions with the trader, to ensure that business practices are improved.

### **Merringtons Optometrists**

In 2003-04 Consumer Affairs Victoria reported that high volumes of complaints had been received against this trader, and that the response of the company to attempts to resolve complaints had been unsatisfactory. Consumer Affairs Victoria has been involved in ongoing action in connection with Merringtons Optometrists, which at year end were expected to continue into the 2005-06 financial year.

### **Stilinox International Pty Ltd**

No further complaints concerning this trader have been received since the enforcement action reported in the 2003-04 Annual Report.

# 3 Trade measurement

Consumer Affairs Victoria administers the *Trade Measurement Act 1995* and the associated Trade Measurement Regulations 1995. The legislation requires that all instruments used for trade purposes be registered and certified, to ensure the accuracy of the instruments. The registration and certification functions are undertaken by licensees appointed by Consumer Affairs Victoria. Contracted inspectors perform regular inspections and audits of certified instruments, random testing of instruments, and testing of pre-packed articles, to ensure that weight statements accurately reflect minimum measurements marked on packages.

During 2004-05 the trade measurement program was incorporated into the Compliance and Enforcement Branch of Consumer Affairs Victoria.\* The program continued to operate through contracted inspectors allocated to regions across metropolitan and rural Victoria. In accordance with compliance and enforcement policy, focus was on securing compliance with the law, and taking enforcement action where appropriate in terms of the *Compliance and Enforcement Policy Guidelines*.

During 2004-05 the trade measurement program:

- received over 270 complaints (the majority in regard to petrol and liquid petroleum gas queries) – 100% were investigated; 17% were found to be justified, and were acted upon
- participated in the metropolitan and regional compliance and enforcement exercises
- delivered presentations to industry associations, small businesses and instrument owners
- conducted inspections at over 5,300 premises
- tested/inspected nearly 22,000 instruments
- issued 87 infringement notices (for breaches related to a range of products on sale at retail outlets that were found to be short weight, short measure with the delivery of petroleum products and firewood, incorrect use of instruments, and non-compliance with notification and payment responsibilities by licensees)
- issued 99 warning letters for minor breaches of legislation
- rejected over 1,800 instruments for non-compliance with trade measurement legislation
- conducted education and awareness sessions for instrument owners to address minor breaches of the legislation
- inspected in excess of 49,000 pre-packed articles, and
- prosecuted clearly established legislative non-compliance (see case study).

\* The total output for “Inspections, compliance monitoring and enforcement activities” reported in the 2004-05 Department of Justice Annual Report as 13,952 is incorrect. This was due to a counting error in the calculation of the trade measurement component of this measure. The correct total output for “Inspections, compliance monitoring and enforcement activities” in 2004-05 is 9,369.

## CASE STUDY

### INGHAMS ENTERPRISES PTY LTD

Each year Consumer Affairs Victoria inspectors undertake random audits of supermarkets and retail outlets where traditional Christmas products are on sale, to ensure that packers and sellers are supplying products in accordance with measurement markings contained on the packaging. In both the 2003 and 2004 festive seasons, inspectors found examples of pre-packed turkey and chicken products supplied by Inghams Enterprises Pty Ltd (Inghams) to be underweight.

In June 2005 Consumer Affairs Victoria successfully prosecuted Inghams for supplying underweight (short measure) turkey and chicken products, in breach of the *Trade Measurement Act 1995*. Inghams pleaded guilty in the Melbourne Magistrate’s Court to eight charges in relation to packaging underweight poultry, and was fined a total of \$68,000 and ordered to pay \$5,000 in prosecution costs.

In addition, Inghams signed an enforceable undertaking, agreeing to have its processes audited and to conduct regular compliance tests.



## ***NATIONAL REVIEW OF TRADE MEASUREMENT ADMINISTRATION***

Trade measurement laws are currently administered by both the Commonwealth and State and Territory governments. The laws require that – where goods are sold by reference to weight, length, volume, or area, or are pre-packed – they are accurately measured.

Under the present system, States and Territories administer their own legislation, which is based on model uniform trade measurement legislation.

MCCA has agreed to undertake an independent review of the national arrangements for administering trade measurement laws in Australia. Options for a national trade measurement system (in the interests of greater legislative and administrative harmony) will be explored in the review.

Consumer Affairs Victoria, on behalf of MCCA, chairs a steering committee comprised of representatives from the various jurisdictions. Consumer Affairs Victoria has advertised nationally for tenders from suitably qualified independent consultants, to review the policy implications, costs and benefits of the various options available, to governments, industry, business and consumers. Stakeholder consultation will form part of the review, which is expected to be completed by the middle of the 2005-06 financial year.





## 4 *Competitive markets*

Consumer protection and commercial competition are closely linked. Effective consumer protection – through the provision of information to market participants, and regulation of trading practices – can enhance competitiveness. This in turn results in lower prices, enhanced quality and innovation in the markets – all of which benefit consumers.

### **IMPROVING TRANSPARENCY IN FUEL MARKETS**

The *Petroleum Products (Terminal Gate Pricing) Act 2000* aims to improve access to fuel at terminals, and price transparency in the wholesale supply of petroleum products. In 2003 Consumer Affairs Victoria reviewed the Act, and made several recommendations to improve its operation. During the 2004-05 financial year the resulting amending Act was passed by Parliament.

The amendments further improved price transparency in fuel markets, by requiring that prices of fuel for sale at terminal gates be published on the basis of the volume of fuel as measured at 15°C (as fuel volumes vary depending on the temperature at which the fuel is measured).

The amendments also introduce the power to make regulations to allow major oil companies to refuse to supply fuel to wholesale customers during fuel shortages. When made, these regulations will require the major oil companies to disclose information about fuel shortages, to ensure that they are transparent in their dealings with customers. Some technical amendments have also been made to clarify the application of the Act.

As at year end an Order in Council and a Determination by the Director of Consumer Affairs Victoria were being prepared, to implement the remaining recommendations.

# Protecting consumers

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Effective consumer protection is intrinsic to well-functioning markets. A significant aspect of Consumer Affairs Victoria's consumer protection role is therefore to help make markets work better. To this end the organisation strives to:

1. deliver core services designed to empower consumers to be their own best advocates, efficiently and effectively
2. address particular sets of needs of groups of consumers considered to be vulnerable or disadvantaged, and
3. educate and inform consumers, to enable them to manage their own risk.

2004-05 saw extensive developments in these areas, which will dramatically enhance Consumer Affairs Victoria's ability to serve Victorian consumers, and particularly vulnerable and disadvantaged consumers.

# 1 Service delivery

Consumer Affairs Victoria delivers several core services on an ongoing basis. These include enquiries- and complaints-handling, conciliation and mediation of disputes, and conducting proceedings on behalf of consumers. In the past these services were offered primarily in the metropolitan area, alongside a Consumer Affairs Victoria Community Program through which the organisation funded various local and specialist non-governmental agencies to deliver consumer protection services to consumers and tenants – particularly those considered to be vulnerable and disadvantaged.

In 2003-04, the Community Program was re-assessed, with the aim of ensuring that consumer protection services are available to all Victorians. This culminated in publication of *The Way Forward Report* in February 2004, recommending changes to service delivery (summarised opposite). Implementation of the proposed new service model was piloted in 2004-05, with:

- 1.1 changes to the way the core services provided by Consumer Affairs Victoria are positioned and delivered
- 1.2 piloting of a program to promote Consumer Affairs Victoria's core services as a Statewide resource available to all Victorians
- 1.3 piloting of regional service delivery with the opening of a shop front service in Wangaratta, and
- 1.4 continued funding of certain non-governmental organisations.

## **SUMMARY OF RELEVANT FINDINGS AND RECOMMENDATIONS MADE IN *THE WAY FORWARD REPORT***

*The Way Forward Report* recommended that Consumer Affairs Victoria:

- re-position the Statewide Consumer Affairs Victoria information and enquiries telephone service as the primary point of contact for Victorians to obtain advice and support on consumer issues, from anywhere in Victoria
- re-position Consumer Affairs Victoria as the primary contact point for conciliation services across Victoria (including face-to-face conciliation where required)
- establish five regional Consumer Affairs Victoria offices to provide information, conciliation, consumer education and other services, in these regions
- operate mobile units from each regional office, providing face-to-face services in every non-metropolitan local government area in victoria
- contract appropriate community-based legal organisations to provide individual case advocacy support and tribunal services, on a three-year basis
- continue to refer vulnerable and disadvantaged consumers requiring assistance at local level because of specific needs, to community-based legal organisations,
- establish a grants program making funds available to community-based organisations for the provision of specialist consumer services, including input on Consumer Affairs Victoria policy issues, training initiatives, consumer education, and advocacy on a range of consumer issues in the public interest
- expand the Statewide consumer education and awareness program (with the aim of better informing Victorians of their consumer rights) by working with local organisations and networks, with continued emphasis on the needs of vulnerable and disadvantaged consumers, and
- arrange for monitoring of the new arrangements, and provision of ongoing policy advice, by the Working Together Forum.

*The Way Forward Report* found that Consumer Affairs Victoria's Indigenous Consumers Unit and its bilingual information officers (a service subsequently expanded to constitute the Multicultural Consumers Unit) were best placed to deliver consumer protection services to Indigenous consumers and those speaking languages other than English.

## 1.1 CORE SERVICES

The provision of certain core services by Consumer Affairs Victoria helps make markets work better, by empowering consumers to make better decisions and to be their own, effective, advocates. These services include:

- 1.1.1 enquiries-handling: emphasis is on facilitating self help by providing necessary information
- 1.1.2 dispute resolution: where self help either proves ineffective, or is inappropriate given the nature of the enquiry, callers are encouraged to lodge written complaints, and parties are then assisted in resolving these between themselves, through the provision of conciliation and mediation services, and
- 1.1.3 advocacy support: if disputes cannot be resolved through conciliation and mediation, Consumer Affairs Victoria may take on an advocacy role and conduct or defend proceedings on behalf of consumers, where complaints raise issues of significant public interest, or relate to conduct that is widespread.

Where appropriate, complaints and disputes are referred directly for investigation and compliance or enforcement action.

### 1.1.1 Enquiries-handling

Consumer Affairs Victoria provides advice to hundreds of thousands of Victorians each year. Enquiries are received by telephone, email and letter, as well as online and face-to-face at Consumer Affairs Victoria offices. Consumers are encouraged, in the first instance, to make use of online resources where these are available (see graph opposite reflecting visits to websites by month), or, in the second instance, to access telephone assistance through the Statewide Consumer Affairs Victoria enquiries line. Where enquirers' interests would best be served by meeting face-to-face, this is facilitated.

#### 1.1.1.1 Telephone

In 2004-05 more than 540,000 calls were made to the Statewide enquiries line (telephone information requests to the specialist product safety, trade measurement, liquor licensing and licensed occupations enquiries lines as well as the Multicultural Consumers Unit and the Indigenous Consumers Unit are excluded from this figure, and are detailed in the appropriate sections of the Report).

All calls made to the Statewide enquiries line are first routed to the integrated voice response (IVR) system, which provides callers with pre-recorded information in respect of certain queries. In 2004-05, 3.72% of callers requested an automated response and 87.4% requested that their calls be routed to the call centre for assistance from enquiries officers. The balance (8.8%) called outside office hours, or abandoned their calls for unknown reasons.

The Statewide enquiries line is equipped to deal with:

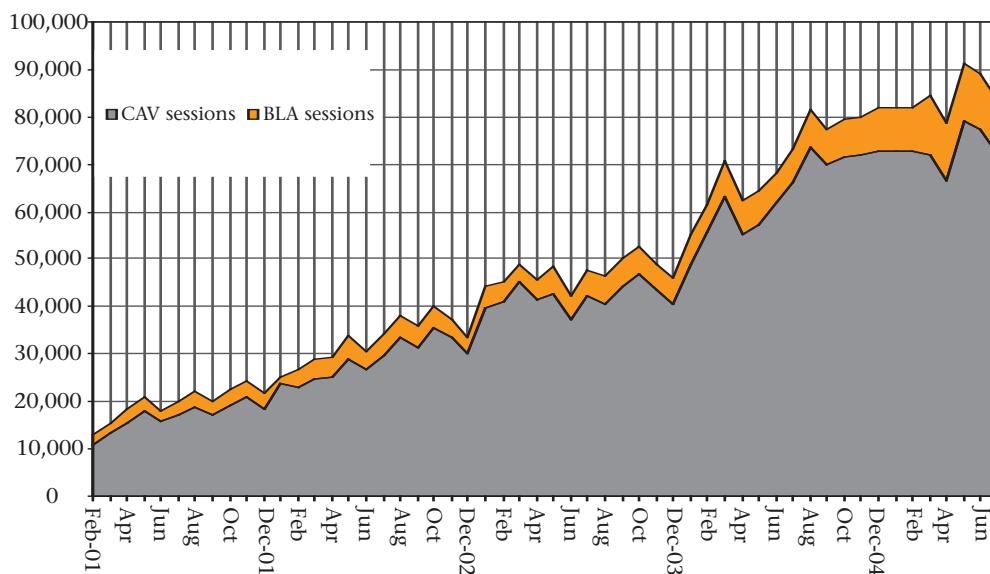
- general consumer enquiries (relating to topics such as renting, building, credit, and fair trading issues)
- queries relating to entities in respect of which Consumer Affairs Victoria maintains public registers, and
- queries relating to the Residential Tenancies Bond Authority (RTBA).

A total of 327,295 general consumer enquiries were made to Consumer Affairs Victoria in 2004-05. Of these, 77,424 were resolved by the IVR system, and 249,871 were routed to the call centre to be handled by enquiries officers.

The registration team within the Enquiries Branch handles queries in connection with business names, incorporated associations and co-operatives.

During 2004-05, 119,589 registration enquiries were made, with 12,032 being handled by the IVR system and 107,557 being routed to the call centre.

The RTBA holds all Victorian residential tenancy bonds in a neutral capacity, in trust for landlords and tenants. The RTBA team within the Enquiries Branch is the public face of the RTBA. The team answered 107,567 calls from tenants, landlords and agents regarding bond matters during 2004-05.



### Visitor sessions per month to CAV and BLA websites

A visitor session is a series of page views, page requests, or page downloads served in an unbroken sequence from within the site to the same visitor.

December 2004 – new CAV website launched. Chart data averaged for December 2004 – February 2005.

CAV visitor sessions includes RTBA and liquor licensing visitor sessions.

Category	Number of enquiries
Renting	98,470
Building	21,765
Credit	4,960
Fair trading issues	124,676
<b>Total</b>	<b>249,871</b>

### Analysis of general enquiries to call centre, by subject matter 2004-05 (excludes calls handled by IVR system)

	Referred to operators	Answered by operators	Abandoned	% abandoned	% answered < 240 secs (target 80%)
General enquiries	249,871	235,827	15,045	6.4	81
Registration	107,557	101,597	5,960	6	83
RTBA	107,567	101,042	6,525	6	92

### Service levels 2004-05 (excludes calls handled by IVR system)

During 2004-05 strategic emphasis was on aligning service delivery with implementation of the recommendation that the enquiries line become the first port of call for all Victorians experiencing consumer or tenancy difficulties. In particular this meant:

- i. gearing up for possible resultant increases in call volumes by continuing to improve the grade of service, and
- ii preparing to begin servicing more vulnerable and disadvantaged consumers on the Statewide enquiries line.

*i. Grade of service*

The improvements in the grade of service offered by the Consumer Affairs Victoria call centre over 2003-04 continued into the 2004-05 financial year. This was partly attributable to a more streamlined selection menu on initial telephone contact, as well as better staffing levels.

Significant improvements to service delivery over this period saw the contact centre exceed its target of answering 80% of calls within 240 seconds, by 5%. Furthermore, 75% of calls were answered within 120 seconds. There was also a decrease in the proportion of calls abandoned to approximately 6%, contributing to a reduction in the abandonment rate over the last four years by 10 percentage points.

The following activities (which are expected to further improve service delivery) were also undertaken in 2004-05:

- provision of an upgraded online enquiries policy and procedures manual (to further enhance consistency and speed of service)
- improvements to the management of the bond database, design of new forms, and changes to RTBA business rules, processes and procedures (aimed at making the bond system more user friendly)
- visits to estate agents to promote the improvements and familiarise agents with RTBA processes and procedures
- preparations for installation of a new call centre platform in Consumer Affairs Victoria and the Department of Justice as a whole (final implementation is expected in late September 2005), and
- the launch of ConsumerHelp (a primary internal information reference system for enquiries officers, ensuring wider access to information across the organisation) in 2004.

## ii. Servicing vulnerable and disadvantaged consumers

Consumer Affairs Victoria took several steps in 2004-05 designed to enhance service delivery to vulnerable and disadvantaged consumers who access the centralised enquiries service. These included:

- developing a database of external organisations to assist staff in referring consumers to relevant organisations (community legal centres, financial counsellors, welfare groups, housing support agencies, advocates, etc)
- training service staff to identify vulnerable and disadvantaged clients and provide appropriate services, and
- encouraging vulnerable and disadvantaged consumers to use face-to-face services where appropriate, to address special needs.

## CASE STUDY

### RELIEF FOR AN ELDERLY TENANT

An elderly tenant called the Consumer Affairs Victoria enquiries line, worried about the potential loss of her goods from a rental property owned and managed by the Office of Housing.

The tenant had recently undergone surgery, having fallen and broken her hip, and a decision had been made to place her in a nursing home. She had therefore vacated the property she had been occupying. The tenant called in a highly distressed state, worried that her personal belongings would be disposed of. The enquiries officer who received the call contacted the Office of Housing directly and established that the tenant had been served the appropriate 60-day notice, and that appropriate arrangements had been made for a Consumer Affairs Victoria goods left behind inspection.

The enquiries officer spoke with nursing home staff, the tenant's son (who lived outside the State), and the tenant herself, and was able to reassure all parties that the tenant's interests had been protected and that her goods had been secured appropriately in line with the terms of the *Residential Tenancies Act 1997*.



## Focus on credit and debt

One of the functions of the Director under the credit legislation is to receive and investigate complaints, and give advice, in relation to credit.

The Consumer Affairs Victoria credit and debt enquiries service (staffed by a specialist credit team within the Consumer Affairs Victoria Enquiries Branch) commenced in August 2004. The team specialises in providing advice with respect to credit- and debt-related enquiries, and provides a comprehensive service, including:

- providing general advice to assist in resolution of disputes with credit providers and finance brokers
- reviewing documents to identify possible courses of action, where parties are in dispute
- promoting and supporting the functions of financial counsellors (in particular, referring vulnerable consumers who require assistance with negotiating general debts, hardship applications, and bankruptcy)
- providing information to brokers and industry bodies in relation to compliance with their statutory duties
- monitoring trends in categories of complaints to identify and draw attention to pressure points and emerging issues, and
- expediting referral of urgent matters (for example, where repossession of goods is imminent) for conciliation and mediation.

A total of 4,960 credit calls were received over the year. After inception of the specialist credit enquiries team in August 2004, the volume of credit-related calls grew steadily each month (312 calls received in December 2004 as compared with 720 received in June 2005).

In addition, Consumer Affairs Victoria worked with the National Australia Bank (NAB) in connection with difficulties relating to the issuing of credit card statements to account holders.

## CASE STUDY

### TELEPHONE ENQUIRY ENDS IN SUCCESSFUL CONCILIATION

A consumer called Consumer Affairs Victoria about a series of contracts she had entered into with a fringe credit provider, for so-called payday loans. The consumer was having difficulty meeting the monthly instalment payments. The specialist credit enquiries officer requested the consumer to send her paperwork to Consumer Affairs Victoria, for review.

On examination, it was found that the loan document did not disclose all default fees and charges (in breach of section 15 of the Uniform Consumer Credit Code (UCCC)) and that the contract included a clause permitting the credit provider to garnish the consumer's wages in the event of default (a possible breach of the *Fair Trading Act 1999*).

After two meetings with Consumer Affairs Victoria to discuss the issues and potential courses of action, the consumer was advised to lodge a written complaint. Once the complaint was lodged, the matter was conciliated by Consumer Affairs Victoria, and resolved to the consumer's satisfaction.

## SUPPORTING BANK TO MAKE AMENDS

During the 2004-05 financial year, Consumer Affairs Victoria continued to work with NAB in connection with difficulties NAB had experienced in relation to the issuing of credit card statements to some of its account holders.

In February 2004 NAB had advised Consumer Affairs Victoria that certain holders of 'inactive' credit card accounts had not been sent monthly statements of account, as required by the UCCC, due to computer system errors dating back to the year 2001. Approximately 120,000 account holders had been affected.

Consumer Affairs Victoria required NAB to provide full details of the errors made, and to provide redress to consumers who had suffered detriment as a result of the errors, for example by being required to pay overdue fees.

NAB also agreed to implement an independent review of its complaint-handling policies, as proposed by the Director. This review highlighted significant inadequacies in the policies, and led to substantial changes to administrative structures and procedures within NAB.

Category	No of calls
Banking and financial services (personal and home loans)	942
Finance and mortgage brokers	657
Credit cards	473
Debt collection	407
Fringe and micro lenders	106
Total	3,401

**Calls received by credit and debt enquiries service 2004-05, by subject matter  
(excludes 1,559 credit and debt calls received prior to inception of service in August 2004)**

### 1.1.1.2 Email

Consumers may also opt to email enquiries. In the 2004-05 period, over 16,000 emailed requests for information were received. Of these, more than 11,000 were dealt with through the provision of information (99% within 48 hours) and the balance were referred for further action.

### 1.1.1.3 Face-to-face service

Many Victorians still choose to speak to enquiries officers in person, and this is particularly encouraged in circumstances where face-to-face consultation will best address consumers' needs. In the past financial year 6,780 consumers attended the Consumer Affairs Victoria public access area to make face-to-face consumer and tenancy enquiries.

### 1.1.2 Conciliation and mediation

Where appropriate, Consumer Affairs Victoria offers conciliation and mediation services aimed at empowering parties to resolve disputes between themselves. Provision of these services can enhance access to justice and redress as they can be quicker, more cost effective and less intimidating alternatives to legal action. By assisting consumers and traders to negotiate and conciliate their disputes, Consumer Affairs Victoria helps to make markets work better.

The record increases and improvements in dispute resolution services reported during the 2003-04 financial year, continued in 2004-05. More than 17,000 complaints were referred for dispute resolution in 2004-05 (a further 6% increase on the 29% increase reported in 2003-04). This is likely to reflect mainly the increased accessibility of the service, rather than a systemic reduction in trading standards. Around 67% of complaints were successfully resolved at Consumer Affairs Victoria, with more than \$2.1 million recovered for consumers – a 13% increase on the amount reported in 2003-04.

Of the balance of complaints, a portion were found to be unsubstantiated, and others were resolved through the provision of advice or referred to more appropriate agencies, including advice that consumers make application to the Victorian Civil & Administrative Tribunal (VCAT).

## CASE STUDY

### FACE-TO-FACE SERVICE ENABLES USE OF INTERPRETER BY VULNERABLE CONSUMER

A Vietnamese-speaking consumer visited Consumer Affairs Victoria for assistance in connection with a debt collector. The consumer's English skills were very limited, and the attending enquiries officer discussed the matter with her through the services of an interpreter. Having ascertained the nature of the consumer's difficulty, the enquiries officer negotiated a reduction in debt repayment amounts with the debt collector, on the consumer's behalf. The officer's ability to assist the consumer was greatly enhanced by meeting face-to-face, owing to the need to make use of an interpreter's services.

A priority during 2004-05 was providing a face-to-face service for vulnerable and disadvantaged consumers in the North Eastern and outer Eastern metropolitan regions as pilot services, leading up to the full implementation of the new model for delivering services to regional Victoria.

Analysis of trends in the types of complaints referred to Consumer Affairs Victoria during the past financial year resulted in the creation of some of the issues-based projects detailed in this Report.

Total complaints received	Average time taken to finalise	Total amount received	Average resolution %
17,056	<ul style="list-style-type: none"> <li>• 45% within 0-28 days</li> <li>• 88% within 0-90 days</li> </ul>	\$2,105,059	67

**Dispute resolution outcomes 2004-05**

General consumer complaint category	% of total complaints received 2004-05	% of total complaints received 2003-04
Residential tenancy	41.3	42.8
Household goods	28.6	27.7
Building and construction	11.8	12.4
Motor vehicles and other transport equipment	9.6	9.1
Real estate	6.5	6.6
Credit, finance and investment	2.3	1.4

**Proportion of complaints by subject matter:  
comparative data 2003-04 and 2004-05**

### **1.1.2.1 General conciliation**

During 2004-05, Consumer Affairs Victoria's general conciliation team handled complaints across a wide range of industry categories including automotive, travel, household goods and services (from security systems and beauty services through to memorial headstones) and tenancy matters. A resolution rate of 73% was achieved. See the case studies opposite for examples of general conciliation activities in 2004-05.

## CASE STUDIES

### SERVING CONSUMERS MOST IN NEED

A single mum with a disabled daughter contacted Consumer Affairs Victoria in connection with several difficulties she was experiencing relating to her rented home:

- delays in repairing defects in the hot water system had left her without hot water for five months
- a broken door in the apartment had not been repaired
- she was overdue on paying her utility bills, and
- she had just been served with notice to vacate, as she was in arrears with her rent.

On her behalf Consumer Affairs Victoria contacted the landlord's agent, who arranged to have the door fixed the next day as an urgent repair under the *Residential Tenancies Act 1997*. Under the guidance of Consumer Affairs Victoria, the tenant plans to lodge a substantial compensation claim in VCAT in regard to the delays in fixing the hot water system, and Consumer Affairs Victoria will arrange advocacy assistance for the hearing.

Consumer Affairs Victoria also arranged for the tenant to meet with Community Housing Ltd to obtain rent assistance, resulting in the landlord withdrawing the notice to vacate. The tenant was directed to an agency which assisted her in obtaining an emergency relief grant to pay her utility bills and buy food and certain household items. This did not solve all the tenant's problems, but did give her some security, and helped her regain confidence and resolve some challenges during this very difficult period in her life.

### A BURNING ISSUE

A consumer purchased an expensive plasma screen TV early in 2004. The set was almost permanently used for analogue cable TV. When the set was switched to high definition mode after prolonged analogue cable TV usage, a broad burn mark appeared down the right-hand side of the screen. The television manufacturer, when contacted by the consumer, said that this was caused by a deteriorated cable signal, and denied any responsibility. The cable TV provider also denied liability.

Consumer Affairs Victoria researched the issue and concluded that the problem had resulted from the prolonged use of analogue cable mode. After four months of ongoing lobbying by Consumer Affairs Victoria, and investigation and consideration on the part of the cable TV provider, the latter agreed to replace the TV set, on condition that the consumer switched to digital cable TV. The consumer was delighted with this outcome.

### WHAT'S COOKING?

A consumer had had a very bad run with an oven purchased and installed in November 1999. The oven was faulty and the consumer had had to call in the service agent more than 10 times during the first 10 months of ownership. The consumer's problems with the oven continued after expiry of the 12-month warranty period, and in June 2004 the oven developed a new fault. Although the oven was out of warranty the trader was prepared to have the oven repaired again, as a goodwill gesture.

The consumer was unhappy with this and wanted nothing less than a new oven or a refund. It was at this stage that the consumer contacted Consumer Affairs Victoria. After confirming the consumer's version of events with the service agent, Consumer Affairs Victoria contacted the manufacturer, who eventually agreed to exchange the unit for a new model.

### COOL CUSTOMER

A consumer who had been diagnosed with cancer sought the advice of a trader for provision of alternative medical treatments. She was charged \$6,000 in advance, but cancelled the transaction within the cooling-off period. The trader agreed to refund the value of products the consumer had returned (\$3,000), but no further amounts. At this point the consumer's daughter contacted Consumer Affairs Victoria.

Consumer Affairs Victoria met with the trader to advise him about his obligations under the *Fair Trading Act 1999*, with the result that a cheque for the balance of the amount that had been paid in advance, was hand delivered to the consumer.

## Focus on credit and debt

During 2004-05, Consumer Affairs Victoria's specialist credit and debt dispute resolution service continued to:

- receive and respond to complaints relating to credit and debt issues
- identify problem traders and enforcement issues
- address urgent matters within 24 hours of receipt of complaints, and
- refer disputes, where appropriate, to the Consumer Credit Legal Service (a specialist advocacy service funded by Consumer Affairs Victoria) or VCAT.

Credit complaints made up 2.28% of the total number of complaints referred to the Dispute Resolution Branch during 2004-05. Issues most prevalent during 2004-05 were disputes with finance brokers, debt collection complaints, and complaints in relation to sales contracts with linked credit contracts (that is, credit obtained at points of sale).

The organisation experienced a high degree of success with credit- and debt-related conciliation during 2004-05.

## CASE STUDY

### CHRISTMAS DEBT

A consumer had a debt of \$576 with a finance company, relating to a store card she had organised to purchase Christmas gifts for her young children some four years previously, after the death of her husband. The consumer was adamant she had paid off the debt. However, the supporting documentation had been lost in a fire, and she was unable to prove this. She was being pursued by both a debt collection company and the finance company for the \$576, and more than \$1,000 in legal costs.

Although the consumer had attempted to trace her payment of the debt, she could only recall paying by money order. No payment dates were available. Australia Post's Money Order Centre agreed to run a complete search of its records for the year in question, using only the approximate date of the alleged payment, the finance company's banking account details, and the consumer's suburb. The Money Order Centre identified an amount paid which, given all the details, more than likely related to the alleged debt, and the finance company agreed to accept this as evidence of payment.

This meant that the debt could be erased. The consumer's credit file was updated accordingly, at the request of Consumer Affairs Victoria, and the finance company removed all legal costs, following contact from Consumer Affairs Victoria.

Category	No of complaints
Banking and financial services (personal and home loans)	132
Finance and mortgage brokers (agreements, debt consolidation)	88
Investment and financial services (investment loans, financial advice, leasing, renting and buying)	59
Credit cards (store cards, fees and charges)	53
Fringe lenders	18
Insurance (credit and finance)	13
Vendor terms contracts (car and home finance)	3
Total	366

**Complaints received by credit dispute resolution team  
2004-05, by subject matter**



### 1.1.2.2 Building Advice and Conciliation Victoria

BACV is a joint service offered by Consumer Affairs Victoria and the Building Commission since 1 July 2002. The BACV section of the Consumer Affairs Victoria dispute resolution team receives enquiries from parties in dispute within the domestic building industry. Parties are encouraged to attempt to resolve disputes between themselves. Where this is unsuccessful, written complaints may be lodged with Consumer Affairs Victoria. The organisation conciliates these complaints, investigates for non-compliance with administered legislation, and takes enforcement action where appropriate.

BACV also encourages domestic builders and associated trades to develop their own complaint-handling procedures.

During 2004-05, 17,776 telephone enquiries and 1,896 written complaints relating to building matters were received. During 2004-05, 57% of the domestic building disputes handled were resolved, resulting in settlements totalling \$838,974 – an increase of 32.6% on the previous financial year.

The remaining complaints were found to be unsubstantiated, resolved through the provision of advice, or referred to more appropriate agencies, including VCAT.

Many of the complaints handled raised issues in relation to defective building works and 224 matters were referred to the Building Commission for independent technical inspection reports, to assist the conciliation process.

## CASE STUDY LATE DELIVERY

A registered builder had contracted to construct an extension to a consumer's home. The parties had agreed that the project would be completed by February 2005.

The consumer contacted Consumer Affairs Victoria in April 2005, dissatisfied that the project was behind schedule, particularly as he was living in the house without the use of the laundry and kitchen. The consumer wanted to make alternative arrangements for completion of the outstanding building works.

After contacting the builder, BACV ascertained that the reason the project had fallen behind schedule was that the builder was experiencing personal problems. These had given rise to financial difficulties which in turn had hampered the progress of the building project.

Following discussions with the consumer, the builder agreed to terminate the contract and allow the consumer to make alternative arrangements for completion of the remaining works. This was what the consumer had wanted, so he was very satisfied with the outcome.

## CASE STUDIES

### PERSISTENT DEFECTS

A consumer contracted a registered builder to construct a brick garage and small balcony extension.

During building, the consumer identified a series of defects, and on each occasion contacted the builder and attempted to resolve the issues so that the work could be completed in accordance with the plans and specifications agreed to in the contract. The builder continuously assured the consumer that the work would be finished to standard, but the consumer remained dissatisfied, and in mid April 2005 lodged a written complaint with BACV, alleging 26 specific defects.

After conciliation by BACV, the builder agreed to rectify various defects and complete all works to the agreed plans and specifications. This was all achieved without any further cost to the consumer despite an amount of \$6,300 owing on the original contract price.

### CRACKED BENCH TOP

As part of a kitchen renovation, an owner-builder entered into a contract with a granite supplier for the supply and installation of a granite bench top. The bench top subsequently cracked, and the owner-builder lodged a complaint with BACV, seeking conciliation of the dispute.

BACV contacted the granite supplier. Investigations disclosed that the reason the bench top had cracked was that the kitchen was not level. BACV brokered an agreement between the parties, to the effect that the granite supplier would replace the bench top, provided that a professional tradesperson ensured that the kitchen was level, both after removal of the cracked top, and prior to installation of the new one.

Mediated by BACV, the parties agreed to apportion the attendant costs of replacement.

### STOPPING THE BUCK

A consumer had engaged a builder to complete a building project. The consumer received a request for payment of \$1,232 for provision of fencing around the building site, as required by Council by-laws. The builder had arranged for erecting the fencing, and had sent a notice to the consumer passing on the cost as a variation to the contract. Despite protests from the consumer the builder refused to waive the cost.

The consumer contacted BACV, disputing liability. BACV determined that the by-law in question had been passed in May 2001, and that the contract had been entered into in November 2002. BACV formed the view that the builder should have factored the cost of provision of fencing in compliance with the by-law, into the price the consumer had been quoted for the whole project.

BACV advised the builder accordingly and the variation request was then dropped, to the delight of the consumer.

### BROKERING COMPROMISE

A consumer entered into a contract for a kitchen renovation. Installation of the kitchen bench top required the making of a hole in the bench top, but for reasons the parties could not agree, the hole was made in the wrong place. The consumer, the builder, a contracted cabinet maker, and the suppliers of the bench top could not agree on the proportional liability of each party for the resulting damage. The consumer lodged a complaint with BACV, who obtained a version of the events from each party concerned.

Settlement rested on achieving a compromise; otherwise the matter was likely to become the subject of legal proceedings. During conciliation, one of the parties accepted a portion of responsibility for the defect. Other parties then returned to the negotiating table, and an agreement that was acceptable to all parties was finally reached.

### 1.1.2.3 Estate Agents Resolution Service

The Estate Agents Resolution Service (EARS) provides a specialist dispute resolution service for vendors, purchasers and landlords who deal with estate agents regarding property transactions. Now in its fourth year of operation, EARS offers a free service dedicated to the provision of advice and information, complaint-handling and dispute resolution on real estate matters.

EARS attempts to assist complainants to resolve matters themselves. If no satisfaction is obtained, written complaints may be lodged with EARS. EARS then attempts to conciliate disputes, with the co-operation of the parties. Where parties do not reach mutually-agreed settlements, EARS refers consumers to alternative forums. Where legislative breaches are identified, Consumer Affairs Victoria may take enforcement action.

EARS also encourages estate agencies to develop their own complaint-handling procedures.

The EARS dedicated enquiry line handled 13,065 enquiries during 2004-05. Vendors contacted the service to seek information on matters such as their rights and obligations in regard to engaging estate agents to sell properties, advertising charges, negotiating commission, and methods of sale. Purchasers enquired about the advertising of real estate prices, offers to purchase, the conduct of auctions, and cooling-off periods in contracts of sale. Landlords made enquiries in relation to the management of rental properties by estate agents.

During 2004-05 EARS received 1,159 written complaints, and settlements totalling \$318,160 were reached during the period.

EARS also plays an important educative role, and to this end conducted 25 presentations (to both consumers and industry representatives) throughout Victoria during 2004-05.

Nature of complaint	Number of complaints	% of total
Advertising and commission charges	151	16.5
Property management	323	30.4
False and misleading advertising	137	12.9
Documentation	63	5.9
Other (agents' conduct other than in regard to advertising, trust monies, unlicensed trading)	364	34.3

Analysis of complaints received by EARS, by subject matter 2004-05

## CASE STUDIES

### VENDORS TRUMP UNSCRUPULOUS AGENT

EARS received a complaint from a solicitor on behalf of the vendors of a property, alleging that the selling agent had purchased the vendors' property without prior permission from Consumer Affairs Victoria, in breach of section 55 of the *Estate Agents Act 1980*. The complaint further alleged that the contract of sale under which the agent had purchased the property contained unfair terms, including an unduly long settlement period (12 months), provision for only a \$1,000 deposit, and a term allowing the agent/purchaser to move into the property as a tenant (the agent was in arrears with the rental when the complaint was lodged). The complaint also alleged that the agent had carried out unauthorised renovations, to the value of \$20,000.

The solicitor wanted action taken against the agent, and to secure the vendors' release from the contract to enable them to re-sell the property, as the extended settlement period had placed them under excessive financial pressure.

With EARS' assistance the parties negotiated an agreement that the agent/purchaser would vacate within 14 days, forfeit the \$1,000 deposit and give up his rights under the contract of sale. The consumer benefited from the unauthorised renovations, and the possibility of taking action against the agent in respect of the alleged section 55 breach was being explored at year end.

### VULNERABLE CONSUMERS' HOME SAVED

EARS received a complaint on behalf of a couple who spoke very little English. The complaint alleged the following series of events.

The husband had been consulting his local doctor for medical reasons. The doctor introduced him to a salesperson, who promoted himself as an estate agent with a licensed agency (the doctor was later seen at the agent's office). The agent misled the couple into signing a contract to purchase an apartment off plan. The couple had made it clear that they could not afford to take settlement of the property and that they were only purchasing on the basis of the agent's guarantee that they could sell it before it settled.

Some two years later (over which time the value of the property had greatly depreciated) the couple received correspondence from the agency and the vendor, confirming the approaching settlement date. The couple's attempts to express their concerns were ignored, and they were advised that they were legally obliged to proceed with the purchase.

The couple then made several attempts to obtain finance, but were not successful, and finally placed their family home on the market in an attempt to raise funds to go through with the apartment purchase.

At this point the husband's cousin contacted EARS.

After protracted negotiations with the estate agency and their legal representatives, an EARS conciliator was able to secure the couple's release from the contract, as the agency, after discussing the matter with the vendors, found alternative purchasers for the apartment.

## CASE STUDIES

### UNLICENSED TRADING

EARS received a complaint from a Sydney-based purchaser of an investment property in Melbourne, claiming that the agency through which he had bought the property had misled him as to its true value, and that he had paid too much for it. The purchaser was seeking action against the agency, and release from the contract.

A search of the Business Licensing Authority (BLA) database revealed that the agency was not licensed in Victoria, and was trading unlicensed. Research of the agency's website and documents revealed that it was promoting itself as a licensed agent in Victoria, in contravention of section 12 of the *Estate Agents Act 1980*. The purchaser was advised that EARS did not have the power to release him from the contract, and that he should seek independent legal advice.

However, EARS did contact the trader, highlighted the multiple breaches of legislation, and outlined the mutual recognition process whereby agents licensed interstate may apply to trade in Victoria. Consumer Affairs Victoria also issued the trader with a written warning and an instruction to amend the website, within one month.

The trader made the changes to the website and has applied for mutual recognition via the BLA.

### AN ACT OF COMMISSION

A vulnerable vendor in a regional area of Victoria was forced to sell his property due to personal circumstances. He alleged that an agent was unfairly claiming commission on the sale.

The agent had introduced an interested party to the property, but had failed to obtain a binding offer from that party during the period he had been authorised to act on behalf of the consumer. Subsequently, the vendor engaged another agent to act exclusively on his behalf, and the property was sold to the party the first agent had introduced. The vendor sought EARS' assistance to have the first agent withdraw his claim for commission.

EARS negotiated with the first agent and advised him not to pursue the claim for commission, as he had not obtained a binding offer to purchase the property from the interested party. The agent agreed to withdraw his claim.



## Residential tenancy inspection service

The Dispute Resolution Branch of Consumer Affairs Victoria includes seven full-time inspectors who conduct residential tenancy inspections, in terms of the requirements of the *Residential Tenancies Act 1997*. This free service covers tenancies in houses, apartments, units, flats, rooming houses and caravan parks, across the whole of Victoria.

During 2004-05, Consumer Affairs Victoria received 7,288 requests for inspections from tenants, landlords and estate agents. These included:

- over 4,100 requests for goods left behind inspections (through which owners or managers of properties deal with goods left behind by vacating tenants), resulting in the issuing of 3,725 reports
- 1,200 requests for rental assessments (resulting in 243 reports being generated), and
- 1,982 requests for repairs inspections (in respect of which 846 reports were generated).

In addition, inspectors contributed to a Victoria Police education campaign on identifying drugs in rental properties, by speaking at training sessions for property managers conducted by The Real Estate Institute of Victoria in February 2005.



### 1.1.3 Consumer advocacy

The *Fair Trading Act 1999* provides the Director with the power to institute or defend proceedings on behalf of people involved in disputes. Where parties are unable to resolve a dispute through conciliation, it may be appropriate to institute or defend proceedings on behalf of a consumer or tenant.

In deciding whether to institute or defend proceedings on behalf of a person involved in a dispute, Consumer Affairs Victoria considers each case in accordance with criteria prescribed in the applicable legislation, namely:

- whether the person has a good cause of action or good defence
- whether the proposed proceedings involve a natural person acquiring goods or services used for personal, household or domestic purposes, and
- whether advocating on behalf of the person concerned would be in the public interest.

Typically, advocacy will be considered appropriate where a consumer or tenant has been unjustly treated, and would have difficulty taking further action independently, particularly because of vulnerability and/or disadvantage; or where a written determination would establish precedent or clarify the application of a particular aspect of the law.

## 1.2 PILOT COMMUNITY EDUCATION PROGRAM

Following recommendations made in *The Way Forward Report*, Consumer Affairs Victoria piloted a community education program in the Eastern metropolitan region during 2004-05. Two community education officers were employed in July 2004, to provide residents in the region with improved access to consumer and tenancy information and assistance.

The role of the officers was to promote Consumer Affairs Victoria and its services to referral agencies, community groups, secondary schools and the wider community, in line with the re-positioning of Consumer Affairs Victoria as the first point of contact for all Victorians experiencing consumer or tenancy difficulties. The provision of education and information in support of vulnerable and disadvantaged consumers and tenants was prioritised.

## CASE STUDY TAKEN TO THE CLEANERS

Since 1997 Consumer Affairs Victoria has received nearly 20 complaints against David Donald trading as Donald's Cleaning, mostly relating to sub-standard work. In 2000, Consumer Affairs Victoria successfully prosecuted Donald's Cleaning for failing to comply with the contact sales provisions of the *Fair Trading Act 1999*, and for not providing appropriate cancellation notices to consumers.

When Consumer Affairs Victoria received yet another complaint regarding this trader during the 2004-05 financial year, it was deemed appropriate to advocate on behalf of consumers against the trader. In this latest instance, Donald's Cleaning had arranged, by way of a door-to-door sale, to clean and stretch a consumer's carpets, at a cost of \$750. The cleaning process had caused extensive, permanent staining to the carpet, necessitating replacement.

Consumer Affairs Victoria instituted proceedings in VCAT on behalf of the consumer.

The representative action was successful, with the VCAT Member ordering Donald's Cleaning to refund the consumer's \$750 and pay him \$1,500, the deemed value of the carpet at the time the work had been done.



During 2004-05 community education officers:

- visited 46 community agencies, providing them with information kits outlining the process for referring consumers to Consumer Affairs Victoria
- delivered in-depth training sessions on the new service delivery model to staff at eight community support and information centres and other volunteer community organisations, and
- regularly attended five local government youth and welfare services networks to liaise with participants and update them on the implementation of the new model.

Presentations promoting Consumer Affairs Victoria's core services and consumer and tenant rights and responsibilities were made to:

- 35 community groups
- four English as a Second Language classes at tertiary institutions and employment agencies
- two groups of Year 9 and 10 students (150 students in total) in conjunction with the Australian Communications Authority and the Telecommunications Industry Ombudsman
- three secondary school classes, and
- seven Neighbourhood Learning Centre workshops.

Displays were set up and staffed at:

- 12 large shopping centres
- the International Students Orientation Day at Swinburne University, and
- the Off the Beaten Track Youth Summit run by the Shire of Yarra Ranges.

Sixty Neighbourhood Houses (learning centres funded from Federal, State and local government budgets where members of the community can receive skills-based and other training, in their communities) were visited, and posters promoting Consumer Affairs Victoria's core services were displayed.

## CONSUMER EDUCATION IN LIBRARIES PROGRAM

As part of the pilot community education program, the Consumer Information in Libraries program was launched in the Eastern metropolitan region in August 2004, and as at 30 June 2005 large carousel display units had been installed in 15 libraries, counter top display units had been installed in two libraries, and small display units had been installed in three mobile libraries.

The units were restocked regularly and an evaluation of the program concluded that it had been successful in making information regarding Consumer Affairs Victoria accessible to large numbers of consumers and tenants, with a turnover of 32,756 information products in 12 months.

### Evaluation

An evaluation of the program for the period August 2004–March 2005, found that:

- cost per item of distributing products in this manner was \$1.29 (excluding display and signage costs), and
- in-library displays were effective information outlets.

Learning gathered from the trial will be used to inform implementation of the program across all regions.

In particular, a more targeted approach will be adopted, in which:

- libraries are selected on the basis of client profiles, likely turnover levels and willingness to participate
- non-library sites are considered in each location
- material displayed is matched with likely needs of each area, as ascertained from client profiles and other data
- publications to be displayed are determined in relation to turnover of particular publications in each area, and
- displays are withdrawn from low turnover sites.

### 1.3 PILOT REGIONAL OFFICE

In June 2004, Consumer Affairs Victoria opened a pilot regional office for the North Eastern region of Victoria, in Wangaratta.

The primary functions of the pilot regional office were to:

- advertise Consumer Affairs Victoria as the first point of contact for all consumer and tenant enquiries, information requests, and complaints, across the North Eastern region
- provide mobile outreach units capable of extending Community Affairs Victoria's visibility and accessibility throughout the region and providing a face-to-face service to all local government areas in the region
- provide a focused and strategic community education and awareness program in the region, and
- make referrals to, and support, advocacy services provided to vulnerable and disadvantaged consumers in the North Eastern region.

Analysis of the pilot in early 2005 led to the decision to proceed with the full implementation of the regional service delivery model, and an extensive planning process took place, culminating in the establishment of a Regional Operations Branch within Consumer Affairs Victoria to:

- develop and administer the full range of operational processes affecting regional services, and
- inform the development of policy and legislation, corporate strategy, and business and operational planning

in relation to implementation of the new service delivery model across all regional areas of Victoria.

In April 2005 policies and procedures across the whole of Consumer Affairs Victoria were reviewed, to determine the extent to which the new service delivery model could access existing systems and processes. In the same month, demographic profiles of the five regions serviced by Consumer Affairs Victoria were developed, to assist in identifying client bases. These profiles will also inform development of future education and information strategies.

### EVALUATION OF THE PILOT

The piloting of regional service delivery in the North Eastern region was evaluated to assess:

- extent of consumer awareness of the services provided at the pilot office
- accessibility of those services
- consistency, targeting and standard of service provision, and
- whether business processes at head office and the pilot office inter-related efficiently and effectively.

Quarterly progress reports on these objectives were prepared for presentation to the Working Together Forum.

For the period July 2004–June 2005:

- average monthly enquiries to Consumer Affairs Victoria from the North East increased by 27% compared to the same period in 2003-04, and
- the number of clients referred to advocates by Consumer Affairs Victoria was slightly greater than the number of clients who were assisted with VCAT cases by community agencies, in the previous financial year.

The final progress report (for the 12 months ending June 2005) incorporates the main findings of a quality benchmarking project, and a demographic survey of clients.

## 1.4 FUNDED ORGANISATIONS

During 2004-05 Consumer Affairs Victoria continued to fund some community organisations to provide consumer, credit and tenancy advice and assistance to Victorian consumers.

These organisations provided telephone advice and face-to-face assistance to vulnerable and disadvantaged consumers in particular, including assistance in negotiating with service providers and traders, and also in preparing or conducting cases at VCAT.

During the financial year, 17 agencies (12 providing general consumer and tenancy services, and five providing specialist services in the areas of finance, credit and tenancy) were contracted. These agencies together received 8,463 consumer and 35,843 tenancy enquiries. Agencies provided 11,842 consumer and 43,979 tenancy services (information provision, conciliation and VCAT assistance).

As part of piloting the new service delivery model, funded agencies ceased to supply consumer and tenancy services in the North East region and Eastern metropolitan region – these being replaced by the Statewide Consumer Affairs Victoria services. However, advocacy support and VCAT assistance to vulnerable and disadvantaged consumers continued to be provided by community-based organisations funded by Consumer Affairs Victoria.

For financial details of funding of community organisations by Consumer Affairs Victoria during 2004-05, see **Appendix 6**.

Consumers					Tenants				
Enquiries received	Types of services provided				Enquiries received	Types of services provided			
	Information provided	Matters conciliated	VCAT assistance provided	Total		Information provided	Matters conciliated	VCAT assistance provided	Total
8,463	8,593	2,937	312	11,842	35,843	34,990	6,809	2,180	43,979

**Funded organisations outputs 2004-05**  
(data for two funded agencies unavailable)

Region	Number of clients				Hours of direct service deliveries			
	Consumer	Tenants	Both	Total	Information assistance	Dispute resolution support	VCAT assistance	Total
Eastern metro	182	446	8	636	473	674	191	1,337
North East	9	81	–	90	111	151	99	360
Grand total	191	527	8	726	583	825	290	1,697

**Pilot advocacy service providers 2004-05**

## CASE STUDY

### BRIDGING THE GAP FOR A CONSUMER IN CRISIS

A member of a local community mental health team contacted a funded agency, asking about the rights of a tenant in connection with goods he had left behind in rented accommodation. The tenant, who still held the keys to the property, had been hospitalised under section 12 of the *Mental Health Act 1986*. The property manager for the landlord had applied to VCAT for possession of the premises.

After numerous consultations between the attending psychiatrist, the case manager and the case worker, it was decided to attempt to save the tenancy, so that the tenant would be able to return to stable accommodation with his possessions intact, once his mental health had stabilized.

After receiving the appropriate authority to act on his behalf, the funded agency successfully negotiated with several agencies to provide emergency relief funds to cover the rent arrears and two weeks' rent in advance. Throughout the process the funded agency initiated contact and negotiation with the property manager, and the landlord withdrew his application for possession of the premises when the application came before VCAT. As a result the tenancy was secured. On discharge from hospital the tenant was able to return to his home and his possessions, and is receiving continued medical support.

Without the intervention of the funded agency, this tenant could potentially have faced homelessness, with attendant detrimental consequences to administration of medical support and, as a result, his long-term mental health.

## *2 Addressing consumer vulnerability and disadvantage*

Consumer Affairs Victoria is committed to protecting those consumers most in need, and has undertaken significant work in past financial years to better understand consumer vulnerability and disadvantage, and the challenges that these present to the organisation. The organisation found that lack of access to information is a key issue entrenching consumer vulnerability and disadvantage, and the highest point of leverage for addressing the same; also, that vulnerable and disadvantaged consumers do not easily access Consumer Affairs Victoria's core services, and generally are not effectively reached by traditional education and information strategies.

In addition to significant strides taken in 2004-05 towards making Consumer Affairs Victoria's core services more accessible to vulnerable and disadvantaged consumers, the organisation continued to consult extensively with representatives of various categories of consumers with particular needs. Special focus was given to developing and implementing strategies that are effective in reaching specific categories of vulnerable and disadvantaged consumers.

## WORKING TOGETHER FORUM

Consumer Affairs Victoria continued to interact with a range of consumer and community organisations, through the Working Together Forum, established by the Director of Consumer Affairs in 2003. The Forum brings together heads of key Victorian community and consumer organisations representing views, issues and needs of, particularly, vulnerable and disadvantaged Victorian consumers.

Membership includes:

- Action for Community Living
- Australian Consumers' Association
- Brotherhood of St Laurence
- Consumer Credit Legal Service
- Consumer Law Centre of Victoria
- Consumers' Federation of Australia
- Council on the Aging
- Country Women's Association
- Disability Advocacy Network
- Federation of Community Legal Centres
- Financial and Consumer Rights Council
- Housing for the Aged Action Group
- Tenants' Union of Victoria
- Victorian Aboriginal Legal Services Ltd
- Victorian Council of Social Services
- Victorian Legal Aid, and
- Youth Affairs Council of Victoria.

Outcomes achieved during 2004-05 included:

- conclusion of a memorandum of understanding between Consumer Affairs Victoria and the Victorian Aboriginal Legal Services Ltd
- liaison between Consumer Affairs Victoria and the Youth Affairs Council of Victoria regarding information products targeting youth
- employment of a disabilities project officer by Consumer Affairs Victoria, to work with the disability sector to raise awareness of services provided by Consumer Affairs Victoria, and to assist in the development of a disability strategy
- more effective exchange of information between Consumer Affairs Victoria and consumer and tenancy organisations in particular, resulting in enhanced identification of systemic issues and trends, and
- broadened understanding of Consumer Affairs Victoria's role and activities amongst member organisations.

## 2.1 INDIGENOUS CONSUMERS UNIT

The Indigenous Consumers Unit provides advice and assistance to Indigenous people and community groups, on tenancy and consumer matters, through answering enquiries (see case study opposite) and delivering targeted education campaigns.

In 2004-05 the Unit visited 20 communities and took 598 telephone enquiries (compared with 25 community visits and 245 enquiries in 2003-04). Many of the enquiries related to credit and debt, and the operation of Indigenous co-operatives and associations.

The Keys for the Community project was delivered to five Indigenous communities, and several publications and materials designed particularly for use by Indigenous consumers were developed.

### KEYS FOR THE COMMUNITY PROJECT

This project raises awareness and understanding of the roles of relevant government- and community-funded agencies, within Indigenous communities. Agencies joining Consumer Affairs Victoria in the project are:

- Victorian Aboriginal Legal Services Ltd
- Energy and Water Ombudsman Victoria
- Office of the Public Advocate, and
- Dispute Settlement Centre Victoria.

During 2004-05 the Indigenous Consumers Unit delivered the project to five Indigenous communities, namely:

- Western Suburbs Indigenous Gathering Place (Maribyrnong)
- Rumbalara Aboriginal Co-operative (Shepparton)
- Dhauward-Wurrung Portland and District Elderly Citizens (Portland)
- Gundjimarara Aboriginal Co-operative (Warrnambool), and
- Mungabareena Aboriginal Corporation (Wodonga).

### PUBLICATIONS AND MATERIALS

In July 2004, Consumer Affairs Victoria produced six new brochures designed specifically for Indigenous consumers.

The new brochures addressed topics identified by the Indigenous Consumers Unit as relevant to community needs, and included the following titles:

- *Buying a used car*
- *Debt collectors*
- *Tips for buying a mobile phone*
- *Renting a home*
- *Your rights when shopping, and*
- *Using credit.*

The brochures were distributed by the Unit, and displayed in Victorian Aboriginal Legal Services Ltd offices across the State. They are also available on the Consumer Affairs Victoria website.

## CASE STUDIES

### CREDIT RELIEF FOR INDIGENOUS CONSUMER

An Indigenous consumer entered into a credit contract for consumer goods, to the value of \$898. The first seven months of the consumer contract was to be interest free; thereafter, interest was to accrue. The consumer failed to make any repayments on the contract, and the debt was subsequently purchased by a collection agency.

The consumer initiated contact with the collection agency in November 2004, seeking to resolve the matter, as he had applied for a housing loan and was concerned that a credit check would disclose the outstanding debt and prejudice his application. The consumer tried to re-negotiate the amount owed (which by this time exceeded \$1,600) and repayment terms, but was not successful.

The consumer called the Indigenous Consumers Unit, seeking information as to his rights.

The matter was referred for conciliation and the parties eventually agreed that the consumer would repay only the original amount of the debt.

### INDIGENOUS ASSOCIATION ASSISTED WITH RULE INTERPRETATION

An Indigenous organisation was having difficulties interpreting its rules, promulgated under the *Associations Incorporation Act 1981*. A representative of the organisation called the Indigenous Consumers Unit's enquiries line, requesting assistance. The organisation had adopted new rules and made several rule changes, at various annual general meetings. None of the rule alterations had been lodged with the Registrar of Incorporated Associations. The Indigenous Consumers Unit met with the organisation's members and committee, to resolve the issue, and assisted the organisation in drafting new rules.

### CLEARING THE WAY FOR FUNDING

An Indigenous organisation applied to the Department of Premier and Cabinet for funding, but the application was rejected pending lodgement of certain outstanding documentation with the Registrar of Incorporated Associations. The organisation had not operated for three years; nor had it lodged annual returns or notified the Registrar of a change of registered address.

A representative of the organisation called the Indigenous Consumers Unit enquiries line. The Unit assisted the organisation to prepare the annual returns and change its registered address and public officer. The Unit also prepared an application to the Registrar requesting waiver of outstanding fees, and this was subsequently approved.

As at year end, the funding application was being assessed.



## **REPORT AGAINST MEASURES OF SUCCESS IN INDIGENOUS CONSUMERS PROTECTION STRATEGY**

Consumer Affairs Victoria's Indigenous Consumers Protection Strategy aims to increase awareness and protection of consumer rights of Indigenous Victorians, and to ensure that the organisation's core services are accessible to Indigenous communities across Victoria.

The measures for success are:

- an increase in enquiries to the Indigenous Consumers Unit, from Indigenous people
- monitoring and analysis of new and emerging issues through data collection
- effectiveness of consumer education resources, and
- reports to the Ministerial Council for Consumer Affairs (MCCA) on the developments and implementation of the National Indigenous Consumers Strategy.

An evaluation of activities during 2004-05 indicates that the strategy is on track to achieve its objectives.

The volume of calls to the Indigenous Consumers Unit increased by almost 150% in 2004-05, as against 2003-04. The Unit has undertaken some analysis of the calls received on the dedicated 1300 line, with the aim of developing new projects and strategies targeting specific areas of need. At year end the Unit was working on projects covering prisons (with regional operations), credit issues and corporate governance. In addition, considerable work has been done in co-operation with other jurisdictions, to identify main issues of concern to Indigenous consumers, resulting in the development of the National Indigenous Consumers Strategy, which incorporates reporting elements.



## ***NATIONAL INDIGENOUS CONSUMERS STRATEGY***

The Indigenous Consumers Unit prepared a draft paper on the governance of Indigenous organisations. The Unit, together with the Registration and Compliance and Enforcement Branches of Consumer Affairs Victoria, is working to formalise the organisation's role in organisational governance. Governance has been identified as an important issue nationally, and forms part of the National Indigenous Consumers Strategy, which has been developed by a sub-committee of the Standing Committee of Officials in Consumer Affairs (SCOCA).

Eight areas of high priority for Indigenous consumers and tenants nationally, have been identified, namely:

- financial management and banking
- sale of motor vehicles
- trading practices in remote communities
- housing
- arts/industry
- corporate governance
- employment of Indigenous staff in consumer affairs and fair trading offices, and
- advocacy of Indigenous consumers' interests.

Implementation of the National Indigenous Consumers Strategy will form part of the Indigenous Consumers Unit's business plan for 2005-06.



## 2.2 MULTICULTURAL CONSUMERS UNIT

The Multicultural Consumers Unit was established to reduce barriers to accessing Consumer Affairs Victoria's services for people from culturally and linguistically diverse backgrounds. The Unit assists with complaints and enquiries in Vietnamese, Mandarin, Cantonese, Arabic and Russian. Consumers who speak other languages can access Consumer Affairs Victoria's services by making use of Translator Information Services. The Unit also assists in the translation of education and information products and media releases into languages other than English, and visits and makes presentations to community groups.

During 2004-05 there was a slight increase in calls to the Unit, as compared to number of calls received in 2003-04.

Enquiries lines for Arabic, Cantonese, Mandarin, Russian and Vietnamese speakers were established (see case studies), with call volumes steadily increasing from inception to year end.

Materials designed specifically for use by speakers of languages other than English were published and distributed, including:

- reprinting of *New Country – New Home* information booklets for newly arrived migrants in Arabic, Vietnamese, Chinese and English and for landlords and estate agents in English, Chinese and Vietnamese, and distribution of 25,000 of these to intermediary organisations as well as ethnic media
- launching of updated translations of *Renting a Home: A Guide for Tenants and Landlords* in Arabic, Chinese, Greek, Italian, Russian, Serbian, Turkish and Vietnamese by the Minister for Consumer Affairs at various ethnic community centres, and distribution of these (as well as the English version),
- translation of nine different fact sheets on renting and consumer rights into Arabic and Vietnamese, to support the Multicultural Consumers Unit in promoting the services of Consumer Affairs Victoria, and distribution through various stakeholders and related organisations, including the ethnic media, and
- production of two branded pull-up display stands for use by the Multicultural Consumers Unit at community education visits and other events.

The Unit visited over 250 groups from the Arabic, Russian, Chinese and Vietnamese communities, made regular presentations on SBS Radio, and was featured in over 100 radio interviews and articles in foreign language newspapers.

## CASE STUDIES

### CAR TROUBLE

A Russian-speaking consumer lodged a complaint with Consumer Affairs Victoria, regarding car repairs. The consumer had sent his motor vehicle for repairs, but these had not been carried out to his satisfaction, despite the fact that he had paid the trader concerned a total of \$700.

The consumer had approached the trader on nine occasions, to attempt to resolve the matter, but was on the point of cutting his losses and going to another repairer.

A friend who had received assistance from the Multicultural Consumers Unit in the past, referred the consumer to the Russian helpline. After speaking to a Multicultural Consumers Unit officer, the consumer lodged a formal complaint. Consumer Affairs Victoria contacted the trader, who agreed to refund the consumer, much to the consumer's delight.

### RECALCITRANT AGENT PAYS UP

A Vietnamese-speaking tenant contacted the Multicultural Consumers Unit via the Vietnamese helpline, in connection with a dispute over rent that she alleged was owing to her.

She had been served with notice to vacate by the real estate agent, and after moving out of the property had realised that the rental she had paid in advance had covered a longer period than that during which she had had use of the property. She had notified the agent, but reimbursement had been refused.

At this point the tenant contacted the Vietnamese helpline. The Unit contacted the agent to clarify the situation, and the agent agreed to reimburse the tenant the full amount outstanding (\$350).

### FAMILY ACCOMMODATION SECURED

A Chinese family had been living in a rented flat for nearly two years. They approached the landlord requesting that certain repairs be made, but rather than assistance, they received a letter invoking the two-month notice to vacate agreed in the lease.

The family believed they would be unable to comply, as they were expecting a baby in four weeks and the husband worked all day. After attempting (unsuccessfully) to negotiate the matter with the landlord, the family contacted the Multicultural Consumers Unit.

The Unit supported the family with provision of information relating to their rights, and assistance in applying to VCAT for a hearing.

VCAT determined that the family could remain in the flat, and ordered the landlord to conduct the repairs.

## 2.3 DEVELOPMENT OF A DISABILITY STRATEGY

Consumer Affairs Victoria responded to discussions in the Working Together Forum relating to the fact that disabled consumers experience significant barriers to accessing Consumer Affairs Victoria's services. Consequently, in 2004 Consumer Affairs Victoria engaged a disabilities project officer to work closely with the disabled community to better understand and respond to the consumer problems experienced.

Consumer Affairs Victoria consulted with over 30 stakeholders, including peak disability advocacy organisations, disability service providers, disability support networks, government consultative councils and government agencies.

Outcomes included:

- increased awareness of the services provided by Consumer Affairs Victoria
- increased volume of referrals from other organisations
- access to stakeholders' views on how best to provide accessible and equitable services to people with disabilities, and
- identification of a broad range of consumer issues experienced by people with disabilities.

Common consumer complaints related to:

- private and public transport
- discrimination in rental and insurance
- lack of protection under the *Residential Tenancies Act 1997* for people living in community residential units and supported residential services
- lack of a complaints-handling process for people receiving support services from contracted carer services or aid and equipment suppliers
- conclusion of contracts by consumers who, by virtue of disabilities, lack contractual capacity
- scams, and
- door-to-door sales.

The disability sector has shown support for this initiative, by promoting awareness of Consumer Affairs Victoria's services and indicating its willingness to work with Consumer Affairs Victoria in the development of a disability strategy. As at year end the strategy was still in development.

## 2.4 TRANSFER OF FINANCIAL COUNSELLING PROGRAM

During 2004-05 the Premier advised that portfolio responsibility for the generalist financial counselling program in Victoria would shift from the Minister for Community Services to the Minister for Consumer Affairs from 1 July 2005.

At the time of the announcement, financial counselling services were provided by 43 agencies throughout Victoria, subject to agreements between the Department of Human Services (DHS) and service providers – mostly community organisations.

Financial counsellors provide services to people struggling to meet the costs of daily living. They deal with vulnerable and disadvantaged consumers who are experiencing financial difficulties, such as inability to pay household bills, loans, credit cards, mortgages, rent, fines, taxation, or child support.

Services provided include:

- analysis of financial and debt situations
- information and options about how to resolve financial and debt problems
- information about accessing emergency relief and grants programs (such as utility bill payments, rent and mortgage relief, and concessions for household bills)
- individual support and advocacy services including negotiating with third parties
- bankruptcy information and options
- referral to other services (for example insolvency and trustee services, other counselling services, and Centrelink), and
- community development and education.

Government-funded financial counsellors do not provide financial planning services, financial management advice or long-term budgeting support.

To effect the transfer of the program from DHS, Consumer Affairs Victoria worked closely with DHS and the Office of Gaming and Racing, which has assumed responsibility for problem gambling services, including specialist problem gambling financial counsellors. Key tasks included:

- ensuring continuity of service delivery
- excising the financial counselling and problem gambling programs from the DHS service agreements with the affected agencies
- effecting variations to DHS contracts with service providers, to establish contractual relationships between the Department of Justice and the agencies concerned, whilst retaining previously existing terms and conditions, to the extent applicable
- managing relationships with agencies and financial counsellors
- preparing to assume responsibility for administrative functions (data transfer, etc), and
- ensuring continuation of professional indemnity and public liability insurance arrangements for contracted agencies.

Financial counselling services have linkages to a number of government programs, particularly those relating to family services. Consumer Affairs Victoria values those linkages and will work closely with DHS, the agencies and financial counsellors to ensure these linkages are maintained and effective. Likewise, Consumer Affairs Victoria will benefit from the closer linkage with financial counsellors, who experience first-hand the behaviours and conduct, both good and bad, of traders and service providers.

Consumer Affairs Victoria has identified opportunities to support the work of financial counsellors and will be funding the Consumer Credit Legal Service to provide legal advice and professional development to service providers such as financial counsellors and advocates – particularly in rural and regional Victoria – so that it is more accessible. Likewise Consumer Affairs Victoria will be establishing a dedicated telephone line into Consumer Affairs Victoria, for service providers to seek information or refer clients for assistance.

## 3 Knowledge is power

The nature of the role of Consumer Affairs Victoria means that all its activities have a consumer protection element. However, as a general proposition, the person best placed to protect the Victorian consumer *is* the Victorian consumer. As a result, emphasis is placed on empowering consumers to manage their own risks. This means working to understand the role of consumer behaviour in systemic consumer problems, and applying this understanding to engage with the problems at source. As a result, 2004-05 saw the implementation of several education strategies aimed at consumers, sometimes running concurrently with strategies aimed at business.

Activities undertaken during 2004-05 reflect the ongoing aim of Consumer Affairs Victoria to empower consumers to fulfil this role with increasing efficacy. For a list of all media releases issued by Consumer Affairs Victoria during 2004-05, see **Appendix 7**.

### 3.1 CONSUMER EDUCATION IN SCHOOLS PROGRAM

Young Australians represent a commercial market worth more than \$4 billion a year. A range of formal research has found that 18-to-24-year-old consumers are in the most vulnerable age group, as they have the lowest levels of financial literacy and awareness of consumer rights and responsibilities. They are increasingly becoming the target of subtle marketing and sales pressures, particularly in relation to products such as cars and mobile phones. Consumer Affairs Victoria engages with these young consumers in an effort to empower them to manage their own risk in these areas. Another key reason for targeting young consumers for consumer education is to produce systemic change in consumer behaviour in the future.

The Consumer Education in Schools (CEIS) program, launched in 2003, comprises a package of best practice curriculum material written and produced by Consumer Affairs Victoria to address consumer issues common to young people.

The program gathered momentum during the 2004-05 financial year, through the expansion of resources and networks to further raise young peoples' awareness of essential consumer and financial issues.

Key outcomes during 2004-05 included:

- launch of *Health & Wellbeing*, a cross-curricular resource for use by teachers of health, physical education and personal development, as well as those teachers introducing life skills to early school leavers, and printing and distribution of 2,000 copies (with the launch of another cross-curricular resource, *Consuming Planet Earth*, planned for later in 2005)
- Ministerial visits to more than 20 secondary colleges promoting to students the benefits of being independent, informed and in-control consumers, and reminding them of their rights and responsibilities
- Director's address to members of the Victorian Commercial Teachers' Association at the Annual Comview Conference, on the role of Consumer Affairs Victoria, the importance of consumer and financial literacy education in the 21st century, and the new phenomenon of affluenza (when wants become needs in an affluent society)
- printing of 40,000 wallet-sized information cards setting out consumer rights and responsibilities in categories of relevance to young consumers, and distribution for use by young consumers in everyday transactions
- establishment of a relationship with Youth Central, a Whole of Victorian Government youth website, which has provided the opportunity to disseminate information on topics of interest to young consumers, such as mobile phone ring tones and consumer scams
- printing of 80,000 copies of *Stuff* magazine (the publication aims to ease the transition from school life, by providing advice and information on a range of consumer issues such as buying motor cars, mobile phones, renting, shopping and much more, and was distributed to school leavers throughout the State during 2004-05)
- launch of a competition among young Victorians to come up with a new name for the Consumer Affairs Victoria CEIS resources – the winning suggestion, *Consumer Stuff*, was submitted by a Year 10 student
- continued promotion of *Consumer Stuff* through direct mailing to all Victorian secondary schools, the expansion of youth networks, and publication of articles in the press and relevant subject association publications, and on websites
- provision of speakers and resources at professional development opportunities for teachers, and
- inauguration of the *Consumer Stuff* Challenge (a competition which encourages young people to create fun and informative messages targeted at youth, regarding consumer awareness) – 128 entries were received and, owing to its success, the competition will be repeated in the 2005-06 financial year.



The Hon Marsha Thomson MP judging a pancake bake-off at the launch of Health & Wellbeing at Drysdale Secondary College.





## **NATIONAL CONSUMER EDUCATION FOR YOUTH**

During 2004-05 Consumer Affairs Victoria continued to take an active role on two national working parties under the auspices of SCOCA, and the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), respectively.

These working parties are simultaneously researching and developing education programs that will ultimately improve consumer and financial literacy for all young Australians and reduce youth debt.

The four pillars of the SCOCA National Consumer and Financial Literacy strategy, and Consumer Affairs Victoria's participation, are outlined below.

1. Undertake a national research study which provides sufficient causal and empirical evidence to inform a national marketing and education program: Consumer Affairs Victoria has applied its expanding knowledge of the community-based social marketing (CBSM) model for behavioural change (which is highly effective in fostering sustainable behavioural change, because it takes into account barriers to, and benefits of, behavioural change, and recognises the interaction between individual and group factors in human behaviour) to assist in the development of the national research brief.
2. Develop a nationally agreed framework for consumer and financial literacy to improve consistency among curriculum resources, and advocate for the embedding of consumer and financial literacy knowledge, skills and understandings in the national Statements of Learning: Consumer Affairs Victoria was co-opted to work on a MCEETYA-endorsed working party to develop a national framework for consumer and financial literacy. The framework outlines what students should be able to achieve by the end of Years 3, 5, 7 and 9 in terms of consumer and financial education. Consumer Affairs Victoria assisted in drafting the framework and in consulting with other stakeholders, including professional teachers' associations, parent groups and principals' associations.
3. Develop a national communication strategy to highlight the problems and consequences of escalating youth debt: Consumer Affairs Victoria strongly advocates that the energy, budget and resources of all States and Territories be used to progress the national research, national curriculum framework and expansion of education resources before a national communications strategy is developed.
4. Expand the range of existing high school education resources addressing consumer and financial literacy, and develop additional resources, especially for students in the early and middle phases of learning: Consumer Affairs Victoria will contribute to the national project by sharing all existing and future resources developed for teachers and students, with other States and Territories. Future Victorian resources may target primary school and Indigenous audiences.

The Federal Financial Literacy Foundation is also planning to conduct national research into financial literacy, and implement a multi-faceted national financial literacy information campaign in 2005-06. Consumer Affairs Victoria recommends that the SCOCA working party and the Foundation work collaboratively, given the obvious synergies in their work.



## 3.2 REAL ESTATE CAMPAIGN

During 2004-05 implementation of a 16-month campaign to educate Victorians on their rights and responsibilities when buying and selling residential real estate (launched in February 2004) continued.

Activities undertaken during the 2004-05 financial year included:

- the publication and distribution of *Frequently Asked Questions* for estate agents (FAQs) and *Real estate: A guide for buyers and sellers* (the *Guide*)
- a direct response advertising campaign calling on consumers to obtain copies of the *Guide*
- media releases and advertising via newspapers, magazines, radio and the internet, and
- exhibitions (metropolitan) and public seminars (metropolitan and regional).

The campaign was short-listed as a finalist in the 2004 Australian Direct Marketing Association Awards.

By the end of the 2004-05 financial year, almost 210,000 copies of the *Guide* had been ordered.

The campaign continues to achieve results that indicate all education objectives will be achieved. A concluding evaluation of the campaign will be conducted in August 2005.

### EVALUATION: EFFECTIVE ADVERTISING AT A THIRD OF THE COST

The cost per copy of distribution of the *Guide* was reduced during 2004-05, to one third of the cost per copy in 2003-04. The success of the campaign is attributed to the use of a direct marketing strategy (as opposed to a mass communications strategy).

The techniques included:

- a long-term campaign
- highly targeted media
- focus on generating a consumer response to order the *Guide*
- measuring results and linking cause to effect to constantly refine the strategy, and
- analysing advertising placement and adjusting placement to obtain highest responses at lowest cost.

This was the first time such techniques had been used in Victorian Government, and the campaign established a benchmark for Government education strategies.

### 3.3 BUILDING AND RENOVATING CAMPAIGN

Consumer confidence is vital for a thriving domestic building industry. Every year thousands of Victorians build or renovate homes. Given that most consumers are not well informed about building matters, consumer education in this area is essential.

During 2004-05 an education and information strategy was implemented, focusing on the distribution of a free magazine *Building & renovating: A guide for consumers*. The magazine contains objective and detailed information on how to carefully plan and monitor what is often a consumer's biggest financial investment. An evaluation showed that 83% of consumers who had read the magazine agreed they would recommend it to others. From 1 January 2005 to 30 June 2005 a total of 108,409 magazines was distributed.

In addition, for the same period 21,328 consumers visited the Building and Renovating section of the Consumer Affairs Victoria website and 4,754 magazines and 1,642 complaint forms were downloaded.

Stakeholders distributing the magazine include VicUrban land sales offices, local councils, display home centres, building advisory centres, builders, building solicitors and conveyancers, estate agents, Bunnings hardware stores and mortgage brokers.

Other services offered by Consumer Affairs Victoria during 2004-05 to educate and inform consumers with regard to this issue included:

- the BACV complaints-handling service
- face-to-face advice at major home shows and seminars run by the Building Display Centre, and
- a stand at the HIA Home Ideas show in March 2005, and sponsorship of a major exhibit.

#### EVALUATION OF BUILDING AND RENOVATING CAMPAIGN

Campbell Research & Consulting Pty Ltd was commissioned to conduct an evaluation of the campaign. This involved a telephone survey of BACV consumers, focus groups of building industry consumers and in-depth interviews with BACV stakeholders.

Consumers were generally complimentary of BACV publications, and were particularly impressed by the A4 magazine. Many consumers saw other publications as unnecessary given the quality and comprehensive coverage of the magazine.

The evaluation concluded that total prompted awareness of BACV amongst consumers surveyed fell just 5% short of the target set for the campaign. Consumers showed greater unprompted awareness of Consumer Affairs Victoria as a provider of information.

Consumers surveyed who had read the education products agreed that the information:

- was relevant (93%)
- was easy to read (92%), and
- provided links to useful additional information (79%).

Survey respondents reported that having read the information they:

- were better informed (73%)
- were more confident about undertaking building and renovating projects (65%)
- would recommend the publications to others (83%), and
- had kept the information and intended to refer to it again (78%).

The evaluation provided a number of recommendations for enhancing existing recognition of Consumer Affairs Victoria and BACV as providers of information in the building industry, and for the conduct of future campaigns.

### **3.4 FOREWARNED IS FOREARMED: A SCAMS AWARENESS STRATEGY**

Each year many unsuspecting Victorians lose large and small amounts of money to scams designed by ruthless operators for their benefit at the expense of their victims. These confidence tricksters are hard to find, and compensation for their victims is difficult to secure. Prevention is thus far more important than cure.

Because of the nature of this threat to consumers, Consumer Affairs Victoria employs ongoing strategies in response. Regular media releases are issued (11 during 2004-05), warning consumers about current scams and detailing how to recognise them, how to respond, and where to turn for help. Alerts about current scams are also published on the home page of Consumer Affairs Victoria's website.

Consumer Affairs Victoria also regularly participates in international sweeps of the internet to identify and close down online scams. A sweep conducted by Consumer Affairs Victoria in February 2005 as part of International Fraud Prevention Month assisted in uncovering more than 200 internet scams.

Consumer Affairs Victoria will also step in to prevent scams circulating where possible. Almost 13,000 illegal chain letters offering consumers instructions on how to earn a guaranteed \$70 million, were intercepted by Consumer Affairs Victoria inspectors in September 2004. As part of a coordinated national sweep by consumer agencies and Australia Post, around 80,000 of these letters were seized across the country.

During 2004-05 Consumer Affairs Victoria implemented a new scams strategy which included the following specific actions:

- hosting a scams awareness stand at the Victorian Seniors Expo in March 2005, where scams-related literature was distributed to seniors, and staff offered assistance in identifying scams
- developing and distributing a scams awareness poster warning consumers to be on their guard against too-good-to-be-true offers, through community groups and agencies around Victoria
- developing a fact sheet on popular scams, and using this at external presentations and community events
- providing the above-mentioned information products to the Indigenous Consumers Unit, the Multicultural Consumers Unit and community education and liaison officers, for use in presentations and at events
- publication of detailed information on scams on Consumer Affairs Victoria's website, and
- an ongoing campaign to highlight current problem scams through the media – where possible, current scams are included in monthly columns in media with regional circulations.

## **MOST COMMON SCAMS OPERATING IN VICTORIA 2004-05**

### **Lotteries**

Members of the public are informed by letter or email that they have won great prizes in lotteries or competitions. They are then asked to pay some sort of fee to access non-existent winnings. The scammers, usually based overseas, pocket the fee and disappear.

### **Pyramid schemes**

Pyramid schemes are money-making schemes based on recruitment of others rather than legitimate selling of products or services. Victims pay to join these schemes on the basis that they will receive substantial sums once they have recruited a certain number of other investors. Most participants make no money, and lose whatever money they paid to participate – as well as any friends that they recruited.

### **Unauthorised advertising**

These scammers are referred to as blowers because they usually telephone their victims, posing as publishers of magazines, directories or internet sites. They repeatedly demand payment for advertisements placed in poorly circulated, or sometimes non-existent, publications without their victims' signed authorisation.

### **Employment schemes**

Scammers use the internet, newspaper advertisements, seminars, mail and direct contact to lure people into self-employment schemes. Victims pay in advance for training or information that turns out to be useless. These scams often guarantee large salaries, but in fact result in the loss of large amounts of money.

### **Fax-back scams**

Fax-back scams advertise things like weight loss programs, employment opportunities and publications. Victims are required to respond by fax. Scammers ensure that the costs of doing this are very high (either by using 1900 numbers or by ensuring that the response requires the sending of a high volume of material). Scammers receive large shares of these high charges.



## **NATIONAL FRAUD GROUP**

The first Consumer Fraud Prevention Workshop, attended by consumer affairs agencies (including Consumer Affairs Victoria), the Australian Federal Police and national regulators, was held in Sydney on 16 March 2005.

The group identified three main priorities in promoting its aim of limiting the impact of fraud on Australian consumers namely:

- determining the extent of the problem in Australia, through research
- developing a national consumer education strategy, with a joint message and consistent approach, aimed at reducing consumers' vulnerability to scams, and
- exploring a national strategy for dealing with perpetrators of fraud (for example, information-sharing options and a one-stop complaints shop).

The group agreed to form three sub-groups to take work forward.

The Outreach Subgroup, chaired by Commissioner Berna Collier of the Australian Securities and Investments Commission, is creating the overall program of co-ordinated outreach by members of the national fraud group.

The "Stop It" Subgroup, chaired by Anthony Wind, Manager of the Anti-Spam Team of the Australian Communications and Media Authority, is tasked with developing innovative and co-ordinated approaches to preventing fraud and scam messages from reaching consumers, and where scams and frauds do get through, preventing the money paid by consumers from leaving Australia.

The Research Subgroup, chaired by Dr Russell Smith, Principal Criminologist of the Australian Institute of Criminology, is tasked with raising the profile of consumer fraud by developing, commissioning and conducting research into the problem.

Consumer Affairs Victoria participated in all three sub-groups in 2004-05.



### 3.5 ITINERANT TRADERS

Some itinerant traders are conmen who travel from town to town, touting for work. They blow in from overseas each Spring and operate through to March, with scams that often revolve around asphaltting, painting and roofing. They particularly target the elderly, and are highly organised. As soon as they are detected in one town they vanish, only to resurface with the same scam in another State. Often identification papers they provide are false.

Itinerant traders have been a problem for Victoria for the past 20 years. However, because of the way they operate, they have been notoriously difficult to catch.

In 2005 Consumer Affairs Victoria put together the first elements of a new strategy to deal with itinerant traders. The aim of this strategy is to raise awareness among consumers (particularly the elderly) of itinerant traders, help put in place an early warning system and deter these rogues from operating in Victoria.

Specific actions will include:

- development of a new community education campaign, with the objectives of enabling communities to identify and report the problem, and providing a template for action so that communities are ready and able to mobilise quickly against itinerant traders
- development of an enforcement process that can be easily followed and quickly implemented each time an itinerant trader group is identified, and
- establishing links with other trader associations and other states to quickly gain and convey information about itinerant traders.

Implementation of the strategy will take place in 2005-06.



## Focus on credit and debt

Credit and debt have been high priority issues for Consumer Affairs Victoria since 2003, owing to the potential intensity of the impact of these on consumers. Besides the work done in the CEIS program, aimed at pre-empting credit- and debt-related consumer problems, the organisation has taken other opportunities to educate and inform consumers about credit and debt.

During 2004-05 the Consumer Affairs Victoria stand at the Royal Melbourne Show was dedicated to conveying messages related to credit and debt. Consumer Affairs Victoria staff also addressed several meetings of the Western Women's Health Group on credit and debt.

## WESTERN WOMEN'S HEALTH GROUP

As part of a dispute avoidance strategy, Consumer Affairs Victoria representatives spoke at four information sessions involving the Western Women's Health Group, which is mostly made up of women of Arabic background. These information sessions were particularly valuable, because the concept of credit is unfamiliar to many members of the Islamic community. Consumer Affairs Victoria provided information about credit, credit cards, debt and the debt collection process, and the responsibilities of co-signatories to loan documentation. The sessions were well received, with several of the women choosing to attend repeat sessions.



Consumer Affairs Victoria staff at the 2004 Royal Melbourne Show stand.

## ROYAL MELBOURNE SHOW

Consumer Affairs Victoria took a stand at the Royal Melbourne Show in September 2004, to promote key messages in relation to credit and debt. A pre-recorded audiovisual message highlighted the consequences of overspending on credit, and an interactive computerised feature enabled visitors to calculate how long it would take to pay off credit card debt.

More than 800 visitors were surveyed, and of these 749 reported that they had obtained a better understanding of credit as a result of visiting the stand.

## 3.6 NEW TECHNOLOGIES

Evolving communication and information technologies are raising issues for consumers. This is reflected in growing volumes of enquiries and complaints received by Consumer Affairs Victoria in relation to these areas. During 2004-05 the organisation took action to ensure that consumers, particularly those considered vulnerable and disadvantaged, are protected from unfair practices in the areas of mobile phone ring tones, third generation mobile phone services, pay TV, phone cards, online auctions, and so-called spyware.

The organisation will continue to monitor and respond to complaint trends in this area.

### 3.6.1 Mobile phone ring tones

Consumers now have access to mobile phone ring tones, wallpapers, logos, pictures, screen savers, music, games and video downloads on their mobile phone handsets. These services are charged to mobile phone bills at high rates and are particularly targeted at young, inexperienced consumers.

During the 2004-05 financial year, Consumer Affairs Victoria became concerned, based on the number of complaints received in this area, that overzealous advertising to children and young people by some content providers was unclear and potentially misleading. Consumers also reported that they had experienced difficulties cancelling some services, or having their complaints heard by supplier representatives.

The complaints were examined together, and in more depth, to define the nature of the issues, and thus determine the appropriate response.

Consumer Affairs Victoria then contacted suppliers by letter, and informed them that special care is required when marketing to children. Consumers were warned, through the media, to take care when ordering these services.

Consumer Affairs Victoria will continue to monitor this issue and respond appropriately.

## CASE STUDY

### DOWNLOADS DOWNER

A 17-year-old consumer requested a ring tone from a magazine advertisement that included the statement “from only 50c per download in package!” The consumer believed that this meant each download cost 50 cents, but found that she was charged \$5 when she received the ring tone. The consumer’s attempts to cancel the subscription via email also ended in frustration – she received returned mail messages, and the SMSs were still being sent to her mobile phone.

At this stage the consumer contacted Consumer Affairs Victoria, who contacted the trader. The consumer was refunded in full and the service was cancelled.

### 3.6.2 Third generation mobile phone services

New third generation (3G) mobile phone services provide faster connection speeds that allow for video messaging and internet access via mobile phone handsets. Concerned at the number of complaints received about 3G handsets and services, Consumer Affairs Victoria examined consumer difficulties associated with 3G. This revealed that the majority of complaints concerned a single supplier, and related to faulty handsets, the behaviour of sales agents, and 3G network problems.

Consumer Affairs Victoria concluded, from these investigations, that consumers were not obtaining satisfaction from the supplier's own complaints-handling mechanisms, and wrote to the supplier asking it to address this concern. Discussions were held with the supplier, aimed at resolving consumer complaints and while most of these have been resolved, at year end the company and Consumer Affairs Victoria were negotiating to resolve the few still outstanding. Consumer Affairs Victoria will continue to monitor the volume of complaints received in this area, and respond accordingly.

### 3.6.3 Pay TV

Consumer Affairs Victoria has received a high volume of complaints against the subscription television provider Foxtel. After analysing the issues reported, by subject matter, Consumer Affairs Victoria concluded that the problems were broad-based, including billing and contract terms relating to cancellation of services and procedures in the event of relocation.

Foxtel's desire to switch its customer base to digital has also led to problems for those consumers who have no desire to upgrade. There is pressure on Foxtel to move its customer base to digital because of the 2008 analogue switch-off mandated by the Commonwealth Government. Consumer Affairs Victoria is concerned that if the switch-off is not handled well it may result in significant consumer confusion and complaints to fair trading agencies.

Foxtel has responded effectively and resolved the majority of matters brought to its attention. However, Consumer Affairs Victoria is still concerned with Foxtel contracts and at year end was working with the company on this matter.

## CASE STUDY

### FOXTEL TOES THE LINE

A consumer had arranged to be connected to Foxtel's analogue subscription TV service until 3 April 2005. The consumer then moved house and organised to have his pay TV service suspended until he'd settled into his new residence. He was happy to re-connect his analogue cable TV service and continue with his contract, but was advised that he had to connect to Foxtel Digital, which was more costly. Foxtel refused to re-connect the analogue service and invoked a cancellation fee. Foxtel also demanded that the consumer sign a new two-year contract. Following Consumer Affairs Victoria's intervention, Foxtel agreed to terminate the consumer's agreement, and decided not to invoke the cancellation fee.

### **3.6.4 Phone cards**

During 2004-05 Consumer Affairs Victoria became aware of several consumer issues in this industry.

Most commonly, consumers complained that they seemed to have been charged for calls at higher rates than those advertised.

Of the consumers who contacted Consumer Affairs Victoria, 41% had experienced difficulty in contacting customer service numbers given on the phone cards.

In 32% of cases reported, phone cards did not work at all.

Some consumers (24%) reported that companies that had issued the phone cards consumers had bought, had gone into liquidation, leaving them with cards that could not be used. This also caused problems for retailers of phone cards, who were left out of pocket because they had purchased stocks of cards which were rendered useless.

The apparently significant number of fly-by-night operators in this industry suggests a systemic problem that is best addressed at the national level. The Minister for Consumer Affairs, the Hon Marsha Thomson MP, wrote to the Commonwealth Minister for Communications, Information Technology and the Arts, calling for a national approach to the phone cards industry.

In the United Kingdom, where similar issues have been experienced, a probe into the industry is being conducted by the telecommunications regulator, Ofcom. The results of the probe will be observed with interest by Consumer Affairs Victoria.

Consumer Affairs Victoria has warned Victorian consumers through the media to be vigilant when purchasing phone cards.

### **3.6.5 Online auctions**

Buying and selling online, through internet-based auctions, is becoming increasingly popular. As a result, Consumer Affairs Victoria is researching online auctions and the issues they raise for consumers, in order to establish whether the existing regulatory framework offers sufficient protection against potential risks particular to this form of transacting. This work is expected to be finalised in the next reporting year.

### **3.6.6 Spyware**

Spyware is computer software that is downloaded to peoples' computers with or without their knowledge, and is used to gather personal details such as passwords and internet banking details.

Spyware spread rapidly during 2004-05, and is damaging consumer confidence in online transactions, and exposing consumers to the risk of identity fraud.

During 2004-05 Consumer Affairs Victoria focused on educating consumers on how to avoid downloading malicious spyware, and how to get rid of it once it has been installed. This advice was placed on the Consumer Affairs Victoria website, and formed the subject of a media release.

At year end Consumer Affairs Victoria was preparing to liaise with other Victorian and Commonwealth government agencies in connection with consumer issues related to spyware.

## 3.7 FORTHCOMING EVENTS

Consumer Affairs Victoria gives consideration to the possible impact on consumers of upcoming situations and events to pre-empt consumer concerns that may arise.

### 3.7.1 Ahead of the Games

During 2004-05, work began on a consumer protection strategy in relation to the upcoming Commonwealth Games, to be run in Victoria from 15 to 26 March 2006.

The Commonwealth Games is expected to be the biggest sporting event to be held in Victoria since the 1956 Olympics, and is expected to attract 90,000 overseas and interstate visitors along with 4,500 athletes and over 3,000 officials from 71 different Commonwealth nations.

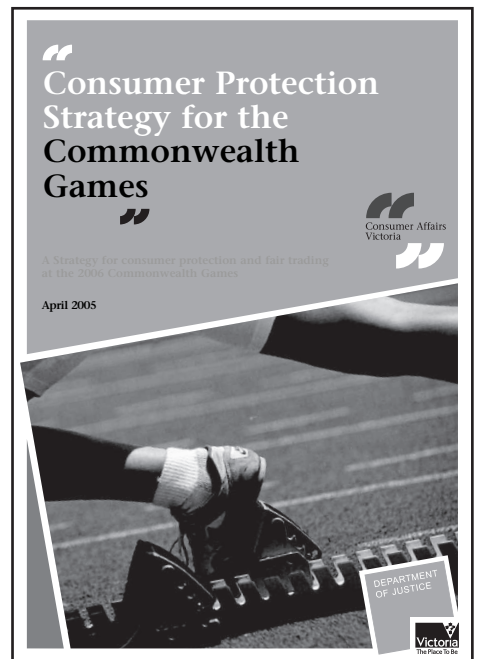
The Games provide the opportunity to showcase Victoria and Australia to a potential audience of 1.2 billion across the world.

As part of a Whole of Victorian Government approach to promote the social and economic success of the Games, Consumer Affairs Victoria has developed a strategy to raise awareness of consumer rights, and to prevent and respond to unfair practices that may emerge during the Games.

The strategy was released in April 2005, and focuses on:

- raising awareness among visitors to Victoria and all Commonwealth Games attendees of their rights as consumers
- providing a quick and effective enquiries and complaint resolution process for consumers who are seeking advice or experiencing difficulties
- preventing unfair trading practices from emerging in the marketplace, and
- addressing any unfair practices using a range of enforcement options.

Central to the strategy will be working in partnership with other Government agencies, and industry and consumer organisations, in providing information and reducing opportunities for unfair trading practices to emerge. The strategy document has been distributed to over 80 key stakeholders, and its implementation has been discussed. Consumer Affairs Victoria will also be working with local governments across Victoria to promote consumer protection messages in the lead-up to the Games.



Staff from Consumer Affairs Victoria's operational areas will be involved in delivery of the strategy, which will include handling consumer enquiries and complaints, resolving issues that emerge and maintaining a presence in key tourist areas across Melbourne and Victoria. At the same time, Consumer Affairs Victoria will continue to provide its usual services to the public during the Games.

Consumer Affairs Victoria's approach will contribute to the overall goal of ensuring that the social and economic benefits of the Games are realised. Consumer Affairs Victoria has also been engaged by the Office of Commonwealth Games Coordination to monitor ticket sales for compliance with the Approved Ticket Scheme.

### 3.7.2 Schoolies

Schoolies is an annual end-of-year celebration for VCE students and takes place after final exams. Following problems with the 2004 celebrations in Lorne, Consumer Affairs Victoria investigated how it could intervene to improve the experience for students, parents, teachers, and suppliers of goods and services, including tenancies.

The organisation explored consumer issues related to this event, and based on its findings identified the need for an education strategy addressed to school leavers, informing them about their rights and responsibilities as they prepare and plan for their trip, and providing practical advice for the safe enjoyment of the experience itself. A key feature of the strategy will be to monitor accommodation issues, since historically this is one of the main consumer issues relating to the event.

Consumer Affairs Victoria will encourage businesses to be aware of and compliant with their responsibilities in matters affecting students taking part in Schoolies, including liquor licensing, travel, and all trade dealings. Consumer Affairs Victoria will also provide an avenue of redress for students who experience consumer problems, and has developed a web presence on the Consumer Affairs Victoria website to inform students about its role.

This Consumer Affairs Victoria initiative has been incorporated into a Whole of Victorian Government Schoolies project, led by the Premier's Drug Prevention Council.

## 3.8 EDUCATION MATERIALS GENERALLY

During the financial year, 2,010,231 publications and forms were distributed via the Consumer Affairs Victoria distribution centre, Consumer Affairs Victoria's regional offices, estate agents, home shows, community groups, libraries and stakeholders. Of these, more than one million forms and booklets related to residential tenancies.

Considerable work was done during the year to upgrade the capacity of the internal stock control database. From 1 July 2005, liquor licensing and business names publications will be tracked through this system, and will be distributed through Consumer Affairs Victoria's distribution network.

The organisation also continued with its forms management program, which has been in existence since 1999 and has seen over 200 forms analysed, reviewed and designed for public use.

Aims of the program include:

- making it easier for people to comply with statutory requirements
- improving customer service
- reducing the number of errors made by form fillers
- producing more efficient business systems, and
- reducing the time frame necessary for processing of forms.

As part of this program, 118 forms have been reviewed, updated and redesigned during 2004-05.



## **NATIONAL CONSUMER RESEARCH CAPACITY**

Australia has no equivalent body to the United Kingdom's National Consumer Council. The key roles of the Council are to carry out research to find the consumer issues of the future and, where change is needed, develop policy solutions, and lobby and work with providers of goods and services to ensure that the policy solutions work.

The current lack of consumer research capacity in Australia nationally, means that the consumer perspective is inadequately presented to reviews on major policy issues, both at the state and territory level, and at national level.

Consumer Affairs Victoria takes the position that Australia needs a consumer body capable of:

- providing substantive research
- undertaking the rigorous economic analysis necessary for effective participation in policy development and debate, and
- collecting, coordinating and analysing empirical data

to support the consumer perspective in policy debate and provide a voice to counter-balance that of industry.

Consumer Affairs Victoria supports the creation of an independent body to undertake research and policy advocacy on national issues in particular, strongly connected to and supported by the consumer movement but not duplicating activities of consumer agencies.

During 2004-05 Consumer Affairs Victoria liaised with the consumer movement on the issue, and succeeded in having the issue tabled by the Standing Committee of Consumer Affairs and subsequently considered by the Ministerial Council on Consumer Affairs (MCCA).

As at year end Consumer Affairs Victoria was awaiting discussion of the issue at the September 2005 meeting of MCCA.





# Regulating trading practices

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Regulation of trading practices is central to achievement of Consumer Affairs Victoria's core strategy of helping to make markets work better.

Activities undertaken during 2004-05 by Consumer Affairs Victoria and the statutory authorities to which it provides service support include:

1. licensing of certain professions
2. liquor licensing
3. registering of particular business entities
4. administration and review of relevant legislation
5. collaboration with other regulators in response to issues of concern, both at State level and nationally, and
6. keeping stakeholders informed of changes in the regulatory environment and other salient issues.

These activities are aimed to ensure that:

- only eligible businesses and individuals enter and remain in regulated industries
- individuals and organisations comply with relevant laws, and
- that these legislative frameworks, regulating various sectors, are current and effective.

These functions promote consumer confidence, and help to ensure well-functioning markets, with the attendant benefits.

# 1 Licensed occupations

Consumer Affairs Victoria provides administrative services to the Business Licensing Authority (BLA). This independent statutory body is governed by the *Business Licensing Authority Act 1998* and licences and registers:

- second-hand dealers and pawnbrokers
- motor car traders
- estate agents and agents' representatives
- travel agents
- introduction agents
- prostitution service providers, and
- credit providers and finance brokers.

Licensing protects consumers by allowing only eligible businesses and individuals to enter and remain in certain regulated industries, which in turn boosts consumer confidence to do business in these industries. Also, various legislation requires licensees to comply with certain industry-specific provisions, designed to address specific risks to consumers or communities in the particular industries. The occupations licensed by the BLA are those which historically have shown a high risk of consumer detriment.

Consumer Affairs Victoria administers the licence application process in respect of these occupations, and investigates applications on the BLA's behalf. The BLA then determines whether applications are granted or refused and, if granted, whether restrictions (for example as to who licensees may employ, where they may trade, how they may deal with trust monies, and types of transactions they may undertake) or conditions (for example obliging licensees to institute complaint-handling schemes, or to report to the BLA regarding trading activities or court judgments) should be imposed.

In 2004-05, Consumer Affairs Victoria investigated 1,864 new applications (of which 125 were subsequently withdrawn by the applicants). During the same period, the BLA determined 2,199 licence applications, 2,034 applications were granted (some subject to conditions or restrictions), 25 were refused, and 140 were withdrawn.

Consumer Affairs Victoria also assisted the BLA in its consideration of 90 permission applications – applications for the grant or renewal of licences by applicants who would otherwise be disqualified from entering specific industries. Of these, 59 were approved (some subject to conditions or restrictions) and 31 were either refused, or withdrawn by the applicants after serious public interest concerns were drawn to their attention.

## CASE STUDY

### END OF THE ROAD

Where a licensed motor car trader is found guilty of a serious offence, the trader's licence is automatically cancelled by operation of the *Motor Car Traders Act 1986*, unless the trader applies to the BLA for permission to continue to hold a licence. The BLA may grant permission if satisfied that this would not be contrary to the public interest.

The BLA was aware of a pending prosecution of a licensed motor car trader on odometer tampering charges by Consumer Affairs Victoria, and monitored the progress of the case. The trader pleaded guilty to 25 charges of odometer tampering and 25 charges of failing to make entries in his dealings book.

On written notice from Consumer Affairs Victoria that the offences on which the trader had been found guilty involved dishonesty and were, accordingly, serious offences for the purposes of the Act, the BLA wrote to the trader notifying him of the effect of the automatic cancellation provisions.

The trader applied for permission within 30 days of the findings of guilt and, given that Consumer Affairs Victoria had conducted the prosecution, the BLA sought Consumer Affairs Victoria's views on the matter. The organisation recommended that permission not be given.

After receiving and considering submissions from the trader, the BLA made a decision to refuse permission. Both Consumer Affairs Victoria and the trader were notified of the BLA's decision and its effect, which was that pending application to VCAT for

(continued)

Applicants whose applications have been refused by the BLA have a right of appeal to the Victorian Civil & Administrative Tribunal (VCAT). In 2004-05 over a quarter (28.5%) of refusals of applications were appealed to VCAT. Twelve of these appeals were finalised in 2004-05, with only two of the BLA's decisions being set aside.

## END OF THE ROAD (cont)

a stay of the decision, the car yard operated by the trader would have to be closed. The trader did make a stay application, and when VCAT indicated that it would grant the application, the BLA made application for the imposition of a condition on the stay, requiring the trader to provide an additional bank guarantee of \$40,000 in favour of the Motor Car Traders' Guarantee Fund.

Following a contested hearing, VCAT affirmed the BLA's decision to refuse permission. The trader's car yard closed on the handing down of VCAT's decision.

Number of licences	Estate agents	Motor car traders	Travel agents	Credit providers	Prostitution service providers	Introduction agents	Second-hand dealers & pawnbrokers
at 30.6.01	5,799	2,195	998	642	169	73	6,901
at 30.6.02	6,094	2,196	962	641	170	64	6,862
at 30.6.03	6,458	2,200	954	697	179	73	6,970
at 30.6.04	6,888	2,205	948	777	180	60	6,797
at 30.6.05	7,266	2,230	938	887	171	62	6,531*

\* Includes 135 endorsed pawnbrokers

### Comparison of number of occupational licences and registrations held 2000-01 to 2004-05

	Estate agents	Motor car traders	Travel agents	Credit providers	Prostitution service providers	Introduction agents	Second-hand dealers & pawnbrokers
Applications received	748	173	69	190	10	14	613
Applications granted	676	156	54	186	14	14	586

### Licence applications received and granted 2004-05

## 1.1 SERVICE DELIVERY

Consumer Affairs Victoria continually strives to enhance licensing service delivery standards.

Licensing staff are available to speak to potential applicants over the telephone or in person. During the year licensing staff handled approximately 60,000 telephone calls from potential applicants and members of the public.

Consumer Affairs Victoria has continued to build online service delivery capacity for regulated occupations and industries. Significantly, 35,200 application forms and guides were downloaded from the website during the year. In addition some 118,000 visits were made to the website in search of information about licensing issues, including eligibility, legislation, fees and obligations.

Available online services include:

- a public register of pawnbrokers, which aids in the recovery of stolen goods and enforcement of consumer protection measures under the *Second-Hand Dealers and Pawnbrokers Act 1989*
- registers of licensed motor car traders and estate agents, enabling consumers to find out, at any time, whether a particular trader is licensed and if so, their location, officers in effective control, additional branches or yards, any conditions placed on the licence and other details
- facilities for the 7,266 licensed estate agents in Victoria to lodge annual statements and pay annual licence fees, update business records (business addresses, phone numbers, trading names, branch managers, etc) and update employment status of estate agents' representatives, as required by law, and
- an electronic communication module, enabling estate agents to receive instant communication from Consumer Affairs Victoria and the BLA by email.

These online developments have significantly improved services to consumers and businesses by providing a 24-hour, seven-days-a-week service. The effectiveness of online service delivery is borne out by the reduced demand for face-to-face and telephone services, not only in relation to licensing and registration, but in Consumer Affairs Victoria generally.

The Licensed Occupations Branch of Consumer Affairs Victoria and the BLA relocated during the year to Level 24, 80 Collins Street, Melbourne. The move resulted in only minor disruptions to services provided to applicants and licensees.

## 1.2 SUMMARY OF ACTIVITIES BY OCCUPATION

### 1.2.1 Second-hand dealers and pawnbrokers

During 2004-05 Consumer Affairs Victoria continued to assist Victoria Police by providing names of registered second-hand dealers and pawnbrokers in various areas of Victoria, on request, in support of police compliance activities against unregistered dealers, and prosecutions involving stolen goods.

Newly endorsed pawnbrokers were provided with information packs, which include copies of relevant regulations, traders' guides, and forms.

### 1.2.2 Motor car traders

The number of licensed motor car traders (LMCTs) in Victoria has remained static for the past five years at about 2,200.

During 2004-05 a number of LMCTs enquired about the employment of sales staff. LMCTs are required by law to screen applicants for sales jobs to ensure that persons who may be otherwise ineligible because they have serious criminal records are not employed. The BLA has prepared a notification form (downloadable from the BLA website) to assist traders when employing salespeople.

Licensing staff inspected proposed car yards of applicants for licences, and also the premises of existing LMCTs proposing to share premises with other existing businesses or LMCTs. These inspections fulfil the purposes of:

- protecting the public, by ensuring that premises are appropriately delineated, to avoid the possibility of misleading consumers as to which trader they are actually dealing with
- identifying possible licence lending risks
- enabling Consumer Affairs Victoria and the BLA to maintain a good rapport with the industry, and
- assisting traders with compliance issues.

## CASE STUDIES

### APPLICATION OF REGULATORY FRAMEWORK

Paul Green operated a car trader business in Epsom under the banners of Deal Direct Cars and Bendigo Cheap Cars. In 2001 he leased part of his premises to a Mr Boi, and sold the business known as Bendigo Cheap Cars to him. Unknown to regulators at the time, Green allowed Boi to use his own licensed motor car trader's license, until Boi's license application was approved. However, Boi was subsequently charged with the re-birthing of stolen vehicles.

Green and Cash for Cars were criminally prosecuted by Consumer Affairs Victoria on charges relating to conduct committed by Boi during the period when Green had allowed him access to the Cash for Cars dealings book. Consumer Affairs Victoria's investigations established that between June 2001 and August 2002, Cash for Cars had tampered with odometers on seven separate occasions. In each case, Cash for Cars had acquired vehicles from licensed motor car traders, and tampered with odometers before selling the vehicles to other licensed motor car traders. A total of 806,878 kilometres had been subtracted from the total kilometres travelled by the seven vehicles. Green's solicitor submitted to the Court that he had not sighted any of the vehicles in question, and did not have any recollection of the cars going through the dealings book of Cash for Cars.

Cash for Cars Australia Pty Ltd was convicted and fined \$30,000 in the Bendigo Magistrates' Court for odometer tampering in breach of the *Motor Car Traders Act 1986*. Green was convicted on several charges and placed on a 12-month good behaviour bond. He was also ordered to pay \$3,500 to the Court Fund, as well as Consumer Affairs Victoria's legal costs in the amount of \$1,890.

Because of this conviction, Green's license was automatically cancelled by the BLA. However, Green was found to be still trading, and in March 2005 Consumer Affairs Victoria made use of provisions introduced to the *Fair Trading Act 1999* in 2003, to obtain an interim cease trading injunction against Green and Cash for Cars. In April 2005 a final injunction was granted, directing Green and Cash for Cars not to trade in motor cars unless licensed. As at year end a permission application to the BLA was pending.

### INTERAGENCY CO-OPERATION STUMPS UNLICENSED TRADER

Claims were made on the Motor Car Traders' Guarantee Fund against a trader who was found to be unlicensed. Evidence linked his activities to two licensees who had allowed him to trade under their licences, Claims were admitted against these two traders and their licences were accordingly suspended.

Consumer Affairs Victoria and the BLA shared information and remained vigilant to the conduct of the unlicensed trader. Evidence linking the unlicensed trader to yet another licenced trader prompted the BLA to impose conditions on the licensed trader's motor car trader's licence. The conditions required the licensed trader to provide a bank guarantee in favour of the Fund (effectively protecting the Fund against claims in relation to conduct of the unlicensed trader), and prevented him from allowing the unlicensed trader to have anything to do with his business.

### 1.2.3 Estate agents and agents' representatives

In a major development in the regulation of estate agents in 2004-05, changes to the *Estate Agents Act 1980* and the *Sale of Land Regulations 2004*, removing restrictions on shareholdings in estate agencies by agents' representatives, came into effect. Consumer Affairs Victoria notified all licensed estate agents of these changes.

Also during 2004-05, seven conditional Victorian estate agents licences were granted to interstate applicants.

### 1.2.4 Travel agents

On 1 January 2005 the *Travel Agent (Amendment) Regulations 2004* came into operation, bringing into effect changes prompted by a review of the national regulatory scheme for travel agents in Australia under the national competition policy. The amendments remove all qualification and experience requirements for managers of businesses selling domestic travel only, and reduce the qualification requirements for managers selling overseas travel. All licensed travel agents were advised of these changes.

### 1.2.5 Introduction agents

The *Introduction Agents Act 1997* places restrictions on those who can operate as introduction agents to prevent undesirable people from acting as agents, and imposes standards to ensure that both agents and clients have clear, enforceable rights and obligations.

As at year end 62 such agencies had notified that they are currently operating in Victoria.

## CASE STUDY

### DODGY AGENT'S REPRESENTATIVE DOING THE ROUNDS

In 2003, Ms G (also known by various other names) lodged an application with the BLA for permission to be employed as an agent's representative as she was otherwise ineligible to be employed in that capacity, owing to findings of guilt made against her in relation to offences involving dishonesty.

In 2004, the BLA determined to refuse Ms G's application, on public interest grounds. An application for review of the BLA's decision was heard by VCAT. VCAT affirmed the BLA's decision, noting that honesty is a prime factor to be taken into account when deciding whether to grant permission applications, and that, given her record of convictions for shoplifting and theft, the applicant would pose an unacceptable risk if employed as an agent's representative.

Within days of VCAT's decision, the BLA received information that Ms G had attempted to gain employment as an agent's representative by allegedly falsifying a police document and misleading a prospective employer by using the falsified document. Ms G also allegedly swore a false statutory declaration that she had not been found guilty of a disqualifying offence and that the contents of her declaration of eligibility to be employed as an agent's representative were true and correct.

The BLA is concerned not only about the necessity to protect the public from such illegal conduct, but also of possible consequences to estate agencies' business and reputation if the applicant is inadvertently employed by an agency. Accordingly, the BLA has referred its concerns to Victoria Police for investigation and appropriate action.

### 1.2.6 Prostitution service providers

The BLA and Consumer Affairs Victoria continued to assist Victoria Police, Federal Police, and Customs and Immigration officials, in providing requested background information relating to brothel licensees and associated licensed premises. The BLA and staff assisted with several police investigations involving sex slavery allegations in Victorian brothels. Numerous referrals of breaches of laws were also made to enforcement agencies, including Consumer Affairs Victoria's Compliance and Enforcement Branch.

Fees payable under the Prostitution Control Regulations 1995 were reviewed (for the first time since passing of the Regulations) in the 2003-04 financial year, and the ensuing amendments to the Regulations came into effect in May 2005. The objective of the amendments was to align revenue received by the Prostitution Control Fund with the costs of effective administration of the Act, including the costs of improved inspection and auditing of licensed prostitution service providers.

Fees associated with licensing of sexual service providers and approved brothel managers were increased effective from 1 November 2004, following release of a regulatory impact statement and consultation with industry participants.

## CASE STUDIES

### TRANSITIONAL ARRANGEMENTS COMPLETED

Transitional arrangements under the *Prostitution Control Act 1994* provided that owners of brothels in existence on commencement of the Act would be deemed to be licensed, pending the outcome of applications for licences.

One such deemed brothel was Top of the Town. The brothel was originally operated by three partners, but two of these had withdrawn during the licensing application process. The BLA had refused the application of the last remaining partner on the basis that the applicant had insufficient resources to run the brothel business, and of a lack of transparency in identifying her associates. The applicant had appealed the refusal to VCAT, and during 2004-05 the BLA's decision to refuse the application was confirmed. The company running the brothel subsequently went into liquidation.

This case is significant as the brothel concerned was the last remaining deemed brothel in existence, and the effect of the final determination of the matter by VCAT is that all transitional arrangements concerning previously unlicensed brothels have now been resolved.

### SERVICE PROVIDER LOSES EXEMPT STATUS

The *Prostitution Control Act 1994* makes provision for individuals wanting to work as prostitutes independently of brothels. They can register as prostitution service providers, and as such are exempted from the licensing requirements that are otherwise applicable to persons running brothels. Because this scheme is designed for prostitutes operating independently, registered prostitution service providers can have a maximum of one partner working with them from their premises.

In 2002 a person notified the BLA of her intention to operate an exempt brothel business, nominating herself and another person as the two prostitutes who would be working in the business. She was entered on the register of exempt providers, and allocated a number that enabled her to advertise her business through the media.

Consumer Affairs Victoria reported to the BLA in August 2004 that Victoria Police had executed a police warrant at the brothel premises operated by the registered service provider, and that more than two prostitutes had been found to be working at the premises.

In proceedings brought by the police in the Magistrate's Court (for an order effectively preventing the use of the premises as a brothel), the Magistrate noted that there was strong evidence that the operator had deliberately breached the condition for exemption from licensing requirements.

On the basis of this finding, the BLA wrote to the provider, setting out its view that her name should be removed from the register of exempt providers, and the operator agreed to the omission of her name from the register.

### 1.2.7 Credit providers and finance brokers

The *Consumer Credit (Victoria) Act 1995* regulates credit providers and finance brokers. Reflecting the increased activity within the credit market, the number of credit providers registered in Victoria has steadily grown over the past three years, from 641 to 887. Finance brokers are regulated through a negative licensing scheme. This scheme renders it an offence for disqualified persons (for example, persons found guilty of serious offences within the previous 10 years) to engage in finance broking. Permission applications, however, may be made to the BLA.

Finance broking includes mortgage broking, a field which has grown in recent years due to the property investment boom.

## 2 Liquor licensing

The *Liquor Control Reform Act 1998* establishes a licensing system to regulate the supply and consumption of liquor in Victoria. A major objective of the Act is minimising harm arising from the misuse and abuse of alcohol by controlling the circumstances under which liquor is made available.

Consumer Affairs Victoria promotes achievement of this objective by:

- 2.1 providing services to the Director of Liquor Licensing (a statutory appointee – see page 130) in support of this office's activities in deciding liquor licence applications and determining appropriate licence conditions
- 2.2 facilitating compliance with the Act, through various types of engagement with licensees and through supporting enforcement of offence provisions by Victoria Police, and
- 2.3 contributing to related Whole of Victoria Government activities.

### 2.1 LICENSING

Liquor licensing seeks to ensure that only people and entities described as suitable in the *Liquor Control Reform Act 1998* are granted liquor licences or BYO permits under the Act. Consumer Affairs Victoria supports achievement of this objective by administering and investigating liquor licence applications, and regularly reviewing standard sets of conditions addressing a range of different settings where liquor is being supplied. These conditions are applied by the Director of Liquor Licensing where deemed appropriate. Imposition of conditions is used to minimise the potential negative impact of grants of licences or permits on communities, and the conditions are therefore drafted to be pragmatic and enforceable.

In 2004-05, Consumer Affairs Victoria processed 16,782 liquor licensing applications, including 11,381 temporary limited licence applications (6,164 of these were lodged online, through a facility believed to be unique in this industry). The number of licensed premises (including BYO premises) increased by 5% from 16,511 in 2003-04, to 17,369 in 2004-05.

### NEW ENTRANT TRAINING

Since April 2004, all new applicants for liquor licences must complete new entrant training approved by Consumer Affairs Victoria. During 2004-05, 3,023 participants undertook such training.

Topics covered include:

- understanding the liquor licence
- best practice in managing licensed premises, and
- Responsible Serving of Alcohol training course content (see related article).

Also during 2004-05, Consumer Affairs Victoria in conjunction with approved training provider William Angliss TAFE and liquor industry associations, reviewed and consolidated course content to ensure that information provided is relevant and useful.



Through exercise of its licensing function, Consumer Affairs Victoria is also able to ensure that licensees receive adequate training on their statutory responsibilities, since this is a requirement in the liquor licence application process (see **New entrant training**).

## 2.2 SUPPORTING COMPLIANCE AND ENFORCEMENT

Consumer Affairs Victoria works with licensees to assist them in achieving compliance with statutory responsibilities, and also provides support to the Victoria Police who are responsible for enforcing the Act.

### 2.2.1 Facilitating voluntary compliance

Consumer Affairs Victoria engages with licensees through a wide range of activities, designed to promote best practice compliance with statutory requirements and promote the Whole of Victorian Government priority of safe communities by minimising the potential harmful impact of alcohol availability on communities. Education and training of those involved in the provision of alcohol (for example, licensees and bar staff) promotes knowledge of, and compliance with, the liquor laws, and a culture of responsible service throughout the liquor and hospitality industries. Interaction between licensees, Consumer Affairs Victoria, Victoria Police and local councils likewise promotes responsible operation under licences and permits.

Outcomes achieved in this regard during 2004-05 included:

- 3,023 license applicants received new entrant training
- 39,285 hospitality students and bar staff received Responsible Serving of Alcohol training
- five regional liquor licensee seminars were held by Consumer Affairs Victoria staff to provide local licensees with updated information on liquor licensing issues
- Consumer Affairs Victoria attended over 150 Liquor Licensee Forum meetings
- Consumer Affairs Victoria staff attended five trade shows held in different areas of the State, and provided information and advice to the trade and general public
- Street Talk (where Consumer Affairs Victoria staff visit different areas and meet licensees at their premises to provide information and answer questions) was held in 21 locations throughout the State
- other licensing information was disseminated through a range of new and updated publications and through the electronic newsletter *Grapevine*
- 26 club seminars, which inform club committee members of their responsibilities under the Act, were held throughout metropolitan Melbourne and regional Victoria (the seminar is also available online and on CD), and
- 5,758 Proof of Age cards were issued (primarily to young people) to assist licensees to comply with responsibilities concerning underage persons on licensed premises.

## RESPONSIBLE SERVING OF ALCOHOL TRAINING

Responsible Serving of Alcohol (RSA) training aims to provide bar staff with the knowledge and awareness necessary to responsibly serve alcohol in licensed premises.

During the year, 39,285 hospitality students and bar staff in regional as well as metropolitan areas of Victoria undertook RSA training. This brings the total number trained since 1992 to 243,774.

RSA training is provided by a network of 499 trainers from 190 TAFEs and private training organisations accredited by Consumer Affairs Victoria using course materials developed by the organisation. Participants who complete the training are certified by Consumer Affairs Victoria. Trainers upload student details to the Consumer Affairs Victoria RSA website, and generate RSA certificates for students from this site.

During 2004-05 a quality assurance program was introduced to ensure that students are provided with current and correct information. Trainers are now required to regularly access an online bulletin board that provides regular information updates, and to undergo face-to-face refresher training with Consumer Affairs Victoria staff.

An online refresher course is also available free of charge for those who have previously completed RSA training, and is a quick way to update knowledge of applicable legislation. Over 9,000 people have now made use of this facility.

## LIQUOR LICENSEE FORUMS

Liquor Licensee Forums have operated in Victoria over the last 15 years. Licensees, police, local government, regulatory authorities and interested businesses and community members come together at a local level on a regular basis to discuss issues related to the operation of licensed businesses and their impact on the community, particularly in terms of community safety. This is very much a Victorian development with the first Licensing Forum in Australia established in Melbourne in 1990.

Often this local co-operation leads to the development of Accords (codes of practice which apply specific terms, conditions and strategies to individual local government areas, or the development and adoption by members of general guidelines or sets of principles). For example, the Geelong Local Industry Accord, established in the early 1990s, is cited in international academic literature on alcohol and violence as a model of a very successful Forum/Accord.

There was substantial growth in the number of Forums throughout the State in 2004-05. As at year end, 73 Forums were in existence (more than double the number of Forums in existence at the end of 2003-04). This reflects the increasingly proactive approach taken by police in solving alcohol-related problems at licensed premises.

### Role of Consumer Affairs Victoria

Consumer Affairs Victoria staff actively supports Victoria Police in establishing and promoting Forums, and supports activities of the Forums by attending meetings and, where requested, putting together Accord documents.

Further support provided by Consumer Affairs Victoria includes provision of online resources, such as downloadable fact sheets setting out guidelines for the establishment of Liquor Licensing Forums and Accords, and a Finding a Liquor Forum or Accord facility listing all Forums and Accords in Victoria. This facility also includes, where available, copies of Accord documents.

### Lockouts

Recently, Forums/Accords in a number of regional locations have agreed to make use of lockouts for late trading entertainment and drinking venues.

A lockout is normally a voluntary arrangement where liquor licensees agree not to allow patrons entry or re-entry to a licensed venue after a specified time well in advance of a later closing time. The purpose of lockouts is to reduce the incidence of problems (such as street assaults, vandalism, noise and other anti-social behaviours) associated with late-night migration of patrons between venues.

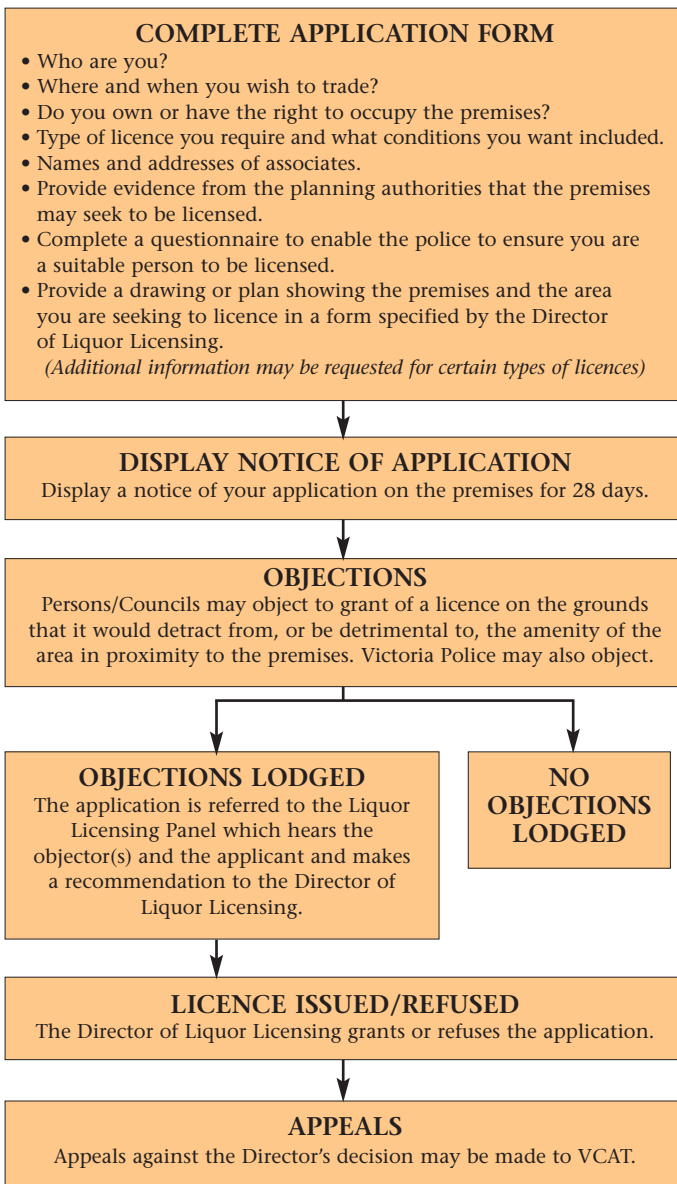
While states such as Queensland have recently legislated blanket lockouts, the approach in Victoria has been to follow a police/licensee/community partnership approach. Blanket lockouts in Traralgon, Warrnambool and Ballarat were trialled during 2004-05, and evaluations conducted in Warrnambool and Ballarat found significant reductions in anti-social behaviour and crime in areas around the licensed venues since the introduction of the so-called lockout.

Trial lockouts were begun in Bendigo, Colac and Horsham during the 2004-05 financial year.

## 2.2.2 Supporting enforcement

The *Liquor Control Reform Act 1998* creates over 60 offences addressing issues of concern such as underage drinking, drunkenness, anti-social behaviour in and around licensed premises, and disturbance of the neighbourhood amenity. Ongoing enforcement of liquor laws is the responsibility of Victoria Police. Consumer Affairs Victoria has a strong partnership with Victoria Police aimed at supporting enforcement activities, and frequently reviews and updates the legislative framework to ensure that it is optimally suited for enforcement needs dictated by prevailing current realities.

### Applying for a liquor license



### VICTORIA POLICE/ LIQUOR LICENSING SEMINAR

Consumer Affairs Victoria hosts a biennial conference for district police licensing inspectors in Victoria.

The most recent conference took place in December 2004, and was attended by most of the 56 district police licensing inspectors from across Victoria. A major focus of the conference was informing delegates of substantial changes to enforcement provisions in the *Liquor Control Reform Act 1998* introduced in the same month.

### VICTORIA POLICE LIQUOR LICENSING ENFORCEMENT OUTCOMES 2004-05

- 2,914 on-the-spot infringement notices issued.
- 19 licensee disciplinary proceedings under the Act lodged at VCAT. Outcomes obtained included:
  - one licence cancellation (Salt Nightclub, South Yarra)
  - 15-year, one-year and two-year disqualifications (one instance of each)
  - imposition of fines (with several licensees receiving the maximum \$10,000 fine)
  - reduction in trading hours (two instances)
  - a seven-day trading suspension, and
  - 1.00am patron lockouts (two instances).

## 2.3 REVIEW OF LIQUOR CONTROL REFORM ACT 1998

During 2004-05 Consumer Affairs Victoria undertook a review of the *Liquor Control Reform Act 1998*, culminating in the commencement of the *Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Act 2004* in December 2004.

This Act introduced amendments aimed at improving the legislative framework regarding underage drinking, enhancing the enforcement powers of Victoria Police, and improving the overall operation of the main Act.

Amendments related to underage drinking:

- substantially increased penalties for supplying liquor to minors
- prohibited the granting of liquor licences for premises primarily used by minors
- made it an offence to give false information in applications for proof of age cards, and
- imposed restrictions on the sale of liquor through vending machines for the first time.

Amendments to enhance the enforcement powers of Victoria Police included:

- substantial increases in penalties for offences
- extension of the range of offences that can be enforced by infringement notices (on-the-spot fines)
- an increase in the maximum fine that can be imposed on a licensee by VCAT (from \$10,000 to \$30,000)
- expansion of search and seizure powers in relation to documents connected with possible breaches of the *Liquor Control Reform Act 1998*.

## 2.4 WHOLE OF VICTORIAN GOVERNMENT

During 2004-05 Consumer Affairs Victoria contributed to several Whole of Victorian Government alcohol-related initiatives including:

- development of Victorian alcohol strategies
- implementation of recommendations from the *Royal Commission into Aboriginal Deaths in Custody Report*
- the Live Music Taskforce, and
- the Inner City Entertainment Precinct working party.

# 3 Registration

Overall demand for registration services has increased compared to 2003-04. In 2004-05, 107,557 registration enquiries were received by the Consumer Affairs Victoria call centre with 83% of these being answered within 240 seconds (as compared with a target of 80%).

Business name and incorporated association clients received faster service in 2004-05, with 91% of applications completed within three days, compared to 81% within three weeks, in 2003-04.

Consumer Affairs Victoria registers:

- 3.1 business names
- 3.2 limited partnerships
- 3.3 incorporated associations, and
- 3.4 incorporated co-operatives (including government guarantee co-operatives).

Consumer Affairs Victoria maintains public registers of the above organisations and since the extensive review of legislation relating to retirement villages, assesses applications for cancellation of notices and extinguishment of charges over retirement village land.

## 3.1 BUSINESS NAMES

Outcomes for 2004-05 included:

- 65,951 new business names registered (up 3% from 2003-04), bringing to 354,992 the number of business names on the register
- half of all business name registrations (up to in excess of 700 per week) performed online – a total of 28,853 online registrations for the year
- about 33% of business name renewals (no changes required) done online as at year end, up from 28% in 2003-04
- 89,205 name renewals and changes to the business names register (an increase of 3.1% on 2003-04), and
- 131,192 online business names searches (up 6.9% on 2003-04) – this includes business names searches undertaken by private information brokers who relay search results to individual clients electronically.

## 3.2 LIMITED PARTNERSHIPS

As at 30 June 2005, there were 82 limited partnerships on the register, up from 64 a year ago.

No new incorporated limited partnerships – venture capital funds established as limited partnerships to gain advantages under the *Venture Capital Act 2002* (Commonwealth) – were registered in 2004-05, leaving the number of such entities registered at four.

## 3.3 INCORPORATED ASSOCIATIONS

During 2004-05:

- 1,439 new associations were incorporated (a decrease of 4.1% on 2003-04), and
- 29,664 annual returns (required by law to be lodged by associations) were processed.

At 30 June 2005, the total number of incorporated associations registered was 31,616, an increase of 1,087.

## 3.4 INCORPORATED CO-OPERATIVES

With the registering of 22 new co-operatives in 2004-05 there were 755 entities on the register at year end.

Since the inception of the government guarantee co-operatives scheme in 1953, 2,336 guarantees have been issued and at year end 195 active guarantees existed. In 2004-05, 11 new guarantees totalling \$1.68 million were executed. The total value of guarantees outstanding as at year end was \$16,807,440.

## 4 Legislative review

Consumer Affairs Victoria monitors commercial marketplaces to identify trends in unethical or unfair practices. In order to respond effectively to this intelligence, the enabling legislation needs to be reviewed and updated as new capabilities are required to implement responses.

This involves the ongoing examination of market regulation to assess its effectiveness and determine whether to recommend new measures to Government.

The consumer protection regulatory framework provides great benefit to the community, provided that it continues to reflect changes in the marketplace and the evolving needs and values of consumers.

Our society is one of rapidly developing technologies, evolving marketplaces and changing demographics. Therefore, the legislative safeguards we put in place to protect consumers must be part of a process of continual review.

During 2004-05 Consumer Affairs Victoria was involved in various review processes in relation to the following legislation:

- *Associations Incorporation Act 1981*
- *Domestic Building Contracts Act 1995*
- compliance and enforcement aspects of the *Fair Trading Act 1999*
- *Fundraising Appeals Act 1998*
- *Liquor Control Reform Act 1998*
- *Motor Car Traders Act 1986*
- *Petroleum Products (Terminal Gate Pricing) Act 2000*
- consumer credit legislation
- conveyancing provisions of the *Legal Practice Act 1996*, and
- Subdivision (Body Corporate) Regulations.

Reports relating to consultations on the *Motor Car Traders Act 1986*, review of compliance and enforcement provisions of the *Fair Trading Act 1999*, amendments to the *Petroleum Products (Terminal Gate Pricing) Act 2000*, and review of the *Liquor Control Reform Act 1998*, appear elsewhere in this Report.

### 4.1 ASSOCIATIONS INCORPORATION ACT 1981

In November 2003, the then Minister for Consumer Affairs announced a review of the *Associations Incorporation Act 1981*. The Act gives non-profit community organisations the benefits of corporate status and limited liability, facilitating these organisations' community-building activities.

Consumer Affairs Victoria has received submissions in response to a discussion paper released in the previous financial year, and the consultation process has been further advanced in 2004-05 with the release of an interim report in April 2005. The interim report listed 18 proposals for targeted consultation (developed in response to submissions from the initial discussion paper) and invited submissions. Around 55 submissions were received in response, and as at year end these were being considered by Consumer Affairs Victoria.

### 4.2 DOMESTIC BUILDING CONTRACTS ACT 1995

The review of the *Domestic Building Contracts Act 1995* and other relevant legislation, led by the Parliamentary Secretary for Justice, Jenny Mikakos MP, was announced in July 2004, in response to decisions of VCAT and the Supreme Court concerning the relationship between the *Domestic Building Contracts Act 1995*, the *Sale of Land Act 1962* and the *Subdivision Act 1988*. The aim of the review was to enhance clarity and certainty for all parties engaged in domestic building activity in Victoria, and to consider the scope for harmonisation and removal of duplication.

Stakeholders were asked to provide input and comments. Submissions were received in August/September 2004, and follow-up meetings were held with stakeholders in October/November 2004.

Amendments to the *Domestic Building Contracts Act 1995* were subsequently introduced by the passage of the *Domestic Building Contracts (Amendment) Act 2004*, stipulating that contracts for the sale of high-rise units are regulated by the off-the-plan provisions of the *Sale of Land Act 1962*, and not the *Domestic Building Contracts Act 1995*.

Also, the Domestic Building Contracts and Tribunal (General) Regulations 1996 were amended by the introduction of the Domestic Building Contracts and Tribunal (General)(Amendment) Regulations 2004. The effect of these amendments was to clarify that subdivisional infrastructure work performed by civil contractors for developers are regulated by the *Subdivision Act 1988*, not the *Domestic Building Contracts Act 1995*, and that civil contractors need not be registered builders under the *Building Act 1993*.

The Minister for Consumer Affairs has deferred further consideration of other issues raised in the review, until completion of an inquiry into regulation of the housing construction sector in Victoria by the Victorian Competition and Efficiency Commission (VCEC), requested in November 2004 by the Treasurer.

### 4.3 FUNDRAISING APPEALS ACT 1998

The review of the *Fundraising Appeals Act 1998* was announced, and a discussion paper released, in July 2004. The review is led by Luke Donnellan MP. The discussion paper sought public comment on ways to improve the regulatory framework governing fundraising in Victoria under the following broad headings:

- opportunities for national harmonisation
- objectives and coverage of the Act and whether the term “fundraising appeal” requires clarification
- effectiveness of the existing process for registration of fundraising organisations, and whether the process appropriately balances the objectives of protecting the public and minimising the administrative burden on fundraising organisations
- accountability provisions in the Act and whether they should be made more robust to ensure greater transparency
- the appropriateness of specifying proportions of proceeds that should be passed on to nominated beneficiaries, or reasonable amounts to be retained by organisations to cover operational costs
- appropriateness of the nature and extent of current exemptions from the operation of the Act
- consistency between reporting requirements under this Act and those contained in other Victorian legislation, and
- the potential role of a code of practice for fundraisers as a means of promoting best practice within the industry.

More than 60 submissions were received on the discussion paper.

At year end, Consumer Affairs Victoria was thoroughly reviewing these submissions as well as academic literature on a wide range of issues in the fundraising industry. Insights gained from these activities will be used to inform the development of an interim report which will be released for further public comment.

On 15 June 2005 an issues paper was released to assist the public and interested parties to contribute to the review by drawing attention to a range of credit and debt issues and suggesting possible areas for response. As part of the broad process of consultation, a series of special consultation forums were arranged, taking place in central and outer Melbourne and in regional Victoria. Members of the public, consumer interest groups, financial counsellors, credit providers, finance brokers, micro lenders and other stakeholders in the catchment area of each of the forums were invited to attend.

A draft report with recommendations is scheduled for release in November 2005 with a period of public consultation to follow.

## DO WE NEED LEMON LAWS?

A consumer purchased a Nissan X-Trail. After approximately 10,000km she noticed noisy gear changes and grinding underfoot. She contacted the dealer but was assured that nothing was wrong. At 11,000km, the vehicle's electrical system temporarily shut down, but despite extensive testing the dealer could not establish any fault.

Subsequently, the consumer noticed other changes in the vehicle's performance. Fuel consumption increased, and problems in relation to gear changes resurfaced. Again, she returned the vehicle to her dealer but was told that her driving manner was the cause of problem.

Finally, at approximately 42,000km, the clutch failed and the alternator was over-revving. The clutch was replaced, but when the consumer collected the vehicle from the dealership after this repair had been made, the electronics failed after she had driven the vehicle approximately 100 metres.

The consumer went to a new dealership, which confirmed that her driving manner was not the cause of the vehicle's problems, and did some work on the vehicle. A week later, the vehicle's engine began emitting smoke, and eventually failed. The consumer was told that the vehicle required a new catalytic converter and a rebored engine.

The consumer filed a complaint with Consumer Affairs Victoria in November 2004. Consumer Affairs Victoria made contact with the trader and the trader's solicitor, but was unable to resolve the matter. Ultimately, the file was closed, with the consumer considering whether to take the matter to VCAT.

Cases such as this raise the question of whether the current regulatory framework affords adequate protection to consumers in such circumstances, or whether new laws, such as the lemon laws that apply in the United States of America, should be introduced.

Lemon laws typically entitle consumers to refunds or replacement vehicles if faults affecting the safety of new cars are not repaired within a reasonable number of attempts. The introduction of such laws in Victoria might provide greater certainty as to when products should be replaced by manufacturers.

The issue was raised by a number of consumers during the course of Mr Noel Pullen MP's consultations on the operation of the *Motor Car Traders Act 1986*. In his report to the Minister for Consumer Affairs, Mr Pullen noted the potentially devastating effects of the purchase of a lemon. He recommended that lemon laws in relation to motor vehicles and possibly other products as well, be further investigated.

Consumer Affairs Victoria is preparing a response to this recommendation in the context of a Whole of Victorian Government response to Mr Pullen's report.



## Focus on credit and debt

On 10 May 2005 the Minister for Consumer Affairs announced a review of consumer credit regulation in Victoria. This honours a commitment given by the Government in the April 2005 social policy statement *A Fairer Victoria* in which the Government undertook to work with credit providers to improve access to affordable finance, and to review Victoria's credit laws, especially to ensure that proper measures are in place to address predatory finance practices.

## 4.4 CONVEYANCING PROVISIONS OF THE *LEGAL PRACTICE ACT 1996*

The review of the regulatory framework applying to conveyancing was announced in November 2004. This is a joint review under the auspices of the Minister for Consumer Affairs and the Attorney-General. The terms of reference require:

- examination of the current conveyancing regime, including the administration of consumer and third party funds to determine what risks consumers face
- investigation of the existing complaints-handling process, and public confidence in this system
- exploration of the potential for a consistent national approach across the States, and
- consideration of the definitions of “legal work” and “conveyancing work” in the *Legal Practice Act 1996*.

The Department of Justice engaged Allen Consulting to develop options to improve the regulation of conveyancing. As at year end, Allen Consulting had prepared a discussion paper and invited submissions from stakeholders to assist in the development of these options.

## 4.5 SUBDIVISION (BODY CORPORATE) REGULATIONS

The review of body corporate regulation continued throughout 2004-05. The review was led by Helen Buckingham MP and was conducted in recognition of the enormous growth in the number of registrations of bodies corporate in recent years. There are approximately 65,000 bodies corporate in Victoria, increasing by approximately 2,000 per annum, and currently encompassing about 480,000 lots.

The terms of reference of the review required the identification of options and strategies to improve the operations of bodies corporate, protect body corporate funds, and minimise and resolve disputes.

An issues paper and future directions paper were published in the previous financial year, and over 200 submissions have been received. During 2004-05 Consumer Affairs Victoria reviewed submissions received and information collected, and also consulted directly with the community, key industry groups and relevant Government agencies, including the Law Institute of Victoria, The Real Estate Institute of Victoria, the City of Melbourne, VicUrban, the Property Council of Australia, the Council on the Aging, St Kilda Legal Service, Macquarie Bank, Tenants' Union of Victoria, and the Institute of Body Corporate Managers.

# 5 Collaborative approach

Effective regulation of trade practices requires close co-operation between Victorian regulatory and consumer complaint-handling organisations (reported on below). Consumer Affairs Victoria was also commissioned by the Department of Victorian Communities to perform ticket audits during 2004-05.

## 5.1 ENERGY COLLABORATION

Consumer Affairs Victoria has a close relationship with the State's economic regulator, the Essential Services Commission (ESC), in overseeing the market conduct of energy retailers. The agencies continue to co-operate closely, along with the Energy and Water Ombudsman Ltd (EWOV) regarding the market conduct of energy distributors and retailers in Victoria. During the year, EWOV received complaints against a relatively new industry entrant, utility connection service providers. These companies arrange free connection for consumers to energy, water, telephone and internet service providers, earning a commission from utility providers.

Utility connection services operate via licensed estate agents or the internet. Concerns expressed to the ESC and Consumer Affairs Victoria related primarily to energy retailers and included:

- insufficient information supplied to enable consumers to choose energy retailers
- consumers being connected to retailers without their explicit informed consent, and
- the provision of inaccurate information to consumers.

The ESC and Consumer Affairs Victoria jointly held a forum for the utility connection service operators, to inform them about their regulatory obligations under both consumer protection legislation and energy regulation. Consumer Affairs Victoria also wrote to all licensed estate agents to impress upon them the need to ensure that tenants and potential tenants knew that the use of utility connection services was optional and unrelated to securing rental accommodation.

## 5.2 VICTORIAN REGULATORS' FORUM

Consumer Affairs Victoria continues to promote the concept of best practice regulation, through the Victorian Regulators' Forum (an initiative established by Consumer Affairs Victoria in 2003-04).

During 2004-05 Consumer Affairs Victoria further developed the Forum, which is intended to contribute to improving regulatory practice in Victoria. The Forum facilitates discussion of common operational and governance issues among regulatory agencies. Two meetings were organised by Consumer Affairs Victoria in 2004-05: Regulating for Safety in October 2004, and Licensing and Organised Crime in June 2005. The meetings were well attended and positively received by participants. Further Forum sessions are planned for 2005-06.

The initiative has also been positively received by VCEC, the State's foremost advisory body on business regulation reform and opportunities for improving Victoria's competitive position. In its recent review of the effects of regulation on regional development, VCEC commented that the Forum has the potential "to significantly improve coordination and consistency among regulators". Furthermore, VCEC formally recommended in its draft report "that Ministers encourage the regulators for whom they are responsible to participate actively in the state forum of regulators".

## WHOLE OF VICTORIAN GOVERNMENT COLLABORATION – INTER-DEPARTMENTAL COMMITTEE FOR PROSTITUTION REGULATION

The Inter-Departmental Committee (IDC) for Prostitution Regulation was established by the Social Development Committee of Cabinet to develop a Whole of Victorian Government approach to the regulation of prostitution in Victoria.

Consumer Affairs Victoria chairs the IDC, and members include the Department of Premier and Cabinet, the Department of Treasury and Finance, the Department of Justice, the Department for Victorian Communities, the Department of Sustainability and Environment, the Department of Human Services, and WorkSafe Victoria.

The IDC was established in recognition of the inherent complexity of public policy about prostitution and that the issues straddle more than one government agency. The IDC meets four times a year. Its deliberations focus on enhancing the effectiveness of the regulatory framework to better meet the objectives of the *Prostitution Control Act 1994*.

In 2004-05 the IDC reported to the Minister for Consumer Affairs about its work, exchanged information on programs affecting the industry, and established liaison with the Local Government sector through the Municipal Association of Victoria.

The work of the IDC and the Prostitution Control Act Ministerial Advisory Committee (reported on at page 129) is complementary. Each body works to identify emerging issues and develop strategies for the future, but with differing emphasis. Inter-committee dialogue occurs through communication between the Chairs, and regular updates at meetings.

## Focus on credit and debt

The *Credit (Administration) Act 1984* requires the Director of Consumer Affairs Victoria to confer and exchange information with peers under the laws of other States and Territories.

During 2004-05 Consumer Affairs Victoria chaired the Uniform Consumer Credit Code Management Committee, hosted its second National Credit Conference, and became a major sponsor of the United Nations' International Year of Micro Credit Conference.

## UNIFORM CONSUMER CREDIT CODE MANAGEMENT COMMITTEE

Victoria continues to chair the Uniform Consumer Credit Code Management Committee (UCCCMC). UCCCMC consists of representatives from each State and Territory and works on issues relating to the consistent administration and effective enforcement of the national Consumer Credit Code. UCCCMC also provides policy formulation and advice for the Standing Committee of Officials of Consumer Affairs (SCOCA), which in turn advises the Ministerial Council on Consumer Affairs (MCCA). During 2004-05, UCCCMC concentrated on the following projects:

- amendments to the Code to confirm the use of electronic communications to enter into credit contracts and in subsequent statutory communications between lender and borrower
- amendments to the Code to confirm that vendor finance and solicitor lending fall within the scope of the Code
- adjustments to pre-contractual disclosure arrangements
- an enhanced set of proposals to address fringe lending practices, and
- an independent review of the scheme of mandatory comparison rates.

## SECOND NATIONAL CREDIT CONFERENCE

In November 2004, Consumer Affairs Victoria hosted a national consumer credit conference. This is the second time that the organisation has hosted such a conference with the purpose of promoting discussion and analysis of credit and debt issues on a national level.

Over 140 delegates from a range of sectors (including business, government, academia and community groups) attended the two-day conference, which brought together national and international experts. Focus was given to major credit issues, industry practice and regulatory infrastructure. The program also encouraged an informed dialogue between stakeholders on credit issues and promoted the pursuit of strategic credit goals.

Themes examined at the conference included:

- consumer credit reviews recently conducted in the United Kingdom, South Africa and New Zealand
- how the credit market has created winners and losers
- fundamentals of the Consumer Credit Code
- over-indebtedness
- whether credit should be addressed at Federal level
- the adequacy of the Code in relation to the aspects of credit covered
- financial literacy, and
- national enforcement issues.

The papers presented at the conference will be published in *Australian credit at the crossroads: Looking for landmarks* – the second in a series entitled *Essays in Australian consumer affairs* and published on an occasional basis by Consumer Affairs Victoria.

## MICRO CREDIT

Consumer Affairs Victoria is one of the major sponsors of an international conference to be held in Australia by the United Nations Association, to mark 2005 as the United Nations' International Year of Micro Credit. United Nations micro credit programs primarily focus on projects to alleviate poverty by facilitating finance for community enterprise and grassroots business activity, but also on policies and programs aimed at improving access to affordable short-term finance for small amounts, especially for individuals from vulnerable and disadvantaged groups. Consumer Affairs Victoria has an important role to play in respect of the latter issue.

## INTERNATIONAL PANEL ON CREDIT REFORM IN SOUTH AFRICA

The Director of Consumer Affairs Victoria was invited to participate as a member of the International Advisory Panel on credit law reform in the Republic of South Africa, during July 2004. The Panel, as part of an extensive consultation process conducted by the Department of Trade and Industry of the Republic, commented on a proposed Bill and discussed international experience. The contributions of the Panel were considered highly beneficial.



## **NATIONAL ESTATE AGENTS HARMONISATION PROJECT**

In response to concerns about existing inconsistencies in the regulation of estate agents in different jurisdictions within Australia – particularly in relation to training requirements – Consumer Affairs Victoria, on behalf of SCOCA, commissioned Jaguar Consulting Pty Ltd to consult and report on the potential for greater harmonisation in the regulation of estate agents nationally.

During 2004-05, Jaguar undertook consultations in all jurisdictions. As at year end Victoria was due to submit a report to SCOCA detailing findings of the consultations and including:

- a comparative analysis of the existing licensing/registration requirements for estate agents in each jurisdiction
- discussion of, and recommendations regarding, the training content appropriate for common adoption for regulatory purposes, and
- a review of possibilities for greater harmonisation of licensing criteria and other regulations affecting estate agents.

The report will form the basis for further detailed work to be conducted by Consumer Affairs Victoria and other SCOCA agencies in 2005-06.

## **VICTORIAN GOVERNMENT SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO SMASH REPAIRS**

Disputes between the national insurance and smash repair industries (mainly springing from the unequal bargaining strength of four main insurance companies on the one hand, and mostly small, independent smash repair businesses on the other) gave rise to a proposal by Victoria for a national code of conduct regulating the relationship between the industries.

This proposal was unanimously endorsed by the Small Business Ministerial Council in July 2004. On 31 August 2004 the Federal Government announced a Productivity Commission inquiry into the relationship between the smash repair industry and insurers.

Victoria established an interdepartmental committee to develop a submission to the Productivity Commission inquiry. Consumer Affairs Victoria had substantial input into this process (along with the Departments of Premier and Cabinet, Treasury and Finance, Industry, Innovation, and Regional Development). The submission was compiled with reference to:

- the outcome of consultations undertaken in the second half of 2004 by Mr Luke Donnellan MP, accompanied by Consumer Affairs Victoria and the Department of Industry, Innovation and Regional Development, and
- a review by Professor Joshua Gans (of the Melbourne Business School) of so-called approved repairer schemes that have come to be favoured by some insurers.

Victoria's submission to the Productivity Commission inquiry supported the introduction of a voluntary national code of conduct to promote national consistency in the commercial dealings between insurers and smash repairers.

The Productivity Commission's final report was provided to the Commonwealth Government on 31 March 2005 for consideration. As at year end the Victorian Government was awaiting the Commonwealth's response.

## **PROPERTY INVESTMENT ADVICE**

Consumer Affairs Victoria contributes to a working party of SCOCA which is investigating a national approach to the regulation of provision of advice relating to investment in real estate.

Victoria strongly advocates that the Commonwealth regulate property investment advice along the lines of the regulatory framework applicable to financial services advice.

The SCOCA working party released a discussion paper in August 2004 seeking public views on the issue, and in particular the scope and intensity of any proposed new regulatory regime, in the event that it is decided to introduce such a scheme. Work on a regulatory impact statement was begun and will continue into 2005-06. Comments from stakeholders will be sought after release of the statement.

## **FINANCE BROKERS**

During 2004-05 Consumer Affairs Victoria participated in a national working party under the auspices of SCOCA. The working party has been examining the most appropriate national regulatory framework for the growing finance broker sector, in order to facilitate a nationally consistent approach, thus limiting compliance costs for the industry. This work will be ongoing during 2005-06.

## **RESIDENTIAL TENANCY DATABASES**

Victoria contributed to a working party under the joint auspices of the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General, examining options for a national approach to residential tenancy databases. The objective is to focus primarily on measures to ensure good practice in such matters as content and accuracy of listings, lifespan of listings, tenant access, and rights to correct or challenge listings.



# 6 Keeping stakeholders informed

## 6.1 CAV Link

During the year Consumer Affairs Victoria continued to keep stakeholders informed about programs and special projects through the publication and distribution of the electronic newsletter, *CAV Link*, to over 1,000 subscribers from the following sectors:

- consumer protection groups
- interstate and federal counterparts and other regulatory bodies
- agencies funded by Consumer Affairs Victoria
- financial counsellors
- legal aid workers
- tenancy, Indigenous, and culturally and linguistically diverse community workers
- industry body representatives
- consumer liaison officers in industry
- Victorian Government central agencies, and
- the Department of Justice executive.

The newsletter provides Consumer Affairs Victoria's closer consumer protection and business stakeholders and partners with an in-depth view of its strategic policy development and service delivery. It directly informs stakeholders on important Consumer Affairs Victoria reforms and projects, and in particular informs those vital to strategic alliances, of the organisations views and stance on consumer protection issues. *CAV Link* also builds on existing face-to-face relationships with stakeholders.



## 6.2 PUBLICATION OF PAPERS

Consumer Affairs Victoria publishes many discussion and issues papers as part of its strategic interaction with stakeholders and major industry groups. These papers are distributed to the organisations that best represent or understand the interests of Victorian traders and consumers. Consumer Affairs Victoria monitors the feedback of these key organisations when formulating policy and legislation, and gives these organisations input regarding the circulation of information by these organisations to their members.

In 2004-05, Consumer Affairs Victoria produced the following papers and reports.

Date	Topic
July 2004	Considering the implications of M-Commerce – A consumer perspective
July 2004	Review of <i>Fundraising Appeals Act 1998</i> discussion paper
September 2004	Operations Policy Overview
September 2004	Enquiries Policy
September 2004	Conciliation Policy
September 2004	Compliance and Enforcement Policy
September 2004	Ministerial Statement on Consumer Affairs
December 2004	<i>Motor Car Traders Act</i> consultations report
March 2005	Conveyancing Review discussion paper
March 2005	Consumer Protection Strategy for the Commonwealth Games
March 2005	Rural Tenancies discussion paper
March 2005	Essays in Australian Consumer Affairs: Consumer Protection in Australia – Understanding Our Past and Making the Future
April 2005	Associations Incorporation Act Review - Interim report
May 2005	Preventing unconscionable conduct in trade or commerce against consumers or small businesses: Guidelines on the unconscionable conduct provisions of the <i>Fair Trading Act 1999</i>
May 2005	Preventing misleading and deceptive conduct in trade or commerce – an Australian standard on commercial behaviour: Guidelines on the false, misleading and deceptive conduct provisions of the <i>Fair Trading Act 1999</i>
May 2005	Unfair terms in vehicle rental agreements for cars, 4WDs, motor homes and vans
June 2005	Consumer Credit Review issues paper

## 6.3 MINISTERIAL STATEMENT ON CONSUMER AFFAIRS

The Minister for Consumer Affairs made a Ministerial Statement to Parliament on 14 September 2004. The central theme of the Statement was that the Bracks Government is revitalising consumer protection in Victoria through:

- improvements in services to consumers, and
- playing a leading role in national consumer policy developments.

The Statement provided a progress report setting out the Government's objectives in the consumer affairs portfolio, priority areas, activities that contributed to achieving the objectives, and how these activities in turn contributed to the Government's broader goals in Growing Victoria Together.

The Statement highlighted the suite of programs and initiatives that have been developed to fulfil the Government's commitment to protect consumers, with a particular emphasis on improvements in the delivery of consumer protection services, which is a key objective for Consumer Affairs Victoria.

The Statement was widely distributed to stakeholders in a public document.

# Tackling unfair terms in consumer contracts

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Nationally, Victoria leads the way in unfair contract terms legislation, being the first jurisdiction in Australia to introduce legislation making unfair contract terms in consumer contracts void (following the lead of the European Commission and the United Kingdom). The amended *Fair Trading Act 1999* creates a legal framework for Consumer Affairs Victoria to target this area of concern.

An unfair contract term is a term which, contrary to the requirements of good faith and in all the circumstances, causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer.

Activities undertaken in relation to unfair contract terms during 2004-05 included:

1. continued implementation of a compliance and enforcement strategy, and
2. collaboration with other agencies, at State and national level.

# 1 Compliance and enforcement focus areas

Markets work better where consumers can exercise sovereignty and make informed choices about the goods and services they purchase. Standard form contracts in particular make it difficult for consumers to exercise such choices. Even if consumers can understand the contractual terms, they are generally presented with a take it or leave it choice, making it difficult for even the prudent consumer to avoid unfair terms if they want a particular product.

Since 2003, Consumer Affairs Victoria has focussed on three priority areas with regard to this issue:

- 1.1 mobile phone suppliers
- 1.2 vehicle hire companies, and
- 1.3 fitness centres.

During 2004-05, Consumer Affairs Victoria continued to implement its compliance and enforcement strategy in relation to these priority areas. In each case, the organisation reviewed individual companies' contract terms, and sought to gain their co-operation in revising or deleting terms considered unfair. Results have been pleasing with amended terms coming into effect in most cases.

## 1.1 MOBILE PHONE CONTRACTS

Consumer Affairs Victoria undertook a detailed analysis of the mobile phone contracts of Telstra, Optus, Orange, 3, Vodafone, Virgin and AAPT. All agreed to review their mobile phone contract terms or discuss the issues further except, at the outset, AAPT. Companies have implemented new standard forms of agreement for their consumer customers (or undertaken to do so during the latter half of 2005), with many terms revised to meet concerns raised by Consumer Affairs Victoria. Significant concerns remain however about industry-wide unilateral variation clauses, and Consumer Affairs Victoria will continue to pursue this issue with telecommunication companies in the next financial year.

## 1.2 VEHICLE HIRE CONTRACTS

Consumer Affairs Victoria reviewed the contracts of major national suppliers Avis/Budget, Hertz, Maui, Britz, Backpacker, Thrifty and Europcar and alerted the companies to concerns about contract terms. During the period, Avis/Budget, Hertz and Maui, Britz and Backpacker amended or agreed to amend contract terms. Progress was also made with the other suppliers.

## CASE STUDY AAPT PTY LTD

During 2004-05 Consumer Affairs Victoria initiated proceedings against AAPT Pty Ltd in the Victorian Civil & Administrative Tribunal (VCAT).

Consumer Affairs Victoria was of the view that AAPT mobile phone contracts (as they then stood) contained terms which were unfair. Among the terms targeted by Consumer Affairs Victoria were those that permitted:

- unilateral variation of consumer contracts
- suspension of services to consumers and subsequent imposition of unspecified reconnection charges
- imposition of early termination fees
- assignment of contracts to different service providers without consent, and
- charging of interest on outstanding amounts without stipulating applicable interest rates.

Consumer Affairs Victoria is seeking declarations from VCAT that these clauses are unfair, and injunctions preventing their further use by AAPT.

The matter is to be heard in VCAT in September 2005.

In discussions with Consumer Affairs Victoria during 2004-05, the company agreed to revise certain of its contract terms, and these revisions were made in May 2005. Discussions are continuing.

### 1.3 FITNESS CENTRE CONTRACTS

Consumer Affairs Victoria identified a number of concerns with terms in the standard fitness contract for Fernwood Women's Health Clubs franchisees. Following discussion, Fernwood made extensive changes to the standard contract and implemented this for Victorian clubs. Consumer Affairs Victoria is continuing work in this area both with Fernwood and other centres.

## 2 *Co-operation with other agencies*

Consumer Affairs Victoria reviewed the standard residential lease contract developed by The Real Estate Institute of Victoria. This review gave rise to concerns, and Consumer Affairs Victoria is discussing with the Institute and its specialist committees, possible revisions and modifications to the contract to address these.



### **NATIONAL APPROACH TO UNFAIR CONTRACT TERMS**

Concurrently with implementation of provisions of the *Fair Trading Act 1999* relating to unfair terms in consumer contracts in Victoria, Consumer Affairs Victoria is actively advocating a nationally consistent approach to unfair contract terms. Victoria and Queensland co-chair a national working party examining the extent to which unfair terms in consumer contracts can or should be addressed by nationally consistent legislation.

Following extensive consultation by the working party with consumers and business, and the successful implementation of unfair contract terms legislation in Victoria, the Ministerial Council on Consumer Affairs agreed in April 2005 to progress a national regulatory response as a matter of urgency. The working party is recommending legislation in line with that already in existence in Victoria.



# Promoting product safety

<b>1 Product safety enquiries and complaints</b>	<b>114</b>	<p>The goal of ensuring product safety is pursued within the context of helping to make markets work better. It is important to strike a balance between regulating business on the one hand, and empowering consumers to manage their own risk on the other. Often, the most effective course of action is to combine regulation and education.</p>
<b>2 Product safety assessments</b>	<b>114</b>	
<b>3 Regulations and ban orders</b>	<b>115</b>	<p>2004-05 saw:</p> <ol style="list-style-type: none"><li>1. continuation of a trend of declining numbers of product safety enquiries and complaints received</li><li>2. a decline in the number of product safety assessments completed</li><li>3. the making of several regulations and ban orders</li><li>4. excellent results in securing compliance with product safety legislation</li><li>5. implementation of product safety education campaigns, and</li><li>6. co-operation with various agencies on product safety issues, at both State and national levels.</li></ol>
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Ensuring product safety is an important function of Consumer Affairs Victoria. The *Fair Trading Act 1999* empowers the organisation to pursue this purpose, using the general powers to receive and investigate enquiries and complaints, enforce provisions, and educate and inform consumers and business. The Act also creates mechanisms for use specifically in relation to product safety. These mechanisms include powers to:

- make regulations concerning particular types of goods and services, setting out safety standards and the standard of any information to be provided to consumers in respect of the safe use of the goods or services
- seize dangerous goods
- obtain destruction orders from the courts in respect of seized goods
- recommend to the Minister that specific goods be banned on an interim, permanent or fixed term basis and
- recommend to the Minister that specific goods be recalled.

## 1 Product safety enquiries and complaints

During 2004-05 the product safety unit received a total of 1,831 product safety enquiries from consumers and industry. Enquirers sought advice on matters relating mainly to the safe use and design of consumer products. From these enquiries, 164 written product safety complaints were raised in 2004-05.

## 2 Product safety assessments

Consumer Affairs Victoria conducted 158 assessments of the safety of consumer products in the past financial year.

Product type	Quantity
Play items	38
Nursery products	28
Transport	20
Consumer durables	18
Personal use	11
Hardware	9
Electrical items	9
Sport and recreational	7
Chemicals	3
Food and drink	8
Gas	1
Stationary	1
Textiles	2
Therapeutic goods	2
Miscellaneous	1

**Product assessed 2004-05**

# 3 Regulations and ban orders

## 3.1 REGULATIONS

During 2004-05 the Governor in Council made the Fair Trading (Safety Standard)(Children’s Toys) Regulations 2004. These Regulations prescribe safety standards for toys for children of less than three years of age. Toys are required to comply with certain safety requirements of the applicable Australian and Australian/New Zealand Standards.

## 3.2 BAN ORDERS

During the year three new permanent ban orders were made prohibiting the supply of:

- baby bath aids which do not comply with safety regulations
- certain categories of so-called mini bikes, pocket bikes and monkey bikes, and
- imitation babies’ dummies.

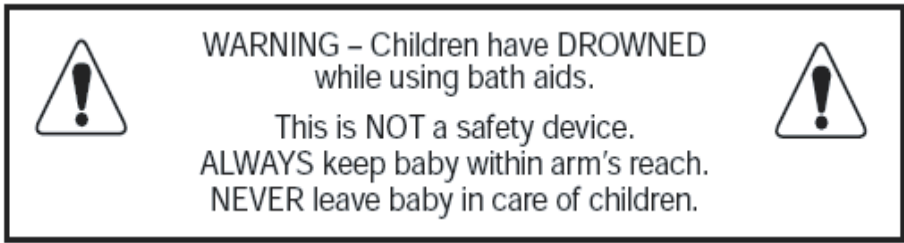
### 3.2.1 Baby bath aids

One aspect of product safety is reduction of risk to consumers of harm caused by incorrect use of otherwise benign household goods. During 2004-05 this aspect of product safety came to the fore in relation to baby bath aids.

Findings of coronial reports on investigations into drownings of babies in Australia (including two in Victoria) prompted the Government to pass new regulations on the mandatory labelling of baby bath aids. The regulations require products of this type (including baby bath seats, bathing cradles and bathing frames), as well as product packaging, to carry a specified safety notice and symbols in prescribed sizes.

A ban order was issued prohibiting the supply of baby bath aids that do not comply with the regulations.

Consumer Affairs Victoria prepared a fact sheet that included an example of the mandatory industry warning message and safety alert symbols. The fact sheet was made available through various information distribution channels and related stakeholders centres and agencies, such as the Infant and Nursery Products Association of Australia, Royal Children’s Hospital, Victorian Safe Communities Network Inc, KidSafe and the Victorian Parenting Association. In addition, it was included in the New Parents’ Kit of the Maternal and Child Health unit of the Department of Human Services.



### 3.2.2 No more unsafe monkey bikes

Monkey bikes, also known as mini bikes and pocket bikes, are working miniature replicas of popular on-road motorcycles. They are scaled down to half the size and can reach speeds of up to 70km/hr. Most are powered by petrol-fuelled combustion engines.

In December 2004, the road rules governing monkey bikes were changed so that unless they could be registered these vehicles could not be used on public roads, footpaths or bicycle paths. Since most monkey bikes cannot be registered because they do not meet the Australian Design Standards, this effectively banned them from public roads and footpaths.

Many consumers contacted Consumer Affairs Victoria saying that they had already purchased monkey bikes as Christmas gifts and were concerned that the bikes would not be usable. Consumer Affairs Victoria advised those consumers who had placed the monkey bikes on lay-by, that they were able to mitigate their loss by cancelling their lay-by arrangements, subject to payment of cancellation fees. A large number of complaints were conciliated, and in all cases consumers were refunded, or received replacement items.

Although the changes removed monkey bikes from the road, Consumer Affairs Victoria still had concerns as to the safety of many monkey bikes used on private land. On investigation, four areas of major concern were identified, including brakes, steering assemblies, foot pegs and throttles.

On 23 May 2005 the Minister for Consumer Affairs banned the sale of monkey bikes not intended for certification under the Road Vehicle Certification System, which exhibited the following defects:

- brakes that provide insufficient stopping force because they are incorrectly adjusted or do not incorporate devices to compensate for component wear and tear
- excessively loose steering assemblies which may produce lack of steering control
- foot pegs that inadvertently fold down resulting in loss of balance, or
- throttles/accelerators that seize up and prevent deceleration.



Bikes that do not comply with these minimum safety standards can no longer be sold to consumers by any person acting in trade or commerce. However, the ban does not make non-compliant bikes illegal in themselves. People cannot be prosecuted for possessing them or riding them on private property. The ban should however alert consumers to the danger that many of these bikes potentially pose.

To coincide with the ban, Consumer Affairs Victoria developed and distributed information packs on the ban and the safety standards to all known suppliers of monkey bikes in Victoria. It also developed a fact sheet and a set of frequently asked questions to help consumers understand the ban and its impact upon them.

### 3.2.3 Imitation babies' dummies

Product safety staff conducting spot checks of retail premises during 2004 came across several novelty imitation babies' dummies, housing electronic circuitry and coloured lights which flashed when activated. These novelty items were intended for use by young adults at rave parties but were frequently displayed alongside actual infant pacifiers, and were easily confused with such products.

Product safety officers tested two types of flashing dummies and found that they failed the voluntary Australian Standard for babies' dummies, in that:

- teats were easily removable with the application of childlike force, resulting in a serious choking hazard
- dummies were supplied with neck cords, which presented strangulation hazards if placed around infants' necks, and
- attached rings, circuitry and battery housings were removable on application of childlike force, resulting in exposure of electronic components, which presented serious choking hazards.

Based on recommendations made to the Minister for Consumer Affairs by Consumer Affairs Victoria, a permanent ban order was made, prohibiting the supply of objects resembling babies' dummies in appearance and size, and which do not comply with the relevant Australian Standard.



*Flashing imitation dummies confiscated by Consumer Affairs Victoria.*

## 4 Product safety compliance and enforcement

Part of Consumer Affairs Victoria's role in ensuring product safety is to ensure that dangerous products are not available in the marketplace. The *Fair Trading Act 1999* renders it an offence to offer for sale goods and services that do not meet prescribed safety standards, or that contravene ban orders. The Act empowers Consumer Affairs Victoria to seize dangerous goods, and to obtain court orders for the destruction of goods seized. The general enforcement powers created by the Act are also applied in the arena of product safety.

### 4.1 INSPECTIONS AND PRODUCT SEIZURES

Consumer Affairs Victoria inspectors led the nation in the volume of dangerous consumer products seized during 2004-05. Nearly 50,000 consumer products which contravened ban orders and/or regulations were seized from suppliers' premises.

### 4.2 WARNING LETTERS

In 2004-05 Consumer Affairs Victoria issued warning letters to 19 retailers who were found to be selling banned products. The offences were discovered by inspectors during store inspections carried out as part of a marketplace monitoring program checking for compliance with ban orders and regulations made pursuant to the *Fair Trading Act 1999*.

### 4.3 ENFORCEABLE UNDERTAKINGS

Twenty-four companies found supplying banned consumer products signed enforceable undertakings to take corrective action. These included undertakings to:

- refrain from supplying products which do not comply with mandatory safety standards and product ban orders
- develop an appropriate compliance program
- place a warning notice in the *Herald Sun*
- display a warning notice at the shop front window, and
- authorise Consumer Affairs Victoria to destroy and dispose of banned goods.

Details of enforceable undertakings obtained during 2004-05, including those in relation to product safety, are reported in **Appendix 3**.

Product type	Quantity
Imitation dummies	28,870
Toy guns	11,525
Lead wick candles and flammable candle holders	5,000
Ice pipes	2,050
Basketball rings/boards	2,000
Infant toys	200
Grow toys	70
Baby walkers	42
Yo-yo balls	25
Monkey bikes	4

#### Types and numbers of dangerous products seized 2004-05

### PRE-CHRISTMAS TOY SURVEY

Prior to Christmas 2004, 130 toy suppliers' premises were inspected throughout metropolitan and country Victoria by Consumer Affairs Victoria. Inspectors seized 788 toys which contravened ban orders and prescribed safety standards. Surveys and seizures attracted extensive media interest.

### REGIONAL SHOWS INSPECTIONS

During compliance and enforcement exercises conducted at Geelong and Ballarat, Consumer Affairs Victoria inspectors seized 1,954 products consisting of 1,950 imitation babies' dummies, two abacus sets and two toy wooden trains.

## 4.4 CRIMINAL PROSECUTIONS

During 2004-05 Consumer Affairs Victoria prosecuted five traders for infringements of product safety provisions.

In two separate actions V&D Consulting Pty Ltd and its Director Daniel Tharmaratnam, as well as Ling Yuan Pty Ltd, were prosecuted for breaching the *Fair Trading Act 1999* by supplying for sale toy guns with suction-tipped darts, which were the subject of a permanent ban order. V&D Consulting Pty Ltd and its Director received \$800 fines, while Ling Yuan Pty Ltd was not convicted, but received a 12-month good behaviour bond.

Sunlight Trading Pty Ltd and its Director, and a Mr Huan Gu, were prosecuted in the Melbourne Magistrate's Court in two separate actions, for supplying toy guns which were capable of firing improvised projectiles with sufficient force to constitute a risk of serious eye injury. The guns were subject to a permanent ban order, and by supplying them the offenders were in breach of the *Fair Trading Act 1999*. Both sets of offenders were fined, and Consumer Affairs Victoria also obtained costs against Mr Huan Gu.

IP&NP Jenson Pty Ltd and its Director were prosecuted in the Melbourne Magistrate's Court for breaching the *Fair Trading Act 1999* by supplying goods subject to a permanent ban order. The goods in question were ice pipes, which are products not inherently dangerous, but rendered dangerous because they are used specifically for smoking or inhaling methamphetamine crystals, including crystal meth or ice. The offenders were each fined \$500 (the Director, without conviction).

## ROYAL MELBOURNE SHOW INSPECTIONS

Consumer Affairs Victoria inspectors conducted the annual Royal Melbourne Show show-bags inspection, and 320 show-bags were inspected for potentially dangerous products. All items were passed as fit for sale. This is the second occasion within three years that all products have been given the green light. During the Show, inspectors carried out spot checks and seized 300 flashing dummies from a side stall. The retailer co-operated and signed an enforceable undertaking, committing to refrain from supplying banned novelty babies' dummies and other banned products, and authorising the destruction of the goods that had been seized.

## CASE STUDY SJS IMPORTS PTY LTD

As part of an ongoing monitoring program, Consumer Affairs Victoria raided the premises of SJS Imports Pty Ltd and uncovered 3,547 permanently banned children's toys and 4,678 non-compliant disposable cigarette lighters.

The banned toys found on the premises included:

- Yo-Yo Water Balls, banned because they pose a strangulation hazard, particularly to children
- Protector Riot toy guns, banned because their suction tip darts can cause choking and eye injuries
- Electric Shooting Box Lucky Star toy gun sets, banned because the supplied projectiles pose a choking risk, and a risk of serious eye injuries exists in relation to both supplied and improvised projectiles, and
- Power Steel Super Action figurines, banned because the projectiles supplied with the figurine pose a risk of serious eye injuries.

The disposable cigarette lighters contravened the Consumer Affairs (Product Safety)(Lighters) Regulations 1998, due to design flaws and lack of mandatory warnings and labelling, and posed a serious risk of burn injuries.

Consumer Affairs Victoria took action against SJS Imports Pty Ltd under the cease trading injunction provisions in the *Fair Trading Act 1999*, which require traders to cease the supply of unsafe products and implement compliance programs or face the risk of being ordered to cease trading altogether. The Supreme Court of Victoria found that the company and its proprietors had breached the law without satisfactory explanation.

The Supreme Court ordered SJS Imports Pty Ltd to refrain from supplying banned goods, and to put in place a compliance program to ensure that goods they propose to supply comply with all applicable ban orders. The company was also ordered to publish a public safety warning notice in the *Herald Sun* detailing the banned goods they had offered for sale and requesting consumers to return or destroy the banned goods.

# 5 Educate consumers and business

## 5.1 PUBLICATIONS

In the past financial year Consumer Affairs Victoria produced a booklet called *Product safety – Product hazard alert* containing information about, and photographs of, products that are subject to supply restrictions in Victoria. The booklet has been most popular with businesses as they now have the opportunity to easily recognise products that are banned and regulated in Victoria.

Three new fact sheets were also produced. These relate to the products in respect of which ban orders were made during 2004-05.

Other fact sheets published by Consumer Affairs Victoria relate to baby walkers, basketball rings, bunk beds, household cots, laser pointers, toughened glass, prams and strollers, toy regulations and a toy safety checklist.

## 5.2 MEDIA COVERAGE

Consumer Affairs Victoria featured prominently on the internet, and in radio and print media, in the promotion of product safety and standards, generating a total of 158 media hits during 2004-05, including reporting on monkey bikes, ice pipes, toy guns, show-bags, baby walkers and baby bath seats.

## 5.3 COMMUNITY SAFETY MONTH

Community Safety Month, which has been operating in Victoria since 1996, is an activity-based community initiative held every October, with the purpose of promoting safe practices in the community to aid in reduction of crime, violence, injury and emergency.

During the 2004-05 financial year, Consumer Affairs Victoria chose to participate in Community Safety Month by promoting key product safety messages to business and consumers during Injury Prevention Week.

As part of this initiative, Consumer Affairs Victoria presented a Regulators' Forum – Regulating for Safety – during Injury Prevention Week.

Also during Injury Prevention Week, Consumer Affairs Victoria's product safety team conducted show-bag inspections at regional shows across the State, and random inspections of discounts stores in adjoining areas. Several banned products were identified during the inspections and Consumer Affairs Victoria used the media to highlight potential injuries these products can cause.

## 5.4 EDUCATING SUPPLIERS WITH DEGREES OF VULNERABILITY OR DISADVANTAGE

A high prevalence of supply of banned or unsafe consumer goods is found amongst traders from multicultural and Indigenous communities. During 2004-05 Consumer Affairs Victoria addressed this issue by targeting education and information strategies to these traders. The Multicultural Consumers Unit, Indigenous Consumers Unit and education and community liaison officers promoted product safety messages through scheduled community presentations during the week, displaying examples of banned goods where possible.

## 6 Co-operation with other agencies

During 2004-05 Consumer Affairs Victoria communicated and co-operated on product safety issues with other Government agencies, interest groups and industry. A summary of these organisations and the issues raised and/or resulting outcomes follows.

Consumer Affairs Victoria also continued to maintain its own database of product safety investigations and enquiries on safety and standards matters, which is used for monitoring trends in product-related problems.

During 2004-05 the organisation co-operated with other consumer agencies on the issue of asbestos management within the State, and on a national level in relation to several product safety issues.

Organisation	Issues and outcome
Victoria Police	seizure of 2,066 ice pipes
Royal Agricultural Society	associated with inspection of show-bags at Royal Melbourne Show
Country Fire Authority Metropolitan Fire Brigade	discussions involving unsafe candles
Australian Competition and Consumer Commission	discussions regarding monkey bikes and vehicle jacks
Australian Customs Service	dangerous products identification
Department of Human Services	food safety and other product safety issues
Federal Chamber of Automotive Industries	discussions relating to monkey bikes
Infant Nursery Products Association	discussions about baby walkers
Safe Communities Network	discussion on developing networks for community safety

### Inter-agency product safety collaboration 2004-05

### ASBESTOS MANAGEMENT

Consumer Affairs Victoria, at the request of the Government, prepared an *Action Plan for Government Asbestos Issues* in October 2004 for consideration by Cabinet.

As part of the consultation process leading up to reporting, Consumer Affairs Victoria convened a stakeholder forum in November 2004 to inform non-Government stakeholders of the Government's approach to asbestos-related issues, and receive comments about perceived gaps in asbestos issues management.

The decision to establish an inter-departmental committee (IDC) was taken in response to recommendations made in the *Action Plan*, and the IDC was established in June 2005. The purpose of the IDC is to develop a Whole of Victorian Government position on asbestos-related issues relevant to Government, and to improve the coordination of Government activities on these issues. Consumer Affairs Victoria and the Department of Treasury and Finance co-chair the IDC, and Consumer Affairs Victoria facilitates the committee's activities and acts as Secretariat.

As at year end it was intended to develop and implement an education strategy in 2005-06, with the aim of informing consumers, and reducing consumer behaviour that carries a risk of consumer detriment, in relation to asbestos.



## ***NATIONAL PRODUCT SAFETY REVIEW***

Product safety regulation in Australia is shared between the Commonwealth, and State and Territory governments. Since 2003, Consumer Affairs Victoria has actively sought a national review of Australia's product safety system and has been a significant contributor to the current review being undertaken by the Ministerial Council on Consumer Affairs (MCCA).

In March 2005, the Productivity Commission was asked to undertake a commissioned study to assist MCCA in the review of the Australian consumer product safety system. The Productivity Commission was asked to examine the benefits and costs of the existing system, as well as options for reform to the system, and in particular to consider:

- a general legal obligation for businesses to only market safe consumer products
- a revised definition of unsafe goods
- revisions to the regulation of services and second-hand goods
- provision of improved product safety information to businesses and consumers
- new product safety monitoring and reporting obligations for business
- establishment of product hazard early warning information systems
- linking of product information systems
- increased government and industry funding of product safety research
- requirements on business to recall unsafe products
- government powers to audit product recalls
- measures to harmonise product safety legislation, administration and enforcement, and
- measures to enhance the making of product safety regulation decisions by the Australian Government.

Three national working parties were established to examine and provide options in regard to:

- consistent product safety laws, and administration and enforcement, across Australia
- a more proactive product safety system, aimed at reducing the incidence of injury to consumers without placing an undue burden on business, and
- improved product safety research and information (Consumer Affairs Victoria led this working party).

Papers will be submitted to MCCA by each working party, and will be considered by the Productivity Commission as they prepare their final submission for MCCA.

The Productivity Commission is expected to release its final report in January 2006, following which MCCA will consider the options outlined in the report, and put forward by the working groups.

## DEVELOPING AND REVISING AUSTRALIAN AND INTERNATIONAL STANDARDS

Consumer Affairs Victoria is represented on a number of committees developing or reviewing Australian, or joint Australian and New Zealand, Standards for particular groups of products, commenting on draft standards from the International Organisation for Standardisation (ISO) and voting on the adoption of existing, internationally recognised ISO standards. This work is becoming increasingly important given the trend to align domestic and international Standards.

During 2004-05 the organisation participated in reviewing or making comment on consumer product standards in relation to car and trolley jacks, children's toys and pedal bicycles.

## CONSUMER PRODUCTS ADVISORY COMMITTEE

The Consumer Products Advisory Committee (CPAC) is made up of representatives from consumer and fair trading agencies in the Commonwealth, States and Territories, and New Zealand, and provides advice on consumer safety matters and develops and implements a national approach to consumer product safety and standards issues.

CPAC met twice during the 2004-05 financial year and discussed issues such as:

- nursery furniture (cots, baby walkers and bunk beds)
- domestic furniture
- baby bath seats
- mini motorcycles
- hot water bottles
- portable soccer goals
- new safety information for children's products
- uniform product safety legislation
- review of safety and information standards, and
- review of Australia's product safety framework.

## COMMONWEALTH PRODUCT SAFETY RECALLS WEBSITE

The Commonwealth Product Safety Recalls website is a useful resource which provides information about voluntary safety-related product recalls and allows information-sharing between regulators. Consumer Affairs Victoria made use of the register of Alleged Hazardous Products, and information concerning product recalls, during 2004-05, to provide information and advice to consumers and traders.



# Supporting statutory bodies and corporations

1 Business Licensing Authority	125	Consumer Affairs Victoria provides administrative support to, and works closely with, five statutory bodies and one statutory appointee:
2 Motor Car Traders' Guarantee Fund Claims Committee	126	
3 Consumer Credit Fund Advisory Committee	128	1. Business Licensing Authority
4 Estate Agents Council	129	2. Motor Car Traders' Guarantee Fund Claims Committee
5 Prostitution Control Act Ministerial Advisory Committee	129	3. Consumer Credit Advisory Committee
6 Director of Liquor Licensing	130	4. Estate Agents Council
7 Consumer Utilities Advocacy Centre	131	5. Prostitution Control Act Ministerial Advisory Committee, and
8 Housing Guarantee Fund Limited	131	6. Director of Liquor Licensing.
9 Patriotic Funds Council	131	This chapter also contains reports relating to a statutory corporation and two additional statutory bodies, namely:
		7. Consumer Utilities Advocacy Centre
		8. the Housing Guarantee Fund, and
		9. the Patriotic Funds Council.

## 1 Business Licensing Authority



**Fiona Smith**  
**Chairperson,**  
**Business Licensing**  
**Authority**

The *Business Licensing Authority Act 1998* empowers the Business Licensing Authority (BLA) to grant or refuse applications for the licensing and registration of businesses and occupations under the following Acts:

- *Consumer Credit (Victoria) Act 1995*
- *Estate Agents Act 1980*
- *Motor Car Traders Act 1986*
- *Prostitution Control Act 1994*
- *Second-Hand Dealers and Pawnbrokers Act 1989*
- *Travel Agents Act 1986*, and
- *Introduction Agents Act 1997*.

The BLA is chaired by Fiona Smith. Stuart Ward is a full-time member, and Julienne Parsons is a sessional member.

The BLA is a specialist licensing agency focussed on creating and maintaining effective and efficient licensing and registration regimes, for the protection of Victorian consumers. The activities of the BLA and Consumer Affairs Victoria are complementary, in that the BLA licensing activities, and the monitoring, investigation, enforcement and policy review activities of Consumer Affairs Victoria operate together to regulate the relevant sectors.

For reporting on the activities of the BLA during 2004-05, see **Licensed occupations** on page 84.



## 2 Motor Car Traders' Guarantee Fund Claims Committee

The Motor Car Traders' Guarantee Fund Claims Committee (established by the *Motor Car Traders Act 1986*) is comprised of members representing the interests of consumers (John Wardle, Jill Myers, Catriona Lowe, Vivien Gunn and Craig Tucker served on the Committee in this capacity at various time during 2004-05), members with motor car trading industry knowledge (Percival Makin, Lea O'Halloran, Noel Gould and Peter Savige), and a lawyer who acts as chairperson (Stuart Ward).

The Committee decides claims against the Motor Car Traders' Guarantee Fund. The Fund is an important component of the framework regulating the motor car trading sector. One of the purposes of the regulatory framework is to protect consumers from detriment arising as a result of certain types of misconduct by motor car traders. The Fund essentially indemnifies consumers against such detriment where it eventuates. The maximum amount that can be paid on a claim admitted against the Fund is \$40,000. The principal source of the money held in the Fund is the licence fees paid by motor car traders.

In deciding claims against the Fund, the Committee seeks to balance protection of the Fund from unsubstantiated claims and those outside its jurisdiction, against the need for access to a simple and quick process to assist claimants with genuine claims, particularly those who are disadvantaged or vulnerable.

During 2004-05, 300 claims against the Fund were received (as compared to 256 received in 2003-04). During 2004-05, 339 claims (including some received during 2003-04) were finalised by the Committee (up from 307 in 2003-04). Of these, 235 were admitted in full or in part, nine were refused, and 95 were withdrawn. The high proportion of claims withdrawn (28%) reflects the effectiveness with which the Committee performs its dispute resolution function, and also the deterrent impact of linking claims made to the Fund against traders with their entitlement to continue to hold licences.

The total value of the claims finalised during 2004-05 was \$1,520,754.30. Of this amount 35.7% (\$542,995.39) was paid out (the balance related to claims refused in full or in part, or withdrawn).

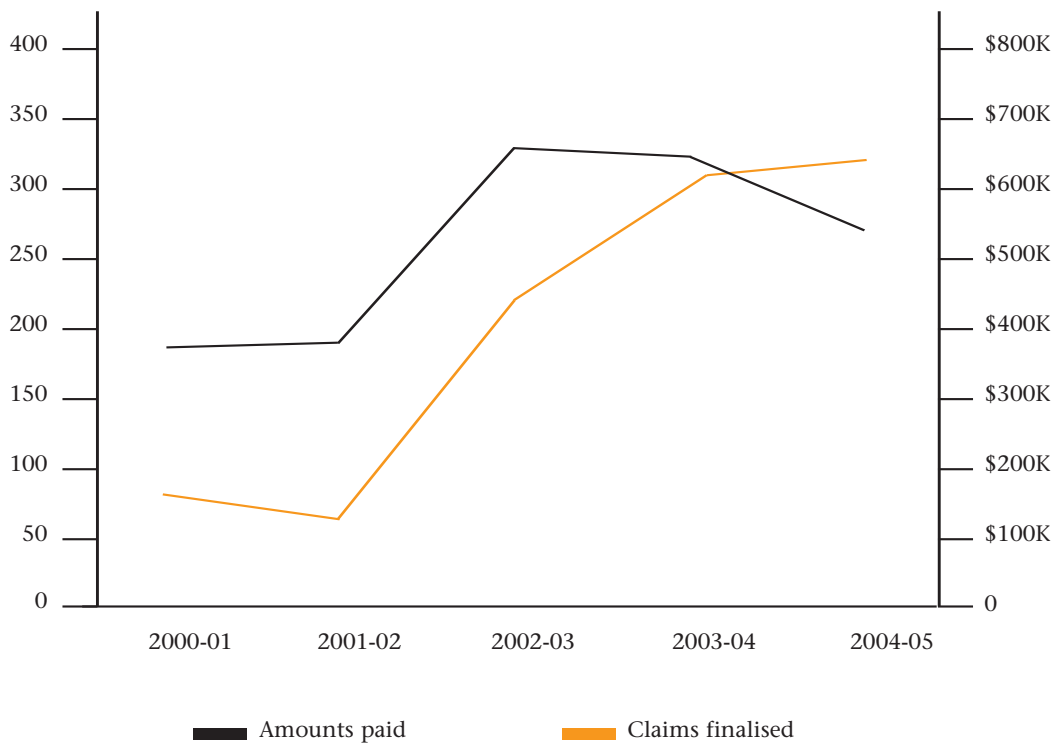
While the proportion of claims admitted during 2004-05 is up 13.5% as compared with 2003-04, the Fund paid out \$106,787.11 less in 2004-05. This is mostly attributable to the fact that 83.5% of claims admitted during 2004-05 accounted for 28% of the amount paid from the Fund – that is, they were for small amounts, in connection with the failure of traders to remit fees to VicRoads.

Where commercially viable, the Committee undertakes legal action to recover amounts paid out of the Fund from those motor car traders against whom claims were admitted, or from the directors of the companies personally. During 2004-05, \$119,398.42 (22% of the amount paid out of the Fund) was recovered from traders.

A detailed report of claims admitted and amounts recovered during 2004-05 appears in **Appendix 8**.



**Stuart Ward**  
**Chairperson**  
**Motor Car Traders'**  
**Guarantee Fund**  
**Claims Committee**



**Claims finalised by MCTGFCC as against amounts paid out of MCTGF 2000-01 to 2004-05**

## CASE STUDY

### FINANCE BROKER'S CLAIM ON FUND UNSUCCESSFUL

In 2004-05 a professional finance broker company lodged five claims (totalling \$170,000) against the Motor Car Traders' Fund.

The broker had introduced to a financier five finance proposals from what the broker claimed to have believed was a licensed motor car trader. In fact, the trader was not licensed. After the financier had paid the trader, no repayments were made on the loans. The financier recouped its loss from the broker, and the broker in turn claimed the amount it had paid the financier from the Fund.

The broker averred that the five deals were fraudulent and that its loss had been caused by the trader's failure to transfer good title to the motor cars forming the subject of the transactions.

In determining to refuse the claims, the Motor Car Traders' Guarantee Claims Fund Committee (MCTGFCC) concluded on the material before it that:

- it could not be satisfied that there had been a failure to transfer good title
- it could not be satisfied that the broker had reasonably believed that the trader was, at the relevant time, a licensed motor car trader (the Committee was of the view that the broker, given a number of circumstances existing at the time of the transaction should have been alerted to the need to make inquiries about the trader's licence status)
- the broker's loss had been caused by its own breach of warranties under the Introducer Agreement it had entered into with the financier, and
- because the law as it stands would bar the financier from making a claim in the circumstances, admitting a claim by the broker who had introduced the proposals to the financier would give rise to an absurdity.

The issue of who should be entitled to claim on the Fund was raised by the Committee in the course of the recent consultations on the *Motor Car Traders Act 1986* undertaken by Noel Pullen MP on behalf of the Minister for Consumer Affairs.

### *3 Consumer Credit Fund Advisory Committee*

The Consumer Credit Fund is a statutory trust fund, established to provide money for credit-related research, advice and assistance programs and materials, and educational services.

As at 30 June 2005, membership included Denis Nelthorpe (Chair), Julie Smith, Peter Ford, Ian Gilbert, Deborah Beale and Peter Gavin.

Applications for funding can be made by not-for-profit agencies, and also the Director of Consumer Affairs. An Advisory Committee considers all applications and the Minister may only approve such applications as the Committee decides to forward.

The money in the Fund comes from the proceeds of civil penalty awards made against credit providers who have infringed the Consumer Credit Code and who have been proceeded against by Consumer Affairs Victoria.

This year saw the start of a new system in which Committee members now receive payment. This recognises the time, effort and expertise that go into the process and the importance of the making of grants from the Fund. During 2004–05, two rounds of applications were conducted. Among the grants made were the following:

- Consumer Law Centre Victoria and the Conflict Resolution Research Centre, LaTrobe University: Dispute resolution at Consumer Affairs Victoria and the Victorian Civil & Administrative Tribunal – accessibility and outcomes for credit consumers
- Russian Ethnic Representative Council of Victoria: Consumer credit information and education for the Russian/Slavic community
- Consumer Affairs Victoria: Consumer Credit Conference, and
- Public Interest Law Clearing House: Advocating for financially and socially disadvantaged people in rural and regional areas in credit and debt matters.

For detailed reporting on the administration of the Fund in 2004-05, see **Appendix 9**.



*Denis Nelthorpe  
Chairperson  
Consumer Credit Fund  
Advisory Committee*

## 4 Estate Agents Council

Consumer Affairs Victoria provides assistance and support to the Estate Agents Council, a statutory body established in terms of the *Estate Agents Act 1980*.

The Council's primary function is to advise the Minister for Consumer Affairs on matters referred to the Council by the Minister, and in respect of any matter relating to the operation of the Act. To this end, the Council monitors the operation of the Act and assesses the efficiency and effectiveness of its application to the real estate industry, on an ongoing basis.

In addition the Council makes policy recommendations to the Minister in relation to the operation of the Act and relevant regulations, the real estate industry generally, and applications for grants from the Victorian Property Fund.

The Council reports directly to the Minister on an annual basis.

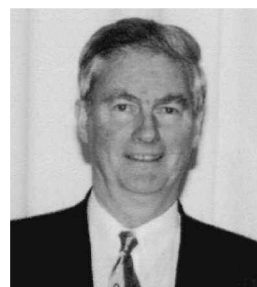
Full details of grants from the Fund approved, and claims against the Fund allowed, during 2004-05, appear in **Appendix 10**.

## 5 Prostitution Control Act Ministerial Advisory Committee

The Prostitution Control Act Ministerial Advisory Committee, established under the *Prostitution Control Act 1994*, advises the Minister on:

- issues related to the regulation and control of the prostitution industry in Victoria
- the general operation of the prostitution control industry in Victoria
- liaison with the police to assist in carrying out its functions in relation to prostitution
- the reference of relevant matters for investigation by the WorkCover Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body
- assistance for organisations involved in helping prostitutes to leave the industry
- the development of educational programs about the prostitution industry for magistrates, police and community workers, and
- the dissemination of information about the dangers (including dangers to health) inherent in prostitution, especially street prostitution.

See page 101 for information on the links between the work of the Committee and that of the Inter-Departmental Committee for Prostitution Regulation.



**John Dillon**  
Chairperson  
Estate Agents Council



**Glenys Romanes MP**  
Chairperson  
Prostitution Control Act  
Ministerial Advisory  
Committee

The Committee is chaired by Ms Glenys Romanes MP, State Member for Melbourne Province. The combined skills and expertise of the Committee ensures the diverse perspectives of the community, sex workers and the industry are considered.

During 2004-05 the Committee was engaged in research on the pathways into prostitution and the barriers to leaving the industry. A progress report on this research was submitted to the Minister in May 2005.

Except for two members, the Committee's term of appointment expired on 17 June 2005, and a new Committee will thus be appointed in July 2005 to act for a period of three years.

## 6 Director of Liquor Licensing

The Director of Liquor Licensing is responsible for the administration of the *Liquor Control Reform Act 1998*. The Director's functions and powers include:

- granting or refusing applications for the grant, variation, transfer or relocation of a liquor licence or BYO permit, and a range of ancillary applications and approvals
- approving training programs
- advising the Minister on the operation of the Act, and
- conducting investigations relevant to the operation of the Act.

Many of the decision-making powers of the Director of Liquor Licensing are delegated to staff of Consumer Affairs Victoria. This has facilitated speedier outcomes on most non-complex applications. More complex applications are escalated to senior staff or to the Director of Liquor Licensing.

The Director of Liquor Licensing is involved, together with Consumer Affairs Victoria staff, in participating on initiatives on the Whole of Victorian Government priority of safe communities.

For reporting on the liquor licensing activities during 2004-05, see **Liquor licensing** on page 90.



*Sue MacLellan  
Director  
Liquor Licensing*

Year	No of active liquor licences*
1998-99	9,767
1999-00	10,806
2000-01	11,677
2001-02	12,687
2002-03	14,025
2003-04	14,997
2004-05	15,912

\*as at 30 June (excluding BYO permits)

**Liquor licensing comparative data  
1998-99 to 2004-05**

## 7 Consumer Utilities Advocacy Centre

The Consumer Utilities Advocacy Centre (CUAC) was established by the Government as a not for profit public company limited by guarantee on 11 April 2002. The Minister for Consumer Affairs is the sole member of the company representing Victoria. CUAC receives funding from the Government, through Consumer Affairs Victoria, of \$500,000 per annum.

In establishing CUAC, the Government sought to ensure the interests of Victorian electricity, gas and water consumers – especially low income, disadvantaged, rural, regional and Indigenous consumers – are effectively represented in the policy and regulatory debate.

CUAC has undertaken a program of initiating and funding research into issues of concern to Victorian utility consumers, through in-house research and building the capacity of consumers through its grants program. Further it has investigated and responded to systemic issues affecting Victorian consumers in the competitive electricity and gas markets, and with regard to water.

During 2004-05, CUAC approved grants totalling \$188,927 for research and capacity building.

## 8 Housing Guarantee Fund Limited

In May 2005, the House Contracts Guarantee (Amendment) Bill 2005 was introduced into Parliament. The purpose of the Bill was to implement the Government's decision to transfer the responsibilities of the Housing Guarantee Fund Limited (HGFL) under the former house contracts guarantee system, and the Domestic Building (HIH) Indemnity Scheme, to the Victorian Managed Insurance Authority (VMIA), as the most appropriate government entity to take over these responsibilities. These funds are currently running down. The aim of the transfer of responsibilities for the funds to VMIA is to ensure that they are properly administered during the running-off period. The transfer of responsibilities will take place on the date the Act is proclaimed to commence operation, which will be no later than 1 July 2007.

## 9 Patriotic Funds Council

In January 2004, the Premier announced that he would take the lead Ministerial responsibility for veterans' affairs in Victoria, with a suite of new initiatives aimed at enhancing veterans' welfare and providing a renewed focus on commemoration of, and education regarding, Victoria's war and service history.

On 10 January 2005 the Premier took over Ministerial responsibility for the *Patriotic Funds Act 1958*, the *Defence Reserves Re-Employment Act 1995* and the *Discharged Servicemen's Preference Act 1943*.

Following this Government commenced a review of the regulation of the veterans sector, focussing on the role of the Patriotic Funds Council, and support of welfare and commemorative activities.

# Developing our people

## 1 Training

### 2 Employee of the Year award

### 3 Rewarding long service

**133** The people of Consumer Affairs Victoria are essential to the fulfilment of the organisation's statutory functions. High priority is given to ensuring that skills are current and relevant to the tasks staff are required to perform.

**135**

**135**

During 2004-05, several training priorities were addressed, and a staff award for professional excellence was introduced. Six staff members were recognised for their long service to Consumer Affairs Victoria and its predecessor organisations.

## 1 Training

As the consumer protection framework grows more complex, and productivity demands on all staff continue to increase, training remains a critical factor in assuring a high level of service to the community. Consumer Affairs Victoria's dedicated Learning and Development Committee identifies and responds to corporate learning and development needs, and optimises use of training funds.

During 2004-05, programs were developed and implemented in the following areas:

- staff induction
- IT skills
- active listening
- investigator training, and
- performance management.

Significant numbers of staff participated in these programs to increase and update their skills and knowledge.

Training was also given in the areas of legislation, Indigenous awareness, project management and regional staff integration.

### Staff induction

The staff induction program aims to accelerate achievement of full productivity levels by new staff by delivering requisite organisational knowledge, and engendering in participants the motivation that comes from feeling part of a friendly and effective team with clear and positive goals.

The staff induction processes and supporting information were reviewed and overhauled early in the financial year. A half-day program was developed to give new starters a broad understanding of the history and functions of the organisation, showcasing in particular how our staff work together to achieve organisational goals.

### IT skills

Most Consumer Affairs Victoria staff spend significant amounts of time interacting with computers. Improvements in basic IT skills therefore result in significant productivity gains. In 2004-05 the IT training effort focussed on standard office software packages and touch typing skills.

Online training was piloted with the provision of a suite of online learning courses covering office software products. Online training allowed for learning at the pace suited to each individual learner, and meant that regional office staff were as able to access learning as staff based in the city. The pilot program was very successful and as a result more online learning materials will be developed in the coming financial year.

## Active listening

An active listening training program was conducted in the advice and information call centre. This improved capability to identify vulnerable consumers on the telephone, and respond more effectively to their needs.

## Investigator training

A one week investigator course was conducted in response to an influx of new staff in compliance and enforcement roles. The course aimed to develop a more proactive approach amongst investigators and responded to recognised needs such as:

- ensuring efficient and effective use of the more sophisticated and flexible civil and administrative regime offered by the *Fair Trading (Enhanced Compliance) Act 2004*, and
- a new statutory requirement that inspectors successfully complete appropriate training.

The program was delivered by senior staff within Consumer Affairs Victoria and a number of external experts in consumer law, compliance, enforcement and investigation.

## Product safety training

New enquiries staff, workers in community agencies funded by Consumer Affairs Victoria, and trade measurement staff received training and induction in relation to product safety, during 2004-05.

## Performance management training

The first full financial year of implementation of the Victorian Public Service performance management and progression system (introduced in mid 2003) was completed in 2004-05.

To ensure the quality of staff performance plans, and improved alignment of content and structure with organisational goals:

- 11 performance planning workshops for managers and supervisors were conducted in September 2004, and
- all-staff meetings were conducted early in 2005 to ensure that the system was understood, and to discuss appropriate ways to provide constructive feedback.



## Staff presentation series

The Consumer Affairs Victoria Staff Presentation Series is a key channel for communication on legislative updates, policy reviews, and developments in the consumer protection landscape.

During 2004-05, presentations were given by Consumer Affairs Victoria staff and external speakers on the following topics:

- Public Value Creation
- Online Business Name Registration
- Bilingual Strategy
- Ombudsman Function (Telecommunications Industry)
- Credit
- Regional Office Program
- Report-back on Attendance at Future Summit
- Proposals for Liquor Reform
- Consumer Affairs Victoria Online Functions
- Best Practice Regulation
- Update on Current and New Legislative Reviews
- Review of Incorporated Associations
- Fair Trading Act Amendments
- Persistent Complainants
- Unfair Contracts
- 2006 Commonwealth Games, and
- Trade Measurement.

## 2 Employee of the Year award

In 2004-05 Consumer Affairs Victoria introduced the Employee of the Year award for professional excellence.

Nominees for the award were:

- Julie Hunt
- Patrick L'Estrange
- Anne Cousins
- Rod Overall
- Theresa Cheng
- Penny Stephens
- John Knight, and
- Christine Nigro.

Patrick L'Estrange won the 2004-05 award, for developing high quality proposals for legislative changes to the *Fair Trading Act 1999*.

## 3 Rewarding long service

Consumer Affairs Victoria annually recognises long serving staff through its Long Service awards. In December 2004 the Minister for Consumer Affairs presented award recipients with engraved dishes in recognition of their dedication to Consumer Affairs Victoria and its predecessor bodies over the past 20 years. The awards were made to:

- Reg Brown
- Pierre Goder
- George O'Keeffe
- Bruno Panozzo
- Gerry Peterson, and
- David Richards.

# The year ahead

The learnings obtained in 2004-05, as well as developments in the markets, will inform strategic direction and prioritisation in 2005-06.

## Promoting and encouraging fair trading practices, and fair and competitive markets

In 2005-06 there will be increased emphasis on measures to promote and assist voluntary compliance by businesses with consumer laws, guidance materials, industry forums and trader visits, and by further developing relationships with industry associations.

An active enforcement program will be pursued. The aim will be to respond quickly to significant breaches of the law and to apply the full range of enforcement tools available to Consumer Affairs Victoria. Priorities will continue to be updated in light of market developments. Enforcement will particularly target persistent offenders, commonly referred to as major rogues. There will be increased co-operation with other enforcement agencies in Australia and overseas through the national fraud group and other established channels.

## Service delivery

Major activity with regard to consumer protection in 2005-06 will relate to further implementation of the regional service delivery model.

From 1 July 2005, regional offices and mobile services will be open in the following locations:

- North Eastern region: Wangaratta, extending coverage across 12 local government areas
- North Western region: Bendigo, with a sub-office in Mildura, extending services across 10 local government areas
- Gippsland region: Morwell, extending services across six local government areas
- South West region: Geelong, with a sub-office in Warrnambool, extending services to all nine local government areas in the region, and
- Central West region: Ballarat, extending services across all 11 local government areas in the region.

Each regional office will develop capability to register business names online. Traders, builders and contractors will also be able to seek information on their rights and obligations under fair trading laws. Regional office staff will seek to develop ongoing relationships with business groups to extend Consumer Affairs Victoria's education and information role directly to traders. In line with this aim, the regional offices will not action enforcement issues directly.

As the pilot mobile outreach service revealed, establishment of a Consumer Affairs Victoria presence in a region creates a greater awareness of available services, and a consequent increase in demand. The volume of enquiries and complaints in each region is expected to double in the next 12-36 months. This will require increased access to resources (such as information technology, staff, training, vehicles and office equipment) and the development of policies and protocols that assist in overcoming service delivery issues in a regional context.

Three additional community education officers will be employed to expand the community education service across metropolitan Melbourne.

## Consumer education

During 2005-06 Consumer Affairs Victoria will continue to follow the strategic direction of empowering consumers to be their own best advocates. Strategies will continue to aim to go beyond provision of information, to improving decision-making skills and abilities, and, therefore, confidence. Particular attention will be given to employing more direct marketing strategies, and distributing information throughout the State.

However, acknowledging that lack of information is not always the cause of unwise consumer behaviour, focus will also be on the impact of education and information strategies on consumer behaviour, and on identifying barriers to behavioural change.

The Consumer Education in schools program and efforts to enhance financial literacy through participation in national initiatives will continue to be emphasised.

## Regulating trading practices

New initiatives to enhance communication with regulated industries will be taken in 2005-06, in particular through the production of regular newsletters. Better linkages between entry regulation and conduct regulation will be sought.

## Unfair contract terms

During 2005-06, Consumer Affairs Victoria will continue with work begun in 2004-05, and also give focus to industries where reviews conducted in 2004-05 gave rise to concern. These include the domestic building, pay TV, internet service provider, and retirement village industries.

## Product safety

Consumer Affairs Victoria aims to take an increasingly strategic, evidence-based approach to product safety policy and activity. Strategic priorities for 2005-06 include:

- improved use of data concerning product-related injury and death, to drive a more evidence-based approach to product safety activity
- continued strong compliance and enforcement activity and technical standards development, to prevent the supply of unsafe products, and remove these from the marketplace where they do arise – it is expected that nursery furniture and discount variety suppliers (\$2 dollar shops) will be targeted in 2005-06
- expanded product safety education and information activities, and
- participation in key initiatives contributing to national product safety reform.

## People management

In the coming year Consumer Affairs Victoria will significantly expand its learning and development program. A legislation training officer will be appointed and comprehensive new training programs covering key legislation administered by the organisation will be developed and delivered. Branch-specific training materials will be developed to improve staff induction, increase service quality and enable better ongoing training in core areas of service provision. Other learning and development priority areas will include team leadership, writing skills, dispute resolution, and delivery of programs to staff in the regional offices. Significant changes to work practices are expected to be associated with the move of Consumer Affairs Victoria to the new Department of Justice Southern Cross building, expected to occur around the end of 2005-06.

## Retirement villages

Implementation of new legislation will continue to be progressed in 2005-06. Regulations covering contract terms will be developed.

# Special feature: Retirement villages

The *Retirement Villages Act 1986* was introduced to clarify and protect the rights of people living, or intending to live, in retirement villages. Since commencement of the Act in 1986 the retirement village industry has experienced growth and change as the Victorian population ages. This environment has created the need to ensure that the Government has an efficient and effective regulatory scheme to provide adequate consumer protection for residents while contributing to the continuing viability of the industry.

## CONSULTATION

Beginning in 2002, the Government undertook an extensive two-year review of existing legislation relating to retirement villages. A discussion paper was developed and discussions were held with major stakeholders including industry groups, residents' groups, residents, other advocates for residents, and retirement village operators.

## LEGISLATIVE AMENDMENTS

Following this review and consultation, the law was changed in February 2005.

Some amendments commenced in May 2005, including those providing for:

- removal of residential care facilities covered by the Commonwealth Aged Care Act from coverage by the Retirement Villages Act, and
- permitting of part extinguishment of charges, and cancellation of retirement village notices, over land.

Other changes to be introduced in 2005-06 make provision for:

- regulation of the form of contracts entered into by retirement village operators and residents and/or unit owners
- clearer rules regarding exit arrangements, including time limits on ongoing charging of fees and (for residents who do not own their units) payment of exit entitlements, and permission for residents who own units to use external agents to re-sell
- limitations on operators making decisions on behalf of individual residents (through general prohibitions on taking proxies or powers of attorney)
- creation of a public register of retirement villages, and
- improved dispute resolution, through cancellation of arbitration clauses and a requirement for policies and procedures to be established at village level.

Since commencement of the first set of amendments, Consumer Affairs Victoria has received two applications for declarations, one from the owner of a retirement village for the cancellation of a retirement village notice over land, and one from the owner of a residential aged care facility in relation to the extinguishment of a charge over land.

## EDUCATING STAKEHOLDERS ABOUT THE CHANGES

An extensive education and information strategy was developed during the latter half of 2004 to prepare the industry and consumers for commencement of the changes.

During December 2004, Consumer Affairs Victoria undertook various education and information activities designed to ensure that operators, residents and prospective residents were not disadvantaged by entering into agreements that included terms and conditions that will be prohibited or changed when the future amendments are implemented. Activities included publicising the upcoming amendments in the media, development and distribution of fact sheets, stakeholder briefings, consumer talks and provision of information on the internet.

Existing fact sheets concerning administrative arrangements for the operation of retirement villages (mostly of importance to village owners and managers) were updated, and an extensive direct mail campaign was undertaken to communicate the changes to village owners and managers during May 2005 when these provisions came into effect.

The education and information strategy will continue to be rolled out during 2005-06. An important component will be a direct response advertising campaign, primarily targeted at existing and prospective retirement village residents, which will be implemented during 2005-06 when the amendments that most directly affect these audiences are scheduled to come into force.

## DISPUTE RESOLUTION

The increased public awareness of Consumer Affairs Victoria's role in regard to retirement villages has led to greater numbers of disputes referred to the organisation. As part of the dispute resolution process, Consumer Affairs Victoria has met on a face-to-face basis with both retirement village operators and resident committees. This approach has proven successful in identifying solutions to multifaceted problems. Consumer Affairs Victoria has also provided guidelines to retirement village operators to assist them in meeting their obligations under the Act including the establishment of internal dispute resolution systems.

## CASE STUDY

### FEES HARDSHIP ALLEVIATED

Consumer Affairs Victoria received two complaints in relation to a particular retirement village. Both families who lodged complaints had had family members in independent living apartments. The retirement village was charging both service fees and body corporate fees. One complainant's mother was deceased, while the other complainant's mother had been transferred into higher care after having a stroke, six months after moving into her apartment. Both families informed Consumer Affairs Victoria that they had had their units on the market for over two years and that continued payment of body corporate fees (which exceeded \$800 per calendar month) were causing hardship.

Following Consumer Affairs Victoria's representations, the retirement village operator agreed to stop charging the families fees, as the apartments had been on the market for an unacceptable length of time, and to defer outstanding amounts owed by both families, until the apartments had been sold.



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# Appendix 1

Legislation administered by Consumer Affairs Victoria  
as at 30 June 2005

- Associations Incorporation Act 1981*
- Business Licensing Authority Act 1998*
- Business Names Act 1962*
- Carriers and Innkeepers Act 1958*
- Chattel Securities Act 1987*  
(except Part 3 – this Part is administered by the Minister for Transport)
- Collusive Practices Act 1965*
- Companies (Administration) Act 1981*
- Consumer Credit (Victoria) Act 1995*
- Co-operatives Act 1996*
- Credit Act 1984*
- Credit (Administration) Act 1984*
- Credit Reporting Act 1978*
- Disposal of Uncollected Goods Act 1961*
- Domestic Building Contracts Act 1995*  
(except Part 5 – this Part is administered by the Attorney-General)
- Estate Agents Act 1980*
- Fair Trading Act 1999*
- Frustrated Contracts Act 1959*
- Fuel Prices Regulation Act 1981*
- Fundraising Appeals Act 1998*
- Funerals (Pre-Paid Money) Act 1993*
- Goods Act 1958*
- Hire-Purchase Act 1959*
- House Contracts Guarantee Act 1987*
- Introduction Agents Act 1997*
- Landlord and Tenant Act 1958*
- Liquor Control Reform Act 1998*
- Marketable Securities Act 1970*
- Motor Car Traders Act 1986*
- Partnership Act 1958*
- Petroleum Products (Terminal Gate Pricing) Act 2000*
- Petroleum Retail Selling Sites Act 1981*
- Prostitution Control Act 1994*
- Residential Tenancies Act 1997 –*
  - sections 24, 25, 27, 32, 33, 45-48, 74-77, 82, 90, 91, 102, 103, 104(1), 104(4), 104(5), 105(2), 105(3), 124, 128, 130-134, 141-212, 214, 215, 230, 232-234, 241, 277, 291-333, 335-341, 343-366, 373-376, 385, 388, 390, 395-398, 400-439, 486-504, 506-511
  - section 66(1) jointly administered with the Minister for Housing
  - the Act is otherwise administered by the Attorney-General, the Minister for Housing and the Minister for Planning
- Retirement Villages Act 1986*
- Sale of Goods (Vienna Convention) Act 1987*
- Sale of Land Act 1962*
- Sea-Carriage Documents Act 1998*
- Second-Hand Dealers and Pawnbrokers Act 1989*
- Subdivision Act 1988*
  - Part 5
  - section 38
  - section 43 (in so far as it relates to Part 5 and section 38)
  - the Act is otherwise administered by the Minister for Planning
- Trade Measurement Act 1995*
- Trade Measurement (Administration) Act 1995*
- Travel Agents Act 1986*
- Trustee Act 1958*
- Trustee Companies Act 1984*  
(The Act is jointly administered with the Treasurer)
- Utility Meters (Metrological Controls) Act 2002*

# Appendix 2

## Legislation commenced/revoked/made 2004-05

### 2004-05 Regulations commenced

Name	Date commenced
Fair Trading (Amendment) Regulations	30 August 2004
Fair Trading (Further Amendment) Regulations	31 August 2004
Fair Trading (Safety Standard)(Children's Toys) Regulations	7 September 2004
Prostitution Control (Amendment) Regulations	1 November 2004
Prostitution Control (Fees) Regulations	1 November 2004
Domestic Building Contracts (General)(Amendment) Regulations	30 November 2004
Fair Trading (Safety Standard)(Baby Bath Supports)(Interim) Regulations	6 December 2004
Travel Agents (Amendment) Regulations	1 January 2005
Credit Regulations	25 January 2005
Credit (Administration) Regulations	1 February 2005
Fair Trading (Forms) Regulations	1 February 2005
Motor Car Traders (Forms) Regulations	1 February 2005
Second-Hand Dealers and Pawnbrokers (Forms) Regulations	1 February 2005
Travel Agents (Forms) Regulations	1 February 2005
Subordinate Legislation (Trustee Companies Regulations 1995 – Extension of Operation) Regulations	30 March 2005
Fair Trading (Infringements) Regulations	6 May 2005
Retirement Villages (Transitional) Regulations	23 May 2005
Subordinate Legislation (Prostitution Control Regulations 1995 – Extension of Operation) Regulations	24 May 2005
Liquor Control Reform (Amendment) Regulations	15 June 2005

### 2004-05 Regulations revoked

Name	Effective date
Consumer Affairs (Product Safety)(Children's Toys) Regulations 1998	7 September 2004
Credit (Administration) Regulations 1995	1 February 2005

### 2004-05 Legislation made

Name	Date of royal assent
Petroleum Products (Terminal Gate Pricing)(Amendment) Act	23 November 2004
Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Act	7 December 2004
Fair Trading (Enhanced Compliance) Act	21 December 2004
Retirement Villages Act 2005	5 April 2005



# Appendix 3

## Enforceable undertakings accepted 2004-05

Date	Party	Section/Act	Breach summary and nature of undertaking
18/8/04	Xiao Yang Cai Jian Wang	s44 FTA	<p>Xiao Yang Cai and Jian Wang are the owners of Discount Kingdom, a discount variety shop in Ferntree Gully.</p> <p>Discount Kingdom was found supplying a children's projectile toy called Protector Riot Gun Item No 008 that breached the requirements of the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S216 dated 14 November 2002. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Xiao Yang Cai and Jian Wang undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
29/9/04	LFCC International Pty Ltd Xiao Feng Xiang Zhi Tao Hong Ji-Long Li	s33 FTA	<p>Xiao Feng Xiang, Zhi Tao Hong and Ji-Long Li are Directors of LFCC International Pty Ltd (LFCC) which operates the discount variety retail store Stuff &amp; Nonsense Knox in Wantirna South.</p> <p>Stuff &amp; Nonsense Knox was found supplying disposable cigarette lighters that did not meet the safety standards as required by the Consumer Affairs (Product Safety) (Lighters) Regulations 1998 SR No. 44. It is an offence under section 33 of the <i>Fair Trading Act 1999</i> to supply non compliant goods in respect of which there is a prescribed safety standard.</p> <p>Xiao Feng Xiang, Zhi Tao Hong and Ji-Long Li individually and in their capacity as Directors of and on behalf of LFCC undertook to refrain from supplying or offering to supply products which do not comply with mandatory product safety standards.</p>
29/9/04	In Touch Fashions & Gifts Pty Ltd Henry Chen	s33 FTA	<p>Henry Chen is the Director of In Touch Fashions &amp; Gifts Pty Ltd (In Touch Fashions &amp; Gifts) which owns a discount variety retail store called In Touch Imports in Collingwood.</p> <p>In Touch Fashions &amp; Gifts was found supplying cigarette lighters that did not meet the safety standards as required by the Consumer Affairs (Product Safety) (Lighters) Regulations 1998 SR No. 44/1998. It is an offence under section 33 of the <i>Fair Trading Act 1999</i> to supply non compliant goods in respect of which there is a prescribed safety standard.</p> <p>Henry Chen undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
29/9/04	Toa Hong Yi Zheng	s44 FTA	<p>Toa Hong and Yi Zheng are the proprietors of the retail variety store Stud Park Dollar Days in Rowville.</p> <p>Stud Park Dollar Days was found offering for sale to the public a children's projectile toy called Protector Riot Gun Item No 008 that breached the requirements of the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S216 dated 14 November 2002. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Toa Hong and Yi Zheng individually undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
29/9/04	Susie Li Qin Su Barry Wei Ming Lai	s44 FTA	<p>Susie Li Qin Su and Barry Wei Ming Lai are the proprietors of the discount variety retail store Just \$2 &amp; Good to Buy in Bulleen.</p> <p>Just \$2 &amp; Good to Buy was found to be supplying a children's projectile toy called Toysat Hit No. 0310A. After testing, the toys were found to not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods, published in the Victorian Government Gazette S216 dated 14 November 2002 and Gazette No. G48 dated 28 November 2002 respectively. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Susie Li Qin Su and Barry Wei Ming Lai undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
29/9/04	Lelon Investments Pty Ltd Jagg Lelon	s44 FTA	<p>Jagg Lelon is the Director of Lelon Investments Pty Ltd (Lelon Investments) which owns and operates a discount variety retail store called Hometown in Forest Hill.</p> <p>Hometown was found offering for sale to the public a children's projectile toy called Protector Riot Gun Item No 008 that breached the requirements of the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S216 dated 14 November 2002. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Jagg Lelon individually and in his capacity as Director of and on behalf of Lelon Investments undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
4/11/04	Louise Rutledge	s44 FTA	<p>Louise Rutledge is the proprietor of the discount variety store Gifts &amp; Gimmicks in Bendigo.</p> <p>Gifts &amp; Gimmicks was found to be supplying a children's toy called Soft Bullet Saika Gun and a novelty called Coloured Growing Hermit Crab. After testing, both toys were found to not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods, published in the Victorian Government Gazette S216 dated 14 November 2002 and Gazette No. 14 dated 27 February 1985 respectively. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Louise Rutledge undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
4/11/04	PARBCO Pty Ltd Perry Arber	s44 FTA	<p>Perry Arber is the Director of PARBCO which owns and operates a chain of discount variety retail stores throughout Victoria under the name Spoils.</p> <p>Spoils in Wantirna was found to be supplying a candle product called Grey Pot Candle which contained a wick with greater than the permitted amount of lead, in breach of the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette G21 dated 21 May 2001. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Perry Arber individually and in his capacity as Director of and on behalf of PARBCO undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
4/11/04	DCKK Pty Ltd Jian Ming Lu Si Yuan Li	s44 FTA	<p>Jia Ming Lu and Si Yuan Li are Directors of DCKK Pty Ltd (DCKK) which operates the discount variety retail store \$2 More or Less in Forrest Hill.</p> <p>\$2 More or Less was found to be supplying a children's projectile toy called Protector Riot Gun Item No 008 that breached the requirements of the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S216 dated 14 November 2002. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Jia Ming Lu and Si Yuan Li individually and in their capacity as Directors of and on behalf of DCKK undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
18/11/04	Ace Toy Supplies Pty Ltd Allan Robert McAuliffe Joan Lynette McAuliffe	s44 FTA	<p>Allan Robert McAuliffe and Joan Lynette McAuliffe are Directors of Ace Toy Supplies Pty Ltd (Ace Toy Supplies). Its core business is the importation and distribution of children's toys in Victoria and elsewhere in Australia.</p> <p>Ace Toy Supplies was found to be supplying banned projectile toys called Super Jet Fighter, Police Force, Dart Game with Gun and Super Force Detective Action Set. These toys were all banned subject to a permanent ban order published in Victorian Government Gazette G48 relating to banned toy projectiles. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Allan Robert McAuliffe and Joan Lynette McAuliffe individually and in their capacity as Directors of and on behalf of Ace Toy Supplies undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
3/12/04	Club X Pty Ltd Diane June Jacques	s44 FTA	<p>Diane June Jacques is the Director of Club X Pty Ltd (Club X) which owns and operates a chain of adult goods retail stores throughout Victoria under the name Club X.</p> <p>Club X was found to be supplying expanding novelty products called Grow a Date and Growing Sexy which are prohibited under the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Government Gazette No. 14 dated 27 February 1985. They are deemed to be dangerous goods and as such their supply contravenes section 44 of the <i>Fair Trading Act 1999</i> as they are included in a permanent ban order.</p> <p>Diane June Jacques individually and in her capacity as Director of and on behalf of Club X undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
15/12/04	Mike & Jack Pty Ltd Jakub Kluska Michael Wolper	s44 FTA	<p>Jakub Kluska and Michael Wolper are Directors of Mike &amp; Jack Pty Ltd (Mike &amp; Jack). The company's core business is the importation and distribution of novelty confectionary in Victoria and in other states.</p> <p>Mike and Jack were found to be supplying a product called Dummy Light that resembles a baby's dummies. Objects that imitate or resemble babies' dummies are prohibited, amongst other dangerous goods that breach safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S191 dated 1 September 2004.</p> <p>Jakub Kluska and Michael Wolper individually and in their capacity as Directors of and on behalf of Mike &amp; Jack undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
15/12/04	Eastan Holdings Pty Ltd Tan Kek Chin Tan Chiew Phing	s44 FTA	<p>Tan Kek Chin and Tan Chiew Phing are directors of Eastan Holdings Pty Ltd (Eastan Holdings) which operates a business known as Eastern Toys &amp; Gifts, a toy and gift wholesaler in Clayton.</p> <p>Eastan Holdings was found to be supplying a number of children's toys which were the subject of the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S216 dated 14 November 2002. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Tan Kek Chin and Tan Chiew Phing individually and in their capacity as Directors of and on behalf of Eastan Holdings undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>
15/12/04	Shadowart Australia Pty Ltd Vladimir Pandur	s44 FTA	<p>Vladimir Pandur is the director of Shadowart Australia Pty Ltd (Shadowart) which was found to be supplying imitation babies' dummies labelled "I Need to be Loved".</p> <p>These dummies do not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S191 dated 1 September 2004. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Vladimir Pandur undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
19/1/05	EnergyAustralia	ss9, 12 FTA	<p>EnergyAustralia's core business is the retailing and distribution of electricity.</p> <p>After investigation into consumer complaints, Consumer Affairs Victoria believes that EnergyAustralia or its agents engaged in misleading and deceptive conduct, and the making of false representations in breach of sections 9 and 12 of the <i>Fair Trading Act 1999</i> in the course of its door-to-door marketing campaign in Victoria during 2004.</p> <p>EnergyAustralia has undertaken to ensure that this conduct does not reoccur and to offer redress to affected customers. They also undertook to conduct additional compliance programs and product training for relevant EnergyAustralia staff and all door-to-door representatives including training materials and other amendments.</p>
9/2/05	Park Avenue Foods Pty Ltd Andre Bernard Coutant David Samuel Fryman Gerard James Peter Van Ameyden	s44 FTA	<p>Andre Bernard Coutant, David Samuel Fryman and Gerard James Peter Van Ameyden are Directors of Park Avenue Foods Pty Ltd (Park Avenue Foods). The company's core business is the importation and distribution of confectionary products in Victoria and other states.</p> <p>Park Avenue Foods were found to be supplying a product called Big Stuff Pacifier Lollipop that resembles a baby's dummy and does not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S191 dated 1 September 2004. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Andre Bernard Coutant, David Samuel Fryman and Gerard James Peter Van Ameyden individually and in their capacity as Directors of and on behalf of Park Avenue Foods undertook to refrain from supplying or offering to supply products which do not comply with a permanent ban order prohibiting the supply of dangerous goods.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
9/2/05	Cardeaux Australia Pty Ltd Paul Ronald Johnstone Mark Strachan Johnstone Ronald Johnstone	s44 FTA	<p>Paul Ronald Johnstone, Mark Strachan Johnstone and Ronald Johnstone are Directors of Cardeaux Australia Pty Ltd (Cardeaux) which operates a chain of retail stores selling cards, toys, gifts and novelties.</p> <p>Cardeaux was found to be supplying a range of Coloured Growing novelties that do not meet the safety requirements specified in the Order Prohibiting the Supply of Dangerous Goods which was published in the Victorian Government Gazette No. 14 dated 27 February 1985. The order prohibits small toys or novelties which have two dimensions less than 45mm and expand considerably in volume when immersed in liquid. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Paul Ronald Johnstone, Mark Strachan Johnstone and Ronald Johnstone individually and in their capacity as Directors of and on behalf of Cardeaux undertook to refrain from supplying or offering to supply any products which are subject to the order prohibiting the supply of dangerous goods or those which do not comply with mandatory product safety standards and product ban orders.</p>
9/2/05	Supa Bargains Pty Ltd Ba Dien Lam Van Tai Lam	s44 FTA	<p>Ba Dien Lam and Van Tai Lam are Directors of Supa Bargains Pty Ltd (Supa Bargains) which operates the discount variety retail store Supa Bargains in Footscray.</p> <p>Supa Bargains was found to be supplying flashing dummies that resembles babies' dummies and do not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods published in the Victorian Government Gazette S191 dated 1 September 2004. It is an offence under section 44 of the <i>Fair Trading Act 1999</i> to supply goods or services in contravention of a permanent ban order.</p> <p>Ba Dien Lam and Van Tai Lam individually and in their capacity as Directors of and on behalf of Supa Bargains undertook to refrain from supplying or offering to supply imitation babies' dummies and/or objects that resemble babies' dummies, which are prohibited under a permanent ban order under the Act.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
9/2/05	LC&T Trading Pty Ltd Chi Hung Luong Jin Chao Chen	s33 FTA	<p>Chi Hung Luong and Jin Chao Chen are Directors of LC&amp;T Trading Pty Ltd (LC&amp;T) which operates the discount variety retail store Mostly \$2 Altona Gate.</p> <p>Mostly \$2 Altona Gate was found supplying Learn the Alphabet children's toys which do not meet the safety requirements specified in the Fair Trading (Safety Standard) (Children's Toys) Regulations 2004 SR No. 111/2004. The small pieces created a risk of choking for small children. It is an offence under section 33 of the <i>Fair Trading Act 1999</i> to supply non compliant goods in respect of which there is a prescribed safety standard.</p> <p>Chi Hung Luong and Jin Chao Chen individually and in their capacity as Directors of and on behalf of LC&amp;T undertook to refrain from supplying or offering to supply any children's toy that does not meet the prescribed safety standard under the Act.</p>
9/2/05	Ming Ming Gift Shop Pty Ltd Chi Lan Chau Vi Nga Tan	s33 FTA	<p>Chi Lan Chau and Vi Nga Tan are Directors of Ming Ming Gift Shop Pty Ltd (Ming Ming Gift Shop) which operates the discount variety retail store Ming Ming Gift Shop in Footscray.</p> <p>Ming Ming Gift Shop was found to be supplying both dangerous baby walkers and Learn the Alphabet children's toys. The baby walkers were in breach of the safety requirements specified in the Fair Trading (Prescribed Safety Standard for Baby Walkers) Regulations 2002 SR No. 95/2002. The Learn the Alphabet toys did not meet the safety requirements specified in the Fair Trading (Safety Standard)(Children's Toys) Regulations 2004 SR No. 111/2004. It is an offence under section 33 of the <i>Fair Trading Act 1999</i> to supply non compliant goods in respect of which there is a prescribed safety standard.</p> <p>Chi Lan Chau and Vi Nga Tan individually and in their capacity as Directors of and on behalf of Ming Ming Gift Shop undertook to refrain from supplying or offering to supply any children's toy that does not meet the prescribed safety standard under the Act.</p>



# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
1/4/05	Nike Australia Pty Ltd	ss9, 12, 161 FTA	<p>Nike Australia Pty Ltd (Nike) manufactures, distributes and retails sporting products and apparel.</p> <p>Nike held a sale of warehouse stock at the Melbourne Showgrounds from Thursday 17 March—Sunday 20 March 2005. Acting on a consumer complaint relating to the non-provision of refunds and receipts, Consumer Affairs Victoria conducted compliance checks on the sale to ensure that Nike was complying with its obligations under the <i>Fair Trading Act 1999</i>.</p> <p>Nike was found to have refused to provide receipts for purchases, and had advised staff to inform customers that no refunds or exchanges would be provided. The same statement was repeated on receipts and on internal promotional material. Consumer Affairs Victoria believes that such conduct may have breached the obligation under section 161 of the Act to provide documents upon request by the customer, and constituted misleading or deceptive representation under section 9 as to the customer's legal right to obtain a refund for faulty or defective goods as guaranteed by Part 2A of the Act.</p> <p>Nike undertook to provide refunds in accordance with the Act, and to publish an advertisement to alert any customers affected of their right to a refund and/or receipt. Nike also staffed an information line to answer any consumer enquiries arising from the advertisement during a prescribed period after publication.</p>
28/4/05	Toptrade Imports Pty Ltd Hung Dat Quach Trong Vu Nguyen	s33 FTA	<p>Hung Dat Quach and Trong Vu Nguyen are Directors of Toptrade Imports Pty Ltd (Toptrade Imports) which imports and distributes discount variety goods.</p> <p>Toptrade Imports was found to be supplying dangerous Wooden Train children's toys in breach of safety requirements specified in the Fair Trading (Safety Standard)(Children's Toys) Regulations 2004 SR No. 111/2004. It is an offence under section 33 of the <i>Fair Trading Act 1999</i> to supply non compliant goods in respect of which there is a prescribed safety standard.</p> <p>Hung Dat Quach and Trong Vu Nguyen individually and in their capacity as directors of and on behalf of Toptrade Imports undertook to refrain from supplying or offering to supply any children's toy that does not meet the prescribed safety standard under the Act.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
28/4/05	PHD Import & Export Pty Ltd Xuong Dang Vinh Dang	s33 FTA	<p>Xuong Dang and Vinh Dang are Directors of PHD Import &amp; Export Pty Ltd (PHD) which imports and distributes discount variety goods.</p> <p>PHD was found to be supplying dangerous baby walkers in breach of prescribed safety requirements specified in the Fair Trading (Prescribed Safety Standard for Baby Walkers) Regulations 2002 SR No. 95/2002. It is an offence under section 33 of the <i>Fair Trading Act 1999</i> to supply non compliant goods in respect of which there is a prescribed safety standard.</p> <p>Xuong Dang and Vinh Dang individually and in their capacity as Directors of and on behalf of PHD undertook to refrain from supplying or offering to supply any children's toy that does not meet the prescribed safety standard under the Act.</p>
28/5/05	Freydin Corp Pty Ltd	ss 9, 12, 16 FTA	<p>Freydin Corp Pty Ltd (Freydin Corp) operates a tanning salon trading under the name Body Bronze Glen Waverley as a franchisee of Body Bronze International Pty Ltd.</p> <p>Freydin Corp conducts regular sales promotions with special prices to promote its tanning services. In the course of conducting such a promotion in February and March 2005, Freydin Corp represented that a free tanning session would be given to the holder of an offer card upon presenting that card at the Glen Waverley salon before 1 April 2005. Consumer Affairs Victoria received a complaint from a consumer about the offer, stating that when she presented the card the salon staff refused to provide the free tanning session.</p> <p>Consumer Affairs Victoria believes that the conduct constituted misleading and deceptive conduct, and the making of false or misleading representations as well as offering of a gift or free item without intending to provide the same.</p> <p>Freydin Corp undertook to take all reasonable steps to ensure that the conduct described is not repeated and to honour the conditions of the original offer.</p>

# Appendix 3

## Enforceable undertakings accepted 2004-05 (continued)

Date	Party	Section/Act	Breach summary and nature of undertaking
3/6/05	Inghams Enterprises Pty Ltd	s32(1)(a) TMA	<p>Inghams Enterprises Pty Ltd (Inghams) activities include the manufacture and distribution of a variety of food products which are predominantly poultry products. In December 2003, and November and December 2004 Consumer Affairs Victoria inspectors carried out inspections of pre-packaged items at supermarkets. A number of Inghams' products were found to be underweight. It is an offence under section 32 of the <i>Trade Measurement Act 1995</i> for the actual amount of a pre-packaged article to be less than the measurement marked on the package.</p> <p>Inghams undertook to ensure that the conduct identified does not reoccur and to audit its existing compliance program to ensure that it is consistent with the Australian Standard AS 3806 - 1998 and complies with the Act on an ongoing basis.</p>

# Appendix 4

Civil litigation conducted 2004-05

Court/Tribunal	Act	No. of Matters
<b>Supreme Court</b>		
Appeal from decision of Victorian Civil & Administrative Tribunal	Consumer Credit Code	1
<b>County Court</b>		
Appeals (defendants)	<i>Domestic Building Contracts Act 1995</i>	2
<b>Magistrates' Court</b>		
Injunctions	<i>Motor Car Traders Act 1986</i>	8
	<i>Fair Trading Act 1999</i>	7
<b>Victorian Civil &amp; Administrative Tribunal</b>		
Credit applications	<i>Consumer Credit (Victoria) Act 1995</i>	1
	Consumer Credit Code	3
Disciplinary inquiry	<i>Estate Agents Act 1980</i>	12
Review of decision of Business Licensing Authority	<i>Prostitution Control Act 1994</i>	3
	<i>Estate Agents Act 1980</i>	6
	<i>Motor Car Traders Act 1986</i>	1
Review of decision of Director of Liquor Licensing	<i>Liquor Control Reform Act 1998</i>	18
Review of decision of Motor Car Traders' Guarantee Fund Claims Committee	<i>Motor Car Traders Act 1986</i>	6
Review of Decision of the Victorian Property Fund	<i>Estate Agents Act 1980</i>	2
Review of Freedom of information Decision	<i>Freedom of Information Act 1982</i>	1
Review of decision of Director & Consumer Affairs Victoria	<i>Fundraising Appeals Act 1998</i>	1

# Appendix 5

## Prosecutions completed 2004-05

Date of hearing	Defendant	Court	Act	Section /Regs	No. of offences	Fines \$	Costs \$	Other orders
1/7/04	Eco Floors Pty Ltd	MC	FTA	s19(1)(a)	1	\$5,000		With conviction
Prosecution of a company and its Director for failure to supply goods and services as contracted.								
1/7/04	Buehler, Eric Bernard of Lower Templestowe	MC	FTA	s19(1)(a)	1	\$8,000	\$1,330	With conviction
Director of Eco Floors Pty Ltd.								
22/11/04	Racovalis, Nicholas of Lalor	MC	DBCA	s29(a)	1	\$5,000	\$275	With conviction
			DBCA	s11(1)(b)	1			
			DBCA	s31(1)	1			
			FTA	s19(1)(a)	1			
Builder prosecuted for being unregistered, receiving excessive deposits and failure to supply as contracted.								
8/7/04	Cummins, Graham of Wahgunya	MC	DBCA	s29(a)	1	\$10,000	\$329.79	With conviction
			DBCA	s31(1)	1			
			FTA	s19(1)(a)	1			
Builder prosecuted for being unregistered, using non-compliant contracts and failure to supply as contracted.								
8/7/04	Sanzaro, Sebastiano of Narre Warren	MC	DBCA	s29(a)	1	\$5,000	\$1,254.35	With conviction
			DBCA	s11(1)(b)	1			
			DBCA	s31(1)	1			
			FTA	s11	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts and misleading conduct.								
19/7/04	V & D Consulting Pty Ltd	MC	FTA	s44	1	\$800	\$99.50	Without conviction
Retail business supplying banned toy guns subject to a permanent ban order.								
19/7/04	Tharmaratnam, Daniel of Burwood	MC	FTA	s44	1	\$800	\$111.60	Without conviction
Director of V & D Consulting Pty Ltd.								
19/7/04	Gu, Huan of Glen Waverley	MC	FTA	s44	1	\$1,000	\$164.02	With conviction
Retail business supplying banned toy guns subject to a permanent ban order.								
19/7/04	Bosnjack, Ray trading as Bojack Constructions of Bacchus Marsh	MC	DBCA	s29(a)	1	\$6,000	\$1,271.50	With conviction
			DBCA	s12(2)(b)	1			
			DBCA	s31(1)	1			
			BA	s136(2)	1			
			FTA	s11	1			
			FTA	s19(1)(a)	1			
Builder prosecuted for being unregistered, lacking warranty insurance, using non-compliant contracts, irregularities in original quote, misleading conduct and failure to supply as contracted.								
2/8/04	Ford, Graeme trading as G & F Concreting of Coolaroo	MC	DBCA	s29(a)	1	\$10,000	\$971.20	With conviction
			DBCA	s11(1)(b)	1			
			DBCA	s31(1)	3			
			FTA	s19(1)(a)	1			
			BNA	s5	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts, failure to supply as contracted and using an unregistered business name.								

# Appendix 5

## Prosecutions completed 2004-05 (continued)

Date of hearing	Defendant	Court	Act	Section /Regs	No. of offences	Fines \$	Costs \$	Other orders
10/8/04	Tate, Nicholas of Paynesville	MC	DBCA	s29(a)	1	\$2,000	\$71.50	With conviction
			DBCA	s11(1)(b)	1			
			DBCA	s31(1)	1			
			FTA	s11	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts and misleading conduct.								
16/8/04	Yuan, Ling of Ferntree Gully	MC	FTA	s44	1		\$500	Without conviction Court fund \$400
Retail business supplying banned toy guns subject to a permanent ban order.								
19/8/04	Pastor, Peter of Glen Waverley	MC	DBCA	s29(a)	1	\$1,000	\$1,264	Without conviction
			DBCA	s31(1)	1			
			BA	s136(2)	1			
Builder prosecuted for being unregistered, non-compliant contracts and lacking appropriate warranty insurance.								
25/8/04	Fogas, Lazlo Sebastian of Diamond Creek	MC	DBCA	s29(a)	1	\$2,700	\$62	With conviction Compensation to consumers \$3,000
			DBCA	s11(1)(b)	1			
			DBCA	s31(1)	1			
			FTA	s23(f)	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts and failure to state full address in advertisements.								
31/8/04	Jemblea Pty Ltd	MC	DBCA	s29(c)	2	\$5,000		With conviction
			DBCA	s11(1)(b)	2			
			FTA	s11	2			
			FTA	s19(1)(a)	2			
Prosecution of a company and its Director for unregistered building, receiving excessive deposits, misleading conduct and failure to supply goods and services as contracted.								
7/2/05	Breen, Francis of Ferntree Gully (first instance)	MC	DBCA	s29(a)	2	\$5,000	\$1,317	With conviction Compensation to consumers \$6,690
			DBCA	s11(1)(b)	2			
			FTA	s11	2			
			FTA	s19(1)(a)	2			
Builder prosecuted for being unregistered, receiving excessive deposits, misleading conduct and failure to supply as contracted.								
1/9/04	Post, Adam of Berwick	MC	SLA	s38(2)	7		\$1,091.32	Without conviction 12 month GBB Court fund \$750
Prosecution for dummy bidding.								
20/9/04	Mosele, Adrian of Fairfield	MC	DBCA	s29(a)	1	\$5,000	\$55.55	With conviction
			DBCA	s13(1)	1			
			DBCA	s31(1)	1			
			FTA	s19(1)(a)	1			
			BNA	s5	1			
Builder prosecuted for being unregistered, using non-compliant contracts, entering into a costs agreement, failure to supply goods and services as contracted, and using an unregistered business name.								

# Appendix 5

## Prosecutions completed 2004-05 (continued)

Date of hearing	Defendant	Court	Act	Section /Regs	No. of offences	Fines \$	Costs \$	Other orders
24/9/04	Bert Otten & Co Pty Ltd of Burwood	MC	DBCA	s29(c)	1	\$1,750	\$850	Without conviction
Builder prosecuted for being unregistered.								
24/9/04	Otten, Egbert of Bayswater	MC	DBCA	s29(a)	1	\$1,000		Without conviction
Director of Bert Otten & Co Pty Ltd.								
29/9/04	Sita Bus Lines Pty Ltd	MC	MCTA	s38(4)	1	\$10,000		With conviction
Prosecution for odometer tampering.								
29/9/04	Sita, Giuseppe of Deer Park	MC	MCTA	s38(4)	1			Without conviction 12 mth GBB Court fund \$3,000 Compensation \$1,600
Director of Sita Bus Lines Pty Ltd.								
24/9 - 30/9/2004	Capri, Joseph of Fawkner	MC	DBCA	s29(a)	5	\$49,000	\$1,792	With conviction Compensation to consumers \$15,535
			DBCA	s11(1)(b)	4			
			DBCA	s31(1)	5			
			FTA	s11	5			
			FTA	s19(1)(a)	5			
			BNA	s5	3			
			BNA	s5(A)(2)	3			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts and misleading conduct.								
22/9 - 1/10/2004	ABR Group Pty Ltd	MC	DBCA	s29(c)	1	\$27,000	\$555	With conviction
			DBCA	s31(1)	1			
			DBCA	s11(1)(b)	1			
			FTA	s11	1			
			FTA	s19(1)(a)	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts, misleading conduct and failure to supply goods or services as contracted.								
22/9 - 1/10/2004	Duric, Slavko of Noble Park	MC	DBCA	s29(c)	1	\$27,000	\$600	With conviction
			DBCA	s31(1)	1			
			DBCA	s11(1)(b)	1			
			FTA	s11	1			
			FTA	s19(1)(b)	1			
Director of ABR Group Pty Ltd.								
22/9 - 1/10/2004	Wong, Richard of Clayton	MC	DBCA	s29(c)	1	\$27,000	\$600	With conviction
			DBCA	s31(1)	1			
			DBCA	s11(1)(b)	1			
			FTA	s11	1			
			FTA	s19(1)(a)	1			
Director of ABR Group Pty Ltd.								
6/10/04	Griffiths, Fiona trading as R & F Griffiths Cabinet Makers of Rye	MC	DBCA	s29(a)	1	\$2,000	\$665	Without conviction
Builder prosecuted for being unregistered.								

# Appendix 5

## Prosecutions completed 2004-05 (continued)

Date of hearing	Defendant	Court	Act	Section /Regs	No. of offences	Fines \$	Costs \$	Other orders
6/10/04	Griffiths, Robert trading as R & F Griffiths Cabinet Makers of Rye	MC	DBCA	s29(a)	1	\$2,000	\$665	Without conviction
Builder prosecuted for being unregistered.								
13/10/04	Visic, Jovo of Dandenong	MC	DBCA	s29(a)	1	\$1,500	\$750	Without conviction
			DBCA	s31(1)	1			Compensation
			DBCA	s11(1)(b)	1			\$2,227.78
			BA	s136(2)	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts and lacking appropriate warranty insurance.								
13/10/04	Hexagon Group Pty Ltd	CC	DBCA	s29(c)	1	\$3,000	\$951	Without conviction
			DBCA	s11(1)(a)	1			
			DBCA	s31(1)	1			
			BA	s136(2)	1			
			FTA	s11	2			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-compliant contracts, lacking appropriate warranty insurance and misleading conduct.								
13/10/04	McCash, Leonard of Armadale	CC	DBCA	s29(1)(c)	1	\$1,500	\$2,994.44	Without conviction
			DBCA	s11(1)(a)	1			
			DBCA	s31(1)	1			
			BA	s136(2)	1			
			FTA	s11	2			
Director of Hexagon Group Pty Ltd.								
22/11/04	Racovalis, Nicholas of Lalor	MC	DBCA	s29(a)	1	\$5,000	\$275	With conviction
			DBCA	s11(1)(b)	1			
			DBCA	s31(1)	1			
			FTA	s11	1			
			FTA	s19(1)(a)	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-complaint contracts, misleading conduct and failure to supply goods or services as contracted.								
30/11/04	Cash for Cars Pty Ltd	MC	MCTA	s38(1)	7	\$30,000	-	With conviction
Unlicensed motor car trader prosecuted for odometer tampering.								
30/11/04	Green, Anthony Paul of Epsom	MC	MCTA	s38(1)	7	\$3,500	\$1,890	Without conviction 12-month GBB
Sole Director of Cash for Cars Pty Ltd.								
14/12/04	McKenzie, Elizabeth of Wodonga	MC	RTA	s406	1	\$500	\$350	With conviction
			RTA	s480	1			
Prosecution for failing to lodge a bond with the Residential Tenancies Bond Authority and failing to comply with a determination of the Tribunal.								
7/2/05	Breen, Francis - Appeal *	CC	DBCA	s29(a)	2	\$5,000	\$1,317	With conviction
			DBCA	s11(1)(b)	2			Compensation to consumers \$6,690
			FTA	s11	2			
			FTA	s19(1)(a)	2			
Decision confirmed on appeal against an unregistered builder, receiving excessive deposits, misleading conduct and failure to supply goods or services as contracted.								



# Appendix 5

## Prosecutions completed 2004-05 (continued)

Date of hearing	Defendant	Court	Act	Section /Regs	No. of offences	Fines \$	Costs \$	Other orders
22/2/05	IP & MP Jensen Pty Ltd (Ice Pipes)	MC	FTA	s44	9	\$500	\$670	With conviction
Retail business supplying banned goods subject to a permanent ban order.								
22/2/05	McConnell, Scott of Brighton	MC	FTA	s44	9	\$500	\$670	Without conviction
Director of IP & MR Jensen Pty Ltd.								
23/2/05	Caruana, Andrew trading as Ad Outdoor Constructions	MC	DBCA	s29(a)	3	\$36,000	\$1,436	With conviction
			DBCA	s11(1)(b)	3			
			DBCA	s31(1)	3			
			FTA	s19(1)(a)	3			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-complaint contracts and failure to supply goods or services as contracted.								
24/2/05	Paramount Steel Building Solutions Pty Ltd	MC	DBCA	s29(a)	2	\$15,000		With conviction
			DBCA	s11(1)	1			
			DBCA	s31(1)	8			
			FTA	s19(1)(a)	1			
Builder prosecuted for being unregistered, receiving excessive deposits, using non-complaint contracts and failure to supply goods or services as contracted.								
2/3/05	Sunlight Trading Pty Ltd	MC	FTA	s44	4	\$1,500	\$500	Without conviction
Wholesaler providing for sale toy dart guns in breach of permanent ban order.								
2/3/05	Yang, Hai of Springvale	MC	FTA	s44	4	\$1,500	\$500	Without conviction
Director of Sunlight Trading Pty Ltd.								
24/3/05	Edwards, Trevor Howard of Bulleen	MC	FTA	s12(n)	2	\$1,000	\$500	With conviction
			FTA	s19(a)	1			
			FTA	s29(1)	1			
			IAA	s24(1)	2			
			BNA	s12(2)	1			
Introduction agent prosecuted for making false representations, failure to supply goods or services as ordered, failure to notify change of business address within one month and failure to supply information to clients as required under the Introduction Agents Act.								
5/5/05	Bull, Mark Robert trading as Rye & Sorrento Funeral Services	MC	FPPMA	s6(1)	5	\$10,000	\$1,625	With conviction
			FPPMA	s7(1)	5			
Prosecution for failure to invest moneys as required by legislation.								
3/6/05	Inghams Enterprises Pty Ltd	MC	TMA	s32(1)(a)	8	\$68,000	\$5,000	Without conviction
Prosecution for underweight pre-packaged items offered for sale.								
27/6/05	Duncan, Ian of Hazlewood North	MC	MCTA	s38(4)	1			Without conviction 12 months GBB Court fund \$1,000
Prosecution for odometer tampering.								
27/6/05	Stewart, Gregory James of Traralgon	MC	MCTA	s38(4)	2	\$2,000		With conviction
Prosecution for odometer tampering.								

# Appendix 6

## Consumer Affairs Victoria Community Program funding 2004-05

The Consumer Affairs Community Program provided for community based agencies to provide consumer protection services to consumers, tenants, and landlords across metropolitan and rural Victoria. This program terminated on 30 June 2005, being replaced by a new service delivery model [see page 50].

Funding for services provided in 2004-05 under the Consumer Affairs Community Program was as follows:

Regional Services	Value*
Anglicare Gippsland, 53-55 Buckley Street, MORWELL 3840	\$162,920
Child and Family Services Ballarat Inc. 115 Lydiard Street North, BALLARAT 3350 also at: 12 Grant Street, BACCHUS MARSH 3340 and at: 4 Banfield Street, ARARAT 3377	\$153,747
Community Connections (Victoria) Ltd. 135 Kepler Street, WARRNAMBOOL 3280 also at: 33 Otway Street, PORTLAND 3305 and at: Currawong Family Services, 92 Thompson Street, HAMILTON 3300	\$194,586
Community West Inc. 822 Ballarat Road, DEER PARK 3023	\$250,752
Jindara Community Program Inc. 202 Myer Street, GEELONG 3220	\$227,156
Kilmany UnitingCare, 126 Raymond Street, SALE 3850 also at: 49 McCulloch Street, BAIRNSDALE 3875	\$156,744
Mallee Tenancy Advice Service Inc. 1/152 Pine Avenue, MILDURA 3500 also at: 300 Campbell Street, SWAN HILL 3585	\$250,371
Peninsula Community Legal Centre Inc. Chatsworth House, Suite 2-4, 431 Nepean Highway, FRANKSTON 3199	\$261,013
Springvale Community Aid and Advice Bureau Inc. 5 Osborne Avenue, SPRINGVALE 3171	\$190,381
St Lukes Anglicare, 175-187 Hargreaves Street, BENDIGO 3550	\$186,144
Tenants Union of Victoria Ltd. (Consumer & Tenant Advice Service Northern), Level 1, 293 High Street, PRESTON 3072 also at: 175 Glenroy Road, GLENROY 3046 and at: Community Information Whittlesea, Shop 111, Epping Plaza, cnr High and Cooper Streets, EPPING 3076	\$292,420
Wimmera UnitingCare, 185 Baillie Street, HORSHAM 3400	\$126,239

### Specialist Consumer Services

Specialist Consumer Services	Value*
Consumer Credit Legal Service Inc. 1st Floor, Bank House, 11-19 Bank Place, MELBOURNE 3000	\$155,618

# Appendix 6

## Consumer Affairs Victoria Community Program funding 2004-05 (continued)

Specialist Tenancy Services	Value*
Housing for the Aged Action Group Inc. Level 2, Ross House, 247-251 Flinders Lane MELBOURNE 3000	\$83,150
Tenants Union of Victoria Ltd. (Inner Urban Tenancy Services), 55 Johnston Street, FITZROY 3065 also at: Rear 161 Chapel Street, ST KILDA 3182	\$263,044
Tenants Union of Victoria Ltd. (State wide Tenancy Services), 55 Johnston Street FITZROY 3065	\$107,992
Tenants Union of Victoria Ltd. (Rooming House Service), 55 Johnston Street FITZROY 3065	\$151,207

Pilot Provision of Advocacy Services	Value*
Consortium comprising: Peninsula Community Legal Centre Inc. Chatsworth House, Suite 2-4, 431 Nepean Highway, FRANKSTON 3199 and: Eastern Community Legal Centre Inc. First Floor 20c Blackburn Road, BLACKBURN 3130 and: Tenants Union of Victoria Ltd. 55 Johnston Street FITZROY 3065	\$53,167
Delatite Community Health Service, 13-15 Mair Street, BENALLA 3672	\$13,226
Mitchell Community Health Services Inc. 72 Ferguson Street, BROADFORD 3658	\$10,000
Upper Murray Family Care Inc. Keill Street, CORRYONG 3707	\$17,977

\*Value is reported exclusive of GST as representing the net cost to the Fund.

Payment of the above amounts will extend over more than one year. Expenditure shown in Appendix 12 is a reflects payments made in the 2003-04 and 2004-05 financial years.

# Appendix 7

## Media releases issued 2004-05

Date	Title
5 July 2004	Poisonous candles on sale in Melbourne
12 July 2004	Adult products distributor forced to deliver goods
16 July 2004	Consumer Affairs wins case against Australian Finance Direct
16 July 2004	Motor car trading legislation reviewed
16 July 2004	Tarbs World TV Australia stops its programs
16 July 2004	Winter roof repair warning
22 July 2004	New consumer support service for Broadford
22 July 2004	New Indigenous consumer information launched
23 July 2004	Raising discussion on fundraising
25 July 2004	Bracks Government reviews building laws
28 July 2004	The right <i>Stuff</i> for young consumers
29 July 2004	Glen Eira students become savvy consumers
4 August 2004	Minister joins North-East mobile consumer unit
4 August 2004	Stock and station agent development funding
5 August 2004	Consumer help for Cobram's Arabic speakers
5 August 2004	Numurkah students become consumer savvy
6 August 2004	Raising discussion on fundraising
8 August 2004	Bracks Government puts mobile phone companies on notice to comply with Victorian fair trading law
11 August 2004	Belgrave library joins consumer information network
11 August 2004	Consumer Affairs inspectors give all clear to get on with the Show
11 August 2004	Consumer information lesson for Monbulk students
13 August 2004	Wangaratta liquor forum addresses local issues
13 August 2004	Wodonga library joins consumer information network
19 August 2004	Consumer Affairs agencies promote national harmonisation of real estate regulation
20 August 2004	Illegal practices uncovered in motor car traders blitz
1 September 2004	Consumer Affairs Victoria institutes Supreme Court proceedings in product safety matter
1 September 2004	First dummy bidder caught by new laws
2 September 2004	Flashing dummy presents a choking hazard
3 September 2004	Top five Victorian scams

# Appendix 7

Media releases issued 2004-05  
(continued)

Date	Title
9 September 2004	Business benefits from online service
10 September 2004	Suspect franchise offers hit Victoria
14 September 2004	Bracks Government revitalises consumer protection
14 September 2004	Consumer Affairs inspectors sweep Shepparton businesses
15 September 2004	Thousands of illegal chain letters seized
17 September 2004	Banned toy guns seized in Shepparton sweep
27 September 2004	New consumer and tenancy service for Yea
29 September 2004	Parents beware: dummy lollies a choking hazard
1 October 2004	Blitz on dodgy builders gets results
6 October 2004	\$95,000 fine for Mt Waverley building company, Directors
8 October 2004	Dangerous toys at Shepparton Show seized
8 October 2004	Minister spreads the consumer message at Brandon Park
8 October 2004	More credit advice services
15 October 2004	Dangerous toys at Geelong Show seized
15 October 2004	Warning for hasting students on mobile phone debt
16 October 2004	Baby bath drowning warning to be mandatory
18 October 2004	Telcos warned again over unfair contract terms
5 November 2004	\$300,000 of bond money now available to claim
5 November 2004	Vermont secondary students show shopping smarts
9 November 2004	Mortgage wrapper facing potential penalties of \$3 million
10 November 2004	Victoria to review regulation of conveyancing
10 November 2004	Bracks Government crackdown on illegal underage drinking
17 November 2004	Howard: the root of all diesel
23 November 2004	Christmas credit warning for shoppers
26 November 2004	New Consumer Affairs Victoria office for Mildura announced
28 November 2004	700 dangerous toys seized in Christmas toy blitz
28 November 2004	Warning for Gippsland students on mobile phone debt
1 December 2004	Dodgy Bendigo car dealer fined \$30,000
3 December 2004	Nigeria and 419 and Sparta USA - top Victorian scams revealed
5 December 2004	New laws to protect retirement village residents
9 December 2004	Baby products safety warning for Christmas shoppers

# Appendix 7

Media releases issued 2004-05  
(continued)

Date	Title
9 December 2004	Baby baths removed from sale in Gippsland product safety sweep
9 December 2004	Record \$1.86M compensation win for Victorian consumers
10 December 2004	Dodging monkey bikes – a motorist hazard no longer
13 December 2004	Campaign to warn retailers on refunds
14 December 2004	AAPT taken to court on mobile phone contracts
17 December 2004	Supreme Court upholds landmark decision against Henry Kaye Financiers
17 December 2004	Consumer success against deadly toy importers
22 December 2004	Don't get scrooged on Christmas lunch
26 December 2004	Retail refund reminder for Boxing Day sales
31 December 2004	Beware of bogus Tsunami fundraisers
14 January 2005	Fundraisers must know their legal responsibilities
20 January 2005	Proposals to better protect Victorians buying cars
21 January 2005	Advice for Monash and Kingston home buyers on property pitfalls
21 January 2005	Rental guide for the Glen Eira Russian community
4 February 2005	Distributors of 'David Rhodes' chain letters banned
4 February 2005	Dodgy phone cards dial up trouble for consumers
4 February 2005	Landlords urged to quickly repair storm damaged homes
11 February 2005	Indigenous consumers help to set National agenda
11 February 2005	Small Geelong businesses warned to be wary of scam advertisers
14 February 2005	Don't let your heart be broken this Valentine's Day
16 February 2005	Advice for Western District home buyers on property pitfalls
18 February 2005	Don't get burned by the love meter
22 February 2005	Victoria cracks down on global internet scams
23 February 2005	Company convicted after ice pipe raid
23 February 2005	Dodgy Taylors Lakes builder fined \$36,000
23 February 2005	Residents association to empower Victoria's retirees
3 March 2005	A young person could win \$200 by renaming <i>Money Stuff</i>
3 March 2005	Motor events prompt reminder on car buying traps
4 March 2005	Strategy ensures safer environment for young people
8 March 2005	Wealth seminar under investigation
12 March 2005	Vapourised alcohol to be banned in Victoria
13 March 2005	Energy Australia agrees to better protect consumers

# Appendix 7

Media releases issued 2004-05  
(continued)

Date	Title
17 March 2005	Carpet cleaning conman ordered to pay up
18 March 2005	Court injunction safeguards consumers
4 April 2005	Grants to assist disadvantaged with credit issues
5 April 2005	Camperdown praised for responsible liquor decision
5 April 2005	New retirement village laws give Seniors more choice
7 April 2005	Businesses warned on office products scams
8 April 2005	Toxic candles creep back onto store shelves
11 May 2005	Minister encourages Lilydale Heights Secondary College students to know their rights
12 April 2005	Thomson issues national alert on get-rich-quick scheme
13 April 2005	Warehouse sales don't mean loss of refund rights
20 April 2005	Minister names Furniture Galore in Parliament
20 April 2005	Minister releases interim report on Incorporated Associations Review
21 April 2005	Crackdown on fine print prices in advertising
22 April 2005	Victoria drives hire car contract reform
27 April 2005	Minister encourages Licensees to get tough on underage drinking
28 April 2005	First female head of Liquor Licensing in Victoria appointed
1 May 2005	Victoria checks for petrol cheats
4 May 2005	'Wind back' car dealer banned from trading
5 May 2005	Booze on wheels crackdown protects teens
5 May 2005	National action needed on dodgy phone cards
5 May 2005	Victoria's top email junk revealed
6 May 2005	Mornington Peninsula Funeral Director convicted and fined again
7 May 2005	Big banks help distribute Real Estate Consumer Guide
9 May 2005	Minister encourages Wellington Secondary College students to know their rights
9 May 2005	Feds must act on unfair bank fees
10 May 2005	Credit 'predators' in Government's sights
13 May 2005	Victoria leads the way in consumer protection
16 May 2005	Illegal toy gun haul destroyed
16 May 2005	Warning on clairvoyants con
23 May 2005	Dangerous monkey bikes banned

# Appendix 7

Media releases issued 2004-05  
(continued)

Date	Title
27 May 2005	Record haul of ice pipes seized in consumer raid
30 May 2005	Funds for consumer credit projects available
30 May 2005	Have a say on Incorporated Associations
31 May 2005	Reforms aid retirement village residents
31 May 2005	Young cats cook up a storm at school
1 June 2005	Warning on envelope stuffing rip-offs
6 June 2005	Poultry packer Inghams prosecuted
8 June 2005	Get-rich-quick letters get the chop
14 June 2005	Co-owners exempt from dummy bidding laws
15 June 2005	Have a say on Victoria's credit laws
17 June 2005	Counting the cost of mobile phone accessories



# Appendix 8

## Claims against Motor Car Traders' Guarantee Fund admitted 2004-05

Trader	No. of claims	Total amount paid
Alan Thompson Motors Pty Ltd	17	\$ 13,919.31
Bougias, Ilias	2	\$ 1,840.80
Cars on Dorset Pty Ltd	2	\$ 1,371.00
Carter, Reginald Patrick	56	\$ 17,638.90
Diskway Pty Ltd	7	\$ 3,628.08
DJ Car Sales Pty Ltd	27	\$ 42,963.16
Fridged Transport Pty Ltd	1	\$ 1,051.50
Hatefka Pty Ltd	20	\$ 21,480.80
Javos Pty Ltd	1	\$ 29,487.21
Kingstrate Pty Ltd	5	\$ 13,754.30
Pro Cycle Pty Ltd	3	\$ 9,266.00
R.A. McDermott & Co (Sales) Pty Ltd	3	\$ 54,633.00
Rostom, Walid	1	\$ 8,000.00
Schaefer, Robert	42	\$212,400.01
Splendour Enterprises Pty Ltd	18	\$ 30,899.28
Stojek Investments Pty Ltd	10	\$ 4,715.90
Supa Dupa Car Sales Pty Ltd	16	\$ 21,228.64
Sutherland, Bernard Francis	1	\$ 259.50
Unlicensed traders	2	\$ 14,458.00
York, Nihal	1	\$ 40,000.00
<b>Total</b>	<b>235</b>	<b>\$542,995.39</b>

# Appendix 9

## Consumer Credit Fund grants approved 2004-05

The *Credit (Administration) Act 1984* allows the Minister for Consumer Affairs to make grants from the Consumer Credit Fund for the purposes specified in section 86AB of the Act.

The grants approved by the Minister in 2004-05 are attached below.

Grant recipient	Value approved*	Description of funded program
Brotherhood of St Laurence	\$20,000	Research and evaluation into Advance Personal Loan, a unique pilot program providing credit to low income earners.
Centre for Philippine Concerns Australia (CPCA)	\$5,500	Utang ay Dapat Bayaran (Credit Management)
Christian City Care Inc.	\$23,500	Dealing with Personal Credit and Budgeting: developing an education program to assist clients to improve their situation
Collingwood Community Information Centre (Jesuit Social Services)	\$12,012	Collingwood Consumer Credit Education Scheme
Consumer Affairs Victoria	\$136,900	The Effectiveness of Mandatory Comparison Rates: Information, capacity and choice
Consumer Affairs Victoria	\$45,000	Consumer Credit Conference
Consumer Credit Legal Centre (NSW) Inc.	\$24,800	Credit Reporting Research Project
Consumer Credit Legal Service Inc.	\$39,167	Debtor experience of Part IX Debt Agreements under the Bankruptcy Act
Consumer Law Centre Victoria	\$37,300	Vendor terms mortgages – rhetoric and reality
Financial Counselling (Vic) Ltd.	\$4,926	Is refinancing right for you
Kangan Batman TAFE	\$15,000	CHCFIN1A Teacher's Resources
La Trobe University	\$89,164	Dispute resolution at Consumer Affairs Victoria and the Victorian Civil & Administrative Tribunal – accessibility and outcomes for credit consumers
Migrant Information Centre (Eastern Melbourne)	\$17,400	Credit information for recently arrived refugees from Southern Sudan

# Appendix 9

## Consumer Credit Fund grants approved 2004-05 (continued)

Grant recipient	Value approved*	Description of funded program
Monash University	\$17,384	An exploration of the causes and nature of financial constraint in Gippsland
Port Phillip Community Group Ltd.	\$3,284	Using alternative dispute resolution
Prodela - Latin American Association of Community Development and Welfare Services Inc.	\$19,150	Creating Awareness on Credit
Russian Ethnic Representative Council of Victoria Inc.	\$21,200	Consumer Credit Information and Education for the Russian/Slavic Community
Thornbury Women's Neighbourhood House Incorporated	\$600	Understanding how to use credit successfully
Upper Murray Health & Community Services	\$20,000	Upper Murray Consumer Credit Information Service
Working Women's Health	\$58,000	The Healthy Credit Project: multilingual credit research and education for CLD working women
<b>Total</b>	<b>\$610,287</b>	

\*Value is reported exclusive of GST as representing the net cost to the Fund.

Payments for these grants will extend over more than one year. Expenditure shown in Appendix 12 includes part payments on these grants plus payments on grants approved in previous years.

# Appendix 10

## Victorian Property Fund – grants from & claims allowed 2004-05

The *Estate Agents Act 1980* allows the Minister for Consumer Affairs to make grants from the Victorian Property Fund for the purposes specified in section 76(3) of the Act.

### Grants approved 2004-05

Grant recipient	Value approved*	Description of funded program
Australian Livestock and Property Agents Association (formerly the Stock and Station Agents Association)	\$118,039	Professional Development Program 2004-05
Credit Helpline Ltd Melbourne	\$19,345	Home Loan and Business Advice Program 2004
Department of Human Services	\$390,909	Group Self Build Program 2004-05
Department of Human Services	\$250,000	Home Renovation Services Program 2004-05
Real Estate Institute of Victoria	\$489,868	Professional Development Program 2004-05
Real Estate Institute of Victoria	\$71,013	Conduct of Public Information Forums on Bodies Corporate
<b>Total</b>	<b>\$1,339,174</b>	

\*Value is reported exclusive of GST as representing the net cost to the Fund.

Payments for these grants will extend over more than one year. Expenditure shown in Appendix 12 includes part payments on these grants plus payments on grants approved in previous years.

### Claims allowed 2004-05

Agent	Claims allowed	Interest allowed on claims	Claimants' costs incurred in proving claim
Holland & Price Pty Ltd	\$75,000.00	0	\$6,193.00
Karen Green	\$92,193.00	\$591.19	0
Sandra Bryant	\$200.00	0	0
Graeme Drew	\$55,345.00	\$413.89	0
Peter Wyss	\$9,000.00	\$969.66	\$375.00
Khin Cham & Champion Group Pty Ltd	\$50,000.00	\$671.23	0
Dale Rosengren & Dorchester Real Estate Pty Ltd	\$180,864.75	\$903.46	0
Lifestyle Property Investments Pty Ltd	\$364,400.00	0	0
<b>Total</b>	<b>\$827,002.75</b>	<b>\$3,549.43</b>	<b>\$6,568.00</b>

# Appendix 11

## Trust funds managed by Consumer Affairs Victoria 2004-05

Consumer Affairs Victoria manages eight distinct funds established by Acts of Parliament. Two of these funds relate to the Residential Tenancies Bond Authority.

The authority for and purposes of these eight funds is as follows.

Fund	Act of Parliament	Income source	Expenditure purpose
<b>Consumer Credit Fund</b>	<i>Credit (Administration) Act 1984</i> ss86AA–86AC	<ul style="list-style-type: none"> <li>• Credit provider contributions</li> <li>• Interest on investments</li> </ul>	<ul style="list-style-type: none"> <li>• Grants relating to consumer credit education and research as permitted by s86AB of the Act</li> <li>• Secretarial support to the Consumer Credit Fund Advisory Committee</li> </ul>
<b>Domestic Builders Fund</b>	<i>Domestic Building Contracts Act 1995</i> s124	<ul style="list-style-type: none"> <li>• Part share of the Domestic Builder registration fees and Domestic Building Dispute Levy collected by the Building Commission</li> <li>• Interest on investments</li> <li>• Fees collected by the Victorian Civil and Administrative Tribunal relating to the Domestic Building List</li> <li>• Fines</li> </ul>	<ul style="list-style-type: none"> <li>• Administration of the Act</li> <li>• Costs relating to the Domestic Building List of the Victorian Civil &amp; Administrative Tribunal</li> </ul>
<b>Motor Car Traders' Guarantee Fund</b>	<i>Motor Car Traders Act 1986</i> ss74–75	<ul style="list-style-type: none"> <li>• Interest on investments</li> <li>• Licensing fees</li> <li>• Fines</li> <li>• Recovery of claims paid</li> </ul>	<ul style="list-style-type: none"> <li>• Administration of the Act</li> <li>• Guarantee claims</li> </ul>
<b>Prostitution Control Fund</b>	<i>Prostitution Control Act 1994</i> s66	<ul style="list-style-type: none"> <li>• Licensing fees</li> <li>• Fines</li> <li>• Interest on investments</li> </ul>	<ul style="list-style-type: none"> <li>• Administration of the Act</li> </ul>
<b>Residential Tenancies Fund</b>	<i>Residential Tenancies Act 1997</i> ss491–498A	<ul style="list-style-type: none"> <li>• Transfers from Residential Bonds Investment Income Account</li> <li>• Interest on investments</li> <li>• Fees collected by the Victorian Civil &amp; Administrative Tribunal relating to the Residential Tenancies List</li> <li>• Interest on individual bond trust accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Administration of the Act</li> <li>• Costs relating to the Residential Tenancies List of the Victorian Civil and Administrative Tribunal</li> </ul>

# Appendix 11

## Trust funds managed by Consumer Affairs Victoria 2004-05 (continued)

Fund	Act of Parliament	Income source	Expenditure purpose
<b>Victorian Property Fund</b>	<i>Estate Agents Act 1980</i> ss71–91	<ul style="list-style-type: none"> <li>• Interest on estate agents' trust accounts</li> <li>• Income from investments</li> <li>• Licensing fees</li> <li>• Fines</li> </ul>	<ul style="list-style-type: none"> <li>• Administration of the Act and other real estate related legislation as permitted by s75 of the Act</li> <li>• Grants relating to real estate as permitted by s76(3) of the Act</li> <li>• Operation of the Estate Agents Council</li> <li>• Guarantee claims</li> </ul>
<b>Residential Bonds Account</b>	<i>Residential Tenancies Act 1997</i> s435	<ul style="list-style-type: none"> <li>• Bonds lodged with the Residential Tenancies Bond Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Repayment of bonds</li> </ul>
<b>Residential Bonds Investment Income Account</b>	<i>Residential Tenancies Act 1997</i> s436	<ul style="list-style-type: none"> <li>• Interest received from the investment of the Residential Bonds Account, and Residential Bonds Investment Income Account</li> </ul>	<ul style="list-style-type: none"> <li>• Administration of the Residential Tenancies Bond Authority</li> <li>• Any amount declared as an additional amount to be added to the bond upon repayment (none yet declared)</li> <li>• Transfers to the Residential Tenancies Fund</li> </ul>

Additional information on the trust funds' income, expenditure and balances is contained in Appendix 12, and in the Annual Report of the Residential Tenancies Bond Authority.

# Appendix 12

## Financial information regarding trust funds managed by Consumer Affairs Victoria 2004-05

Trust Fund Financial Information 2004-05	Consumer Credit Fund	Domestic Builders Fund	Motor Car Traders' Guarantee Fund
<b>Consumer Affairs Victoria Revenue</b>			
Revenue recognition from external sources (Note 1)			
Appropriations and other			
Interest income	241,934	200,805	66,284
Recognised fair value increment in investments			
Other revenue, Domestic Building Dispute Levy, fees	2,239	5,345,858	1,426
Fees income			2,386,578
Recovery related to claims previously paid			118,745
Penalty income			40,586
Transfers			
<b>Total Consumer Affairs Victoria Revenue</b>	<b>244,173</b>	<b>5,546,663</b>	<b>2,613,619</b>
<b>Consumer Affairs Victoria Expenditure</b>			
Claims on Guarantee Funds			500,598
Consumer Utilities Advocacy			
Contracted Community Agencies	63,968	61,019	122,038
Contractors, consultants and professional services		174,253	90,077
Departmental governance and support costs (GECS)			
Employee related costs		2,069,119	1,686,457
Grants paid	213,957		
Information technology		22,257	31,477
Occupancy costs		202,257	191,360
Other operating costs	40,793	736,379	314,522
Outsourced contracted costs			
Realised loss on disposal of assets			
<b>Total Consumer Affairs Victoria Expenditure</b>	<b>318,718</b>	<b>3,265,284</b>	<b>2,936,529</b>
<b>VCAT Financial Activities partly supported by Trust Funds</b>			
VCAT Tribunal fees offset		(241,346)	
VCAT employee related costs		1,118,873	
VCAT other operating costs		508,254	
<b>Total Consumer Affairs Victoria + VCAT Net Expenditure</b>	<b>318,718</b>	<b>4,651,065</b>	<b>2,936,529</b>
Trust Funds, opening equity 1 July 2004	4,494,893	3,336,151	972,029
Current year operating surplus/(deficit)	(74,545)	895,598	(322,910)
Consumer Affairs Victoria + VCAT			
Prior period adjustments			
<b>Trust Funds, closing equity 30 June 2005</b>	<b>4,420,348</b>	<b>4,231,749</b>	<b>649,119</b>

### Note 1

The Department of Justice (DoJ)/CAV is the custodian of the Residential Bonds Account (RBA) and has responsibility to repay the residential bonds held in trust. CAV does not have either legal, or beneficial ownership of Victorian Estate Agent trust accounts. DoJ/CAV has a statutory entitlement in the interest paid on these trust accounts and on the RBA. That entitlement is shown as revenue recognition from external sources.

### Note 2

The comparative figures for Total Output are: \$53,976,702 for 2004-05 versus \$51,438,596 for 2003-04.

Prostitution Control Fund	Residential Tenancies Fund	Residential Bonds Income Investment Account	Victorian Property Fund	Trust Funds Total 2004-05	Appropriations and other 2004-05	Total Output 2004-05	Trust Funds Total 2003-04
		17,228,381	30,937,585	48,165,966		48,165,966	40,236,793
					26,272,522	26,272,522	
12,392	1,445,815		8,082,957	10,050,187		10,050,187	12,436,303
			7,676,547	7,676,547		7,676,547	5,044,492
	10		25,000	5,374,533		5,374,533	5,613,839
523,609	300		1,369,615	4,280,102		4,280,102	3,928,493
				118,745		118,745	240,137
33,182			35,435	109,203		109,203	60,644
250,000	14,000,000	(14,000,000)		250,000	(250,000)		250,000
<b>819,183</b>	<b>15,446,125</b>	<b>3,228,381</b>	<b>48,127,139</b>	<b>76,025,283</b>	<b>26,022,522</b>	<b>102,047,805</b>	<b>67,810,701</b>
			834,454	1,335,052		1,335,052	687,193
	2,368,710		29,183	2,644,918	500,000	500,000	
43,918	189,773	99,888	1,552,552	2,150,461	804,784	3,449,702	2,925,378
					1,539,667	3,690,128	2,273,757
659,098	2,337,555	590,913	3,324,029	10,667,171	3,337,372	3,337,372	
			2,777,399	2,991,356	12,086,034	22,753,205	9,546,089
6,074	38,996	9,004	84,534	192,342	188,345	3,179,701	3,064,473
55,002	241,601	91,768	361,015	1,143,003	998,212	1,190,554	159,576
86,881	921,940	637,075	1,584,026	4,321,616	1,907,056	3,050,059	1,069,720
		2,407,397		2,407,397	2,668,400	6,990,016	3,818,862
		388		388	2,093,128	4,500,525	1,900,331
<b>850,973</b>	<b>6,098,575</b>	<b>3,836,433</b>	<b>10,547,192</b>	<b>27,853,704</b>	<b>26,122,998</b>	<b>53,976,702</b>	<b>25,445,379</b>
	(1,809,792)			(2,051,138)			(2,049,244)
	5,513,333			6,632,206			6,222,363
	1,800,000			2,308,907			2,165,384
<b>850,973</b>	<b>11,602,796</b>	<b>3,836,433</b>	<b>10,547,192</b>	<b>34,743,679</b>			<b>31,783,882</b>
273,962	17,271,430	1,472,126	210,412,520	238,233,111			202,253,216
(31,790)	3,843,356	(608,052)	37,579,947	41,281,604			36,026,819
							(46,924)
<b>242,172</b>	<b>21,114,786</b>	<b>864,074</b>	<b>247,992,467</b>	<b>279,514,715</b>			<b>238,233,111</b>

Note 2



# Glossary

Acronym	Full title	Acronym	Full title
ACCC	Australian Competition and Consumer Commission	ISO	International Organisation for Standardisation
ADR	Alternative Dispute Resolution	IVR	Integrated Voice Response
AIA	<i>Associations Incorporation Act 1981</i>	MCEETYA	Ministerial Council on Education, Employment, Training and Youth Affairs
ASIC	Australian Securities and Investment Commission	MCCA	Ministerial Council on Consumer Affairs
ARAV	Australian Retailers Association Victoria	MCU	Multicultural Consumers Unit
BA	<i>Building Act 1993</i>	MCTA	<i>Motor Car Traders Act 1986</i>
BACV	Building Advice and Conciliation Victoria	MCTGF	Motor Car Traders' Guarantee Fund
BLA	Business Licensing Authority	MCTGFCC	Motor Car Traders' Guarantee Fund Claims Committee
BNA	<i>Business Names Act 1962</i>	OCGC	Office of Commonwealth Games Coordination
CA	<i>Credit (Administration) Act 1984</i>	PCAMAC	Prostitution Control Act Ministerial Advisory Committee
CALD	Culturally and Linguistically Diverse	PFC	Patriotic Funds Council
CAV	Consumer Affairs Victoria	RSA	Responsible Serving of Alcohol
CBSM	Community-based marketing	RTBA	Residential Tenancies Bond Authority
CCFAC	Consumer Credit Fund Advisory Committee	RTA	<i>Residential Tenancies Act 1997</i>
CEIS	Consumer Education In Schools	SLA	<i>Sale of Land Act 1962</i>
CPAC	Consumer Products Advisory Committee	SCOCA	Standing Committee of Officials of Consumer Affairs
CUAC	Consumer Utilities Advocacy Centre	TMA	<i>Trade Measurement Act 1995</i>
DBCA	<i>Domestic Building Contracts Act 1995</i>	UCCC	Uniform Consumer Credit Code
Dir LL	Director of Liquor Licensing	UCCCMC	Uniform Consumer Credit Code Management Committee
DOJ	Department of Justice	VACC	Victorian Automobile Chamber of Commerce
DHS	Department of Human Services	VCA	<i>Venture Capital Act 2002 (Cwlth)</i>
EAC	Estate Agents Council	VCAT	Victorian Civil & Administrative Tribunal
EARS	Estate Agents' Resolution Service	VCEC	Victorian Competition and Efficiency Commission
EAGF	Estate Agents' Guarantee Fund	VETASSESS	Victorian Education and Training Assessment Services
ESC	Essential Services Commission		
EWOV	Energy and Water Ombudsman Ltd		
FFPMA	<i>Funerals (Pre-Paid Money) Act 1993</i>		
FTA	<i>Fair Trading Act 1999</i>		
FOI	Freedom of Information		
HGFL	Housing Guarantee Fund Limited		
IAA	<i>Introduction Agents Act 1997</i>		
ICU	Indigenous Consumers Unit		

# Contact Consumer Affairs Victoria

Write to us at:

## **Consumer Affairs Victoria**

GPO Box 123A  
Melbourne 3001

FAX: (03) 9627 6007

Email: [consumer@justice.vic.gov.au](mailto:consumer@justice.vic.gov.au)

Website: [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

Consumers can also email enquiries or submit complaints via forms available on the CAV website.

CAV is open for enquiries Monday to Friday between the hours of 8.30am and 4.30pm at Level 2, 452 Flinders Street, Melbourne.

## **Industry Complaint Handling Processes**

Traders who are part of an industry association often have access to dispute resolution mechanisms available through their association. Generally this is a free service and one that can be explored by consumers if a resolution cannot be achieved via the member trader.

## **Victorian Civil and Administrative Tribunal (VCAT)**

VCAT adjudicates disputes between consumers and traders, tenants and landlords, and traders against traders. It is responsible for a Civil Claims List and a Residential Tenancies List. Determinations made at VCAT are legally binding and enforceable. Enquiries can be made to VCAT on 9628 9700.

## **Telephone CAV between 9.00am and 5.00pm Monday to Friday:**

### *General enquiries*

1300 55 81 81

(Household goods/services enquiries, motor vehicle enquiries, residential tenancies enquiries, and bodies corporate enquiries)

### *Building Advice and Conciliation Victoria (BACV)*

1300 55 75 59

### *Business names enquiries*

1300 36 16 73

### *Business licensing enquiries*

1300 13 54 52

### *Residential tenancies bond enquiries*

1300 13 71 64

### *Estate Agents Resolution Service (EARS)*

1300 73 70 30

### *Indigenous enquiry line*

1300 66 15 11

### *Arabic enquiry line*

1300 655 503

### *Vietnamese enquiry line*

1300 85 51 10

### *Liquor licensing*

09 9655 6696

### *Trade measurement*

1300 55 81 81

### *Product safety*

1300 55 81 81

### *Hearing or speech impaired*

National Relay Service (NRS) for textphone (TTY) or modem users:

133 677 (quote 1300 558 181)

Speech-to-Speech relay:

1300 555 727 (quote 1300 558 181)

## **Fax CAV on:**

### *Consumer enquiries*

(03) 9627 6007

### *Residential tenancies enquiries*

(03) 9627 6223

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