

ANNUAL REPORT

1981

DIRECTOR

of

CONSUMER AFFAIRS

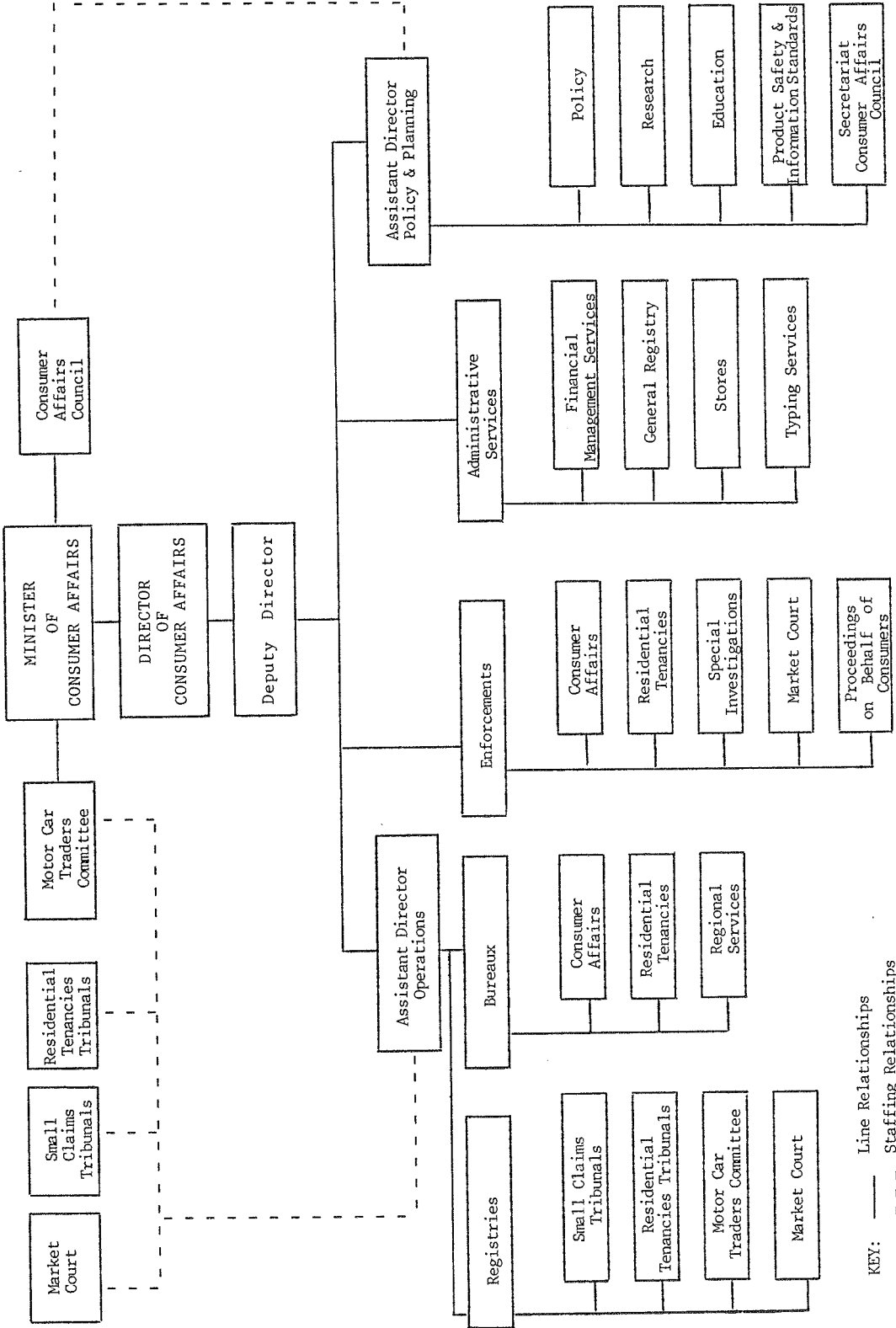
for the year ended 30 June 1981

Ministry of Consumer Affairs.



Looking after your interests.

ORGANIZATION CHART  
MINISTRY OF CONSUMER AFFAIRS



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

A. Herla.

**VICTORIA**

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*Report*

of the

**DIRECTOR OF CONSUMER  
AFFAIRS**

for the

Year ended 30 June 1981

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

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MELBOURNE  
F D ATKINSON GOVERNMENT PRINTER  
1981



## MINISTRY OF CONSUMER AFFAIRS

DIRECTOR:  
JOHN O. MILLER, A.O.  
B.A., B.COM., B.ED., M.ED. ADMIN., F.A.S.A.,  
F.C.A., M.A.C.E., F.A.I.M.

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

October 30th, 1981.

The Honourable Haddon Storey, Q.C., M.L.C.,  
Minister of Consumer Affairs  
500 Bourke Street  
MELBOURNE. 3000

Sir,

### ANNUAL REPORT 1980-81

Pursuant to Section 8A of the Ministry of Consumer Affairs Act 1973, I have the honour to submit the Annual Report, prepared by me as the Director of Consumer Affairs, for the year ending 30th June, 1981.

Yours sincerely,

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

J.O. Miller

encl;



Looking after your interests.

SUMMARY

OF

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PART 1INTRODUCTION

- 1.1.1 This is the seventh Annual Report of the Director of Consumer Affairs and is made pursuant to Section 8 (A) of the Ministry of Consumer Affairs Act 1973.
- 1.1.2 This is the first report I present; it is also the report which covers the period during which the Ministry of Consumer Affairs was formally established in its own right, having been separated from the Department of Labour and Industry whose Permanent Head, or his Deputy, had previously been the person(s) to whom the Director of Consumer Affairs reported. This very necessary separation was finally achieved in January 1981, and I commenced duties as Director, and Permanent Head of the Ministry of Consumer Affairs in April 1981.

Objectives and Reorganization

- 1.1.3 I have already spoken publicly on several occasions about the commitment and productivity of the Ministry's staff. If there is a stereotype of public servants, and it is probably unfair, it most certainly is not appropriate to the generally highly dedicated and competent staff of the Ministry.
- 1.1.4 Inevitably, with its independence now gained, this small Ministry must now demonstrate its capacity to cope with the demanding and increasing expectations the Victorian community is placing on it.

- 1.1.5 With the establishment of a separate Ministry, the role of Director has changed quite markedly. Appropriate procedures are needed so that accountability is effectively demonstrated, and senior management, in addition to carrying out statutory duties, must be seen to be capably performing the necessary functions in a viable community oriented enterprise; of developing and communicating corporate objectives and instituting the means of achieving them; of planning, organizing, controlling and communicating; also of successfully advocating, acquiring and administering new resources, both people and premises, necessary for the Ministry's broadening responsibilities.
- 1.1.6 The Ministry's responsibilities towards consumer protection and education will in the near future include advice in relation to goods, services, shelter and credit since both Residential Tenancies legislation and the Consumer Credit legislation, together with staffing the various tribunals, will be administered by this Ministry. The advice will equally be available to consumers, traders, manufacturers, credit users and credit providers and tenants and landlords on all aspects of legislation affecting both their rights and their obligations.
- 1.1.7 The accountability of the Ministry is of vital concern; accountability is a concept central to democratic government - it is that quality of a system that obliges the participants to pay attention to their responsibilities - to understand that accountability does matter.

Thus a progressive and unbroken chain of linkages must exist, including effective monitoring and appraising procedures by which management can demonstrate that there is effective control over operations; that objectives have been set and are being achieved and that the means exist of both demonstrating and fulfilling accountability responsibilities to Parliament, and thus to the broader community. \*

- 1.1.8 The new administrative structure of the Ministry needs to be designed around the responsibilities, powers and objectives of the Ministry. This has, it is believed, been achieved. (See Chart, inside front cover)
- 1.1.9 The fundamental objective of the Ministry remains assisting in the maintenance and operation of a fair and open market, existing for the benefit of all Victorian consumers. Put more simply, this entails the responsibility of looking after the interests of consumers. Sub-objectives include assisting more and more consumers to assist themselves - for consumers to become better informed and therefore more self-reliant; advising the Minister on legislation changes; acting effectively against dishonest and incompetent traders whose actions are neither in consumers' interests nor in those of their honest and ethical competitors, and generally administering the legislation - including the need to develop a strong legal and prosecutions unit and provide staff support to the various tribunals operating under the Ministry's legislation.

\* Paraphrased from Public Bodies Review Committee

- 1.1.10 The new management structure recognizes the corporate goals and objectives of the Ministry. It provides for an Operations Division, a Policy Division, together with Administrative and Prosecutions units. The various tribunals are, of course, separate entities, their referees and members being independent appointees who have no accountability to the Director for their decisions. Nor, being independent, should they.
- 1.1.11 Not only does the Ministry's organization structure need to be of a design able to cope with increasing demands; adequate and skilled resources need to be available at appropriate locations so as to best serve the needs of Victoria's consumers. Availability of staff, by telephone or in person, will continue to be the main limiting factor in the perceptions of the community as to the value and productivity of the Ministry; linked to this is the need to have a network of literature distribution in all relevant languages and a staff presence at convenient, appropriate locations.
- 1.1.12 The other factor of course affecting public perceptions of the Ministry's output, and hence value, would appear to relate to the power, relevance and enforceability of its legislation.

#### Acknowledgements

- 1.1.13 Having briefly reviewed the organizational changes that have already occurred or that are under way, a number of acknowledgements need to be made.



- 1.1.14 Victoria's first Director of Consumer Affairs, Mr C N Geschke, OBE, resigned on 12 September 1980 to become Ombudsman, and my first report would be incomplete were I not to pay tribute to Mr Geschke for both the successful way in which he established the role of the Director and for the quality of staff he had attracted and retained. In many respects, the quality of a senior administrator is reflected in the continuing 'organizational health' of the unit after his departure; and in the ease of the succession process. On these and other rather more obvious grounds, Norman Geschke must be recognized as an outstanding leader.
- 1.1.15 For the prolonged period of September 1980 to April 1981 the onerous and difficult task of being Acting Director was carried out by Mr Andrew Lachowicz. He carried out this task with competence and dedication and I thank him for this.
- 1.1.16 The separation from the Department of Labour and Industry commences a new era for this Ministry. Commonsense and continuing concern with costs which must be borne by the Victorian taxpayer dictate that the benefits of the close relationships developed with the Department of Labour and Industry should be maintained, at least whilst occupancy of a common building is continued. The Ministry therefore acknowledges with thanks the services provided by the Department of Labour and Industry, many of which it is hoped will continue to be available, particularly in the areas of legal, accounting, procurement and personnel services.

There will undoubtedly be some gradual movement towards self-reliance in these areas, but the cost-effectiveness of such possibilities must remain the dominant factor in decision making.

- 1.1.17 This introductory section of the report would be incomplete without reference to the Consumer Affairs Council, which, whilst an independent body which directly advises the Minister, has an ongoing relationship with the Ministry. The Council and the Ministry have, I believe, worked harmoniously and productively together and the Council has made a number of recommendations and completed several very detailed projects with considerable skill and care covering areas of particular concern and sensitivity to consumers. I thank the Council and particularly the Chairman, Professor Maureen Brunt, for the willing co-operation extended to colleagues and I.

#### Resources and Legislation

- 1.1.18 It is clear that the major challenge to the Ministry in the period ahead will not be coping with the change to being a separate Ministry. It will be with the Residential Tenancies legislation - which establishes new relationships - and protection thereof - between tenants and landlords. Estimating future workloads is a difficult exercise and it must be conceded that there is already no 'slack' at all available in meeting existing commitments. Any demands for service resulting from new legislation must therefore exceed capacity, and given the long lead times in recruiting and training specialist staff, and (if approval for necessary additional positions is in fact gained) some disappointment in delivery of services will be experienced.

Advice at this stage is that reasonably argued and well documented cases for additional staff will be considered sympathetically and realistically - particularly as the Residential Tenancies legislation will be self-funded - from income from tenancy bonds.

1.1.19 In this connection it is hoped that some of the necessary new positions will be available on a job sharing basis, and, following a move towards convenient 'localisation' of resources, that services will be available outside normal public service working hours, when particular consumers requiring assistance in the evenings or on Saturday mornings, will be able to have access to Ministry staff. It is thought that the first moves towards 'localisation' of the Ministry will be to locations where tenancy problems are at their height - Footscray, Geelong, Fitzroy and St Kilda - and where there are already community based Tenants Advice Services - which are generally understaffed - given the dimensions of the need of tenants in those areas. The Ministry is already assisting this valuable service to the extent of \$60,000 per annum.

1.1.20 Although Victoria 'led the field' in consumer legislation in 1964 and shared with Queensland the introduction of Small Claims Tribunals, and has its own unique Market Court, some major changes in legislation do now appear to be necessary.

These include:

- increasing, because of inflation, all penalties, and also the jurisdiction of the Small Claims Tribunals where \$1,500 would now be an appropriate limit, (it has been \$1,000 since 1975 and was \$500 initially);
- The need, following the Gobbo judgement on insurance, to redefine services so that the scope of the Ministry, the Market Court and the Small Claims Tribunals clearly extend to all services, (including professional advice, offers of employment and franchising) falling within the scope of general usage of the term.
- The desirability of Victoria introducing appropriate product safety provisions - at the present time Victoria is isolated in comparison with procedures in other states.

( See para. 5.6.1 page 158 )

- 1.1.21 Consideration could also be given to assisting small businesses and farmers, so as to treat them as consumers within the Small Claims Tribunals legislation, when purchasing goods or services in connection with the business pursuits in which they are engaged.

#### An overview of the Year

- 1.1.22 It is desirable that a summary of the trends revealed in the detailed statistics contained in Part 4 of this report be provided. It is also necessary that reference be made, for the first time, to the costs of the programs administered by the Ministry.

The year under review saw an increase of 17.7% in the number of trading practice incidents complained of by consumers; a decrease of 17.6% in matters brought to the Small Claims Tribunals, with a levelling off in the number of consumers who complained in writing as is the requirement.

- 1.1.23 It is difficult to comment on the significance of these figures - they do indicate an awareness of the scope and existence of the Ministry which is pleasing and yet they also reveal the disappointing existence of an increasing number of practices about which consumers felt it necessary to lodge a written concern.
- 1.1.24 Traders who abuse their position and responsibilities will continue to be dealt with as severely as the legislation permits.
- 1.1.25 There is no doubt that unethical traders, who often appear to lack also basic competence, are exceedingly short-sighted, as no lasting business enterprise can be built on the twin evils of exploitation of consumers' weaknesses and unethical practices. Such traders not only affect consumers, they discredit traders' associations, they do not provide fair competition; they indulge in reprehensible practices in which no fair or competent trader would engage; provide most unfair and counter-productive competition; and generally are a scourge to both the free market system and to all consumers. Specific irresponsible traders are named in later sections of this report.

Summary of Trends

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Consumer Complaints	9941	10122	11388	11828
Small Claims Tribunals	<u>2975</u>	<u>3006</u>	<u>2699</u>	<u>2236</u>
Total 'Matters'	<u>12916</u>	<u>13128</u>	<u>14087</u>	<u>14064</u>
Practices Complaints	<u>12218</u>	<u>11346</u>	<u>12919</u>	<u>15205</u>

- 1.1.26 The statistics which are amplified in Part 4 reveal a levelling off in consumer 'matters' volumes but an increase in practices complained of by consumers.
- 1.1.27 It is pleasing to be able to report a decline in the number and relative frequency of complaints about advertising and representations from 1402 to 937, and that this number represents only 6% of practice complaints (last year 14.02%); on the other hand complaints about product and services quality have risen alarmingly, from 5026 to 6374, up 26.8%. This category now accounts for just on 42% of all complaints of product and services received by the Ministry. Consumer dissatisfaction with contacts was another major cause for concern.

Volumes and Costs

- 1.1.28 It is desirable that some linkage between costs and delivery of services be established. One way of going about this is to establish a 'notional cost per matter' which can be used as an 'index of cost' in order to give a broad indication of the reflection of total costs and volumes.

Of course it must be understood that the 'notional cost per matter' is a theoretical measure and is not the actual cost of handling each matter. Nevertheless a comparison over a number of years should reveal shifts in emphasis of the separate functions performed by the Ministry and thus serve as a useful analytical tool to management, by providing a notional cost and an index of notional cost, for each category of activity.

1.1.29 The total financial expenditures in the last two years - adjusted for the costs of becoming a separate Ministry - are as follows:

	Actual Cost 1979/80	Actual Cost 1980/81	Separate Ministry Adjusted Full Year Cost Base 1980/81
Salaries & Payments	\$ 771,951	\$ 1,077,653	\$ 1,172,529
General Expenses	95,610	128,512	138,948
Payroll Tax	44,070	45,102	49,845
Other Services	74,264	130,350	130,350
<u>Costs Shown in Budget Papers</u>	\$ 985,895	\$ 1,381,617	\$ 1,491,672
Estimated Adjust- ments to Base Costs Associated with Separation from Department of Labour & Industry	-	\$ 110,055	\$ 1,491,672

Actual direct costs are :-

	<u>Actual Cost</u> <u>1979/80</u>	<u>Actual Cost</u> <u>1980/81</u>
Consumer Affairs Bureau Staff Salaries Only	\$ 329,586	\$ 366,645
Actual Direct Cost Per Complaint	\$ 28.94	\$ 32.20
Cost Index	100	113

The 'Notional Cost Per Matter' of two of the major functions of the Ministry is defined by adjusting total costs to \$1,491,672 and calculating on a unit basis -

	<u>Number</u>	<u>'Notional Cost</u> <u>Per Matter' \$</u> 1980/81
Consumer Affairs	11,828	\$ 126.10



- 1.1.31 It also needs to be emphasised that some of the most productive work of the staff of the Ministry is in handling initial consumer enquiries. No action is taken by the staff unless and until the consumer has approached the trader with his complaint. Of the order of 70,000 telephone enquiries and complaints are received annually, yet as shown by the detailed statistics, only about 12,000 of these calls result in official written complaints. The Ministry assists in solving many consumer problems, eliminating the need for written complaints. A considerable and productive use of resources is thus devoted to advising and mediating, as well as in consumer education generally. These costs are, of course, included in the notional cost per matter referred to above.

#### Cost Benefits

- 1.1.32 In looking backwards at statistics for a past year, it is also important to look forward. What the figures do

1.1.33 Consequently , even at the 'micro level' of individual complaints, the consumer is ahead, and it appears that expenditure of \$1.5 million for the State's third smallest Ministry, with only 80 staff, has helped facilitate an awareness among responsible manufacturers, importers, wholesalers and retailers that consumerism is a movement whose time has come; that consumers are customers, that traders' markets do have access to the Ministry and that efficient complaint handling procedures, better quality, and maintained delivery promises, are ongoing features of the 'marketing mix'; that a vigilant, competent and aggressive Ministry of Consumer Affairs should be welcomed as serving the interests of all ethical traders, as of consumers generally.

LEGISLATION

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

Act 6815 Disposal of Uncollected Goods Act 1961  
 Act 6973 Building Contracts (Deposits) Act 1962  
 Act 8276 Consumer Affairs Act 1972  
 Act 8408 Motor Car Traders Act 1973  
 Act 8442 Ministry of Consumer Affairs Act 1973  
 Act 8486 Small Claims Tribunals Act 1973  
 Act 9196 Market Court Act 1978  
 Act 9151 Credit Reporting Act 1978  
 Act 9514 Residential Tenancies Act 1980  
 (not yet in operation, to commence on  
 November 9 1981)

Market Court Act 1978

- 1.2.2 The principal Act was amended in the light of experience gained during proceedings under the Act.
- 1.2.3 The amending Act - Market Court (Amendment) Act 1980 - was drawn up to overcome problems of scope and interpretation.
- 1.2.4 The major amendment was one which enabled the Court when making an order (or an interim order) to include in that order a requirement that any contract entered

- 1.2.5 The amending Act has also made it clear that the Court could take into account the conduct of a trader prior to the commencement of the principal Act.

#### Residential Tenancies Act 1980

- 1.2.6 In December 1980 the Residential Tenancies Act passed through Parliament. At the time of writing, the Act has not yet come into operation ; to commence on November 9, 1981.
- 1.2.7 The impact of this legislation on the resources of the Ministry has already been commented upon above.
- 1.2.8 The Act is quite revolutionary in its scope and will regulate normal landlord/tenant relationships. The administration of the Act is based on the current operation of the Consumer Affairs Bureau and the Small Claims Tribunals, in that it envisages the establishment of a Residential Tenancies Bureau and a Residential Tenancies Tribunal. The role of these latter two organisations are similar in operation to the Consumer Affairs Bureau and Small Claims Tribunals.
- 1.2.9 Some major features of the Act are:
- (a) Agreements - all written tenancy agreements must be in a prescribed standard form;
  - (b) Statement of Rights and Duties - a tenant must be given a copy of a prescribed Statement of Rights and Duties;

- (c) Security Deposits - if a landlord takes a security deposit (bond) he must pay it into a trust account held with an 'approved institution';
- (d) Tenancy Insurance - the tenant has an option under the Act to elect to enter into an insurance policy in lieu of a security deposit;
- (e) Condition Report - if a landlord takes a security deposit, two condition reports must be given to the tenant who is required to return one signed copy to the landlord;
- (f) Housing Commission - since the Act binds the Crown, Housing Commission tenancies will come under the Act;
- (g) Maintenance and Repair - one area of dispute under tenancy agreements relates to the maintenance and repair to premises. The Act clearly sets out the rights and duties of both the landlord and tenant in this area and for example allows a tenant in certain circumstances to undertake 'urgent repairs' and obtain compensation (up to \$200) from the landlord.

1.2.10 The above is only a very brief summary of some of the major provisions of the Act. There are other provisions relating to termination of agreements, abandoned goods, excessive rents, assignment and sub-letting and so on. The Ministry is currently preparing a number of pamphlets/booklets on the Act and these will be available before the Act comes into operation.

- 1.2.11 Although it is early days yet, the Ministry considers that overall the Act is fair to both parties and will go a long way to overcoming current landlord/tenant disputes.

#### Credit Legislation

- 1.2.12 In April 1981 the Victorian Government introduced redrafted versions of uniform credit legislation first introduced by Victoria in 1978. The legislation consists of a Credit Bill, Goods (Sales and Leases) Bill and Chattel Securities Bill.
- 1.2.13 The Bills represent the result of a long and difficult exercise designed to reform a body of law which regulates the granting and obtaining of credit, the giving and taking of securities over goods and the rights and liabilities of purchasers and sellers of goods.
- 1.2.14 The broad principles, as stated in the second reading speech, underlying these Bills are as follows.
- (a) To establish a qualified and effective administration to supervise the credit industry through an overall licensing system for persons who provide credit under credit sales, or who make loans at rates exceeding 14% and to assist users of credit who may encounter difficulties or problems in the use of credit.
  - (b) To equate all the various forms under which credit may be provided so that the rules applicable will be essentially the same and will govern the substance rather than the form of the transaction.

- (c) To apply in an extensive and sophisticated way the type of regulation and protection to all forms of credit.
- (d) To make provision for the disclosure of the actual cost of credit in dollars and cents and in the form of a statutorily determined annual percentage rate. As the basis for determining that rate will be the same in respect of all forms of credit, it will be possible to compare the cost of credit no matter what form the offer of the credit takes.
- (e) To make provision for security interests in goods to have effect as statutory charges, subject to certain provisions of the Property Law Act 1958 and defeasible only by the operation of clause 8 (bona fide purchase of goods for value by a person without notice of the security interest). Corresponding defeasibility provisions are made under clauses 9 and 10 in relation to interests of lessors, and owners under hire purchase agreements.
- (f) To make special provision for protection under the Goods Act 1958 of what might roughly be described as consumer transactions ie transactions involving goods and services of a value of not more than \$15,000, by incorporating into such sales and leases new provisions relating to fitness and quality of the goods and services which cannot be excluded by the supplier.

- 1.2.15 The administration of the Bills will be the responsibility of the Ministry of Consumer Affairs.
- 1.2.16 The Director of Consumer Affairs will assume functions which include the receipt and investigation of complaints from the public and the provision of advice as to the application of the Act.
- 1.2.17 The Consumer Affairs Council will have the responsibility for advising the Minister upon the administration of the Act.
- 1.2.18 There will be a Credit Tribunal chaired by the President of the Market Court, and four other members, two possessing experience in the business of supplying credit or goods, and two persons representing the public.
- 1.2.19 Apart from imposing specific controls upon the provision of credit, the Credit Bill adopts the approach of licensing credit providers.
- 1.2.20 The Tribunal will have an exclusive jurisdiction with respect to licensing under the Act. Licence applications will be made to the Registrar of the Tribunal who may issue licences, or in the case where objections are received to the issue of licences, he shall refer the application and objection to the Tribunal for determination.
- 1.2.21 Although the legislation is still in Bill form planning for its implementation and administration has been commenced by senior staff of the Ministry.



REGISTRY OF THE SMALL CLAIMS TRIBUNALSLocation of Sittings

- 1.3.1 During the year 1980/81 hearings were conducted in the offices of the Ministry at 500 Bourke Street, and at other centres.
- 1.3.2. Hearings also took place in the following country centres.

<u>Centre</u>	<u>Times Visited</u>
Ballarat	8
Geelong	6
Morwell	6
Dandenong	5
Bendigo	4
Horsham	3
Seymour	3
Benalla	2
Warrnambool	2
Shepparton	1
Swan Hill	1
Wodonga	1
Mildura	1

- 1.3.3 In addition to the above, the Tribunals found it necessary to conduct on-site inspections and hearings in 114 cases.

1.3.4 In matters involving swimming pools, concreting, bathroom and kitchen renovations, tiling and carpets, the Tribunals have felt that a more accurate assessment of the problems can be achieved by conducting on-site hearings. In addition, cases where one of the parties is aged or infirm are scheduled at the home of that person.

#### Supreme Court Decision on Insurance

1.3.5 The last report made a special point on the substantial increase in claims involving insurance matters. Previous reports indicated that the Tribunals have dealt with a number of claims against insurance companies. This practice has now been stopped. The Supreme Court of Victoria on 15 April 1981 handed down a judgment in the case of RACV General Insurance Pty Ltd versus Small Claims Tribunals and Maurice James Dean. The Claimant Dean sought payment of \$780 from the RACV General Insurance Pty Ltd in respect of a claim made under a comprehensive home insurance policy.

1.3.6 It was submitted on behalf of the company that a claim under a policy of insurance of the kind in question was not a claim arising out of a contract for the supply of goods or the provision of services.

1.3.7 The notice of claim to the Tribunal referred to a claim for \$780 for the cost of repairs or replacement of damaged floor coverings. The Claimant stated that the damage occurred as a result of flooding, however the claim was rejected by the Insurer.

1.3.8 The Tribunal was not afforded the opportunity of hearing the claim or submissions relating to jurisdiction as the RACV General Insurance Pty Ltd arranged for Writ of Prohibition to be issued before the hearing before the Tribunal commenced.

1.3.9 His Honour Mr Justice Gobbo, found that the Writ was issued prematurely and that the Tribunal should have been allowed to decide jurisdictional facts. In addition, the Court decided that the Small Claims Tribunals do not have jurisdiction to hear matters concerning contracts of insurance.

#### Enforcement of Orders Made by the Tribunals

1.3.10 There are still many traders who do not wish to voluntarily comply with orders of the Tribunals.

1.3.11 During the year under review the Registrar's office was required to prepare enforcement papers in 376 cases involving orders totalling \$127,832. Most Warrants of Distress issued are enforced by Bailiffs of the Magistrates' Courts.

#### Source of Claims

1.3.12 Approximately 32% of the claims received by the Tribunals are matters that have been previously handled by the Consumer Affairs Bureau. Most of the remaining claims arrived at the Tribunals as a result of reference by solicitors, Legal Aid offices and Citizens Advice Bureaux. There were also a large number of consumers who decided to lodge claims after hearing of the Tribunals' existence on radio and television or by reading various newspaper articles.

Education

- 1.3.13 The demand for speakers to explain the work of the Tribunals has continued. Higher School Certificate students and Law Students from universities have shown a particular interest as the Small Claims Tribunals is included on the syllabus for various subjects. Consumer and trader groups and various service organizations have felt the work of the Tribunals should be explained to their members and whenever possible a speaker has been made available.

ALLEGED BREACHES / PROSECUTIONSWorkload

- 1.4.1 As at 1 July 1980, investigations were in progress on 142 files relating to alleged breaches of the legislation administered by the Ministry of Consumer Affairs. A further 253 investigation files on alleged breaches were created during the current year. These files originated from complaints and the Ministry's own monitoring of the market place. A file may contain from one to in excess of forty possible offences, or alternatively, preliminary investigation may show that no offence has occurred.
- 1.4.2 During the year 215 alleged breach files were finalized as compared with 275 in the year 1979/80.

Details are: -

	<u>1979/80</u>	<u>1980/81</u>
Prosecuted successfully	33	18
Prosecuted unsuccessfully	3	-
Offence established - decision not to be prosecuted (warnings issued in 13 cases)	50. (19)	34
No apparent breach - allegations unjustified	133	103
Investigations inconclusive evidence inadequate	30	33
Trader in liquidation or disappeared	13	13
Lapse of time prevented prosecution	3	4
Section 64 action resolved by reply	2	2
Referred to Trade Practices Commission	6	2
Referred to other departments	2	6
	<u>275</u>	<u>215</u>

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

- 1.4.3 The decline in the number of prosecutions and files finalized compared with 1979/80 must be ascribed to the complex and protracted nature of some investigations conducted in the current year.
- 1.4.4 The investigation of alleged breaches of the Motor Car Traders Act, in particular unlicensed trading still occupies a large proportion of the Investigations Team's available time.

The workload imposed by the Market Court, which is not reflected in the above statistics, has also made inroads into the investigation of alleged breaches.

- 1.4.5 During the year, officers attached to the Investigations Team carried out 1006 visits. Visits involved field investigations in the form of interviews with traders, inspections of premises, documents and exhibits, discussions with other Government departments, the serving of informations and subpoenas and appearances in court.
- 1.4.6 The 18 investigations described in the previous table as "Prosecuted Successfully" resulted in the prosecution of 162 separate informations (compared with 198 in 1979/80) an average of 9 informations per file (compared with 5.5 in 1979/80). An analysis of these prosecutions is in Part 4.

#### Training

- 1.4.7 During April 1981 two officers of the Ministry attended the 6th Investigations Course conducted by the Detective Training School of the Victoria Police.
- 1.4.8 The course proved extremely valuable and a number of ideas and techniques obtained from the Ministry participation have been or will be implemented in the future.
- 1.4.9 Subjects covered included:
- Principles of Investigations, Judges Rules, Court Procedure, Avenues of Inquiries, Evidence, Statutory Interpretation, etc.

- 1.4.10 A further benefit from the course was the extension and consolidation of liaison between the staff of the Bureau and representatives of other Government organizations with similar enforcement roles.
- 1.4.11 Thanks are to be expressed to the Chief Commissioner of Police and the staff of the Detective Training School.

### MARKET COURT

#### Appeal to Supreme Court

- 1.5.1 During the year the Market Court had only one sitting. The matter was adjourned on the first day pending clarification on points of law by the Supreme Court of Victoria. A major area which required a ruling by the Court was in respect to the admission of complaints arising before the Market Court Act was proclaimed. The Supreme Court held that such complaints could be used in Market Court proceedings.
- 1.5.2 Other cases could not have been brought before the Court until the Supreme Court ruling had been given but some were prepared in anticipation. At present there are a number of cases, either fully or partially prepared for hearing. The preparation of the cases takes many months since a large number of witnesses must be interviewed.

Enforcement for Breach of Market Court Orders

- 1.5.3 In the Annual Report for the year ended 30 June 1980 under the heading of the Market Court, mention was made of Edna Helen Holmes-Ascott (trading under the names of Cothalla Kennels, Ascott Kennels and Bayswater Kennels) who conducted a business of selling dogs to the public from kennels situated at 130 Bayswater Road, Croydon.
- 1.5.4 Complaints had been received in the Ministry over several years. All the complaints told the same heart-breaking tale of the consumer responding to a newspaper advertisement for puppies and after visiting 130 Bayswater Road, paying between \$15 and \$80 only to find on the same day, or shortly afterwards, that the new puppy had distemper or another disease. A visit to the local veterinary surgeon usually proved to be too late and the puppy was destroyed.
- 1.5.5 The Court was satisfied that Mrs Ascott had repeatedly engaged in conduct unfair to consumers and on 19 June 1980, ordered that she refrain from selling dogs which were not of merchantable quality. It further ordered that -
- "(i) No sale shall take place within a period of six months and then only after the respondent has written certification from a veterinary surgeon that her premises are free of distemper and in a fit condition to resume sales of dogs to the public;



(ii) Each sale of a dog must be accompanied by a certificate from a veterinary surgeon issued not less than 14 days prior to the sale, indicating that the dog has been immunised against distemper;

(iii) Each sale must be accompanied with a written undertaking signed by the respondent that the purchaser will be given a full refund of the purchase price if the dog becomes ill from any disease within one month of purchase."

1.5.6 It is believed that Mrs Ascott was involved in the sale of dogs during the six months specified in the Market Court Order but sufficient evidence could not be obtained.

1.5.7 Mrs Ascott admits to the resumption of business on 3 January 1981 but she did not have the written certification from a veterinary surgeon that her premises were free of distemper and in a fit state to resume the sale of dogs to the public.

1.5.8 From a sample of 10 transactions it appeared that Mrs Ascott failed to comply with the Market Court Order by resuming trading without first obtaining the prescribed certification of her premises, by selling dogs with immunization certificates less than 14 days old, and by selling dogs without the prescribed written and signed undertakings to refund purchase prices.

1.5.9 At the time of writing this report, Mrs Ascott was presented at Ringwood Magistrates Court on 22 informations.

Three informations were withdrawn due to unavailability of a witness, one was dismissed, and on each of the remaining 18, Mrs. Ascott was convicted and fined \$100, in default 5 days imprisonment - a total of \$1800 plus \$1000 costs. She was granted a stay of 12 months.

1.5.10 The Market Court Act provides a maximum penalty of \$5,000 for failure to comply with an order of the Court. The fines imposed represent only two per cent of the possible maximum penalty for the 18 offences proven.

1.5.11 This is a most undesirable outcome. Whether the low penalties will serve as a sufficient deterrent to ensure compliance with the Market Court Orders in future remains to be seen.

#### Deeds of Assurance

1.5.12 In the last report it was stated that the Director was seeking a Deed of Assurance from a trader. The trader involved agreed to sign the Deed which related to various trading practices considered unfair to consumers. Since signing the Deed in September 1980, the trader appears to have conducted his business in a satisfactory manner.

1.5.13 This highlights the effectiveness of the Market Court's provisions relating to Deeds of Assurance and it is felt that greater emphasis will in the future be placed on their use.

PROCEEDINGS ON BEHALF OF CONSUMERS

- 1.6.1 Part 1A of the Consumer Affairs Act allows the Director of Consumer Affairs to institute or defend actions on behalf of consumers. The Act specifies also two pre-requisites. The Director must be satisfied that the consumer has a course of action or a good defence and that it is in the public interest to institute such proceedings on behalf of the consumers.
- 1.6.2 The Minister's consent in writing must also be obtained. There are five matters presently underway in which the Director either has instituted or is defending proceedings on behalf of consumers.
- 1.6.3 It is of interest to know that three relate to insurance issues. One matter was settled out of court with the company offering to pay in full plus costs for damages arising from a motor accident. In the other case, County Court action was instituted to recover damages arising from a motor car accident which the company has refused to pay. This matter is still pending. In the third case, Minister's approval has been obtained in order to recover for the consumer money payable under the Consumer Credit Insurance Indemnity.
- 1.6.4 The further two cases related to a finance company and involved adjustments to a finance agreement and the withdrawal of a Writ of Possession.

- 1.6.5 Part 1A of the Consumer Affairs Act can be looked upon as an appropriate tool to prevent unscrupulous traders intimidating individual consumers by threatening court action irrespective of whether there is a good cause of action or not.
- 1.6.6 On the other hand, the Ministry is anxious to ensure that it does not usurp the services provided by Legal Aid. Each case is therefore examined closely especially to ensure that proceedings are in the interest of the public.
- 1.6.7 Some cases can be very time consuming as once Ministerial approval has been obtained, it is the responsibility of the Ministry to ensure that all evidence is properly presented to court.

#### COUNTRY SERVICES

- 1.7.1 The Country Services Unit of the Ministry operates from Regional Offices at Geelong, Ballarat, Bendigo, Wangaratta and Traralgon and through a Mobile Unit which visits cities and towns on a regular basis. (See Part 4 for location and frequency of visits).
- 1.7.2 Regrettably the Ministry's Mobile Unit was written off in a road accident in November 1980 and the service to country centres had to be curtailed. The unit has now been replaced and the service as offered previously has been restored. Since the inception of the Mobile Information Service, residents of country centres have come to know the full range of services provided by the Ministry to consumers and traders.

This is reflected in the large number of contacts established with consumers, traders, educational bodies and the media as opposed to actual complaints as shown in the following statistical comparison.

<u>Regional Offices</u>	<u>1979/80</u>	<u>1980/81</u>
Interviews conducted	859	732
Alleged Breaches investigated	5	2
Discussions at traders' premises re complaints	43	91
Talks to schools, service and community organizations and trader groups	57	20
Complaints taken	199	167
 <u>Country Towns</u>		
Number of visits to country towns	149	137
Interviews conducted	1576	568
Alleged Breaches investigated	3	7
Discussions at traders' premises re complaints	165	137
Media interviews, talks etc.	54 )	
Talks to schools, service and community organizations and trader groups	233 )	78
Complaints taken	121	52

## 1.7.3

Co-operation has continued between the Ministry and the various Citizen Advice Bureaux throughout Victoria. The Ministry appreciates the assistance provided by this organization.

The Ministry also wishes to acknowledge the co-operation extended to regional officers by Municipalities and other community organizations.

- 1.7.4 There is a constant need to balance the services provided by the Ministry in country areas with those provided in the Metropolitan area in order to ensure a uniform development throughout Victoria. However, there is a need for further expansion into the larger regional cities and more frequent visits to other centres especially in anticipation of the requirements of the Residential Tenancies Act.

#### CONSUMER / TRADER EDUCATION

- 1.8.1 Education has continued to play a major role in the Ministry's activities during the year and the introduction of the Residential Tenancies Act will see an expansion of this role.
- 1.8.2 Over the last decade or so, there have been some dramatic changes in the market place with the introduction of new technology, more sophisticated advertising techniques, introduction of various forms of credit and a growing affluence of many consumers.
- 1.8.3 As a result, there is an enormous range of goods available today, many of which are highly technical. It is therefore very difficult for an average consumer to make direct comparison between like products and he must rely upon the expertise of the trader. Unfortunately in some instances, the trader is as much in the dark about the product's ability to perform as the consumer.

As well, many purchases require written contracts and/or some form of credit. Those again are matters in which many consumers have little, if any, knowledge.

- 1.8.4 The aim of consumer education must therefore be to narrow the knowledge gap that currently exists between buyers and sellers.
- 1.8.5 The achievement of this aim is often extremely difficult. For example, education aimed at adults must in effect try to change behavioural patterns developed over a number of decades.
- 1.8.6 Consumer education which consists mainly of publicizing the availability of assistance provided by the Ministry although important, does not really get to heart of the problem. To be truly effective, education must be designed to promote greater self-sufficiency on the part of consumers. Prevention is obviously better than a cure and it is far more satisfactory to promote prudent market behaviour designed to avoid problems than to attempt to solve problems after they have arisen.
- 1.8.7 This has been the general philosophy behind the Ministry's education programs. For example, all printed material available from the Ministry has been designed to make consumers more aware of pitfalls in the market place.
- 1.8.8 The need to educate consumers (or potential consumers) at an early age is now recognized. The Ministry is currently studying a program prepared in Queensland for primary school children.

- 1.8.9 In one respect, Victoria is fortunate in that consumer education is now a well established course in many high schools and the demand for printed material and guest speakers is very high.
- 1.8.10 During the year under review, the Ministry prepared a booklet of case studies and separate teaching notes for high schools. The assistance provided by the Victorian Commercial Teachers Association in the preparation of this material was appreciated.
- 1.8.11 The difficulties faced by migrant consumers create separate problems for the Ministry. Although the type of consumer problems faced by migrants may be similar to those faced by native born Australians, language problems and cultural differences tend to exacerbate the problems.
- 1.8.12 In an attempt to reach the migrant population, funds were made available for the production of a booklet entitled "Your Rights as a Consumer" as a joint effort by the Ministry and the Ministry of Immigration and Ethnic Affairs. The booklet has been translated into Arabic, Greek, Italian, Maltese, Serbo-Croat, Spanish, Turkish and Vietnamese.
- 1.8.13 Although an English language version of the booklet will also be available, it has been produced primarily for the migrant population and will cover the following topics:
- . The Services the Ministry can Provide
  - . General Buying Advice
  - . Contracts
  - . Credit

(Cont) ...



- . Buying a Car
- . Buying a House
- . Home Repairs and Renovations
- . Child Safety - Flammability of Children's Night Wear.

1.8.14 Apart from the above booklet and the case studies booklet, no new brochures were issued during 1980/81. However, the demand for printed material from schools, community groups and the general public remained at a high level necessitating the reprint of all pamphlets.

1.8.15 The animated film mentioned in the last report is not yet available. This film which is being produced by the Victorian Film Corporation covers a number of topics and has been planned with migrants in mind. It has therefore been designed for easy translation into foreign languages.

1.8.16 The media play an important role in projecting the role of the Ministry in consumer education. Their assistance during the year has been much appreciated and particular thanks are due to these organizations producing regular programs of interest to consumers and which generously feature staff of the Ministry:

- . ABC - Muriel Cooper's City Sound - 3LO
- . Channel 10 - Ian Gillespie's Consumer Segment on Eye-Witness News;
- . Martha Gardiner's program - 3AW

1.8.17 The co-operation given by country radio and television stations and newspapers in respect to the Ministry's country service is also appreciated.

1.8.18 The following addresses and talks were given:

	<u>1979/80</u>	<u>1980/81</u>
. Trade & Professional Groups	36	31
. Educational Institutions	29	30
. Migrant Groups	15	4
. Community Groups/Service Clubs	58	45
. Church Associations/Parent Groups	5	11
	<u>143</u>	<u>121</u>

#### PRODUCT SAFETY

- 1.9.1 During 1980/81 the Ministry continued to receive reports of unsafe and hazardous products.
- 1.9.2 The situation in Victoria is that Part V of the Consumer Affairs Act "Safe Design and Construction of Goods" will allow a product to be banned only after a standard has been developed for it. The banning would apply only to products which do not comply with the standard. The development of a standard is usually a lengthy process and consequently Part V of the Act can be considered to be of limited application in relation to individual unsafe products which emerge on the market from time to time without any warning. With such products speed is essential in order to prevent injury or death of unsuspecting consumers.
- 1.9.3 In the past the Ministry has been reasonably successful in having hazardous products withdrawn from sale by negotiation.

The difficulty with this approach is that the distributors of such products may often be unknown and scattered throughout Victoria, so that negotiations would be protracted and may not cover all distributors of the product. Furthermore it must be realized that apart from Queensland, Victoria is the only state without specific powers to impose an immediate ban on unsafe or hazardous products. This could mean that Victoria may become a dumping ground for products banned elsewhere in Australia.

- 1.9.4 At the time of writing this report, consideration is being given to establishing a Product Safety Committee backed by legislation which could investigate alleged hazardous products and if necessary, recommend that they be banned from sale in Victoria.

COMMONWEALTH / STATE CONSUMER PRODUCTS  
ADVISORY COMMITTEE - (CSCPAC)

- 1.10.1 The Ministry has continued to be involved with the operation of the Commonwealth/State Consumer Products Advisory Committee (CSCPAC) and a representative of the Ministry attended the meetings of CSCPAC in Hobart in October 1980 and in Sydney, March 1981.
- 1.10.2 CSCPAC comprises one member of each of the Commonwealth authorities involved in consumer matters and one member representing the Consumer Affairs authorities in each state/territory. The committee also has two representatives from the Standards Association of Australia, who act in a consultative capacity.

This forum has been most valuable in exchanging product safety information between states and in developing product information and product safety standards. These standards can then be incorporated in State and Federal legislation.

1.10.3 The major areas currently being considered by CSCPC are:

- . Babies' dummies
- . children's toys;
- . fibre content labelling of textiles;
- . "build" date of motor vehicles; and
- . size labelling of clothing.

#### PRODUCT SAFETY / INFORMATION STANDARDS

1.11.1 There have been no new product safety/information standards promulgated during the year under review.

1.11.2 The Ministry has however been involved with a consumer survey on the understanding of current flammability labelling of children's night clothes. The Western Australian Consumer Affairs Bureau carried out a pilot survey and it appeared that many consumers misunderstood the current labelling. As a result New South Wales and Victoria undertook a much broader survey using the Western Australian questionnaire.

1.11.3 In Victoria, the questionnaires have been sent out through Infant Welfare Centres. At the time of writing the results of this survey have not been collated.

The Ministry wishes to express its appreciation for the assistance provided by the Director of Maternal and Infant Health of the Victorian Health Commission and also the Sisters-in-Charge of Infant Welfare Centres involved in the surveys.

MONITORING OF ADVERTISEMENTS  
BY HANDICAPPED PERSONS

- 1.12.1 In December 1978 a program was commenced whereby the Ministry of Consumer Affairs engaged under a contract the services of seriously handicapped people to monitor radio, television and newspaper advertisements.
- 1.12.2 With an annual budget of \$9,500 the Ministry employs 9 persons part-time on this project. Three from Nadavoc Industries, Mitcham, three from "Yarra Me", Croydon, to monitor television and radio advertisements and three from Bethlehem Private Hospital, Caulfield South to monitor newspapers.
- 1.12.3. Each person has been trained to recognize breaches of Consumer Affairs legislation such as False and Misleading Advertising, Misleading Marking of prices and detection of unlicensed motor car traders.
- 1.12.4 Information gathered by these people has been forwarded to the Ministry on a regular basis for further investigation.

CREDIT REPORTING AGENCIES

- 1.13.1 The Ministry acquired the responsibility to investigate credit bills of individual consumers kept by credit reporting agencies under a voluntary agreement in accordance with the Credit Reporting Act 1978.
- 1.13.2 During the year ended 30 June 1981 the Director received eleven complaints or enquiries from consumers about records kept by credit reporting agencies.
- 1.13.3 In four of the cases the records were amended after investigation.
- 1.13.4 In another four instances the complainant, whilst accepting the accuracy of the credit report, objected to any records being kept at all.
- 1.13.5 In another two cases, complainants discovered that credit reporting agencies had made some investigation of them even though they had not applied for credit.
- 1.13.6 The Ministry investigation showed that in the first case, an insurance company made an enquiry because it wanted to check the ability of the complainant to pay costs incurred in an accident.
- 1.13.7 In the other case it was alleged that an employee of a subscriber to a credit reporting agency had misused his company's subscription to check on a person for his own personal reasons.

- 1.13.8 The Ministry objects to the misuse of credit reporting agencies by subscribers who are not making 'bona fide' enquiries concerning consumers. Such enquiries should be made only when a consumer is seeking credit.
- 1.13.9 In the final case reported, the complainant has been provided with a summary of his credit history but as yet has not requested the Ministry to have it amended.
- 1.13.10 Credit reporting agencies have been very co-operative with the Ministry throughout the year.

STATUTORY BODIES  
ASSOCIATED WITH THE MINISTRY

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

Consumer Affairs Council

- 1.14.2 The Consumer Affairs Council is an independent body appointed by the Minister with functions as follows:
- (a) to investigate any matter affecting the interests of consumers referred to it by the Minister;
  - (b) to make recommendations with respect to any matter calculated to protect the interests of consumers;

- (c) to consult with manufacturers retailers and advertisers in relation to any matter affecting the interests of consumers; and
- (d) in respect of matters affecting the interests of consumers, to disseminate information and to encourage and undertake educational work.

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

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

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

#### Small Claims Tribunals

1.14.6 The Small Claims Tribunals are now in the seventh year of operation. There are currently two full-time and three part-time referees including a senior referee.

1.14.7 The referees of the Tribunals are appointed by the Governor-in-Council from the ranks of barristers, solicitors and persons qualified as Stipendiary Magistrates.



- 1.14.8 The Tribunals are serviced by a Registrar who supervises an administrative staff of four, one stenographer and one typist. Administrative matters relating to the Tribunals are discussed in Section 3.
- 1.14.9 The Small Claims Tribunals Act provides that decisions made by the Tribunals are final and binding on all parties to the proceedings. The only right of appeal is to the Supreme Court on the grounds that the Tribunal had no jurisdiction to take proceedings or that natural justice was denied.
- 1.14.10 It is necessary to maintain close liaison with the Tribunals as consumers have a choice whether to lodge a complaint with the Consumer Affairs Bureau or a claim with the Tribunals.

Motor Car Traders Committee

- 1.14.11 The Motor Car Traders Committee is an independent body appointed by the Governor-in-Council under the Motor Car Traders Act 1973.
- 1.14.12 The functions of the Committee as stated in the Act are:

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

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

- 1.14.13 The Committee is serviced by a separate section of the Ministry consisting of a staff of eight which includes the position of Secretary to the Committee. The staff of this section as well (as any other costs associated with the administration of the Act) is financed from the Motor Car Traders Guarantee Fund. Enforcement of the Act is carried out by the general prosecution section of the Ministry. (See Section 4).
- 1.14.14 The Committee prepares its own independent report to the Minister.

PART 2.MATTERS ARISING FROM THE INVESTIGATION OF COMPLAINTS  
AND REFERENCES TO THE MINISTRYRETAIL INDUSTRY - INTRODUCTION OF  
ELECTRONIC CHECKOUT SYSTEMS INTO SUPERMARKETS

- 2.1.1 Most Australians nowadays acquire their household and grocery needs from supermarkets which have displaced the traditional and numerous labour-intensive corner stores. Individual item price marking has become an essential part of the self-service operation, on all but the very high turnover lines, providing the most efficient method by which the checkout operator may verify the price of each article purchased.
- 2.1.2 New electronic equipment developed overseas now enables checkout operators to obtain price information from a computer memory bank either by manually pressing code numbers memorised or printed on the grocery item, or automatically by using laser scanners which can identify products by reference to a code ("bar codes") printed on each product label. The technical need for retailers to retain individual item price marking therefore disappears where such equipment is introduced. Moreover, depending upon the software options which may be purchased, other benefits associated with vastly increased data collection and processing facilities become available to retailers in the areas of: -

- . inventory management (including automatic re-ordering)
- . checkout productivity
- . price accuracy
- . customer buying habits and preferences.

2.1.3 On the other hand, it has been maintained by some consumer and community organizations that item pricing should not be allowed to disappear since it constitutes an indispensable ingredient of the consumer's right to have all reasonable information in order to make an informed purchase choice.

2.1.4 Consumers are concerned about the reduction or elimination of item pricing, claiming that it will:

- . lead to a decline in price awareness
- . make comparison shopping difficult
- . facilitate deceptive price manipulation to the disadvantage of the consumer
- . lead to consumers being charged the same price for old and new stock
- . lead to an increase in prices, used to pay for the new equipment.

2.1.5 Some consumers also express dissatisfaction at the prospect of being left with nothing but the shelf price ticket from which to obtain information; they say existing shelf pricing is inadequate, non-uniform and does not contain sufficient information. Finally consumers dispute the extent of savings that could be gained from the abolition of item pricing.

2.1.6 The Ministry received some hundreds of submissions from individuals or organizations stating their opposition to the introduction of the electronic check-out systems.

Although some of the submissions were of a high standard and based on extensive research, others were uninformed expressions of opinion, betraying a considerable lack of knowledge of the operation of the systems.

2.1.7

However, in November 1980, the Ministers of Consumer Affairs established a working party comprising South Australia (Chair), New South Wales, Victoria, the Commonwealth and the National Standards Commission to examine all issues relating to the introduction of the systems into supermarkets.

2.1.8

The terms of reference were established and circulated and advertised nationally together with an invitation, as shown, for all interested parties to make submissions.

National Inquiry into  
**ELECTRONIC CHECKOUT  
 SYSTEMS AND ITEM  
 PRICING IN SUPERMARKETS**

A national working party has been established to examine policy and technical questions associated with electronic checkout systems.

The working party comprises the Commonwealth Department of Business and Consumer Affairs, the National Standards Commission and consumer affairs agencies in South Australia, New South Wales and Victoria.

The terms of reference are:

1. To identify the benefits and difficulties associated with the introduction and continued operation of electronic checkout systems, particularly in relation to individual item pricing as opposed to other methods of price disclosure, from retailer and consumer viewpoints.
2. To consider whether, in the interests of both retailers and consumers, it is necessary to provide any safeguards to streamline the introduction of electronic checkout systems.
3. To assess the feasibility of any safeguards considered necessary, from a technical, legal and enforcement viewpoint and to assess the costs to the community of those safeguards.
4. To consider the implications of the future introduction of extensions to this new retail technology.

Interested parties are invited to make submission on any matters within these terms of reference, which must be received no later than Monday, 16th February, 1981, by the:

**Working Party on Electronic Checkout Systems,  
 C/- S.A. Department of Public and Consumer Affairs,  
 G.P.O. Box 1268,  
 ADELAIDE S.A. 5001.**

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The Working Party has met on a number of occasions. It has not yet finalized its recommendations.

- 2.1.9 The Ministry considers that it has a responsibility to ensure that information essential to consumers so as to enable them to make intelligent purchasing decisions is available conveniently. At the same time, the Ministry is concerned that consumers be in a position so as to obtain the benefits that may follow from the introduction of these systems. Thus the important issue at stake is not whether these checkout systems should be allowed to be introduced but rather whether their introduction will reduce or eliminate price disclosure and thereby consumers' access to essential information.
- 2.1.10 The Ministry has also a duty to promote consumer education. This involves encouraging consumers to shop comparatively and to make discerning choices, rather than arbitrary choices they may later regret.
- 2.1.11 The Ministry considers that it is imperative that a national public education program be implemented before the introduction of the new equipment and, since these systems are being introduced primarily to benefit the retailing industry, that retailers should sponsor and conduct such a program, in consultation with the Ministry of Consumer Affairs.
- 2.1.12 In addition, the Ministry considers that it is essential that the industry develop its own code of practice relating to the introduction and operation of such systems.

If such a code can be negotiated with the industry - and all the indications so far are that it can - and it is accompanied by an effective education campaign, then pre-emptive action on the part of consumers will be avoided, as it would allow time for assessment of the situation after consumers have been properly informed and have operated under the code. They could then express any dissatisfaction they may have with the code based on actual experience. On the other hand the Ministry will also then have a sound basis on which to consider recommendations for any changes of legislative controls which might become necessary.

### PACKAGING INDUSTRY

#### MODEL LEGISLATION ON DECEPTION IN PACKAGING

- 2.2.1 In a considerable number of instances, consumers have voiced their disapproval to the Ministry that upon opening a package, they were disappointed as the content was much smaller in volume or lower in number than the package had led them to believe.
- 2.2.2 Under the Consumer Affairs Act 1972, the Victorian Ministry has powers to proclaim by regulation a number of controls relating to packaging. No such regulations have as yet been proclaimed, although the Victorian Ministry is participating on the Standing Committee on Packaging (SCP) chaired by the National Standards Commission, and set up in order to ensure that uniformity of packaging regulations is achieved on an Australia wide basis.

- 2.2.3 In this respect, it should be noted that legislation dealing with deception in packaging is in existence in New South Wales, Queensland and South Australia. It is the Ministry's understanding that these States will introduce the necessary amendments in order to achieve the required uniformity.
- 2.2.4 Membership of the SCP consists of Weights and Measures bodies which in Victoria come under the administration of the Local Government Department.
- 2.2.5 Close co-operation has been achieved with the Victorian Weights and Measures and the advice of the Superintendent and his staff on all technical matters relating to packaging is gratefully acknowledged.
- 2.2.6 The deliberations of the SCP have progressed considerably and its recommendations have been summarised in the form of three documents which have been issued for public scrutiny -
- . Model Act on Deceptive Practices In Packaging,
  - . Model Regulations for Controlling Deceptive Practices in Packaging, and
  - . Standard Techniques of Measurement of Packages.
- These documents are available from the National Standards Commission in Sydney.
- 2.2.7 The aim of the three documents is expressed in the preamble to the Model Act, namely:



To prohibit in relation to the packaging for sale and selling of articles usage of a package such as to induce a viewer of the package to believe by reason of the apparent capacity of the package that it is likely to contain a greater quantity of an article than it does.

- 2.2.8 The Ministry fully supports this principle although it is aware that if literal requirements are imposed on the packaging industry, it may deprive Victorian consumers of some useful products. This would apply especially to imported products where foreign manufacturers packaging goods for world-wide distribution may be reluctant to take into account any restrictive requirements of the relatively small Australian market.
- 2.2.9 In order to deal effectively with this problem, SCP has formed a Consultative Committee in which the Victorian Ministry participates, together with industry representation. The aim is to arrive at an acceptable balance between consumer protection from deception in packaging and the costs to industry in complying with possible requirements.

### BUILDING INDUSTRY

#### New Home Construction - House Builders' Liability Act

- 2.3.1 The House Builders' Liability Act which comes under the administrative overview of the Local Government Department, generally speaking, gives a dual protection to a new home purchaser. It protects him in the event of default by the builder in not completing the construction of the home as well as against defects arising in construction for a period of up to six years after completion of the home.

2.3.2 However it is becoming increasingly apparent that the public do not know of the protection that is afforded them by the Act or the procedure required to make a claim. Officers of the Ministry spend considerable time each day explaining the provisions of the Act to home owners who ring for advice. In many cases, after establishing the facts, the only advice that can be given is regretfully that the owner is prevented from making a claim under the Act because the prescribed deadlines in reporting his claim to the guarantor body were missed. This is so in many cases where the home owner had a valid claim against a builder, the right to which had been lost through elapsed time.

2.3.3 The limitations under the Act are twofold:

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

2.3.4 The following two examples illustrate the genuine difficulties that new home owners experience in complying with the Act.

- (a) "The circumstances of my claim are briefly stated hereunder for your consideration:

"1. On 17 November 1979, 16 days from taking possession of my house, I wrote to the builders-vendors advising them of its defects or faults due to defective materials or workmanship, and asking them to make the necessary repairs within 30 days from date of notice pursuant to the terms of the Contract of Sale.

2. In reply, the builders-vendors requested me by telephone - and I acceded - to give them time, in view of the onset of the holiday season, to make the necessary repairs in late January or early February, which would be beyond the 30-day period provided in the contract. The repair work done was not wholly satisfactory and I so advised the builders-vendors by telephone.

3. On 9 May 1980, I sent to the builders-vendors an itemised list of the repairs they made, indicating which were unsatisfactory and which were not, and therefore had to be made good accordingly. This letter was completely ignored.

4. On 29 August 1980, I wrote another letter reiterating my previous complaint, and also advising the builder-vendors of some other defects that had surfaced in the meantime. This, too, was completely ignored.

5. On 10 September 1980, having elicited only complete silence from the builders-vendors, I wrote to the Housing Builders' Association Ltd, requesting their intercession in the hope of persuading the builders-vendors to carry out their contractual obligations.

"6. On 30 September 1980, after some communication exchanges, the Housing Builders Association wrote me, citing 918L (1) (b) of the House Builders Liability Act 1973, that they were unable to help me because of my failure to give them prior notice in writing within three months after I had become aware of the defects.

Needless to say I was disappointed by the stand taken by the Housing Builders Association. Instead of dealing with the central issue frontally to resolve a question that cries out for a meaningful answer, it avoided it on convenient technical grounds. Hence, this appeal to your office for some satisfactory solution to obtain redress. I am convinced of the justice of my case; I formally informed the builders-vendors of the defects within the prescribed period of the contract, and nowhere among its provisions does it also oblige me to give notice in writing to the approved guarantor within three months after becoming aware of the defects.

If the Builders-vendors in this case are allowed to get away with it, so to speak, and if the stand of the Housing Builders Association is the final word on the matter, I believe the public is entitled to a much tighter protection. For the number of unwary consumers and home buyers is legion, and they cannot be expected to know all the laws and rules governing certain transactions, much less the implications of the fine print in a contract."

(b) "The relevant details are as follows:

Three items of repair were discovered around October-November 1979 on the above premises. These were -

1. paint in bathroom peeling,
2. paint on garage door peeling and fading,
3. water entering the garage from the brick wall on west side.

These faults were discovered, and on its discovery I immediately wrote to the builder, Glenvill Homes. I received a letter from the Manager of that company saying that their building people will come and see and advise. To this date no such person has been to see these faults or advise me as such.

In early 1980 I further communicated with two further letters, to which I did not receive any replies. Phone calls were made, to which no replies were given. In desperation I then communicated with the Housing Builders Association, of whom the builder is a registered member. This was done in May-June 1980.

It was not until August 1980 a member of the HBA inspected the premises and stated that these faults needed rectifying. No further communication was had until September 1980 when a further inspection was made by both parties. Subsequent to that a reply was sent to me, and I enclose that letter to you.

"All relevant letters and documents that I have had with the builder had been sent to the HBA. I have requested these to be sent to me, but no reply has come so far.

I feel that builder has never communicated for almost 12 months, and that the faults were notified to the builder as it appeared way back in November 1979. In view of this, the present statements as per enclosed letter do not comply."

2.3.5 The letter from the Housing Builders' Association Ltd. (HBAL) referred to by the consumer stated:

"We refer to previous correspondence regarding alleged defects in the above dwelling house and your subsequent claim pursuant to the provisions of the House Builders Liability Act 1973.

We advise that the complaints have been considered by this company and we regret that we are unable to assist you with your claim by reason that the items were not reported to this company within three (3) months of their appearance pursuant to the requirements of Section 918L (1)(b) of the House Builders Liability Act 1973 which provides cover where:

"... the purchaser gives notice in writing to the builder and to the approved guarantor within three months after becoming aware of the defect."

As this company was not notified by yourselves within three months of becoming aware of the defects, we are unable to proceed with this claim.

If we may be of assistance in the future, please do not hesitate to contact this office."

- 2.3.6 Initially, HBAL, which is the guarantor body under the Act adopted a most sympathetic attitude towards consumers. At one stage the HBAL undertook to disregard the restrictive limitation of the Act and met claims such as the two outlined above. However, the HBAL had to discontinue this policy. It is the Ministry's understanding that the reasons for this stance were that HBAL had a duty to protect their insurers who have undertaken to insure HBAL and that unless a strict interpretation of the Act was adopted HBAL would experience considerable difficulties in seeking recovery of such payments from the defaulting builder. The recovery would be thwarted by virtue of the fact that the payment would not have been made in accordance with the Act.
- 2.3.7 The Ministry accepts that HBAL would have been placed in an invidious situation and considers that the best solution to the problem would be an appropriate amendment to the House Builders Liability Act. Negotiations are currently in progress with the Local Government Department on this issue.

#### Resolution of Building and Renovation Disputes

- 2.3.8 Over the last few years the Ministry of Consumer Affairs received a considerable number of complaints relating to the following two main areas:

- (a) Disputes arising during the course of construction of a home or arising out of defects appearing after possession of the home and hence subject to the terms and conditions of the building contract and the provisions of the House Builders Liability Act.
- (b) Disputes relating to home renovations which do not come under the House Builders Liability Act and where the contract may be of such a superficial nature, or even only a verbal one, that it cannot be used as a basis for adjudicating a dispute.

2.3.9 There were instances where it became apparent that the existing disputes mechanisms available to consumers were not sufficient to resolve all the complaints in an efficient manner.

2.3.10 The mediating powers of the Bureau would have failed because of the consumers' negligence in not ensuring that proper agreements were drawn up. Conflict of evidence then leaves the complaint unresolved. The \$1,000 monetary limit of the Small Claims Tribunals did not allow some cases to be adjudicated in that forum.

2.3.11 Allegations were made that arbitration clauses in the House Builders Liability Act or in individual contracts forced a dispute to arbitration where alleged industry bias was prevalent, and last but not least that the cost of arbitration or court litigation was usually beyond the financial capacity of consumers.

2.3.12 It is not implied here that the existing dispute settling mechanisms had failed in the area of building disputes as most could be resolved in an efficient and equitable manner.



However it became apparent that developments in the building industry required the development of a dispute settling mechanism which would specifically cater for the needs of that industry.

- 2.3.13 Consequently the Ministry convened a meeting of the two industry bodies, the Housing Industry Association and the Master Builders Association, together with the two approved guarantor bodies nominated by the House Builders Liability Act and a representative from the Local Government Department to consider the establishment of a mechanism which could adjudicate over such complaints at the least cost in time and money to both consumers and traders.
- 2.3.14 Once the deliberations of this informal working party have sufficiently progressed, the intention is to issue a discussion paper to the industry and other interested bodies and to invite comment.
- 2.3.15 The ultimate aim of the Ministry is to eliminate complaints in these areas and it is considered that an efficient dispute settling body attuned to the special characteristics of the industry is the first prerequisite to achieving this aim.

#### House Cladding

- 2.3.16 As in previous years a considerable number of complaints concerning house cladding were received. The major causes of complaint included questionable sales methods, poor quality products and bad workmanship and fixing.

- 2.3.17 The Ministry has continued its representation on a committee, established by the Standards Association of Australia, to formulate standards of manufacture and fixing for the multiplicity of cladding products together with a standard form of guarantee/warranty and a standard contract. It is hoped that the development of such standards together with the co-operation of reputable manufacturers will ultimately curb the unethical practices for which this industry is unfortunately renowned.

### TRAVEL INDUSTRY

#### Inefficiency of Travel Agents

- 2.4.1 In the past 18 months seven Victorian retail and wholesale agents are known to have collapsed, closed down or simply disappeared owing travellers money.
- 2.4.2 For some years prior to 1980 only one significant collapse was reported to the Ministry. The need to impose some controls over travel agents, at least to the extent of the introduction and operation of proper trust accounts has therefore increased accordingly.
- 2.4.3 The advent of advance purchase excursion fares with their connotations of cheap air travel resulted in a large increase in the number of passenger departures from Australia in previous years. Industry sources claim that concurrently the number of travel agents in Victoria has also increased.

- 2.4.4 There is evidence that this trend has now eased and in some instances even reversed. Australian Bureau of Statistics passenger departure figures for 1980 show an increase of only 30,000 (or 2.5%) in departures from Australia. Most of the departures were to South East Asian destinations. As many travel agents do not specialise in this sector of the market, some of them must have experienced an absolute decline in their business.
- 2.4.5 Furthermore there is evidence that the travel industry is becoming more centralised with large companies controlling many outlets. Large scale advertising campaigns covering the full spectrum of world travel are becoming common, placing many of the smaller agents in a competitive situation in which they cannot survive.
- 2.4.6 Allegations were made by a number of travel agents that at present a number of individuals in the industry have inadequate capital and very little knowledge of how to run a travel business in lean times. Ministry experience suggests that the industry is plagued by 'biscuit tin trust accounts' and that the necessary financial skills are sadly lacking with some proprietors.
- 2.4.7 Two cases investigated by the Ministry indicate this clearly. The proprietor of one company whose collapse was brought to the attention of the Ministry, obtained the services of an accountant for the first time when she was unable to pay a refund from her 'trust account'. Another 'trust account' investigated by the Ministry had numerous instances of cheques being marked 'refer to drawer'.

- 2.4.8 A number of travel agents within the industry while using the term 'trust account' in reference to the account in which payments of individual's moneys are lodged, make no effort to provide any additional security for these funds. Individual consumers have lost amounts up to \$5,500 as a result of the activities of incompetent travel agents.
- 2.4.9 Segments of the industry are now moving towards some form of self regulation. The Australian Federation of Travel Agents (AFTA) is in the process of setting up a 'Consumer Protection Fund' which will guarantee security to consumers. Such a move is welcomed by the Ministry although it must be realised that less than half of all travel agents are members of AFTA who would therefore subscribe to such a protection fund once it becomes operative. Properly operated trust accounts are essential for all travel agents.

#### Advance Purchase Excursions

- 2.4.10 There is no provision specifically relating to the rights of consumers to obtain refunds on their advance purchase excursion tickets when an epidemic illness has broken out in the area to which they might be travelling.
- 2.4.11 While the Australian Air Navigation Regulations make provision for the Director General of Transport to vary refund conditions under exceptional circumstances, the specific provision of a refund to potential travellers once an epidemic has broken out in the country of their destination appears not to be covered.

- 2.4.12 Considerable reliance is placed upon the country in which the epidemic is occurring, indicating that an epidemic has in fact broken out. Unfortunately some countries are loath to acknowledge this officially on account of the effect such an announcement would have on their tourist trade, Prospective travellers have to rely on general media reports without being able to obtain any definite confirmation.
- 2.4.13 The Ministry has received a number of enquiries on this issue from consumers who were not able to obtain reliable advice on which they could make an informed decision as to whether to continue with their travelling plans.
- 2.4.14 Inability to obtain refunds in such circumstances is understandably most disconcerting to consumers.

#### Length of Advertised Tours

- 2.4.15 Complaints continue to be received from consumers who booked package tours advertised, for instance, to last for 18 days and 17 nights. In some instances these 'days' are as short as one-and-a-half hours. In one case a consumer was due to depart from Mascot Airport at 10.30 at night and this was counted as a full day on a tour. Such advertising can only be described as 'puffing out the tour' and is grossly misleading to most intending travellers.
- 2.4.16 It is recognized that the description of the length of a tour can be a problem especially as precise departure times may not be available at the time the brochure is printed.

However, barring unforeseen circumstances, organizers should be able to indicate at least whether the tour is to commence in the morning or afternoon. Similar consideration should be given as to descriptions of the last day of the tour. A 14 day tour commencing at 3.00 pm on the first day and terminating at 10.00 am on the fourteenth day can hardly be described to have a duration of 14 days. A more appropriate description would be 12 days plus 2 half days. Such a description would give the consumer a clear indication of exactly what he is purchasing.

#### Travel Insurance - Non Disclosure of Conditions

- 2.4.17 The Ministry has continued to receive complaints during the year concerning travel insurance. The complaints centre on a number of issues such as failure to provide adequate information on the policy, usage of language which is incomprehensible to the majority of consumers and policies that contain terms and conditions which exclude liability in circumstances which could be considered to be unfair or unreasonable and fail to balance the interest of the insurer and the consumer.
- 2.4.18 Consumers are not always in a position to be able to obtain information necessary for the comparison and evaluation of alternative policies. A number of policies do not contain detailed information about the extent of cover or of warranties, terms and conditions or exclusions. The policy is either made available only after a contract has been arranged or is available only for perusal at the office of the insurer.

- 2.4.19 Failure to fully and readily disclose the terms of travel insurance contracts frustrates proper comparison and prevents consumers taking maximum advantage of the competitive process. Furthermore, failure to alert consumers to the limits imposed by exclusions can result in them purchasing a cover which is inappropriate to their needs and circumstances.
- 2.4.20 Most insurers rely on contractual terms in policies to establish their rights and duties. Few consumers can be expected to comprehend all the implications of such terms or to be able to negotiate their modification.
- 2.4.21 This unacceptable situation must be remedied if complaints are to be reduced in this area, especially as travellers are always under pressure to take out travel insurance because:
- (1) airlines recommend that passengers using advance purchase tickets take out insurance;
  - (2) transport authorities encourage the use of travel insurance and require intending passengers under advance purchase schemes to be informed of its availability;
  - (3) failure to take out travel insurance diminishes any right travellers may have under the Department of Transport's Waiver Scheme; and
  - (4) some tour operators require, as a condition of reservation, that travellers take out insurance to cover ill health whilst on tour, loss of luggage and loss of deposit and air fare changes due to cancellation.

- 2.4.22 It is therefore essential to ensure that plain language documentation and accurate and comprehensive summaries of policies are available to consumers at the time when they are arranging their travel itinerary.
- 2.4.23 This may impose minimal additional costs on the industry but would enable consumers to compare policies for suitability and value and be an effective aid to marketing.
- 2.4.24 Travel insurance is normally sold by travel agents, banks or airlines for whom arranging cover is incidental to their main business. Many are not able to advise clients on the suitability of the policy or possible alternatives. Suitable comprehensive and informative explanatory material would enable such agents to assist clients without inadvertently misrepresenting or exaggerating the cover offered, or failing to clarify relevant exclusion clauses.
- 2.4.25 A substantial proportion of the travel insurance market comprises people of non English speaking origin for whom reasonable access to such explanatory information is essential. Furthermore the Ministry has received reports that fully automatic vending machines may be used to sell travel insurance. Such a move would be acceptable to the Ministry only if the policies were standardised and simplified, as under such circumstances the consumer would be unable to acquire readily available advice on the policy.



- 2.4.26 The introduction of standardised contractual terms in policies should result in greater cost-effectiveness, facilitating the provision of effective explanatory information and substantially eliminating the risk to consumers in purchasing insurance which may be inappropriate for their circumstances.

Travel Insurance - Onerous Disclosure Requirements

- 2.4.27 Most travel insurance policies require that the insured give a warranty that to the best of their knowledge, they are in good health and free from any physical defects or disease. The consumer always runs the risk when giving such a warranty, that it could render the policy void if he subsequently makes a claim, if it can be shown that unknown to him he was suffering from a pre-existing condition.
- 2.4.28 Most of the warranty requirements, as they are being administered now -
- . reflect a lack of consultation with consumer groups,
  - . diminish the value of cover offered,
  - . place the claims in a state of uncertainty and dependent on possibly one-sided interpretations of health conditions,
  - . potentially negate claims on narrow technical grounds, and
  - . potentially mislead consumers about the nature of the cover offered.

2.4.29 The Ministry realises that there is a genuine need to have a disclosure clause relating to pre-existing conditions in a travel insurance policy. However, significant improvements could be made if the interpretation of what constitutes a pre-existing condition were standardised. In addition special warnings to groups of travellers most likely to be ineligible, such as the elderly, pregnant women and people with chronic or recurring conditions, should be provided prominently in the actual policy document and any information material.

SKIING

- 2.5.1 Over the past 20 years, skiing in Victoria has developed into a large sporting and tourist activity catering for many tens of thousands of enthusiasts who flock to the slopes annually. With the development of such an industry, some considerable sophistication has evolved in operations, both technically and in management of the snow fields.
- 2.5.2 Unfortunately however, according to the volume and nature of complaints received, the growth in participation has not always been matched by a corresponding increase in quality of service provided to skiers. Accordingly the following comments are now made - although obviously some complaints were made in the period since 30/6/81 - in order that arrangements might be improved for the next season.
- 2.5.3 1981 saw the best snow falls in almost 20 years; perhaps understandably, at the same time it created an unprecedented increase in complaints to the Ministry.
- 2.5.4 Ski tow operators have come in for very heavy criticism.
- 2.5.5 Mount Buller skiers bitterly criticised the failure of the two tow companies on the mountain to provide a combined ticket. Allegations were received that because Mount Buller required two separate tow tickets to ski the whole mountain, it was in fact a most expensive mountain for tow rides, and that when conditions were unfavourable in one area, a further ticket had to be purchased to ski in other areas.

- 2.5.6 Complaints were received about tow breakdowns, failure to give refunds on tickets when tows were not working because of mechanical and weather reasons, and failure to offer concessions when many of the tows were not working. In addition, Buller skiers complained about the quality and price of the taxi services from car-parking areas to the lodges.
- 2.5.7 Mount Hotham skiers complained about the lack of adequate snow grooming particularly; delays in getting broken tows back into operation, the late starting of tows, and failure to give refunds or concessions when tows failed to operate. Complaints were also received that the tow company at Mount Hotham was the only one in Victoria not allowing priority of access on its tows for ski schools - on the other hand, the priority given ski schools elsewhere causes complaints also - obviously at Hotham, common ownership of ski schools and tows does not exist as at other resorts - nor should this necessarily be so.
- 2.5.8 Falls Creek skiers complained about the failure of the tow company to give refunds when tows were not operating, of the waiting time to buy tickets and of snow grooming.
- 2.5.9 Complaints were received about the rudeness and off-handed attitude of tow operators, especially towards beginners, and the lack of supervision and direction of skiers queueing at access points to tows.
- 2.5.10 Many Victorian skiers have seen the standard of service at overseas resorts and in New South Wales and have voiced to the Ministry their considerable disappointment and resentment at the quality of service at Victorian ski resorts.

- 2.5.11 Generally speaking the complaints by individual skiers have been substantiated by VSA - Victorian Ski Association - the organization representing skiers. In several respects their comments add weight to individual consumer complaints and to the Ministry's observations, particularly as follows:

Ski Lift Prices

- 2.5.12 "Whilst we accept the principle of private enterprise and the rights of the commercial operators to make fair and reasonable profits, we submit that the lifting companies are in the privileged position of running monopoly or near monopoly enterprises on public land, and, therefore charges to consumers should be subject to some independent means of justification. There is no real element of competition for these particular operators as prevails in a normal free enterprise system.

To this end, the Victorian Ski Association, in conjunction with the New South Wales Ski Association and other regional bodies such as the Hotham Ski Club Association and the Baw Baw Ski Association, strongly recommends the formation of an independent tribunal... to sit in judgement on both the current cost levels and any future requested increases."

Families

- 2.5.13 "The Victorian Ski Association is most concerned at the devastating effect tow prices are having on the average family's capacity to afford to enjoy alpine skiing.

With the occasional exception (Blue Lifts at Buller) lifting companies appear to be unconcerned with the problems of the family and no attempt is made to financially encourage this large group to participate. It is most discouraging when a family has to pay full price for a child over 12 (in most cases), and examples of daily costs for a man, wife and two children over 12 at our resorts which are detailed below indicate the enormous cost a family must pay to participate.....

Falls Creek	\$62	per day		
Mt Hotham	\$62	" "		
Mt Buller - Orange	\$60	" "		
- Blue	\$56	" "	..."	

- 2.5.14 It is interesting that lift companies are permitted to charge adult prices for children over 12 years. I have recommended to the Minister that when children's concessions are advertised they should apply, not only in skiing but in all circumstances, for children up to the age of under 16 years, except where otherwise specified.

Lack of Refunds

- 2.5.15 "Various complaints have been received by the Association about the practice of some tow companies charging normal prices when a significant proportion of tows at that resort are inoperative due to mechanical failure or weather and snow conditions. This practice has been going on for some years and the Association has often commented on the inequity and unfairness of it. Most comments this season have revolved around Mount Hotham, which for some few days had only one lift operating.

We are told that the full price was still charged during this time.

The Victorian Ski Association has long considered the necessity of a scheme whereby consumers would only have to pay a set proportion of the full charge when only that same proportion of lifts were operating. We suggest that the American practice of providing partial refunds in such cases should be investigated and implemented in Australia. To their credit, Orange Lifts of Mount Buller did on one occasion adopt such a procedure following public demand after a major lift failure."

- 2.5.16 But it is also of interest that on other occasions the same company displayed a "No Refunds" sign at ticket boxes.

Two Lift System - Mount Buller and Mount Baw Baw

- 2.5.17 "Whilst we believe that under some circumstances two companies can operate lifting services at one resort, we consider that an All Mountain ticket is essential in these cases. However, careful consideration should be given to the setting of an All Tows ticket price as we feel it is a dangerous principle to permit a premium to be charged for skiing the whole mountain,

because (1) at all other resorts you can ski all the mountain without any additional payment,

and (2) if and when a merger or amalgamation of the two companies takes place, the lift companies may attempt to use the combined All Mountain ticket price as the basis for the two prices in the future. In fact, the two companies at Baw Baw attempted to instigate this very scheme this season. As we pointed out to the Committee of Management in response to this situation a merger should in fact lead to cheaper operating costs by lack of duplication of services and operating costs. The price should possibly be cheaper, certainly not greater."

#### Unsatisfactory Ticket Selling Facilities

2.5.18 "Many complaints have been registered, principally about Falls Creek, at the inefficient and frustrating methods of selling tickets, especially in the morning rush. Delays in excess of one hour are being experienced and frustrations and anger amongst consumers are quite regular."

#### Snow Grooming

2.5.19 "The service provided in this most important facet of downhill skiing varies from the very good to the very poor. Orange Lifts at Mount Buller and National Parks at Mount Buffalo provide good, well-groomed slopes using top-standard machinery.



At Falls Creek, a very much lesser standard of snow grooming is done with cheaper, second-rate machines. This company has a very high return and should be compelled to provide an adequate service in this regard. Mount Hotham provides a very poor snow grooming service. The resort is now reaching major proportions and the financial returns should be reaching a stage where adequate snow grooming should be expected. Mount Baw Baw's grooming is also well short of the required standard, especially in view of the lesser snow cover usually experienced there."

2.5.20

Thus it is clear that considerable improvements in services are needed at Victoria's snow resorts. At the present time there appears to be no well co-ordinated attempt to improve standards of service at all resorts, and from the complaints received by the Ministry, it is obvious that unless appropriate action (sometimes requiring additional expenditure) is taken in the near future, the level of discontent amongst skiers will continue to increase, with resultant disenchantment of what should be a thriving aspect of Victoria's tourism activities. Tourism is of course quite labour intensive and an important aspect of economic development.

2.5.21

Ski resort management is vested in local representative committees of management for each area, co-ordinated by the relevant Government Department or Instrumentality - Falls Creek (SEC), Hotham (Crown Lands & Survey), Buller and Baw Baw (Forests Commission) and Buffalo (The National Parks Service). At Buller the Transport Regulation Board is also involved.

- 2.5.22 Discussions with representatives of the relevant authorities were held during the season, and it must be stated that generally they were well aware of the nature of complaints received by the Ministry, as in many instances consumers had also contacted the relevant committee of management.
- 2.5.23 As a result of discussions it has been agreed that all complaints received by the Ministry would be forwarded to the relevant committee but investigated by the Ministry.
- 2.5.24 The Mount Buller lift operators have apparently conceded the need to provide a comprehensive service to all skiers and are willing to introduce interchangeable lift tickets and/or a 'Whole Mountain' ticket. The operators stated that an increased lift fee would be charged for this service, which if permitted, would continue to place Mount Buller skiers at a relative disadvantage compared to skiers at Victoria's other resorts where the one ticket gives access to all ski tows.
- 2.5.25 The Ministry has also been advised that as a result of action by the committee of management, slope grooming at Mount Hotham will be substantially increased next year, although it is understood that there is no legal requirement for the operator to do so. Such a desirable change will undoubtedly improve both safety and enjoyment, particularly on Mount Hotham's more difficult slopes and is thus to be welcomed; the absence of effective grooming at Mount Hotham is probably the most serious complaint dealt with in this section.

2.5.26 It should be realised that while the essential commercial interests are entitled to a fair return on their most considerable outlays, skiing and its necessary commercial infrastructure occur on Crown land. The committees of management appear to have few sanctions or powers over the tow operators, particularly over those companies with extensive (and perhaps excessive) tenure. It is hoped that Victoria's skiing consumers will find the arrangements at each resort to be much improved for next season. The situation will undoubtedly be watched with great care by the various interested parties.

#### PROFESSIONAL COMPLAINTS

2.6.1 The resolution of professional complaints requires a high degree of consultation with associations representing the professions. The Ministry received fullest co-operation from these bodies on all issues referred to them, a clear indication that they are concerned to maintain the highest possible standard for their members and good relations with the Ministry.

2.6.2 There was a considerable reduction in the number of complaints received this year. Hopefully this can be attributed in part to the close liaison established between these associations and the Ministry, a fact which is acknowledged herewith.

### Legal Complaints

- 2.6.3 Complaints involving the legal profession fall within two distinct categories, those simply requiring clarification, and those of a more serious nature involving allegations of incompetence or misconduct by solicitors or barristers. In essence they follow the pattern of previous years.
- 2.6.4 Complaints which showed that consumers did not understand the nature of the fees charged were usually referred to the relevant solicitor or barrister, who without exception supplied further information to clarify the nature of his charges. In all cases this action was sufficient to resolve the complaint.
- 2.6.5 Complaints of a more complex nature were referred to the Law Institute for their investigation and where appropriate for further referral to the Disciplinary Tribunal established under the Legal Practitioners Practice Act.

### Medical Complaints

- 2.6.6 Discussions were held with both the Medical Board of Victoria and the Australian Medical Association in an endeavour to establish procedures whereby consumer complaints could be adequately investigated.
- 2.6.7 As there is a growing public awareness and demand for professional accountability in the medical profession the Ministry considers that a system of peer review which would provide an acceptable independent opinion on medical complaints may be the most appropriate method of settling such disputes, particularly if a Lay Observer were also present.

Dental Complaints

- 2.6.8 Most complaints related to dental charges. As there is no standard dental fee for dental services, complaints are going to continue in this area as there seems to be a wide range of charges for similar services.
- 2.6.9 In the 1979 Report a proposal was made for dentists to display a scale of charges in their waiting rooms and thus provide a basis of referral to their clients. This proposal was not implemented and consequently complaints continue to arise.
- 2.6.10. However despite this basic concern over the charges the resolution of dental complaints has been a credit to the Australian Dental Association, the Royal Dental Hospital and various members of the dental profession, who have on a voluntary basis, provided the Ministry with helpful advice in the resolution of complaints.

MOTOR VEHICLE INDUSTRYComplaints Against Traders

- 2.7.1 The Motor Vehicle industry still represents the highest number of complaints received by the Ministry. In the last Annual Report a downward trend in the percentage of complaints was noted. This trend has continued in the current year.

2.7.2

	1978/79		1979/80		1980/81	
	No.	% of Total Compl- aints	No.	% of Total Compl- aints	No.	% of Total Compl- aints
New Motor Vehicles	626	6.18	640	5.62	529	4.47
Used Motor Vehicles	1219	12.04	1146	10.06	1087	9.19
<u>T O T A L</u>	1845	18.22	1786	15.68	1616	13.66

2.7.3

This downward trend is attributed mainly to the consumer education policies of the Ministry, particularly on avoiding pitfalls purchasers may encounter when purchasing a motor vehicle. A large percentage of the 70,000 telephone enquiries received by the Ministry each year refer to pre-purchase advice of motor vehicles, and this in itself must have had a considerable effect on the number of complaints.

2.7.4.

In addition some thousands of individual discussions are taking place each year between investigating officers and motor car traders and their sales staff on complaints during which the point of view of consumers is represented, traders' attitudes towards their customers are re-shaped and new policies relating to sales methods, warranty repairs and contractual obligations are developed.

2.7.5

The effectiveness of the Ministry's work is also evident when analysing the complaints records of individual traders.

Traders who in previous years have generated close to 100 complaints per year have instituted new policies as a result of discussions with the Ministry and complaints against them have been reduced to two or three per month.

2.7.6 However the motor vehicle industry represents a dynamic market with constant change in membership and sales staff. The advances made by the Ministry with some traders in relation to the number of complaints may be offset by the entry of some new members who are most anxious to establish themselves at any cost, believing that the typical popular image of the shrewd car salesman gives them the right to operate in such a fashion.

2.7.7 The motor vehicle industry is also most susceptible to general economic fluctuations of our economy. The fierce competitiveness within the industry makes it inevitable that whenever the market is depressed, some traders are driven out of business. This usually happens to those who lack foresight and sound financial planning and who entered this business believing that they would survive by good luck, fortuitious cash flows and assisted by sometimes naive consumers.

2.7.8 Unfortunately, as a general rule, such traders resort to the extreme tactics of pressure selling, misrepresentation, refusal to repair warranted items etc, as a last minute attempt to maintain financial viability. The sad result is a large number of complaints prior to a collapse of the business.

2.7.9 There is a large number of well established motor car traders whose business acumen and concern for clients equals that of retailers in any other field.

They co-operate fully with the Ministry in order to improve the generally poor image which the industry has in our community and their individual efforts are gratefully acknowledged; given the continuation of reduction in complaints in this field it is to be hoped that the image of the industry will gradually improve. There is no doubt that the Motor Car Traders Committee through its licensing powers, also contributed to the general downward trend in complaints.

2.7.10 In May 1980 an amendment to the Motor Car Traders Act 1973, empowered the Director of Consumer Affairs to object to the Committee against the issuing or renewal of a licence -

"on any ground which suggests that

- (i) the applicant is not a fit and proper person to hold a licence, and
- (ii) the applicant has not sufficient material and financial resources available to him to enable him to comply with this Act and the Regulations."

(See Sections 15 and 18 of the Motor Car Traders Act 1973 No. 8408).

2.7.11 It is the intention of the Ministry to continue to provide all available information to the Committee on the standing of motor car traders so that an appropriate consideration can be given as to whether a licence should be issued.



Biased Contracts

- 2.7.12 The Victorian Ministry is participating in a Committee of the Standards Association of Australia to develop a Standard Contract for the sale of motor vehicles. There is a definite need to develop a balanced contract which reflects equally the rights and obligations of both traders and consumers. The most widely used contract in Victoria clearly shows a bias in favour of the trader. This contract was developed by the Victorian Automobile Chamber of Commerce (VACC). Clause (1) of the contract states that -
- "The Trader shall have the right and be at liberty to cancel this agreement at any time within five (5) days from the date hereof without assigning any reason whatsoever therefor....."
- 2.7.13 The contract does not give the consumer the same entitlement. The reason for this clause seems to be that management of a dealership wishes to have the right to review every contract entered into by its sales staff. In other words, the argument is that management will not accept any responsibility for the actions of its sales staff when negotiating the conditions of a sale but at the same time requires the purchaser to comply with them. As stated in the previous Annual Report, this is a most unfair situation and the contract does little credit to the VACC and the dealers who use it.
- 2.7.14 The Ministry has received complaints where it was obvious that contracts were cancelled by dealers because a better price was subsequently offered to them by another customer.

2.7.15 Clause three of the contract imposes a number of most unfair requirements on the purchaser which it would be impossible for him to confirm. Three of the seven requirements of this clause state:

"The Purchaser hereby acknowledges admits declares and agrees:

- . That he is aware that the Trader is a Motor Car Trader as defined by the Motor Car Traders Act 1973.
- . That he has personally checked the distance recorded on the odometer or other instrument or device installed in the motor car for recording distance and found that same accords with the statement on the face hereof and is aware that the Trader does not believe such reading to be true.
- . That the Trader its employees servants and agents have all acted in a fair and reasonable manner towards him in the negotiations leading up to and in the making of this agreement."

2.7.16 This clause is one of 20 clauses printed on the back of the contract in letters of one millimeter in height. The total wording of the clauses is more than the equivalent of 12 pages of this Annual Report.

2.7.17 The purchaser is asked to sign on the front of the contract, and it is the experience of the Ministry that most consumers are not made aware of the special conditions printed on the back, let alone given the encouragement to read them.

2.7.18 The Ministry is receiving a considerable number of complaints and enquiries relating to issues which could have been avoided if the contract used was more specific.

2.7.19 The complaints related to such issues as:

- (a) Price increases between the time the contract was signed and the car delivered.
- (b) Specific delivery dates instead of such vague terms as "delivery ASAP" (As Soon As Possible) and clarification of the consumer's rights when the dates cannot be maintained.
- (c) Trade-in valuations and re-valuations if the consumer was using the trade-in for the time until the new car could be delivered.
- (d) Proper price disclosure and explanation of such terms as "on road costs", "delivery charges", "Statutory Requirement Fees", "Maintenance", "Freight", "Handling", etc, all of which add to the published price of the car.
- (e) Proper description of the year/model of the vehicle.

2.7.20 Specific examples can be quoted on all above points relating to the inadequacy of the contract, but as they have already been referred to in previous Annual Reports, only one, relating to trade-in valuation and description of year/model is given here:

2.7.21 In February 1981 a group of dealers were heavily discounting new vehicles prior to a new release. A consumer made a purchase knowing that the date of manufacture would not be 1981. To his surprise he discovered that the vehicle was manufactured in 1979.

- 2.7.22 It was obvious that the consumer would incur a financial loss at the time when he came to sell the vehicle as it would have to be designated as a 1979 model. The Ministry made representations on behalf of the consumer and was informed by the trader that this car would be valued as a 1981 model and not 1979 if it was traded in at a future time.
- 2.7.23 Investigation by the Ministry showed that the same consumer had used a Gemini as a trade-in on the new car. He had purchased it in 1979 and it was registered in that year, however the compliance plate showed that it was manufactured in 1978. The dealer had represented the Gemini as a 1978 model in the trade-in particulars on the purchase contract for the new vehicle and the allowance given to the consumer was in line with a 1978 Gemini. The Ministry established that the same dealer sold the Gemini at a later date as a 1979 model. This course of events makes it difficult to believe that the new car would be valued as a 1981 model at a future date.
- 2.7.24 There must be thousands of such confusing valuations of trade-ins, and a contract clearly requiring the disclosure of the date of manufacture, the date of the compliance plate, and the date of first registration would go a long way to stop such manipulation, always of course to the advantage of the trader.
- 2.7.25 It is therefore disappointing that industry representatives at the SAA meetings have adopted a most negative attitude. The contract has been under development for over four years and while a contract relating to another industry has long ago been finalised and is in use, very little progress has been made with the motor car industry.

- 2.7.26 The Ministry considers that the SAA is an ideal forum for the development of an unbiased contract, as the SAA in itself is a "neutral body" and both industry and consumers are represented at the meetings.
- 2.7.27 However, given the performance to date it is now becoming timely for this matter to be acted upon unilaterally by Governments.

#### Test Driving of Vehicles

- 2.7.28 . During the year under review, some complaints were received involving damage to vehicles whilst being test driven by consumers.
- 2.7.29 In one case a consumer was contemplating purchase of a 1980 Mazda 626. The salesman took the consumer for a test run during which the consumer was invited to drive the Mazda.
- 2.7.30 The vehicle was involved in a minor accident, resulting in approximately \$500 damage. It was the consumer's fault and he immediately offered to pay for the damage, but decided not to purchase the car. The Sales Manager then told the consumer that the company would sue him for \$2,500 if he did not sign the contract to buy the Mazda. The consumer replied that he would like to leave the office to seek legal advice. As he had not agreed to buy the Mazda and had offered to pay for the damage, he felt he was not under any legal obligation. The consumer wrote in his complaint to the Ministry:

"The Sales Manager became angry and stated that we were not going to leave the office until we bought the car.

If we walked out, he would sue us without any further negotiation. Not knowing whether or not we were liable, and not being prepared to risk the loss of \$2,500, I signed the Sale Note and bought the car.... Please investigate if we were obliged to buy the car and if the car yard had any grounds to threaten to sue us for \$2,500 costs."

- 2.7.31 It was obvious to the investigating officer of the Ministry that the dealer used the incident of the accident to pressurize the consumer to buy the Mazda.
- 2.7.32 In another example a consumer had signed a contract for a 1979 Fairmont priced at \$11,000. The consumer was reasonably confident that he could obtain the finance; if he was unsuccessful, then the finance would be arranged through the dealer's finance company.
- 2.7.33 The consumer asked the salesman if he could test drive the vehicle over the weekend. This was agreed, provided the consumer left his own car, a Datsun, as security. Prior to leaving the yard, the salesman also confirmed with the consumer that the Fairmont was covered by "the company's own insurance policy".
- 2.7.34 The next day the Fairmont was involved in an accident, causing approximately \$600 damage. The consumer still wanted to buy the vehicle but his finance was rejected. The dealer's efforts to obtain finance were also unsuccessful, and so the deal could not proceed.
- 2.7.35 The dealer then demanded that the consumer pay \$600 for the damage and refused to return his Datsun.

- 2.7.36 It is important that consumers test drive a vehicle before finalizing the deal in order to satisfy themselves that the vehicle will meet their expectations. It is therefore imperative that in each case they check with the dealer that the vehicle is properly insured and if there is any doubt, consumers should get a written statement from the dealer confirming the dealer's liability in case of an accident.

#### Repairs Under Warranty

- 2.7.37 It seems that the accepted practice in the motor vehicle repair industry is to provide a consumer with details of the work done on his vehicle only when the consumer is actually invoiced, ie when a charge is made for service, lubricants or repairs.
- 2.7.38 If a consumer presents his vehicle for repairs under warranty, and there is no charge involved, he does not receive any paper work detailing the reported fault and work requested or the nature of repairs carried out.
- 2.7.39 The result of this is that the consumer does not have an accurate record of the number of occasions he has presented his vehicle for repairs under warranty, nor does he know the nature of the repairs undertaken.
- 2.7.40 By not providing such details there is always a possibility that disputes may arise after the warranty period has expired. Such disputes are infrequent when a new vehicle is involved, but it has been a problem when a dealer effects repairs under a Used Car Warranty. For example, a consumer complained on two separate occasions about an unusual intermittent whine in the differential whilst the car was still under warranty.

The dealer's service department could not identify the fault but shortly after the warranty period expired, the noise became more pronounced. When it was fully investigated by the dealer the fault was located and repaired but at the consumer's expense. The dealer could not locate the previous reference to the fault and the consumer could not provide any documentation to show that he had reported the fault during the warranty period.

- 2.7.41 Such problems could be resolved if consumers insisted on detailed information of all warranty work done to their cars.

#### Illegal Activities

- 2.7.42 The Motor Car Traders Committee, in its Annual Report for 31 December 1980, made the following statement:

"Mass disobedience of the law is usually associated with the driving of motor vehicles. Sadly, and much to the concern of the Committee, it also applies to the selling of motor vehicles to the public. The Act and Regulations are not complex and yet certain requirements are observed more in breach than otherwise by many traders."

- 2.7.43 The work-load which was imposed on the Ministry by such an attitude towards legislation has already been discussed in Part I of this report.
- 2.7.44 However, two aspects, which cannot be condoned must be highlighted:



(a) Tampering with Odometers

- 2.7.45 As a result of allegations received by the Motor Car Traders Committee during November 1980, officers of the Ministry conducted investigations into the operations of Motor Car Traders in the Bendigo region. It was alleged that a number of Bendigo traders were engaged in tampering with odometers prior to sale.
- 2.7.46 The initial investigation resulted from claims that only two Bendigo Motor Car Traders were tampering with odometers. However, a decision was made to inspect premises of several additional traders and a team of inspectors did this on 18 December 1980 and again on 4 March 1981.
- 2.7.47 Evidence obtained has resulted in the successful prosecution of four Motor Car Traders in the Bendigo region.
- 2.7.48 If the Bendigo experience is to be taken as representative of the whole of Victoria then it is really a serious indictment on the industry.
- 2.7.49 Turning back of an odometer cannot be claimed to be an inadvertent mistake. It is a criminal activity with the intention to defraud another person in a premeditated manner.
- 2.7.50 It is the Ministry's intention to eradicate such fraudulent activities and make the strongest possible representations to the Motor Car Traders Committee to withhold licences from traders convicted of such an offence.

(b) Unlicensed Motor Car Trading

- 2.7.51 Although the Ministry received and investigated many allegations of unlicensed motor car trading, the majority of these have been found not to be in breach of any legislation.
- 2.7.52 The allegations were found to relate to private individuals advertising the sale of their own cars or asking a petrol station operator to allow a car to be parked on his premises with a "For Sale" sign prominently displayed.
- 2.7.53 Such allegations of unlicensed trading arose from several sources such as consumers, motor car traders, the Victorian Automobile Chamber of Commerce, the Motor Car Traders Committee and from independent monitoring by the Ministry.
- 2.7.54 However sufficient evidence has also been collected to indicate that an organized group was running "backyard" operations on a large scale.
- 2.7.55 Unlike the "lone backyarder" such a group is not only able to operate the business on a large scale but can use its individual members to advertise cars for sale from private addresses, thereby creating outlets from many suburbs. The people who direct this type of operation usually keep well out of the picture and conduct their business in such a way that they are difficult to implicate.

- 2.7.56 In one case which resulted in a successful prosecution, a number of advertisements for the sale of motor cars and referring to one and the same address, were located by the Motor Car Traders Committee and referred to the Ministry for investigation. When interviewed at his home (from where the cars were being advertised) the "trader" stated that he did not own any of the cars advertised and that in fact other people were placing the advertisements in the newspapers. He claimed that he only allowed the use of his telephone number and that he would receive commissions on resulting sales only in the capacity as an agent.
- 2.7.57 He further added that he was only a "small fish", that there were others who were engaged, like himself, by a group who had the money and the expertise to buy and sell vehicles on a large scale.
- 2.7.58 He was not prepared to give names of the organizers of the group saying "... You're only worth \$500 around here" and that should he inform on the organizers he would not only jeopardise himself and his family's safety but that the group would ensure that he would never be able to be employed in the motor car trade. For those reasons he said he would "cop the rap" rather than inform on his associates.
- 2.7.59 A similar incident resulted from a consumer complaint. It followed very similar lines, that is, an individual, being a "small fish" was part of a more powerful group which it was alleged had connections with the drug trade. However, again the person interviewed was not prepared to implicate any further persons as he claimed that threats had been made against him.

- 2.7.60 This case is still under investigation, however, members of the group are extremely difficult to locate as they frequently change names and addresses.
- 2.7.61 It is clear that "backyarders", whether individuals or groups, are using very complex methods of operation, and are very difficult to trace, and ultimately prosecute. The use of fictitious names, regular changing of telephone numbers and addresses is a constant problem. The most disturbing aspects are the strong undertones of criminal activity.
- 2.7.62 Criminal matters are usually referred to the Police for further investigations, however, it is the Ministry's responsibility to prosecute for unlicensed trading. Liaison is being developed with the Police in order to deal with all aspects of such criminal activity.

#### CARAVAN INDUSTRY

- 2.8.1 In the period covered by this report there was a significant increase in the number of complaints received against the caravan industry.
- 2.8.2 The complaints covered the whole gamut of trading including alleged faulty products, poor design and performance, unethical sales methods, failure to rectify faults and misrepresentation over accessories such as annexes etc.

- 2.8.3 There are regulations in existence which cover safety aspects of caravans such as gas and electricity installations, and the external lights and height and width of the caravan. However there is an absence of manufacturing standards relating to the quality of the caravan.
- 2.8.4 Some consumers have complained that the draw-bar of the caravan had failed, the tyres fitted to the caravan were underrated for the gross weight of the caravan and that warping and distorting of the aluminium exterior surface occurred. Such faults related clearly to insufficient supervision and care by the manufacturer.
- 2.8.5 The problem of poorly balanced caravans with unsafe towing qualities was found to be due to incorrect installation of such accessories as air conditioners in the rear of the van when they should have been fitted in the centre of the van in the roof. This problem was usually aggravated by the carrying of camping equipment in the caravan which dangerously increased the gross weight of the unit and added to its instability.
- 2.8.6 At the time of writing this report, discussions are being held with the Caravan Trade & Industry Association on a variety of matters, including the possibility of adoption of a manufacturing standard.

#### TYRE SAFETY

- 2.9.1 For the period covered by the report a number of complaints have been received from consumers concerning the spontaneous failure of tyres fitted to their vehicles.

In almost all cases, these tyres were of the steel-belted radial type.

2.9.2 In the main the consumers have stated that they did not experience any problems while driving in the city but that on a recent holiday or trip to the country areas, the tyre had blown out or failed in some other spontaneous manner.

2.9.3 Investigations by the Ministry have established that in most cases the tyres were not faulty but that the main contributing cause to the failures was the likelihood that the tyres were under-inflated.

2.9.4 One of the recommendations of the House of Representatives Standing Committee on Road Safety at which a Ministry representative testified, was:

"The Department of Business and Consumer Affairs consult with its State and Territory counterparts with a view to the initiation of regulatory action at those levels to require service stations and tyre dealers to keep accurate pressure gauges and that gauges be checked regularly by authorities responsible for weights and measures."

2.9.5 The report further states:

"Under inflation increases the running temperature of tyres through additional flexing of the tyre. Since additional pressure is required when normal load and/or speed is increased, a tyre inflated to normal operating pressure will be under-inflated in those conditions and any less pressure will further aggravate the problem of heat build-up.

High ambient temperatures such as are encountered in many areas of Australia, add to these effects. The excessive running temperatures so caused, can promote separation and eventual break-down of the thread or carcass adhesion through accelerated degradation of the rubber."

- 2.9.6 The complaints on tyre safety investigated by the Ministry confirm that consumers are not regularly checking tyre pressure. As the majority of the tyres on sale in Australia are the radial-ply type, the technology of such a tyre appears to have outstripped the average consumer's understanding of its construction features and the importance of adhering to the recommended inflation levels.
- 2.9.7 The report of the committee further stated that witnesses informed the committee that pressure gauges at service stations and even tyre dealers' premises were often inaccurate.
- 2.9.8 Furthermore, tyre pressure gauges at service stations and tyre outlets at the present time are not required to be checked by any authority such as the Weights and Measures.
- 2.9.9 As a result of receiving and noting the comments of the report on tyre safety, the Ministry has corresponded with the Superintendent of Weights and Measures, seeking his assistance in implementing the recommendations on tyre pressure gauges contained in the report, with the view to implementing mandatory checking of tyre gauges at service stations and tyre sales outlets.

HOME DELIVERIES OF HEATING OIL

- 2.10.1 The majority of complaints concerning this area relate to unordered deliveries made by the oil companies or their agents. Consumers claim that their oil tanks were filled and an invoice forwarded to them even after they rang the oil company or their agent cancelling further deliveries.
- 2.10.2 After contacting an oil company the Ministry was usually informed that there was no record of such a cancellation and that consequently consumers were not taken off the automatic delivery list. Some consumers have stated to the Ministry that they have even put notices on their tanks requesting that no further deliveries were to be made. In many cases such notices were ignored by the tanker-drivers.
- 2.10.3 The drivers usually claim that such notices were attached to the tanks even before the consumer ordered a specific oil delivery and that the consumer forgot to remove the notice. In other cases the claim was made that the driver suspected that the property had changed hands and that the note did not apply to the new owner.
- 2.10.4 Consumers are therefore advised that if they want to stop further deliveries they should inform the oil companies or their agents in writing.



MAIL ORDER SALES

- 2.11.1 The sale of goods by mail order is now a well established commercial practice with companies advertising in nationally distributed magazines, periodicals and on television. Despite the undoubted value of this for certain sections of the community, for example people in remote country areas, there are certain disadvantages associated with mail order. A consumer is unable to inspect the quality of the goods, and in most cases the money must be forwarded immediately and before the goods are supplied and inspected.
- 2.11.2 During the year under review the Ministry has received many complaints, all of which tell a similar story - substantial delays in the delivery of goods, non delivery of goods, and the quality of the articles not being as advertised. When complaints are lodged with the companies consumers are often unable to obtain any satisfactory response or even acknowledgement.
- 2.11.3 One can understand how a trader can sometimes be caught in a bind as advertising schedules are prepared well in advance and may be impossible to cancel should there be a delay in the import of the goods. Orders for products may also exceed estimated stocks and excessive delays may be experienced until fresh supplies are received.
- 2.11.4 Many complaints would not have arisen if mail order companies adopted the policy of keeping their clients informed of any inadvertent delays in the supply of goods. It is not acceptable to extend this necessary service of supplying basic information only to clients who have complained to the Ministry.

RETAIL SALESCredit Notes

- 2.12.1 The Ministry has continued to receive a number of enquiries and complaints regarding credit notes. It is apparent that many retailers and consumers are still unaware how to handle credit notes.
- 2.12.2 It is evident from complaints that:
- (a) Frequently consumers have not sought or have not read the conditions of credit notes. A credit note usually bears or should bear the period over which it is valid (ie 6 months). Once that period expires the consumer is technically not entitled to goods or refund of moneys. Some consumers have sought the honouring of a credit note some nine months after the expiry date, and have complained when they were refused.
  - (b) Some retailers are issuing credit notes as an alternative to refunds for faulty goods purchased. This is not a welcome practice as a consumer is entitled to a refund at his discretion if the goods are faulty and are of an unmerchantable quality. The policy practised by some retailers of refusing to refund moneys or exchange on faulty goods because a sign is displayed in their premises stating "No Refunds No Exchange" is not acceptable to the Ministry. Often it is not the principals of the firm who refuse to entertain consumer enquiries on the subject rather it is the staff employed.

credit notes is available from the Ministry.

Lay-Bys

- 2.12.4 There are no laws covering lay-bys in Victoria. However the general practice is that goods purchased on a lay-by system are kept in store until they are fully paid for.
- 2.12.5 Many consumers do not realise that failure to continue payment on lay-by items could result in not only the loss of their right to obtain the item but also in the loss of moneys already paid.
- 2.12.6 Consumers are also unaware that each retailer may have different provisions for purchase on a lay-by system. One such provision is the length of time that a lay-by item can remain in store before it is returned to stock.
- 2.12.7 Many consumers fail to note such requirements. Again there are some retailers who do not make consumers aware of the provisions of their lay-bys.
- 2.12.8 It is the Ministry's recommendation that retailers should notify consumers in writing prior to returning the goods to stock or forfeiting the lay-by deposit even if it is in accordance with their stated conditions.

- 2.12.9 It is essential that all retailers using a lay-by system print clearly on the lay-by docket handed to a customer, all conditions of the lay-by.
- 2.12.10 A newsletter containing guidelines for lay-bys is available from the Ministry.

#### Peripheral Market Activities

- 2.12.11 Within the last ten years, with the increased relaxation in legislation controlling hours and places where goods can be sold, a considerable "flea-market activity" has developed which allows people with excess household goods and hobby craftsmen to dispose of their products in a designated area.
- 2.12.12 In view of the thousands of sales which take place on Sundays and other designated days in large open areas around Melbourne, it has been certain that sooner or later complaints would be received regarding this type of selling.
- 2.12.13 It has become obvious that manufacturers and importers have not been slow to recognize the opportunities offered by this form of retailing and it has also become obvious that sub-standard clothing, shoes, watches and jewellery are being offered at some of these places.
- 2.12.14 Consumers should know when dealing with a flea-market operator that it would be practically impossible to exercise normal rights of returning goods for exchange, repair or refund, if there is anything wrong with the product purchased.

They may be dealing with a person who has no intention of ever returning to the same area and there is no guarantee that such an operator could ever be traced

- 2.12.15 It cannot be emphasised too much that a far greater degree of caution and inspection is needed in this area than in normal everyday shopping.
- 2.12.16 It is important at this stage to point out that although complaints are also received against stall holders at regular market sites, for example, Victoria Market, Dandenong Market and Croydon Market, these stall holders occupy a numbered space, pay regular rental and can be traced if an argument develops and as such do not cause the same problems that may be evident with a regular "flea-market" operator.
- 2.12.17 Again, several other complaints have been received regarding small stall holders in the Melbourne City area, usually operating from a table on or near the footpath, selling items such as jewellery or watches. A check has revealed that these operators are not registered or controlled in any way and anyone buying from such venues is urged to exercise a great degree of caution.

PART 3

TRADERS WHOSE ACTIVITIES OR ATTITUDES

WARRANT SPECIAL MENTION

BUILDING AND HOME RENOVATIONS

Connelly Constructions Pty. Ltd.

- 3.1.1 This company in its brief period of operation managed to generate eleven serious consumer complaints, and four files relating to alleged breaches of the Consumer Affairs Act.
- 3.1.2 The company was incorporated on 1st October, 1979 and it had apparently ceased operations by the end of 1980.
- 3.1.3 Its directors were:
- James William Connelly,  
Colin Thompson (until 11.6.80), and  
Thelma Margaret Connelly (commenced 11.6.80).
- 3.1.4 The company was a successor to a business name Connelly Constructions registered in the name of James William Connelly.
- 3.1.5 Connelly Constructions Pty. Ltd., concentrated its selling in the Latrobe Valley area. It sold vinyl cladding to householders on a door to door basis.

- 3.1.6 The sales manager of this company was Gerald Franciscus Langelaan whose activities relating to unacceptable sales methods were already noted in the Director's Report for the year 1979/80.
- 3.1.7 The current complaints lodged related to high pressure selling, overcharging and poor workmanship. Consumers were not advised of their rights to cancel contracts, refunds for cancelled contracts were not made and sales were induced by false promises of commissions or rebates for referrals.
- 3.1.8 It should be pointed out that the manufacturer of the cladding carried out rectification of consumer complaints, not Connelly Constructions Pty. Ltd., which had no intention of standing by its work.
- 3.1.9 Connelly Constructions Pty. Ltd., showed scant respect for the rights of consumers and prosecutions could not be followed through as James William Connelly, the principal, successfully evaded not only the Ministry but his creditors as well. His present whereabouts are unknown.
- Colin James Thompson, trading as  
Cee Jay Home Improvements
- 3.1.10 Cee Jay Home Improvements was a business name registered to Colin James Thompson.
- 3.1.11 This business should be linked with Connelly Constructions Pty. Ltd., mentioned above.

- 3.1.12 Both involve common operators, Colin Thompson and James William Connelly. Connelly was a salesman employed by Thompson.
- 3.1.13 It was established that householders who were sold contracts for cladding were not given the schedule prescribed by the Consumer Affairs Act setting out their rights to cancel a door to door contract.
- 3.1.14 Mr. Thompson's form of contract displayed the Housing Industry Association Logo, yet that Association advised the Ministry that Cee Jay Home Improvements were not, nor had ever been a member of the Housing Industry Association.
- 3.1.15 When Mr. Thompson was questioned by a Ministry officer about his business methods, he made the following remarks:

"All I would like to say is that I am new in the industry and didn't know the Consumer Laws...I thought all we had to do was get the deals in and then go out and make the money".

Woodleigh Homes (Vic) Pty. Ltd., and  
Woodleigh Homes (Aust) Pty. Ltd.

- 3.1.16 These two companies were engaged in the marketing of kit homes.
- 3.1.17 The directors of the companies are listed as:  
John William Lloyd Gibbs; and  
Peter Charles Sneddon.



- 3.1.18 Purchasers of kit homes through these two companies were led to believe that the kit would be constructed by an associated company.
- 3.1.19 In some cases, the nominated builder company, which had a similar name, but in fact had no connection, was not aware that its name had been used in any contract.
- 3.1.20 Apparently the directors of Woodleigh Homes then sub-contracted the construction out to a number of fringe builders.
- 3.1.21 Twelve complaints were received. In some instances the full kit was not supplied, in others poor quality materials were used.
- 3.1.22 Other unfortunate purchasers found that the sub-contractors could not or would finish construction, leaving them to fend for themselves.
- 3.1.23 A constant thread throughout the complaints was that the cost of construction was under quoted.
- 3.1.24 In one instance, a deposit of \$6,000 was taken by Woodleigh Homes on the basis of a construction quote that was grossly understated. The consumer did not receive that deposit back despite the fact that no kit was ever delivered. The only course of action open to the consumer would be to take the companies to Court.
- 3.1.25 Consumers would be well advised to steer clear of either of the two named directors and their companies in any venture.

country town or an older suburb of Melbourne is approached by one or two men who offer to paint houses or house rooves, carry out asphaltting or other paving work or other household repairs.

- 3.1.29 They may use a story along the lines of: "Hello, we've just completed a big job down the road and we've got some paint left over. Your roof looks like it needs a coat of paint and we can do it for you very cheaply". Apart from this type of spiel the householder may be subjected to intimidation in the form of suggestions that the visit is the result of a request from the local council, or that unless the work is done immediately, the condition of the house will become irreparable.
- 3.1.30 Payment is demanded in full, in cash, before work commences or immediately on completion. Receipts are rarely provided, and when they are provided are in a semi-literate, virtually illegible scrawl which does not permit identification of the trader. The work carried out is of a very low standard, with inferior or adulterated materials, and little or no preparatory work.

3.1.31 There appear to be several of these traders who constantly move from town to town and state to state, living in caravans in a nomadic life style. They travel in four wheel drive or utility type vehicles, often with interstate number plates, and are usually described by their "victims" as having English, Scottish or Irish accents. Some of the names they have used include Kelly, Kealing, Kerford, Castle, Stewart, Young, Devine, Knowles, Lee, Gray, King, Emmett, Collton, Gordon, Cameron, Gorton, Kefford, Orchard, Buckland, Braney, Adam, Finney, Yelding, Ellis and Thompson.

3.1.32 One such trader arrived in Bendigo recently, using the names of James Thompson, John Thompson, Mr. Lee and J. Thompson Road Construction, an apparently unregistered business name.

3.1.33 He advertised as follows:

"BITUMEN Paving- J. Thompson Road Construction offers special reduction in price. Owing to hold-up in contract, we have a large amount of bitumen aggregates. This offer is for a period of one week only. We specialise in car-parks, private roads, private drives, factories, garages, etc. The materials can be applied hot or cold. For free quotes, please phone .....9 - 5".

3.1.34 A number of consumers responded to the advertisement by calling the number listed, which belonged to a legitimate and reputable answering service in Bendigo, and requested the free quotes offered.

Fortunately, Mr. "Thompson" after being interviewed by inspectors of the Ministry of Consumer Affairs left town rather hurriedly, apparently and fortunately before he had time to carry out any work.

- 3.1.35 It is far safer for any consumer who requires painting or other renovations to seek written quotes from reputable local tradesmen. They can then be reasonably certain that the paint will not wash off with the next shower of rain, and if any problems do arise, the trader will still be available to rectify them.
- 3.1.36 Consumers who are approached by a tradesman on a door to door basis offering to do paving, painting, etc., are warned to be very careful, especially if the tradesman is driving a vehicle with interstate number plates.

Bellum Proprietary Limited  
trading as Merchant Kitchens

- 3.1.37 Merchant Kitchens is a business name owned by a company, Bellum Proprietary Limited.
- 3.1.38 The directors of that company are listed as at June, 1981:
- Nicholas Stephen Gordon,  
Gilbert Pennington,  
John Aloizy Lorych, and  
Kurt Prack.
- 3.1.39 The firm advertises extensively, and exhibits at Home Shows. Consumers attracted by these presentations invite the firm to their homes for consultations and

quotes and therefore are not provided with the protection given to unsolicited door to door sales by the Consumer Affairs Act.

- 3.1.40 During the period under review, the Ministry received 29 complaints about this company.
- 3.1.41 In the majority of these cases, consumers wished to cancel contracts which arose from what they thought would be a free consultation and discussion about ideas for re-modelling their kitchens; this turned out to be a skilful presentation over some hours of plans for their kitchens.
- 3.1.42 They were overwhelmed with the plans and seeming effort. Consumers were placed in a position of obligation, felt duty bound to sign contracts there and then without time to think. They had been all too quickly forced into becoming buyers rather than shoppers for advice.
- 3.1.43 The Ministry has had difficulty in communicating with this firm, as it insists that all communications must be in writing. The Ministry would prefer less formal communication such as regular face to face discussions about consumer problems.

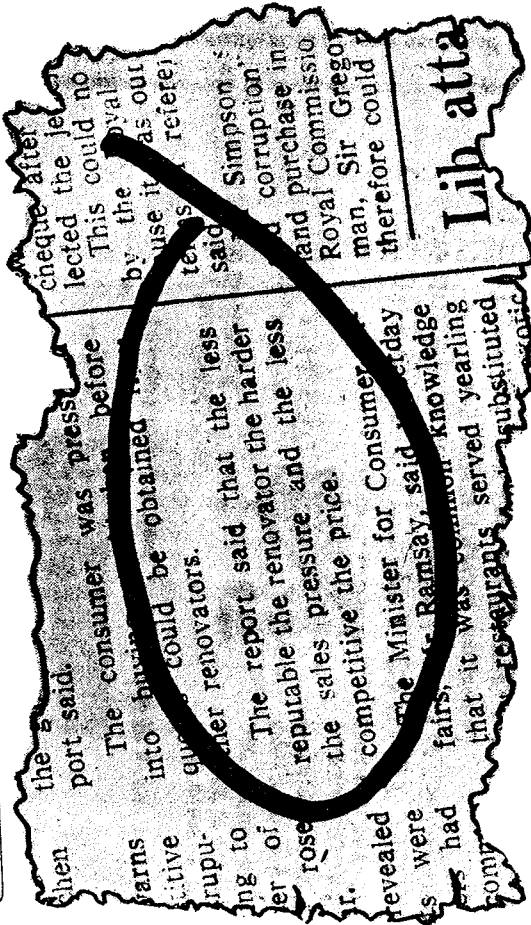
- 3.1.44 Invitations for such discussions have been made regularly, but the Managing Director seems reluctant to accept, saying that he is too busy and cannot spare the time.
- 3.1.45 This attitude is frustrating to the Ministry as experiences with other sectors of industry have demonstrated that regular discussions have the benefit of establishing speedy lines of communication resulting in a decline in consumer complaints.
- 3.1.46 The attitude of the Managing Director that he cannot spare the time to review complaints lodged against his company must be condemned as most off-handed and not complying with sound business practice.
- 3.1.47 An advertisement used by the company referring to remarks made in the previous Annual Report and claiming to be "No. 1" was considered to be misleading by the Ministry and the company was asked to discontinue it. The company must have been aware that the disparaging remarks reported in the Age were directed against it, as at that time negotiations between the Ministry and the company were in progress.
- 3.1.48 The advertisement is reproduced on the following page.

# The very best reason in the world to buy from No.1.



88 14 - THE AGE, Thursday 4 December 1988

## Consumer Affairs Bureau report



**Moorabbin** 887 Nepean Highway 557 6653  
**Mulgrave** 752 Springvale Road 560 2211  
**Camberwell** 717 Riversdale Road 830 1111  
(Approx. 1 mile east, Camberwell Junction)  
**Ringwood** 101 Maroondah Highway 870 7321  
**Essendon** 1019 Mount Alexander Road 870 7321  
**Clayton** 2065 Dandenong Road 543 4444  
**Geelong** 98 High Street Belmont (052) 43 8111  
**Merwell** 69 Princes Highway (051) 34 5666

A.A. and F.H. Marketing Pty. Ltd.

- 3.1.49 A.A. and F.H. Marketing Pty. Ltd., in its brief life as a renovation and house cladder left a trail of broken promises, wrecked homes and unsatisfied creditors.
- 3.1.50 The directors of the company were:
- Angelo Augustus, and  
Francis Patrick Hansell.
- 3.1.51 Of the seven complaints received, work was completed in only two instances and then not to the consumer's satisfaction.
- 3.1.52 This company took substantial deposits, and in some cases required the full amount for the work to be paid in advance.
- 3.1.53 It is most distressing for a consumer to find out after part of his house has been demolished in preparation for an extension, that no building permit has been obtained and that the work done is shoddy.
- 3.1.54 A consumer is then faced with the dilemma of finding and paying again for competent builders to finish the job.
- 3.1.55 This company has ceased operations and legal action against it would be futile as the company has no assets.



MOTOR CAR AUCTIONSGavin Phillip Hartley trading as  
Arcadia Motor Auctions

- 3.2.1 Arcadia Motor Auctions is a business conducted during the period under review by Gavin Phillip Hartley. Its place of business is 130 - 138 St Kilda Road, St Kilda. The nature of its business is car auctions.
- 3.2.2 Consumers who sold their cars through Arcadia Motor Auctions have complained that they did not receive the price the cars were sold for after adjustment for commission.
- 3.2.3 In a typical case a consumer stated:

"I took my car to Arcadia Auctions at 130-38 High Street, St Kilda and instructed them to auction it. I signed a booking voucher and it was agreed that the reserve price would be \$1700 and that the commission payable to Arcadia Motor Auctions would be 10% of the purchase price.

At the time of booking the car for auction it was explained to me by the representative for Arcadia Auctions that I would receive whatever price the car fetched at auction less ten per-cent commission provided the reserve of \$1700 was reached."

- 3.2.4 The consumer went on to state that his car was sold to the highest bidder for \$2,300 and the Ministry has a statement from the purchaser confirming this price. After the auction the consumer was told he could pick up a cheque for \$1,530, being the agreed reserve price of \$1,700 less ten-per cent commission.
- 3.2.5 When the proprietor of Arcadia Motor Auctions, Mr. Hartley, was questioned by the Ministry about the case, he said that the consumer had signed the booking voucher for an agreed price of \$1,700 and thus the consumer was only entitled to that price less commission. However, in all complaints investigated, consumers stated emphatically that the "agreed price" was always taked of in terms of a reserve price.
- 3.2.6 The Ministry is in the process of obtaining redress for the consumers involved.
- 3.2.7 Consumers are strongly advised when dealing with Arcadia Motor Auctions to demand and obtain a written statement clarifying the conditions of sale.

#### TRAVEL AGENTS

Alexander Victor (Alex) Redler and  
Noumea Caledonia Travel Service Pty. Ltd.

- 3.3.1 Alex Redler was Manager of Noumea Caledonia Travel Service Pty. Ltd. The directors of that company were:
- Margaret Anne Redler, Alex Redler's wife  
and Marlene O'Neill, his sister-in-law.

- 3.3.2 He was unable to be a director himself as he was made bankrupt on 15 August 1978 and is still undischarged.
- 3.3.3 Alex Redler was a former Managing Director of Theodore Travel Service Pty Ltd which crashed in the late 70's with debts estimated at \$600,000.
- 3.3.4 As Manager of Noumea Caledonia Travel Service, Redler issued vouchers to travellers for use in Noumea. These vouchers for hotel accommodation and transport were pre-paid by travellers in Australia to Redler. However Redler did not pay the moneys received to the businesses in Noumea which were to provide the services to the tourists.
- 3.3.5 Initially, some of the vouchers were honoured, on the expectation that the money would come from Australia, but over the 1980 Christmas period matters reached a head and no one in Noumea would touch them. Tourists then had to pay again for services they had thought already covered.
- 3.3.6 The Ministry co-operated with the Fraud Squad in its investigations into Mr Redler's defaults.
- 3.3.7 A press release was made immediately warning tourists to Noumea to check their bookings and any vouchers they held.
- 3.3.8 Needless to say, Mr Redler did not stay in Victoria to greet the returning tourists. It is believed he left Victoria in a hurry for Queensland, leaving behind him debts of approximately \$250,000 and very poor records.

- 3.3.9 The Ministry issued a warning to the Queensland Authorities and made its information available so that Redler would be prevented from carrying out any similar scheme in that State.

INSURANCE / FINANCE

James Tsoukas

- 3.4.1 James Tsoukas carries on the business of Insurance Consultant from premises situated at 584 Sydney Road, Brunswick. A variety of names are listed for the business, including Athena and James Tsoukas and A & J Insurance Consultants.
- 3.4.2 During the year under review the Ministry received four complaints against Tsoukas. However, a further four have been received since July this year.
- 3.4.3 In each case Tsoukas undertook to place a number of insurance risks for his clients.
- 3.4.4 In a typical case investigated by the Ministry a consumer had instructed Tsoukas to obtain insurance cover on his home and contents, his business and car. When a claim relating to the business was lodged through Tsoukas the consumer could not obtain any satisfactory answer about the policy, despite the fact that the consumer had been issued a document by Tsoukas setting out particulars of the policy including a nominated insurer, policy number, particulars of cover and a premium of \$228.58.

The consumer then approached the insurer himself only to be told there was no record of a policy placed in his name.

3.4.5 In another instance a consumer instructed Tsoukas to obtain cover on his truck. Despite having paid the necessary premium to Tsoukas, the consumer received a summons from his finance company as the insurance required under his loan agreement had not been taken out.

3.4.6 The Ministry's investigations in this case showed that the consumer had paid Tsoukas some \$3,204 for various policies but no satisfactory account has yet been given by Tsoukas as to where the money went, nor can it be traced to any insurance company he claimed to have dealt with.

3.4.7 The above examples would seem to indicate that some means of regulation is necessary to protect consumers from insurance brokers who whilst willing to take a client's money, seem careless in the extreme about obtaining the cover they were employed to arrange.

Pennant Acceptance Corporation Pty Ltd and  
Feathertop Insurance Service Pty Ltd.

3.4.8 Pennant Acceptance Corporation Pty Ltd is a finance company providing consumer credit, mainly for the purchase of consumer goods.

3.4.9 A company closely associated, providing Consumer Credit Insurance, as an intermediary, for those loans, is Feathertop Insurance Service Pty Ltd.

3.4.10 The two companies share common directors in -  
Robert Leslie Brougham, and  
Leslie James Brougham.

They also share the same business address -  
3A Feathertop Avenue  
TEMPLESTOWE

3.4.11 The two companies acting in tandem appear to operate a handsomely rewarding business.

3.4.12 A consumer obtained a personal loan for \$22,150 from Pennant Acceptance Corporation Pty Ltd, to be repaid at 60 monthly instalments of \$703 each. Included in the amount borrowed was a consumer credit insurance (CCI) premium of \$2,641 disbursed to Feathertop Insurance Service Pty Ltd. The consumer then received a policy from an insurance company, however, the premium was not shown on the policy.

3.4.13 The Ministry made enquiries with the underwriter who issued the policy as to the actual premium he received from Feathertop. It was \$615. Thus, as a result of this particular loan contract, Feathertop and/or Pennant between them, retained \$2,026; a commission of 329%.

3.4.14 The Ministry has been unable to determine what arrangements exist between Pennant and Feathertop as to how this money was split up.

3.4.15 The underwriter informed the Ministry that as far as he was aware \$615 was the premium that should have been shown on the loan contract. To make matters worse the underwriter had given Feathertop approximately 23% of the \$615 as commission; thus total commission earned was \$2167, net premium \$474, a commission rate of 457%.

When he realized the true situation, he severed all relationships with Pennant and Feathertop.

3.4.16

A random sample of 22 loan contracts was taken. The sample is shown hereunder:

Amount of Loan \$	Period of Contract (Months)	Premiums Shown on Loan Contract	Actual Amount Received by Underwriter	Retained by Pennant/Feathertop
4,000	24	162	93	69
5,050	36	463.45	115	348.45
4,200	36	458.10	100	358.10
11,250	36	484	210	274
6,750	36	256	137	119
6,850	60	550	190	360
800	12	76	32	44
6,700	36	606	137	469
650	12	73.35	32	41.35
6,200	36	567	130	437
5,000	36	350	107	243
9,500	60	673.59	265	408.59
1,100	36	81.64	45	36.64
2,500	36	218	72	146
4,100	48	246	120	126
4,450	48	240	120	120
22,500	36	978	375	603
600	12	78	25	53
2,700	24	274	75	199
8,300	48	540	210	330
1,450	12	156.20	55	101.20
22,150	60	2,641	615	2,026
T O T A L		\$10,172.33	\$3,260.00	\$6,912.33

- 3.4.17 In using this random sample, the actual amount received by the underwriter was deducted from the CCI premium as shown on the finance contract. From these 22 examples, Pennant would have retained \$6,912.33. In other words, based on the 23% commission payable by the underwriter a total commission of \$7,662.13 was obtained by Feathertop or Pennant - a most satisfactory monthly return for assisting 22 borrowers to complete a consumer credit insurance proposal form !
- 3.4.18 The irony of this practice is that the interest charged by Pennant (usually 29% per annum) was charged on moneys that it or Feathertop had "creamed off" in addition to the commission it received from the underwriter. Thus 29% interest was charged on commissions representing 457% of net premiums.



PART 4STATISTICS AND TABLESTABLE 1Consumer Affairs BureauAnalysis of Consumer Complaints - Product/ ServiceClassification - 1979/80 and 1980/81

	<u>1979/80</u>		<u>1980/81</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Food and Beverages</u>				
Food Products	97	.85	100	.84
Beverages	36	.32	32	.27
Other	<u>8</u>	<u>.07</u>	<u>23</u>	<u>.19</u>
SUB TOTAL	141	1.24	155	1.31
<u>Clothing, Footwear and Drapery</u>				
Clothing	417	3.66	421	3.56
Footwear	205	1.80	213	1.80
Accessories	36	.32	84	.71
Drapery	37	.32	38	.32
Trousseau	20	.18	2	.02
Other	<u>13</u>	<u>.11</u>	<u>16</u>	<u>.13</u>
SUB TOTAL	728	6.39	774	6.54
<u>Consumer Durables</u>				
Electrical Goods etc.				
Washing Machines, Dishwashers, Drying Cabinets	91	.80	105	.89
Stoves	55	.48	70	.59
Refrigerators & Freezers	92	.81	153	1.29
Television	81	.71	101	.85

(Cont'd)..

Air Conditioners	42	.37	85	.72
Heaters	71	.62	104	.88
Vacuum Cleaners	45	.39	62	.52
Radio, Hi-Fi, etc.	127	1.11	153	1.29
Other	62	.54	127	1.07
Used Electrical Goods etc.	55	.48	25	.21
Repair of Electrical Goods etc.				
Washing Machines, Dishwashers, Drying Cabinets	120	1.05	116	.98
Stoves	29	.25	12	.10
Refrigerators & Freezers	78	.68	78	.66
Television	98	.86	106	.90
Air Conditioners	12	.10	18	.15
Heaters	37	.32	15	.13
Vacuum Cleaners	31	.27	25	.21
Radio, Hi-Fi, etc.	72	.63	61	.52
Other	28	.25	24	.20
Furniture	303	2.66	318	2.69
Furnishings				
Carpets & Other Floor Coverings	178	1.56	207	1.75
Curtains & Blinds	110	.97	110	.93
Hard Floor Coverings	48	.42	46	.39
Other	10	.09	7	.06
Hardware & Kitchenware	68	.60	56	.47
Other	5	.04	7	.06
	<u>1948</u>	<u>17.11</u>	<u>2191</u>	<u>18.52</u>
SUB TOTAL				

Motor Vehicle & OtherTransport Equipment

New Motor Vehicles	640	5.62	529	4.47
Used Motor Vehicles	1146	10.06	1087	9.19
Repair & Servicing of Motor Vehicles				
Mechanical	402	3.53	400	3.38
Electrical	15	.13	4	.03
Panel Beating	82	.72	80	.68
Exchange Engines	63	.55	57	.48
Towing/Storage	24	.21	17	.14
Other	37	.32	49	.41
Parts & Accessories	205	1.80	176	1.49
Motor Bikes & Trail Bikes	48	.42	86	.73
Other Transport Equipment:				
Caravans & Campervans	95	.83	87	.74
Boats & Outboard Motors	65	.57	54	.46
Trucks	67	.59	57	.48
Other	91	.80	77	.65
Other	<u>11</u>	<u>.10</u>	<u>8</u>	<u>.07</u>
SUB TOTAL	2991	26.26	2768	23.40

Building & Construction

New Home Construction	168	1.47	307	2.60
Extensions & Renovations:				
Concreting, Blockwork, Brickwork etc.	104	.91	140	1.18
Fences & Walls	51	.45	78	.66
Carpentry	20	.18	23	.19

(Cont'd) ..

Painting & Decorating	57	.50	59	.50	
Plumbing	101	.89	104	.88	
Electrical Work	31	.27	24	.20	
Roofing & Insulation	92	.81	122	1.03	
Cladding	96	.84	86	.73	
Other	167	1.47	230	1.94	
Supply of Packages - Kitchens, Garages, etc.	130	1.14	171	1.45	
Building Products	186	1.63	240	2.03	
Swimming Pools	61	.54	85	.72	
Gardening	82	.72	95	.80	
Other	<u>4</u>	<u>.03</u>	<u>6</u>	<u>.05</u>	
	SUB TOTAL	1350	11.85	1770	14.96

#### Miscellaneous Products

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

Transport & Energy Services

Postal & Telephone Services	24	.21	27	.23
Public Utilities & Fuel Supplies	131	1.15	121	1.02
Travel	210	1.84	199	1.68
Other	<u>98</u>	<u>.86</u>	<u>94</u>	<u>.79</u>
SUB TOTAL	463	4.07	441	3.73

Insurance & Finance

## Insurance:

Life	67	.59	30	.25
General	-	-	-	-
Health	51	.45	37	.32
Motor Vehicle	207	1.82	176	1.49
Fire	4	.03	6	.05
Household	111	.97	158	1.34
Marine	6	.05	8	.07
Consumer Credit	79	.69	55	.46
Other	103	.90	107	.90

## Finance:

Credit Cards	16	.14	8	.07
Store Credit	18	.16	15	.13
Chattel Mortgage	20	.18	5	.04
Lay-By	3	.03	7	.06
Hire Purchase	196	1.72	139	1.17
Lease	27	.24	4	.03
Personal Loan	37	.32	20	.17

(Cont'd) ..

## Finance (Cont'd)

Other	42	.37	66	.56
Other	-	-	-	-
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
SUB TOTAL	987	8.67	841	7.11

Real Estate and Accommodation

Investment	12	.10	6	.05
Purchase	135	1.18	109	.92
Lease & Rental	173	1.52	205	1.73
Short Term Accommodation	45	.39	48	.41
Other	<u>19</u>	<u>.17</u>	<u>20</u>	<u>.17</u>
SUB TOTAL	384	3.37	388	3.28

Miscellaneous Services

Professional Services	455	3.99	321	2.71
Semi - Professional Services	316	2.77	387	3.27
Household Services	367	3.22	356	3.01
Educational	37	.32	44	.37
Entertainment, Restaurant, Catering	105	.92	101	.85
Work at Home Schemes	6	.05	7	.06
Other	<u>38</u>	<u>.33</u>	<u>105</u>	<u>.89</u>
SUB TOTAL	1324	11.63	1321	11.17

<u>T O T A L</u> .....	11388	100%	11828	100%
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NOTES:

1. Percentage sub-totals may not total exactly because of rounding of decimal places.
2. The above table is only a summary. Any person interested in a particular classification may obtain a copy of that classification on request to the Ministry.

TABLE 2Consumer Affairs BureauAnalysis of Consumer ComplaintsPractice Classification - 1979/80 and 1980/81

	<u>1979/80</u>		<u>1980/81</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Advertising and Representations</u>				
Health and Safety	34	.26	4	.03
Price	164	1.27	207	1.36
Quantity	26	.20	16	.10
Sponsorship, Approval	21	.16	7	.05
Specification, Goods	695	5.38	347	2.28
Nature of Services	16	.12	6	.04
Free Gifts/Special	43	.33	90	.59
Availability	43	.33	26	.17
Conditions of Sale	209	1.62	120	.79
Other	<u>151</u>	<u>1.17</u>	<u>114</u>	<u>.75</u>
	SUB TOTAL	1402 10.85	937	6.16
<u>Packaging and Labelling</u>				
Safety Label, Instructions	4	.03	2	.01
Operating Instructions	20	.15	19	.12
Contents, Description of	17	.13	14	.09
Deceptive Packaging	5	.04	7	.05

(Cont'd) ...



## Packaging and Labelling (Cont'd)

Date of Manufacture on Packaging	7	.05	10	.07
Other	<u>16</u>	<u>.12</u>	<u>12</u>	<u>.08</u>
SUB TOTAL	69	.53	64	.42

Sales Methods

Unsolicited Product or Service	104	.80	59	.39
Door to Door Sales	114	.88	20	.13
Auctions	14	.11	7	.05
Mail Order Sales	301	2.33	338	2.22
Over-Ticketing	2	.01	-	-
Other	<u>343</u>	<u>2.66</u>	<u>481</u>	<u>3.16</u>
SUB TOTAL	878	6.80	905	5.95

Prices and Charges

Charge Above Quote	239	1.85	197	1.30
Industry Pricing Policy	59	.46	16	.10
Overcharging	472	3.65	634	4.17
Other	<u>136</u>	<u>1.05</u>	<u>91</u>	<u>.60</u>
SUB TOTAL	906	7.01	938	6.17

Quality of Product or Service

Installation	109	.84	122	.80
Servicing or Repair	1561	12.08	1223	8.04
Unavailability of Product, Component or service	232	1.80	141	.93
Unsafe or Hazardous Product or Service	68	.53	76	.50
Unauthorised Repairs	38	.29	64	.42
Defective at Purchase	1936	14.99	3711	24.41

(Cont)...

## Quality of Product or Service (Cont) ...

Defective After Purchase	677	5.24	387	2.54
Damage to Consumer	327	2.53	570	3.75
Weight/Measure of Unpacked Goods	7	.05	5	.03
Other	<u>65</u>	<u>.50</u>	<u>75</u>	<u>.49</u>
SUB TOTAL	5020	38.86	6374	41.92

Credit Practices

Repossession	108	.83	56	.37
Debt Collection	145	1.12	173	1.14
Deposits or Lay-Bys	148	1.14	218	1.43
Incorrect Interest or Credit Charge	46	.36	29	.19
Over Commitment	41	.32	11	.07
Documentation Complaints	71	.55	14	.09
Credit/Insurance Rebates	121	.94	27	.18
Other	<u>195</u>	<u>1.51</u>	<u>162</u>	<u>1.06</u>
SUB TOTAL	875	6.77	690	4.54

Contracts

Harsh or Unconscionable Contracts	95	.73	157	1.03
Non Disclosure or Misrepresentation of Terms	291	2.25	740	4.87
Retention of Bond	121	.94	134	.88
Other Landlord/Tenant Disputes	44	.34	26	.17
Cancellation of Contract	472	3.65	706	4.64
Non Supply of Goods and Services	842	6.52	1153	7.58
Non Performance of Contracts	349	2.70	595	3.91
Other	<u>155</u>	<u>1.20</u>	<u>270</u>	<u>1.78</u>
SUB TOTAL	2369	18.34	3781	24.87

<u>Guarantees and Warranties</u>	SUB TOTAL	1048	8.11	753	4.95
<u>Offers of Redress</u>					
Provision of Credit Note		33	.25	65	.43
Provision of Replacement		1	-	6	.04
Repair - No Replacement - Refund		76	.59	470	3.09
No Refund Policy of Seller		214	1.66	200	1.31
Insistence on Repair		12	.09	6	.04
Other		<u>16</u>	<u>.12</u>	<u>16</u>	<u>.10</u>
	SUB TOTAL	352	2.72	763	5.02
	<u>T O T A L</u> .....	12919	100%	15205	100%

NOTES

1. Percentage sub-totals may not total exactly because of rounding of decimal places.
2. The above table is only a summary of the full classification. Any person interested in a particular classification may obtain a copy of that classification on request to the Ministry.

TABLE 3  
Consumer Affairs Bureau - Comparison of Complaints by Product and Practice 1980/81

PRACTICE	Advertising & Representations	Packaging and Labelling	Sales Methods	Prices and Charges	Quality of Product or Service	Credit Practices	Contracts	Guarantees and Warranties	Offers of Redress	TOTAL
PRODUCT										
Food, Beverages & Tobacco	53 26.2 5.7	25 12.4 39.1	7 3.5 0.8	35 17.3 3.7	37 18.3 0.6	3 1.5 0.4	34 16.8 0.9	1 0.5 0.1	7 3.5 0.9	202
Clothing Footwear & Drapery	41 4.7 5.2	23 2.2 35.9	97 9.4 10.7	4 0.4 0.4	544 52.6 8.5	21 2.0 3.0	116 11.2 3.1	1 0.1 0.1	180 17.4 23.6	1035
Consumer Durables	126 4.5 13.4	2 0.1 3.1	75 2.7 8.3	138 4.9 14.7	1757 62.4 27.6	78 2.8 11.3	447 15.9 11.8	90 3.2 12	101 3.6 13.2	2814
Motor Vehicles & Other Transport Equipment	227 6.3 24.2	3 0.1 4.7	336 9.4 37.1	187 5.2 20	1367 38.2 21.4	125 3.5 18.1	660 18.4 17.4	596 16.7 79.1	78 2.2 10.2	3579
Building & Construction	75 3.5 8	2 0.1 3.1	30 1.4 3.3	178 8.3 19	1229 57.3 19.3	63 2.7 9.1	481 22.4 12.7	42 2 5.8	43 2 5.6	2143
Miscellaneous Products	143 8.5 15.3	8 0.5 12.5	300 17.9 33.1	52 3.1 5.5	605 36.1 9.5	36 2.1 5.2	419 25 11.1	21 1.3 2.8	91 5.4 11.9	1675
Transport & Energy Services	61 10.8 6.5	1 0.2 1.6	12 2.1 1.3	122 21.6 13	121 21.4 1.9	18 3.2 2.6	149 26.3 3.9	0 0 0	82 14.5 10.7	566
Insurance & Finance	19 1.9 2	0 0 0	5 0.5 0.6	17 1.7 1.8	21 2.1 0.3	267 27.1 38.7	634 64.2 16.8	0 0 0	24 2.4 3.1	987
Real Estate & Accommodation	48 10.1 5.1	0 0 0	6 1.3 0.7	25 5.3 2.7	46 9.7 0.7	19 4.0 2.8	295 62.3 7.8	1 0.2 0.1	33 7.0 4.3	473
Miscellaneous Services	136 7.9 14.5	0 0 0	37 2.1 4.1	180 10.4 19.2	647 37.4 10.1	60 3.5 8.7	546 31.5 14.4	1 0.1 0.1	124 7.2 16.3	1731
TOTAL	937	64	905	938	6374	690	3781	753	763	15205

TABLE 3Interpretation

The Ministry uses the National Consumer Complaints System for classifying complaints. That system allows for double recording of a complaint on the basis of type of product or service and also type of practice involved. There is also the facility for coding for up to two practices for each complaint.

Table 3 details the distribution of the practices amongst product groups. Each row of the table refers to a particular product or service group and each column refers to practice groups. An appreciation of the information contained in the first box of the table will assist in interpreting the table. The box contains three pieces of information relating to "Food, Beverages and Tobacco". Firstly it shows that there were 53 complaints in this category, secondly, that 26.2% of all complaints about "Food, Beverages and Tobacco" related to Advertising, and thirdly, that 5.7% of all "Advertising and Representation" complaints were about "Food, Beverages and Tobacco".

A similar table for complaints received in 1979/80 appeared in the Director's Report for the year ended 30 June 1980.

Small Claims Tribunals

Analysis of Claims Determined - Product/Service

Classification - 1979/80 and 1980/81

	<u>1979/80</u>		<u>1980/81</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Food and Beverages</u>				
Food Products	5	.18	4	.18
Beverages	1	.03	-	-
Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
SUB TOTAL	6	.22	4	.18
<u>Clothing, Footwear and Drapery</u>				
Clothing	140	5.19	107	4.78
Footwear	63	2.33	36	1.61
Accessories	12	.44	5	.22
Drapery	4	.15	11	.49
Other	<u>4</u>	<u>.15</u>	<u>10</u>	<u>.45</u>
SUB TOTAL	223	8.26	169	7.56
<u>Consumer Durables</u>				
Electrical Goods, etc.				
Washing Machines, Dishwashers, Drying Cabinets	26	.96	30	1.34
Stoves	8	.30	12	.54
Refrigerators and Freezers	47	1.74	35	1.56
Television	38	1.40	16	.71

(Cont) ....

## Electrical Goods Etc. (Cont) ....

Air Conditioners	5	.18	16	.71
Heaters	30	1.11	32	1.43
Small Appliances	8	.30	4	.18
Radio, Hi-Fi, etc.	11	.41	25	1.12
Other	31	1.15	21	.94
Used Electrical Goods etc.	3	.11	8	.36
Repair of Electrical Goods etc.				
Washing Machines, Dishwashers, Drying Cabinets	32	1.18	26	1.16
Stoves	1	.03	5	.22
Refrigerators and Freezers	10	.37	8	.36
Television	7	.26	12	.54
Air Conditioners	5	.18	2	.09
Heaters	11	.41	5	.22
Vacuum Cleaners	1	.03	-	-
Radio, Hi-Fi, etc.	12	.44	6	.27
Other	8	.30	6	.27
Furniture	116	4.30	56	2.50
Furnishings:				
Carpets and Other Floor Coverings	103	3.81	59	2.64
Curtains and Blinds	48	1.78	40	1.79
Other	16	.59	8	.36
Hardware and Kitchenware	6	.22	6	.27
Other	<u>20</u>	<u>.74</u>	<u>16</u>	<u>.71</u>
SUB TOTAL	603	22.35	454	20.30

Motor Vehicles and Other Transport Equipment

New Motor Vehicles	41	1.52	23	1.03
Used Motor Vehicles	216	8.00	182	8.14
Repair and Servicing of Motor Vehicles:				
Mechanical	231	8.56	163	7.29
Electrical	19	.70	13	.58
Panel Beating	38	1.41	35	1.56
Other	38	1.41	42	1.88
Parts and Accessories	67	2.48	41	1.83
Motor Bikes and Trail Bikes	8	.30	11	.49
Other Transport Equipment:				
Caravans and Campervans	21	.78	17	.76
Other	45	1.67	30	1.34
Other	<u>12</u>	<u>.44</u>	<u>10</u>	<u>.45</u>
	SUB TOTAL	736 27.27	567	25.36

Building and Construction

New Homes	17	.63	37	1.65
Extensions and Renovations:				
Concreting, Blockwork, Brickwork, etc.	82	3.04	85	3.80
Fences and Walls	30	1.11	34	1.52
Carpentry	19	.70	14	.63
Painting and Decorating	35	1.30	33	1.48
Plumbing	65	2.41	74	3.31
Electrical Work	21	.78	19	.85
Roofing and Insulation	31	1.45	23	1.03
Cladding	11	.41	3	.13
Other	94	3.48	74	3.31

(Cont)....



Supply of Packages - Kitchens, Garages etc.	65	2.41	43	1.92
Building Products	45	1.67	37	1.65
Swimming Pools	23	.85	25	1.12
Gardening	28	1.03	27	1.21
Other	<u>18</u>	<u>.67</u>	<u>19</u>	<u>.85</u>
SUB TOTAL	584	21.64	547	24.46

#### Miscellaneous Products

Communications - Newspapers, Books, Periodicals, etc.	8	.30	7	.31
Tools and Equipment	2	.07	3	.13
Sporting Goods	18	.67	27	1.21
Jewellery, Watches and Clocks	41	1.52	44	1.97
Toys and Musical Instruments	14	.52	7	.31
Photographic Equipment	8	.30	8	.36
Chemical Products	1	.03	3	.13
Animals, Pets and Livestock	16	.59	25	1.12
Other	<u>10</u>	<u>.37</u>	<u>31</u>	<u>1.39</u>
SUB TOTAL	118	4.37	155	6.93

#### Transport and Energy Services

Post and Telephone Services	17	.63	-	-
Public Utilities and Fuel Supplies	13	.48	7	.31
Travel	103	3.82	85	3.80
Other	<u>3</u>	<u>.11</u>	<u>18</u>	<u>.80</u>
SUB TOTAL	136	5.04	110	4.92

Insurance and Finance

Insurance	42	1.56	13	.58
Finance	9	.33	4	.18
Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
SUB TOTAL	51	1.89	17	.76

Real Estate and Accommodation

Investment	1	.03	-	-
Purchase	1	.03	1	.04
Lease and Rental	-	-	-	-
Short Term Accommodation	4	.15	1	.04
Other	<u>10</u>	<u>.37</u>	<u>2</u>	<u>.09</u>
SUB TOTAL	16	.59	4	.18

Miscellaneous Services

Professional Services	33	1.22	51	2.28
Semi-Professional Services	44	1.63	50	2.24
Laundry and Dry Cleaning	69	2.56	44	1.97
Other Household Services	44	1.63	43	1.92
Educational	1	.03	4	.18
Entertainment, Restaurant, Catering	23	.85	9	.40
Other	<u>12</u>	<u>.44</u>	<u>8</u>	<u>.36</u>
SUB TOTAL	226	8.37	209	9.35
<u>T O T A L</u> ....	2699	100%	2236	100%

(Cont) ....

NOTES

1. Percentage sub-totals may not total exactly because of rounding of decimal places.
2. The above table is only a summary of the full classification. Any person interested in a particular classification may obtain a copy of that classification on request to the Ministry.

TABLE 5

Small Claims Tribunals  
Analysis of Claims Determined - Practice  
Classification - 1979/80 and 1980/81

	<u>1979/80</u>		<u>1980/81</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Advertising and Representations</u>	26	.87	20	.88
<u>Packaging or Labelling</u>	5	.17	-	
<u>Sales Methods</u>	4	.13	7	.31
<u>Prices or Charges</u>				
Charge Above Quote	43	1.44	22	.97
Overcharging	164	5.51	127	5.59
Other	<u>115</u>	<u>3.86</u>	<u>57</u>	<u>2.51</u>
SUB TOTAL	357	11.99	233	10.25
<u>Quality of Product or Service</u>				
Installation	151	5.07	41	1.80
Service or Repair	343	11.52	840	36.96
Unavailability of Product, Component or Service	132	4.43	129	5.67
Unsafe or Hazardous Product or Service	143	4.80	35	1.54
Unauthorised Repairs	14	.47	10	.44
Defective at Purchase	79	2.65	47	2.07
Defective After Purchase	836	28.08	622	27.36
Damage to Consumer's Property	216	7.26	113	4.97

(Cont) .....

Weight or Measure of Unpacked Goods	-	-	1	.04
Other	<u>437</u>	<u>14.68</u>	<u>95</u>	<u>4.18</u>
SUB TOTAL	2351	78.97	1933	85.04

Credit Practices

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

Contracts

Harsh and Unconscionable Contracts	-	-	-	-
Non Disclosure and Misrepresentation of Terms	4	.13	1	.04
Retention of Bonds	-	-	-	-
Other Landlord/Tenant Disputes	-	-	-	-
Disputes Concerning Cancellation of Contracts	20	.67	18	.79
Non Supply of Goods and Services	52	1.75	11	.48
Non Performance Within a Reasonable Period	15	.50	8	.35
Other	<u>20</u>	<u>.67</u>	<u>7</u>	<u>.31</u>
SUB TOTAL	111	3.73	45	1.98

Guarantees and Warranties

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

Offers of Redress

Provision of Credit Note	4	.13	-	-
Provision of a Replacement	2	.07	-	-
Repair - No Replacement or Refund	2	.07	1	.04
No Refund Policy of Seller	24	.81	19	.84
Insistence that Consumer Pay for Repair	9	.30	-	-
Other	<u>9</u>	<u>.30</u>	<u>-</u>	<u>-</u>
SUB TOTAL	50	1.68	20	.88
T O T A L . . . . .	2977	100%	2273	100%

NOTES

1. Percentage sub-totals may not total exactly because of rounding of decimal places.
2. The above table is only a summary of the full classification. Any person interested in a particular classification may obtain a copy of that classification on request to the Ministry.

TABLE 6Country Centres Visited By Mobile Unit1 July 1980 - 30 June 1981

<u>City or Township</u> <u>Visited</u>	<u>Number</u> <u>Of Visits</u>	<u>Persons</u> <u>Interviewed</u>
Ararat	1	3
Bairnsdale	2	32
Beaufort	1	6
Benalla	2	9
Birchip	1	11
Camperdown	2	10
Casterton	1	5
Charlton	1	2
Cobram	1	14
Colac	2	19
Donald	1	6
Echuca	1	6
Euroa	1	7
Hamilton	3	25
Hopetoun	1	7
Horsham	2	24
Kerang	1	3
Mansfield	1	5
Mildura	2	63
Numurkah	2	17
Port Fairy	1	3
Portland	2	18
Puckapunyal	1	5
Robinvale	1	8
Rochester	1	5
Sale	2	51

(Cont).....

<u>City or Township</u> <u>Visited</u>	<u>Number</u> <u>Of Visits</u>	<u>Persons</u> <u>Interviewed</u>
Sea Lake	1	2
Shepparton	2	34
Swan Hill	1	15
St Arnaud	1	6
Terang	2	11
Warracknabeal	2	11
Warragul	1	3
Warrnambool	5	86
Wodonga	<u>3</u>	<u>36</u>
	55	568

NOTE

Mildura was visited on two occasions, but duration was for two days on each visit.



TABLE 7Analysis of Prosecutions

<u>Consumer Affairs Act 1972</u>	<u>Convicted</u>	<u>Adjourned</u>	<u>Dismissed</u>	<u>Total</u>
<u>Section</u>				
13 (1)	14	-	6	20
13 (2B)	1	-	-	1
13 A (2)	-	1	-	1
36	5	-	-	5
64	<u>3</u>	<u>-</u>	<u>-</u>	<u>3</u>
	23	1	6	30
 <u>Motor Car Traders Act 1973</u>				
<u>Section</u>				
14	7	-	-	7
19	2	-	-	2
26	14	-	7	21
30	2	-	-	2
40	42	-	-	42
41 (1a)	25	-	-	25
54	6	-	-	6
55	7	-	-	7
Regulation 403	<u>20</u>	<u>-</u>	<u>-</u>	<u>20</u>
	125	-	7	132
 Total Informations Heard	<u>148</u>	<u>1</u>	<u>13</u>	<u>162</u>

NOTE

These figures cannot be compared to those given in Section 1.4.2 Alleged Breaches/Prosecution, as the latter relates to files, while those listed in this appendix, relate to individual breaches and there may be a number of breaches in any one file.

TABLE 8List of Publications prepared by the MinistryPamphlets:

Buying a Car  
Hire Purchase  
Carpets  
Electrical Appliances  
Funerals  
Household Removals  
Directory of Consumer Assistance  
Be Sure Before You Sign  
Small Claims Tribunal  
Customer Dissatisfaction Reporting Systems  
Case Studies & Teachers' Notes  
Booklet - 'Consumer Rights' (available in  
8 other languages)

Newsletters:

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

Information Sheets:

Do It Yourself Home Checklist  
Door to Door Sales

Door to Door Sales Tricks  
Pyramid Selling & You  
Mail Order  
Second Hand Vehicle Check List  
Motor Car Traders Act  
Ministry of Consumer Affairs - Functions  
Small Claims Tribunal  
Consumer Protection Legislation in Victoria  
Contract Sale Note - House Purchases

Poster:

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

At the time of writing this Report, the following publications relating to the Residential Tenancies Act became available:

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

The following documents as prescribed by  
Regulations are also available

Standard Residential Tenancy Agreement  
Statement of Rights  
Condition Report

TABLE 9

## AUSTRALIAN &amp; VICTORIAN CONSUMER COMPLAINTS STATISTICS - 1980/1981

PRODUCTS & SERVICES COMPLAINED ABOUT	NUMBER		PERCENTAGE	
	AUST	VIC	AUST	VIC
Purchase of Used Motor Vehicles	7200	1087	9.9	9.2
Motor Vehicle Repairs & Servicing	4396	607	6.1	5.1
Purchase of New Motor Vehicles	2302	529	3.2	4.5
Other Motor Vehicle Products	3802	545	5.2	4.6
Electrical Goods - Purchase & Repair	8154	1440	11.2	12.2
Home Construction, Extension, Renovation	6940	1173	9.6	9.9
Other Home Improvements	4025	597	5.5	5.1
Entertainment, Travel, Recreation	4220	644	5.8	5.5
Real Estate, Accommodation	4005	388	5.5	3.3
Furniture, Furnishings	4692	751	6.5	6.3
Insurance	3256	577	4.5	4.9
Finance and Other Credit Services	1760	264	2.4	2.2
Clothing, Footwear, Drapery	3776	774	5.2	6.6
Professional Services	1658	321	2.3	2.7
Semi-Professional & Other Services	6457	1000	8.9	8.4
Food, Beverages, Tobacco	1270	155	1.8	1.3
Miscellaneous Products	4626	974	6.4	8.2
T O T A L	72539	11828	100%	100%
<u>REASONS FOR COMPLAINT</u>				
Unsatisfactory Quality of Product or Service	37696	6374	46.1	41.9
Unfair or Unfulfilled Contracts	16386	3781	20.1	24.9
Guarantees & Warranties not Honoured	5425	753	6.6	4.9
Misleading Representation/Advertising	4929	937	6.0	6.2
Excessive Prices/Charges	5856	938	7.2	6.2
Unfair Credit Practices	4304	690	5.3	4.5
Unfair Sales Methods	3597	905	4.4	6.0
Offers of Redress	2990	763	3.7	5.0
Unsatisfactory Packaging/Labelling	521	64	0.6	0.4
T O T A L	81704	15205	100%	100%

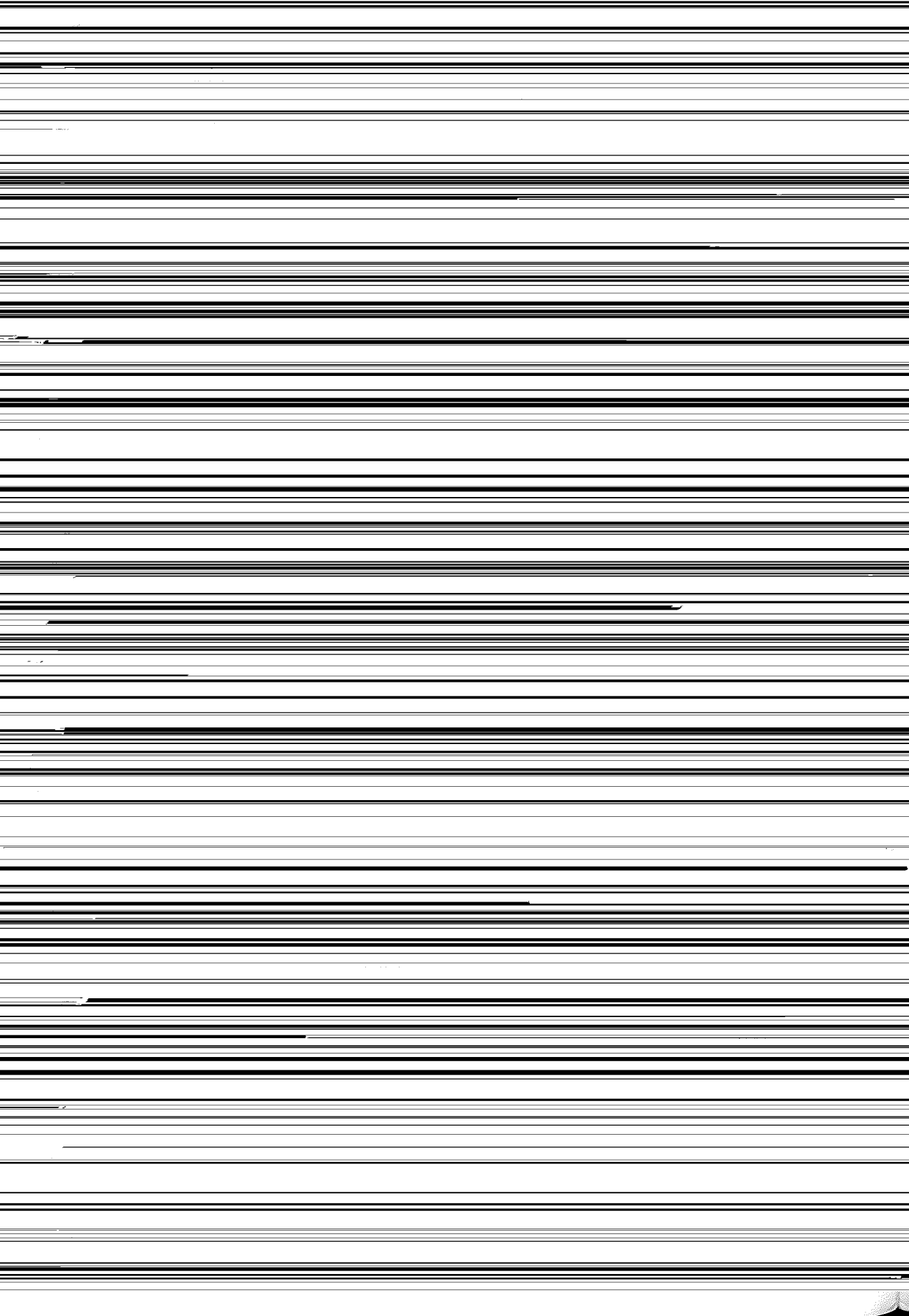
PART 5CONCLUDING COMMENTSComparative Statistics

- 5.1.1 It is interesting to note that Victorian consumers' complaints referred to in this report are at a lower rate than one would assume on a theoretical per capita calculation.
- 5.1.2 Based on population, one would expect Victoria to have about 26% of all complaints. In fact, Victoria had, in 1980/81, just over 16% of total Australian complaints about products and services, and 18.6% of all consumer complaints when analysed by reasons. Part 4 of this report shows that in the former category, 'Motor Vehicles' and 'Consumer Durables' were the two largest areas of complaint. An analysis of reasons for complaints showed that 'Unsatisfactory Quality and Service' and 'Unfair and Unfulfilled Contracts' accounted for about two thirds of all complaints.

Occupationally Licensed Groups

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

- 5.2.2 There is no public examination of disciplinary procedures by other than boards set up for these purposes - generally comprising members only - and, particularly in the professions and semi-professions, these costly qualifications have been obtained at public expense.
- 5.2.3 The professions - the "monopolies of competence" - based on monopolies of knowledge gained through access to publicly funded higher education, demonstrate little accountability to the public. Only one profession - the Law - has a Lay Observer on disciplinary matters, and it is a matter of concern that this practice is not already quite widespread.
- 5.2.4 It is also to be regretted that the jurisdiction of the Market Court does not extend to any of these occupational groups for whom special licensing arrangements exist or who have set up their own disciplinary procedures.
- 5.2.5 The unique conditions of the Victorian Market Court, where in appropriate circumstances what is virtually negative licensing may apply, appear to make it a particularly appropriate setting for claims to be heard against professional and semi-professional people in actions brought on behalf of consumers by the Director of Consumer Affairs.
- 5.2.6 At the present time, this desirable course of action cannot be utilised as Section 3 of the Market Court Act prevents this occurring.





5.4.3 As a personal comment, I therefore observe that undoubtedly, like all Permanent Heads, and particularly those on fixed term appointments, I wish my own performance to be evaluated on the yardstick of professionalism demonstrated - of competence, of achievement and of integrity. These alone are surely the central issues.

#### Commitment

5.5.1 I wish to assure Parliament and consumers that the Ministry will continue its vigorous action on behalf of consumers to ensure insofar as it is able, the recognition in practice of the four basic rights of consumers :-

- \* To be informed;
- \* To be able to choose goods and services fairly and freely;
- \* To be heard; and
- \* To be confident that dishonest and unfair traders are dealt with appropriately.

5.5.2 The capacity to so act will naturally be a matter of resource allocation. Undoubtedly every Ministry would claim the need for additional resources.

5.5.3 However, in the case of the newer ministries, such as Consumer Affairs, public awareness is a relevant factor. It is clear that awareness of the scope of the Ministry is increasing all the time. For

example, in the period since July 1981, the rate of consumer complaints has increased by about 11% over the period under review in this report. Yet in the staffing cut backs of April this year, this Ministry, along with all others, had its resources reduced by 3%.

- 5.5.4 It is clear that if growth in demand for resources is not accompanied by internal increases in productivity - which does not appear either a fair or a realistic assumption - then additional resources will be needed if delivery of services is not to be impaired. At present the Ministry is aiming at a 'turn around' period of about 3 weeks for consumer complaints attention and 6 weeks for Small Claims Tribunals hearings. If the gap between demand and resources is widened, then inconvenient extensions of these lag times will unfortunately be the inevitable consequence.

### The Future

- 5.6.1 Some changes in existing legislation are required. It is pleasing to report that since this report was commenced, Cabinet has agreed with the three recommendations contained on Page 8, and also the recommendation on Page 85 concerning contracts for sale of vehicles.
- 5.6.2 Legislation in new areas is being progressively introduced.

- 5.6.3 Changes in methods of operation within the Ministry are now required. Their introduction is now being planned - these include the office localisation programme, job sharing for some new staff, extended office hours, and an emphasis on access for all the ethnic groups in the community; office localisation will include establishment of 'shop front' offices in the suburbs and in the country.
- 5.6.4 More widespread translation of consumer information booklets produced by the Ministry is necessary and will be achieved.
- 5.6.5 These changes are needed so that consumers who most need help, and who cannot cope on the phone and in high rise city offices, can have a local, more personalised and conveniently available service.

Director's Thanks

- 5.7.1 I wish to thank all members of the staff of the Ministry for their dedicated efforts in the past year, and thank them also for the friendly and co-operative manner extended to me since joining the Ministry. I am proud to be associated with so dedicated a band.
- 5.7.2 This past year has been one of exciting achievement. The current and future years promise to be even more so.



John O. Miller,  
Director of Consumer Affairs  
Melbourne,  
October 30, 1981