

Report to the
Minister for
Consumer Affairs
for the year ended
30 June 2007





Marsha Thomson MP

Minister for
Consumer Affairs
(25 January 2005 to 30 November 2006)



Hon Daniel Andrews MP

Minister for
Consumer Affairs
(1 December 2006 to 2 August 2007)



Department of Justice

Director
Consumer Affairs Victoria

Level 17, 121 Exhibition Street
Melbourne, Victoria 3000
GPO Box 123
Melbourne, Victoria 3001
Telephone: (03) 8684 6017
Facsimile: (03) 8684 6040
Email: consumer@justice.vic.gov.au
DX210220

Hon Tony Robinson MP
Minister for Consumer Affairs
1 Macarthur Street
MELBOURNE VIC 3000

Dear Minister

Annual Report 2006–07

I present to you my report on the activities and operations of Consumer Affairs Victoria for the year ended 30 June 2007.

The document has been prepared in satisfaction of section 102 of the *Fair Trading Act 1999*, section 16 of the *Credit (Administration) Act 1984* and section 83 of the *Veterans Act 2005* for you to lay before each House of Parliament.

Yours sincerely

Dr David Cousins
Director



Finalised...

44 criminal prosecutions.

78 civil proceedings.

Secured...

Over **\$590,000** in court orders for fines, Court Fund and VCAT penalties, and costs.

A landmark first judgment on unfair terms legislation, confirming CAV's approach.

Accepted...

Enforceable undertakings from **121** parties.

Recovered...

Over **\$4.1 million** through dispute resolution.

More than **\$590,000** in compensation for consumers through legal proceedings.

Received...

More than **640,000** written and telephonic requests for information and advice.

Over **140,000** visitor sessions per month to CAV website.

In excess of **18,500** complaints and requests for inspections.

Over **65,000** applications for registration of business entities.

In excess of **19,000** applications for liquor licenses.

More than **1,500** applications for registration and licensing of occupations.

Handled...

Over **47,000** counter visits.

Delivered...

Five Acts for passage through Parliament and **21** sets of regulations.

Led...

Three major national reviews.

Enhanced...

Market monitoring capacity by establishing a dedicated branch.

Expanded...

Learning and development activities completed by CAV staff.

Developed...

Standards for generalist financial counselling.

Distributed...

Over **3.2 million** forms and publications to consumers and traders.

Performance Indicators

Percentage of audits, inspections and investigations giving rise to enforcement action (excluding court activity):
5 per cent (2005–06: 6.8 per cent)

Percentage of audits, inspections and investigations giving rise to court activity: **1.6 per cent** (2005–06: 1.7 per cent)

Percentage of eligible calls to Consumer Helpline answered within two minutes: **81 per cent** (2005–06: 76 per cent)

Number of matters finalised in higher courts:
eight (2005–06: five)

Call abandonment rate: **3.6 per cent**
(2005–06: 5 per cent)

Percentage of eligible written complaints responded to within grade of service (70 days): **89 per cent**
(2005–06: 93 per cent)

Percentage of residential tenancy inspections provided within grade of service (goods left behind, seven days for metro/14 days for country areas; other inspections, 42 days): **87 per cent** (2005–06: 91 per cent)

Percentage of conciliated cases that were resolved:
83.3 per cent (2005–06: 83.3 per cent)

Recognition of CAV as a dispute resolution service provider after prompting: **92 per cent** (most recognised in sample)

Proportion of clients surveyed under CAV Customer Satisfaction Framework, who rated service levels at or above CAV benchmark (competitive with industry standards)

Consumer Helpline – **98 per cent**

New applications for liquor and occupational licences – **96 per cent**

CAV customer service at Victorian Consumer & Business Centre – **94 per cent**



There is a need for significant reform to consumer laws at the national and state levels.



This is the thirty-fourth annual report of the Director of Consumer Affairs in Victoria. The report provides an important record of the operations of Consumer Affairs Victoria (CAV) in 2006–07. Formally, the report is produced in compliance with provisions of the Fair Trading Act, the Credit Administration Act and the Veterans Act. The Director also holds the positions of Residential Tenancies Bond Authority, Registrar: Co-operatives and Incorporated Associations, and Director: Trade Measurement. The report also covers activities in these areas.

The annual report is more than just an historical record. It is a means of highlighting, to the Parliament and the public, issues and concerns about the operation of consumer markets in Victoria. The report provides details of court and tribunal determinations, and other administrative actions, CAV has taken against traders who have engaged in unfair practices. The report also names some traders who have failed to respond in an appropriate way to concerns raised with them by CAV.

A State election was held in November 2006. In the months prior to this election, legislation was passed relating to bodies corporate (now referred to as owners' corporations), conveyancing and funerals. The Government also responded formally to the *Report of the Credit Review* and the *Motor Car Traders Consultation*, both of which were significant focuses for CAV in 2005–06. Responses to reviews of incorporated associations and fundraising legislation were delayed pending other whole of Government reviews impinging on these areas.

The Government's election commitments emphasised the development of new lemon laws, improved residential accommodation arrangements for residents of rooming houses, caravan parks and student accommodation, and implementation of recommendations of the Credit Review.

The Hon Daniel Andrews MP was appointed Minister for Consumer Affairs in the new Government. He assumed the Chair of the Ministerial Council on Consumer Affairs when he was appointed Minister. The Council met on 18 May 2007 in Melbourne. Aside from implementation of the election commitments, the Minister took a keen interest in progressing the whole of Government initiative of reducing unnecessary regulatory burdens on business.

It is appropriate that I record appreciation for the passionate support for consumer issues of the former Minister, Marsha Thomson MP, who served in this position over two terms and for more than four years. Minister Thomson ensured that CAV pursued its core role of protecting and promoting consumer interests, especially the interests of vulnerable and disadvantaged consumers. She vigorously pursued improvements in the operation of credit markets to ensure more affordable credit for low income consumers and stronger action to prevent predatory lending practices.

Regulatory reform has been a central aspect of CAV's work over the past year. Further steps were taken to strengthen the general law (the Fair Trading Act), significant regulatory burdens associated with motor car dealings books were removed, and aged care facilities benefited from legislative changes that removed a double compliance burden caused by overlapping Victorian and Commonwealth legislation.

Importantly, CAV began a systematic review of its regulation and regulatory practices. In the coming year, moves will be taken to rationalise existing laws administered by CAV to the benefit of both consumers and business. Laws and practices need to retain valuable protections for consumers, but an unnecessarily complex array of laws that add confusion and cost burdens for businesses is not in the interests of consumers.

During the year, CAV took numerous steps to expand and improve service delivery (our own and that of funded agencies), notably including a significant project to enhance standards for financial counselling services.

Another major development was the launch of the new Consumer Action Law Centre, jointly funded for three years by CAV and Legal Aid Victoria.

CAV again received a high volume of written and telephonic information requests, counter visits and complaints over the past year. This was partly a reflection of the growing awareness of the readily accessible Consumer Helpline and the regional offices (which are now well-established across the State), and the opening of the Victorian Consumer & Business Centre in July 2006.

Timeliness and customer satisfaction indicators met, and in many cases, exceeded agreed benchmarks despite the higher volumes of activity.

While conciliation and tenancy inspection response rates exceeded targets, they did decline against the previous year's rates, due to staffing pressures. Use of the website again expanded substantially and this channel is undoubtedly appreciated by many consumers and traders as a way of obtaining information and communicating with the agency.

Director's Foreword

The strength of property markets was the source of many complaints. The activities of some property investment marketers continue to give rise to concerns in respect of exaggerated claims of likely financial gains and use of financing methods, such as vendor terms contracts. There also was concern expressed in the media about the practice of underquoting by agents and about rental bidding. Security of accommodation was a special concern for residents in rooming houses, caravan parks and student accommodation. Homelessness is a very real, but unacceptable alternative for some of these residents.

Service industries continue to grow relative to the rest of the economy. CAV has received many complaints about telecommunications services during the year, partly reflecting gaps in Commonwealth regulation. Warranty issues in relation to new communication devices have been a significant source of concern. Scams continue to be prevalent in Victoria, which is partially attributable to our affluence, rendering us attractive targets to rogue operators. A number of initiatives were taken in conjunction with other consumer agencies to warn consumers about scams and to track down the perpetrators of scams.

The compliance and enforcement work of the agency continues to grow in sophistication. There was a decline in the number of matters before the courts in total, but an increase in the number of matters before the higher courts and in the levels of compensation obtained for consumers and fines levied on traders for breaches. CAV was successful in significant cases relating to unfair contract terms and unconscionable conduct.

The Director was granted leave to appear in a High Court case that was successful in clearly establishing that company employees can be held personally liable for their misleading and deceptive conduct, in trade or commerce, within the scope of their normal duties for a company. A greater emphasis was placed on obtaining undertakings from non compliant traders about their future conduct. Such undertakings are enforceable by law and are useful to achieve speedy and effective marketplace outcomes.

CAV continued its active program of monitoring business conduct for compliance with consumer laws and it was pleasing that this program, which has been running over the past three years, appears to be having positive impacts, as indicated by the declining rate of serious non compliance detected during these exercises. An area where significant confusion still seems to exist among traders, however, concerns the application of legislated implied statutory warranties and the use of notices about returning goods and obtaining refunds. CAV issued warnings to numerous traders, accepted enforceable undertakings from others previously warned, and successfully pursued legal action to clarify the law.

In recent years CAV inspectors have seized many banned toys and other products that have found their way to the marketplace. Many of these products are imported from China. Where retailers have been willing to disclose their sources of supply to CAV and agreed to cease supply, CAV has been willing to accept undertakings about their future conduct, but in a few cases, prosecutions have been warranted. The laws were amended during the year to facilitate the destruction of seized banned goods.

CAV also undertook research during the year to improve understanding of the drivers of the behaviour of the retailers and wholesalers involved in this illegal trading. Despite having produced publications depicting all Victorian banned goods, there are questions as to whether language and cultural barriers may have inhibited the success of efforts to secure compliance. The results of this research will help to inform education and compliance strategies in the new year.

Home building was again an area receiving significant attention from compliance and enforcement officers. Action was taken by CAV when consumers suffered detriment due to breaches of general fair trading and building legislation and a failure by builders to rectify or compensate. Many, but not all, matters involved builders who were unregistered because they had been unable to obtain builders' warranty insurance (a requirement for registration). A particular concern to the agency was the prevalence of terms in home building contracts that CAV considers unfair. CAV focused significant attention on ensuring change in this area. These efforts will continue into the new year.

The focus of consumer agencies like CAV must change over time as marketplace conditions and community attitudes change. Important in this regard has been CAV's emphasis over the past year on the promotion of more responsible, sustainable consumption behaviour. CAV has also had a growing concern about the veracity of the advertising claims and marketing practices of food manufacturers and retailers, particularly in light of the major community problem of obesity. More attention needs to be devoted in the future to the promotion of responsible consumption and trader behaviour in the areas of consumer credit and liquor.

Having been Director of CAV for the past five years, it is appropriate that I provide some reflections on this time and on the role itself. This has been an exciting time when many things have been achieved to further the Government's aim of enhancing the consumer policy framework in Victoria. During this time, Victoria has also played a leading role in promoting consumer policy at a national level and has contributed substantially to reforms being affected by the Council of Australian Governments and the Ministerial Council on Consumer Affairs in a range of areas. A major and historic development in this regard, during the past year, was the agreement that the Commonwealth will assume its full constitutional responsibility for trade measurement (weights and measures). In 2010, the Commonwealth will take over functions relating to weights and measures which the State has performed since the mid nineteenth century.

Consumer policy is a complex area of economic and social policy, which in many ways has been undervalued by governments in Australia. Despite the apparent emphasis on competition policy, there has been a failure to appreciate that the key drivers of competition and innovation in markets are informed and active consumers.

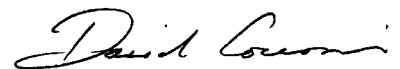
There is a need for significant reform to consumer laws at the national and state levels. The laws need to focus more on principles, and the fairness of market transactions. Victoria has led the way in its successful implementation of unfair contract terms legislation, but a more broadly defined range of unfair conduct could be covered by the general law. Institutional reform in Victoria would be a further progressive move.

Effective implementation of general consumer laws requires that the regulator is established with clear and appropriate independence, transparency and accountability. The Director is employed under Part 3 of the *Public Administration Act 2004* and, therefore, does not have the same statutory independence as other, equivalent, general regulators. The effective implementation of the Director's statutory functions has been impacted by the position's lack of statutory independence.

Looking forward, as part of the on-going review of the legislation, it would be desirable to consider whether a commission structure would be more appropriate for Consumer Affairs Victoria and whether there should be a clearer separation of the regulatory and policy advising functions of the organisation.

I hope that the review of national consumer policy that the Productivity Commission is currently conducting may provide the catalyst needed to achieve further improvements in the consumer policy framework, both nationally and at State level. This is the first major review of consumer policy in Australia and Victoria has contributed substantially. Victoria has chaired the Ministerial Council Working Party looking at the future of consumer policy which provided information to the review.

Once again I would like to acknowledge the fine efforts of all the staff at Consumer Affairs Victoria who have worked hard over the past year and before that to achieve many reforms and improvements and restore Victoria's historical tradition as a leader in consumer policy. I would also like to acknowledge the continuing fine efforts of the many consumer and tenant agencies and statutory bodies who work in partnership with CAV, and the support for the agency from the Department of Justice as a whole.



Dr David Cousins
Director



**Barwon South West
(Geelong & Warrnambool)**

Main office: 65 Gheringhap Street
Geelong

Telephone: 5224 8072

Mobile service to: Camperdown,
Colac, Corio, Drysdale, Queenscliffe,
Winchelsea

Sub office: 192 Liebig Street
Warrnambool

Telephone: 5561 3631

Mobile service to: Casterton, Hamilton,
Heywood, Mortlake, Port Fairy, Portland

Grampians (Ballarat)

Office: 11 Sturt Street Ballarat

Telephone: 5331 6074

Mobile service to: Ararat, Bacchus
Marsh, Beaufort, Daylesford, Edenhope,
Horsham, Meredith, Nhill, St Arnaud,
Warracknabeal

Consumer Helpline

1300 55 81 81 (Statewide)

Email

consumer@justice.vic.gov.au

Visit

www.consumer.vic.gov.au



Loddon Mallee (Bendigo & Mildura)

Main office: 60 Mitchell Street Bendigo

Telephone: 5444 2038

Mobile service to: Castlemaine, Echuca, Kerang, Kyneton, Maryborough, Swan Hill, Wedderburn, Wycheproof

Sub office: 122 Ninth Street Mildura

Telephone: 5022 1375

Mobile service to: Ouyen, Robinvale

Hume (Wangaratta)

Office: 78 Murphy Street Wangaratta

Telephone: 5721 8481

Mobile service to: Alexandra, Benalla, Cobram, Corryong, Euroa, Mansfield, Myrtleford, Rutherglen, Seymour, Shepparton, Wodonga

Gippsland (Morwell)

Office: 8 George Street Morwell

Telephone: 5116 5701

Mobile service to: Bairnsdale, Churchill (Monash University), Cowes, Korumburra, Sale, Warragul, Wonthaggi, Yarram

Victorian Consumer & Business Centre 113 Exhibition Street Melbourne

Monday–Friday 8.30am–5.00pm
(except public holidays)

Regional offices

Office hours Monday–Friday
9:00am–5:00pm
(except public holidays)

For mobile service timetables see
www.consumer.vic.gov.au and follow
links from “Contact us” menu



vi	Director's foreword	6	Providing advice and resolving disputes
x	Where to find us	7	Enquiries
xvi	About Consumer Affairs Victoria	7	Dispute resolution
xvii	Functions	10	<i>Feature: Alternative dispute resolution across the Department of Justice</i>
xviii	Funded agencies	11	Securing compliance
xviii	Consumer Utilities Advocacy Centre Ltd	11	Educating traders
xviii	Financial Counselling Program	11	New businesses
xviii	Community Program	11	Better Business in Latrobe
xix	Grants Program	11	Working with industries
xx	Structure	11	Telecommunications
xxii	Program co-ordination	13	Tourism
xxii	National context	15	Detecting and addressing non compliance
xxii	State context	16	Metropolitan compliance program
xxii	Licensing and registration bodies	17	Regional areas
xxii	Advisory functions	18	Public warnings
xxiii	Community links	18	Legal proceedings
xxiii	Regulator's Forum	19	Legislative developments
xxiv	Organisational chart	19	Consumer Acts amended
xxv	<i>Feature: Consumer Affairs Victoria Annual Lecture</i>	19	Director's powers
		19	Court orders
1	<i>General Industry</i>	19	Lemon laws
2	Registration of business names	20	<i>Feature: Unfair contract terms</i>
2	National work	25	<i>Feature: Misleading and deceptive conduct</i>
3	Empowering consumers to enforce their fair trading rights	29	<i>Feature: Scams</i>
3	Consumer Education in Schools program	30	<i>Credit and Debt</i>
3	Teacher resources	32	Services for consumers
3	Newspaper supplement	32	Information and advice
3	<i>Consumer Stuff!</i> Challenge	32	Dispute resolution
5	Community educators	34	Advocacy
5	Seniors		
5	VCAL students		
6	Youth networks		
6	ESL and literacy students		
6	Consumer information in libraries		
6	Information displays		
6	Contact sales education pilot		

- 34 **Vulnerable and disadvantaged consumers**
- 34 **Financial counselling program**
 - 35 Financial counselling standards project
 - 35 Energy hardship training project
- 35 **Credit booklet**
- 36 **Working with credit providers**
- 37 **Enforcing the law**
- 37 **Geeveekay Pty Ltd**
- 37 **Australian Finance Direct**
- 38 **Regulatory review**
- 38 **National work**
- 38 **Personal property securities reform**
- 39 **Comparison rates**
- 39 **Regulating the price of credit**
- 40 *Accommodation*
- 42 *Feature: Co-operating to address vulnerable consumers' residential accommodation needs*
- 43 **Renting**
- 43 **Services for consumers**
 - 43 Information and advice
 - 43 Dispute resolution
- 43 **Educating tenants**
- 44 **Educating landlords**
- 44 **Vulnerable and disadvantaged consumers**
 - 44 Community education
 - 45 Partnerships
 - 45 Funded agencies
- 46 **Working with industry**
- 46 **Residential Tenancies Bond Authority**
- 46 **RTBA online**
- 47 **Retirement villages**
- 47 **Registration**
- 48 **Legislative developments**
- 48 **Consumer empowerment**
 - 48 Telephone enquiries service
 - 48 Dispute resolution service
 - 49 Self advocacy
 - 49 Education and information
- 50 **Rooming houses and caravan parks**
- 50 **Policy developments**
- 50 **Educating residents**
- 52 **Buying and selling real estate**
- 52 **Regulatory framework**
- 52 **Services for consumers**
 - 52 Information and advice
 - 52 Dispute resolution
- 53 **Consumer education**
 - 53 Consumer guide for home buyers and sellers
 - 54 First Home Buyers Seminars
 - 54 First Home Buyers Expo
 - 54 Market research
- 54 **Working with estate agents**
- 55 **Monitoring compliance**
 - 55 Trust account audit program
- 56 **Enforcing the law**
 - 56 Simon Lukauskas
 - 56 Peter Clements
- 56 **Industry reform**
 - 56 SCOCA harmonisation projects
 - 57 COAG mutual recognition project
 - 57 Victorian project
- 57 **New legislation**
- 57 **Regulatory activity**
- 58 *Feature: Owners' Corporations*
- 59 **Building and renovating**
- 59 **Services for consumers**
 - 59 Enquiries and complaints
- 61 **Consumer education**
 - 61 Direct marketing campaign
 - 61 Events
 - 61 Seminars
 - 62 Market research
- 63 **Working with builders**
 - 63 Standard form contracts
- 63 **Enforcing the law**

- 64 *Motor Cars*
- 68 **Consumer protection framework**
- 68 **Services for consumers**
- 70 **Consumer education**
- 70 Comprehensive guide for consumers
- 70 Targeted quick reference
- 70 Training for first car buyers
- 70 **Working with traders**
- 70 Newsletter
- 71 **Enforcing the law**
- 71 Consumer issues in the industry
- 71 **Unlicensed traders**
 - 71 Vehicle Advertisement Tracking System
 - 71 Regional compliance monitoring exercises
- 74 **Regulatory review**
- 74 *Feature: Fuel*
- 76 *Liquor*
- 78 **Regulatory framework**
- 79 **Trader engagement**
- 79 **Training and education**
- 81 Audio and podcasts
- 81 **Compliance and enforcement activities**
- 81 Go Tubes
- 81 Country racing
- 81 **Legislative developments**
- 82 New Liquor Control Advisory Council
- 82 Intoxicated patrons
- 82 Sale of packaged liquor
- 82 **Whole of Victorian Government activities**
- 82 Crowd control, venues and events
- 83 Impact of tobacco reforms
- 83 Harmful alcohol consumption
- 83 Pedestrian accidents
- 83 **National activities**
- 83 Australasian Liquor Licensing Authorities Conference
- 83 Working Party on National Indigenous Issues
- 83 Thinking Drinking II
- 84 *Trade Measurement*
- 86 **Regulatory framework**
- 87 **Compliance monitoring**
- 87 Pre-Christmas inspection program
- 87 Licensee seminars
- 87 Licensees
- 88 **Enforcement**
- 88 Baiada Poultry
- 88 Prince Aurora Pty Ltd
- 88 Supermarket register scales
- 89 Short measure pre-packed article withdrawals
- 89 **National work**
- 90 *Product Safety*
- 92 *Feature: Infant and nursery products*
- 93 **Ban orders and regulations**
- 93 Non compliant babies' dummies
- 93 Anti-drowsiness devices
- 95 **Inspections/surveys**
- 95 Royal Melbourne Show
- 95 Rural shows inspections
- 95 Regional compliance exercises
- 95 Pre-Christmas product safety inspections
- 96 Toy survey
- 96 **Information gathering and exchange**
- 97 **Court actions**
- 97 **National work**
- 97 Harmonisation of the Australian consumer product safety system
- 98 National baseline research study
- 98 Developing and revising Australian and International Standards
- 98 Consumer Products Advisory Committee
- 99 *Feature: Two-dollar shops*
- 100 *Other Industry Regulation Schemes*
- 102 **Conveyancers**
- 102 Scope of the new legislation
- 102 Licensing requirements
- 102 Insurance
- 102 Professional obligations
- 102 Consumer protection against fraud
- 103 **Funeral directors**
- 103 Registration
- 103 Securing compliance
- 103 Funeral Industry Ministerial Advisory Council

- 103 Introduction agents
- 103 Prostitution service providers
- 104 Monitoring prostitution service providers
- 104 Enforcing the law
- 106 Prostitution Control Act Advisory Committee
- 106 Second-hand dealers and pawnbrokers
- 106 Travel agents
- 107 *Feature: Reviewing regulatory practice*
- 108 Compliance and enforcement
- 109 Policy developments
- 110 *Governance*
- 112 Incorporated associations and co-operatives
- 112 Incorporated associations
- 112 Co-operatives
- 113 Indigenous associations
- 114 Fundraising
- 116 Patriotic funds
- 117 Partnerships
- 118 *Media Review*
- 124 *Other National Initiatives*
- 126 Review of national consumer policy
- 126 Victorian Government submission
- 126 Empowering consumer advocates
- 127 National Indigenous Consumers Strategy
- 127 National Education and Information Taskforce
- 128 The Victorian Government key messages to the Productivity Commission
- 130 *Optimising Organisational Capacity*
- 132 Sustainability
- 133 Case management system
- 133 Review of principles for handling cross-jurisdictional matters
- 134 CAV performance measures
- 134 Measuring customer satisfaction
- 134 Disability strategy
- 134 Internally focused initiatives
- 135 Externally focused initiatives
- 136 Volunteer engagement project
- 136 Monitoring markets
- 137 Keeping employees and stakeholders informed
- 137 Learning and development
- 137 Legislation
- 137 Leadership development
- 137 Customer service
- 138 Recruitment and selection
- 138 Training plan and calendar
- 138 Competency mapping

Appendices

- 139 Appendix 1 Legislation administered by the Minister for Consumer Affairs as at 30 June 2007
- 140 Appendix 2 Legislation passed/commenced/revoked 2006–07
- 142 Appendix 3 Enforceable undertakings accepted 2006–07
- 158 Appendix 4 Civil litigation concluded 2006–07
- 180 Appendix 5 Prosecutions completed 2006–07
- 196 Appendix 6 Media releases issued 2006–07
- 202 Appendix 7 CAV Community Program 2006–07
- 204 Appendix 8 CAV Financial Counselling Program 2006–07
- 206 Appendix 9 Consumer compensation claims admitted 2006–07
- 208 Appendix 10 Consumer Credit Fund grants approved 2006–07
- 210 Appendix 11 Victorian Property Fund grants approved 2006–07
- 212 Appendix 12 Trust funds managed by Consumer Affairs Victoria
- 214 Appendix 13 CAV financial information 2006–07





Consumer Affairs
Victoria (CAV)
is the State's
general consumer
protection
agency, with
a vision of
informed and
responsible
consumers
and traders
in Victoria.



CAV's four main goals in pursuing this vision are:

- empowered consumers
- an efficient, fair and safe trading environment
- protected vulnerable and disadvantaged consumers, and
- optimised organisational capability.

As a business unit of the Department of Justice, CAV leads the following strategic priorities of the Department (which in turn are framed within the context of the Government's vision as outlined in *Growing Victoria Together and a Fairer Victoria*):

- development and implementation of an alternative dispute resolution strategy
- reducing the regulatory burden
- identifying areas for improvement through the Better Business Regulation project, and
- the review of consumer policy and education, including addressing the challenge of consumer debt.

In addition, along with all business units of the Department of Justice, CAV is committed to the achievement of the priority to improve occupational health and safety.

Functions

The agency has three key roles, namely to:

- advise the Government on the consumer policy framework and manage the legislative and non legislative program related to this framework
- regulate industry conduct, monitor entry regulation in some industries, and manage guarantee funds covering residential tenancies, property services and motor car trading, and
- provide services including information, advice, education, complaint handling (primarily through the provision of third party conciliation and mediation services) and business registration and licensing services.

Consumer Affairs Victoria is the initial entry point for all consumer enquiries from across the State, having subsumed, over the last three years, the services previously provided by numerous community agencies formerly funded by CAV. Many services are provided from the seven regional offices established over the last three years across the State.

CAV administers 50 Acts of Parliament, some covering industry generally (for example fair trading, trade measurement, and business names), and others covering specific industries.

Licensing and registration schemes cover liquor suppliers, estate agents, motor car traders, credit providers, finance brokers, travel agents, prostitution service providers, introduction agents, second-hand dealers and pawnbrokers, fundraisers and other not-for-profit entities, trade measurement certifiers and retirement villages. New schemes covering conveyancers, owners' corporation managers and funeral service providers are due to come into effect soon.

Important areas of consumer expenditure specifically outside the scope of the agency's complaint handling (but not its compliance and enforcement) activities include energy and water, health and health insurance.

Some areas within the regulatory scope of Consumer Affairs Victoria do not have a primary consumer focus. The legislation on prostitution is driven more by occupational health and safety, child protection and crime prevention objectives. The second-hand dealers and pawnbrokers legislation is also more about general crime prevention than consumer protection, while the liquor licensing scheme has harm minimisation and preservation of community amenity as its central objects.

CAV receives in excess of 640,000 written and telephonic requests for information and advice and over 47,000 counter visits annually (relating to consumer, licensing and residential tenancy matters), and over 18,500 written complaints and requests for residential tenancy inspections.

Most complaints are dealt with by conciliation when they are assessed as being justified and within jurisdiction. Complaints can also trigger investigations of breaches and subsequent compliance or enforcement action. Approximately 120 matters end up being dealt with by courts or tribunals. Legal specialists within Consumer Affairs Victoria conduct prosecutions, undertake civil actions and initiate disciplinary actions. They also handle appeals against decisions of the licensing and registration bodies. Other administrative remedies are also used extensively by the agency, including court enforceable undertakings, infringement notices and warning letters.

About Consumer Affairs Victoria

Funded agencies

While most of CAV's services are provided directly by Consumer Affairs staff, CAV also funds a range of organisations to provide programs to vulnerable and disadvantaged Victorians on its behalf.

This approach is consistent with the Victorian Government's long-term action plan to tackle disadvantage and create opportunity for all Victorians.

It emphasises:

- the provision of accessible and affordable universal services for all Victorians, and
- targeting support for those in greatest need.

It also includes a strong commitment to expanding place-based approaches, and working in partnership across Government, and with local governments, the community sector, business and local communities.

By funding external providers, CAV can direct assistance to where it is most needed. Many of the funded programs deal directly with individuals and communities, and so have a capacity-building component.

Consumer Utilities Advocacy Centre Ltd

The Consumer Utilities Advocacy Centre Ltd (CUAC) has been an active advocate for Victorian consumers since its office opened in August 2002, taking a leading role in State and national policy and regulatory decisions affecting Victorian energy and water consumers.

CUAC also has an important role in facilitating the participation of other consumer advocates through its grants program, which supports research and capacity-building projects that enhance consumer input into the regulatory debate, build expertise on consumer utility issues and support and facilitate the participation of consumers.

Financial counselling program

Financial counselling is a service primarily for low-income vulnerable individuals, families or groups who are experiencing disadvantage and/or disputes concerning their financial and debt situation. Consumer Affairs Victoria funds 44 community-based organisations to provide this service free of charge and without conflict of interest, as well as funding the peak body. The program includes both casework and community development.

Community program

Advocates

Through its community program CAV funds seven community-based agencies in regional and metropolitan locations to provide advocacy services to consumers and private rental tenants. The advocacy program supplements CAV's enquiry and conciliation services by providing locally accessible consumer and private tenancy advocacy services for clients who are vulnerable or disadvantaged and who require face-to-face intensive support.

CAV-funded advocacy programs served over 3,900 clients in 2006–07.



CAV's funding of CALC primarily supports legal advice and professional development for financial counsellors, advocates and other service providers as well as policy research and advocacy on consumer issues.



Statewide and special projects

Consumer Action Law Centre (CALC)

The Consumer Action Law Centre is the result of a merger of Victoria's two specialist consumer law community legal centres, the Consumer Credit Legal Service (CCLS) and the Consumer Law Centre Victoria (CLCV).

CAV and Victoria Legal Aid (VLA) are partnering to fund CALC for a period of three years to undertake civil casework and policy research and advocacy. All parties have agreed to and signed a memorandum of understanding.

CAV's funding primarily supports legal advice and professional development for financial counsellors, advocates and other service providers as well as policy research and advocacy on consumer issues. VLA's funding is primarily for casework.

Housing Action for the Aged Group

Housing Action for the Aged Group (HAAG) is a not-for-profit community organisation established to provide tenancy and housing support and advice to senior Victorians residing in all types of rental accommodation, including public and private housing, caravan and residential parks, rooming houses and retirement villages. CAV funds HAAG to assist tenants to access CAV services as well as undertake specific projects relating to older persons' accommodation issues.

Peninsula Community Legal Centre

Peninsula Community Legal Centre (PCLC) is funded through VLA to provide free legal services to the Frankston and Mornington Peninsula communities. CAV also funds PCLC to develop and deliver specific consumer and tenancy projects to the local community.

Tenants Union of Victoria

CAV funds the Tenants Union of Victoria to provide assistance and advocacy for tenants of private residential properties and residents of rooming houses and caravan parks in Victoria. The TUV is also funded to undertake specific tenancy projects and policy advocacy.

Grants program

CAV also makes recommendations to the Minister to approve grants from some of the trust funds administered by CAV, for purposes stated in the relevant legislation.

About Consumer Affairs Victoria



Dr David Cousins
Director



Lois Goodes
General Manager
Community
Partnerships



Andrew Levens
General Manager
Compliance &
Enforcement



James Latham
Acting General
Manager
Consumer Policy



Warwick Knight
General Manager
Corporate Resources



Chris Noone
General Manager
Education &
Information



Geoff Browne
Deputy Director



Elizabeth Lanyon
General Manager
Programs & Projects

Structure

The position of Director of Consumer Affairs in Victoria has existed since 1974. The position is appointed under the Fair Trading Act and its powers and functions have been broadened over time.

As at 30 June 2007, five branches of CAV reported directly to the Director of Consumer Affairs Victoria.

The Community Partnerships Branch develops and enhances Consumer Affairs Victoria's links with the community to further CAV's goals and the needs of vulnerable and disadvantaged consumers who would otherwise not access CAV's services.

The responsibility of the Compliance and Enforcement Branch is to monitor traders' compliance with the law, and to take enforcement action where appropriate in terms of the *Compliance and enforcement policy*.

The Consumer Policy Branch (formerly the Program Development and Evaluation Branch) develops, reviews and evaluates consumer policies and programs, and provides policy advice to the Minister for Consumer Affairs and to the Director. The Branch also prepares regulations and bills for the legislation program, carries out public reviews of consumer legislation, and participates in Victoria-wide and national policy development.

The Corporate Resources Branch provides a range of services within CAV, including strategic planning and performance reporting, and evaluation of CAV programs and services. It is also involved in managing executive services to the Director and the Minister, finance and trust fund management, grant programs, contracts, residential bonds, business information system administration and support, and human resources support for the business unit.

Responsibilities of the Education and Information Branch include developing and managing education programs and public information relating to matters of concern to consumers and business.

Seven branches of CAV reported to the Deputy Director of Consumer Affairs Victoria as at 30 June 2007.

The Deputy Director supports or delegates for the Director on a variety of organisational, strategic, priority and Departmental matters, and is responsible for the activities and outputs of the majority of the operational branches of the organisation.

The Corporate Programs and Projects Branch has carriage of a range of CAV initiatives. The Branch plans and co-ordinates cross-organisational responses to emerging issues and organisational priorities.

The Enquiries Branch provides information services to the public through the Consumer Helpline, and via email and post.

The Dispute Resolution Branch provides conciliation and mediation services to Victorian consumers, with the objective of assisting those involved to resolve the disputes. Proceedings may be instituted or defended on behalf of members of the public in specific circumstances.

The Licensing Branch provides support to the Director of Liquor Licensing and the Business Licensing Authority in the administration of Victorian licensing schemes. The Branch provides information and advice to the community, the Business Licensing Authority, the Director of Liquor Licensing, participants in regulated industry sectors, government agencies, and other stakeholders, in relation to licensing schemes.

The Registration Branch registers business names, patriotic funds, incorporated associations, co-operatives and limited partnerships, and processes certain retirement village applications. Services are offered face-to-face, via mail and fax and, increasingly, online.

The General Manager, Registration also has responsibility for the CAV customer service counter in the Victorian Consumer & Business Centre (VCBC). This joint shopfront (shared with the Office for Small Business) offers face-to-face information, advice and transactions. Together with the services offered by the Office of Small Business, the VCBC is a one-stop-shop for licensing, businesses and associations, consumers and tenants, in connection with issues administered by the two organisations.

The newly-established Market Monitoring Branch monitors the operation of markets and identifies ways to improve outcomes for consumers, including the analysis of enquiries and complaints data.

The Regional Operations Branch is responsible for developing and administering operational processes which affect regional services in Victoria. It also advises on the development of policy and legislation, corporate strategy, and business and operational planning, in relation to delivery of Consumer Affairs Victoria's core services across all Victorian regional areas, and oversees CAV's Multicultural Consumers and Indigenous Consumers Units.



Steven Scodella
General Manager
Enquiries



Tony McMahon
General Manager
Dispute Resolution



Neil Taylor
General Manager
Licensing



Melanie Saba
General Manager
Registration



Paula Healy
Manager
Victorian Consumer
& Business Centre



Anne Cousins
General Manager
Market Monitoring



Alison Smith
General Manager
Regional Operations



Steven Devlin
General Counsel



The position of Director
of Consumer Affairs in Victoria
has existed since 1974.



Program Co-ordination

Much of CAV's day-to-day business falls into the discrete program areas outlined in this report. Each of CAV's branches plays a role in each of these program areas, and co-ordination of activities, information sharing and strategic thinking and planning require effective communication between the branches.

Each program area has a co-ordination group which meets regularly for this purpose, and CAV's new Programs and Priorities Management Group (PPMG), chaired by the Deputy Director, meets monthly to monitor and review programs, via the co-ordination groups. PPMG's focus is on operational policies and issues, and it is also a forum for new and emerging issues to be raised and responses agreed.

The Corporate Management Group (CMG) focuses on business planning, priority setting, performance monitoring and Departmental issues, and meets monthly, chaired by the Director.

The Executive Management Group, comprised of the Director, Deputy Director and General Manager, Corporate Resources, also regularly meets.

National Context

The Ministerial Council on Consumer Affairs (MCCA) considers consumer affairs and fair trading matters of national significance and, where possible, develops a consistent approach to those issues.

MCCA consists of all Commonwealth, state, territory and New Zealand ministers responsible for fair trading, consumer protection laws, credit laws and trade measurement legislation.

The Ministerial Council is supported by the Standing Committee of Officials of

Consumer Affairs (SCOCA) comprising heads of consumer affairs agencies (including the Director of Consumer Affairs Victoria), and a number of advisory committees. Since 1 September 2006, MCCA and SCOCA have been chaired by Victoria. The Chair will rotate to New Zealand from 1 September 2007.

The key MCCA priorities reflected in CAV's 2007–08 Corporate Plan are:

- review of the Australian consumer policy framework
- establishment of the National Education and Information Taskforce (Victoria to lead)
- a national review of the regulatory framework applying to credit, and
- a national review of the regulatory framework applying to product safety.

Detailed reports on these initiatives appear elsewhere in this report.

State Context

Licensing and registration bodies

Within the Consumer Affairs portfolio, the licensing and registration determination functions are separated from the conduct regulation function in most cases.

The Business Licensing Authority and the Director of Liquor Licensing make licensing determinations. Consumer Affairs Victoria provides the administrative support and processing activities for these bodies.

The Director of Consumer Affairs Victoria is responsible for conduct regulation in respect of schemes under the Business Licensing Authority, whilst Victoria Police is responsible for conduct regulation under the liquor legislation.

This separation of functions maintains the independence of the licensing and registration decisions.

However, there is still a need to ensure close co-operation between the bodies so they are not operating at cross purposes. This applies especially in relation to the setting of licence conditions, which can impose significant conduct requirements on licensees.

In the case of trade measurement and fundraising, a closer link between conduct regulation and registration has been thought to be appropriate, and the licensing and registration is undertaken by the Director of CAV. In the case of retirement villages there are no pre-requisites for registration other than operating in the industry. The same will hold true for the funeral industry when the new registration scheme comes into effect on 1 November 2007, and both schemes are administered by CAV.

Advisory functions

Also within the Consumer Affairs portfolio are a number of separate industry-specific ministerial advisory bodies. These cover estate agency, credit, liquor and prostitution, with funeral directors and conveyancers to be added in the near future.

The Estate Agents Council retains the functions given to it after the break-up of the Estate Agents Board, including monitoring the operation of the *Estate Agents Act 1980* and initiating work to advise the Minister. The Estate Agents Council and the Consumer Credit Fund Advisory Committee both review applications for grants from the relevant trust funds. Otherwise, the bodies advise the Minister on matters referred to them.

In areas of social regulation such as liquor, prostitution and funerals, ministerial advisory committees have an especially important role to play. In these areas, it is necessary to ensure that there is a diversity of community interests represented in policy making.

Statutory bodies, appointees and corporations

Arbitrator for Sale of Land Act –
Judge Francis Shelton

Business Licensing Authority –
Chair: Fiona Smith

Consumer Credit Fund Advisory
Committee – Chair: Deborah Beales

Consumer Utilities Advocacy Centre –
Chair: Joan Sturton-Gill

Director of Liquor Licensing –
Sue Maclellan

Estate Agents Council –
Chair: Philip Gardner

Funeral Industry Ministerial Advisory
Council – Chair: to be appointed

Liquor Control Advisory Council –
Chair: Liberty Sanger

Liquor Licensing Panel –
Chair: Glenice Fox

Motor Car Traders Guarantee Fund
Claims Committee –
Chair: Stuart Ward

Prostitution Control Act Ministerial
Advisory Committee –
Chair: Glenyys Romanes

Residential Tenancies Bond Authority –
Appointee: Director CAV,
Dr David Cousins

Travel Compensation Fund –
Appointee: Deputy Director CAV,
Geoff Browne

Statutory bodies with consumer appointees nominated by CAV

Architects Registration Board of
Victoria (Minister for Planning)

Building Advisory Council
(Minister for Planning)

Plumbing Industry Advisory Council
(Minister for Planning)

Community links

CAV ensures that it maintains strong connections to the communities it serves, through the Working Together Forum. Meetings of the Forum provide consumer and community representatives in Victoria with the opportunity to raise systemic issues and enable CAV to further develop initiatives aimed at assisting specific sectors of the community.

Other purposes of the Forum are to:

- raise awareness of the issues impacting on vulnerable and disadvantaged groups
- build sustainable relationships between CAV and community and consumer organisations
- help identify issues and opportunities that are common among groups and organisations, for collaborative work
- inform strategic policy development and service delivery practices within CAV
- promote understanding of the broader consumer protection environment, and
- promote understanding of the role and activities of CAV and member organisations.

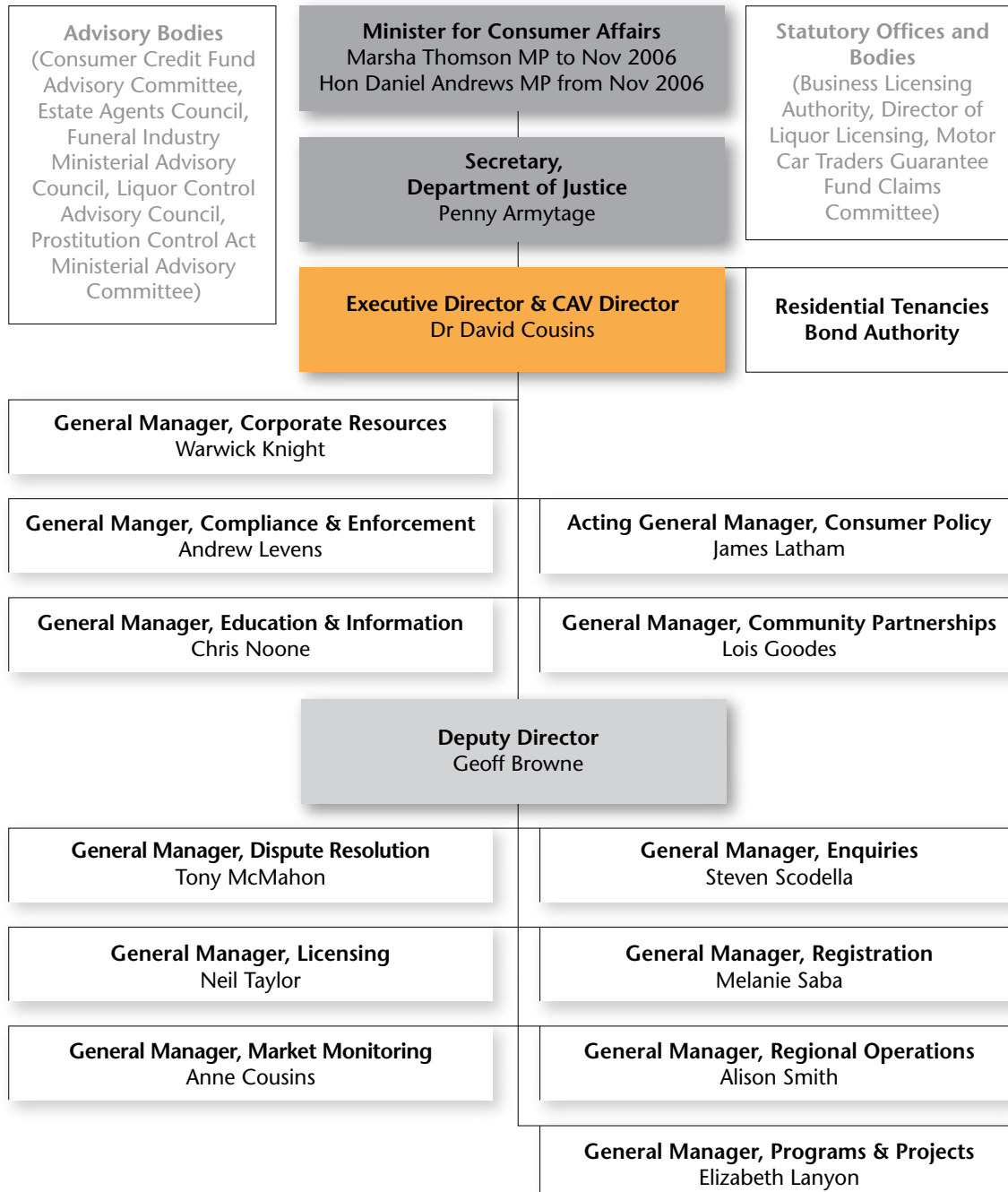
Issues canvassed with the 14 community group members of the Working Together Forum during 2006–07 included rental auctions; consumer and competition policy; rooming houses, caravan parks, residential parks and student housing; consumers with a disability; ability of people on low incomes to gain access to insurance; financial counselling; Residents of Retirement Villages Victoria Inc; credit comparison rates; reverse mortgages; alternative dispute resolution; incentives and disincentives encountered by consumers when considering whether to lodge a complaint and/or proceed to the Victorian Civil and Administrative Tribunal (VCAT); community education and outreach to Indigenous consumers; consumer education for new arrival communities; and impact of the shortage of rental accommodation on older people.

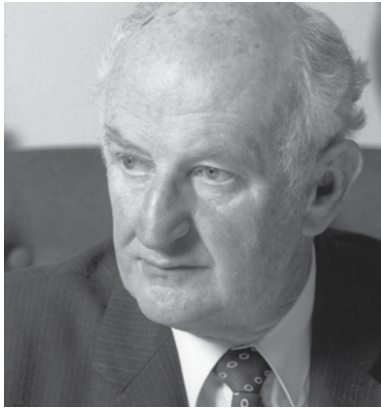
Regulators' Forum

Since 2003–04, CAV has convened the Victorian Regulators' Forum, with the intention of contributing to improving regulatory practice in Victoria. The Forum facilitates discussion of common operational and governance issues among senior management of Victoria's regulatory agencies.

About Consumer Affairs Victoria

Organisational Chart





Norman Geschke, OBE, the first Director of Consumer Affairs in Victoria.

Feature: Consumer Affairs Victoria Annual Lecture

The 2007 Consumer Affairs Victoria Lecture entitled *Consumer Affairs: Past, Present and Future* was presented by the Director of Consumer Affairs Victoria, on Tuesday 13 March 2007.

This year the lecture was delivered in honour of Mr Norm Geschke OBE (the first Director of Consumer Affairs in Victoria, and subsequently the State Ombudsman) and was held on the eve of the 2007 National Consumer Congress held in Melbourne.

Tracing the history of consumer-oriented regulation in Victoria from the establishment of the Consumer Protection Council (the first general government consumer body established in Australia) in 1965, the address noted the substantial growth in this field of endeavour to the present day, but pointed out that consumer policy does not rank highly on the agendas of most governments now. The Director also noted the recent recognition that Australia may be falling behind world's best practice in this area.

He went on to argue that the current regulatory reform environment presents a real opportunity to raise awareness and understanding of the important role of consumer policy and to enhance significantly the consumer policy framework for the future.

Consumer policy can be enhanced by placing greater reliance on the general law, by harmonising this law across all the jurisdictions and by adopting as its key principle a broader unfair trading test than now exists. Industry-specific law should not duplicate the general law, but operate in addition to it. Licensing laws need to be critically assessed. Effective negative licensing may provide greater net benefits than positive licensing in many cases. The general law needs to be supported by effective compliance and enforcement policies, and information and education policies, which recognise the complexity of the drivers of consumer behaviour. Codes of conduct can be used in support of the general law, but voluntary codes are best used to promote standards in excess of the minimums set by the general law. Finally, new institutions are needed to implement a national consumer policy. These include a National Consumer Commission, separate from the competition regulator, and a National Consumer Council.

Emphasis on the General Law

Any consideration of reducing the regulatory burdens on business needs to have particular regard for why industry-specific regulation is operating alongside the general consumer law which, in many cases, will also apply. Duplication of regulatory requirements and regulators to enforce both sets of legislation at first glance appears not only to impose unnecessary burdens, but also to be inefficient.

There are a range of factors which have prompted the use of industry-specific regulation, and in some cases this may be appropriate. For example, activities such as fundraising (which are not conducted in the course of 'trade or commerce') will not be covered by Fair Trading Acts. In many cases, however, the validity of arguments for not relying on the general law must be carefully evaluated. The general law has the advantage that it is widely framed and more flexible in new and dynamic markets. It specifies broad standards of behaviour, allowing business to meet them in the most suitable ways, in contrast to prescriptive industry-specific law that can result in unnecessary compliance costs. Consistent enforcement of the general law across all industry is also important for ensuring that regulation does not distort resource allocation.

Ensuring the General Law is Appropriate

The principle of relying on general law rather than industry-specific law will be undermined if the general law is perceived as being inadequate. The general law needs to be sufficiently wide to give expression to community notions of fairness as they evolve and change over time.

In Victoria a significant innovation in consumer policy initiated by Norm Geschke was the Market Court, which was established by the *Market Court Act 1978*. The Court comprised a President (a County Court Judge) and two advisory members selected from panels representing the interests of traders and consumers. Only the Director of Consumer Affairs was able to apply to the Court for an order against a trader. The Court could make an order either totally prohibiting a trader from engaging in unfair conduct or prohibiting him from entering into contracts with consumers unless those contracts complied with the terms and conditions specified by the Court. The Market Court Act aimed at dealing directly with rogue traders who caused detriment to consumers and other traders, and specified a general unfairness test against which the conduct of traders could be judged. Prior to this, most consumer legislation in Victoria had been relatively narrowly practice- or industry-based.

Today, the key elements of general consumer law in Australia are the prohibitions on misleading and deceptive conduct, unconscionable conduct, harassment and coercion and, in Victoria only, on unfair contract terms. Taken together, these provide a narrower definition of unfairness than that provided by the Market Court Act.

A broader unfairness test has for many years been the basis of the general consumer law in the United States of America, and more recently, in June 2005, the European Commission adopted an Unfair Commercial Practices Directive applicable to member States. This will provide a means of tackling conduct that is unfair but was not previously unlawful, addressing rogue traders and repealing unnecessary laws that cause duplication.

This prompts the question of whether Australia should now be considering widening its general prohibitions to cover all conduct which is unfair. There are gaps in the general consumer law that a broader unfairness test might address, particularly advertising and marketing practices, the provision of poor quality services and exploitative pricing. Without a broad unfairness test, it seems unlikely that we will be able to deal effectively with the small number of rogue traders who persistently engage in unfair practices to the detriment of consumers and ethical traders.

Licensing

Licensing has been a common form of industry-specific consumer policy regulation. Most commonly, positive licensing requires entrants to satisfy certain conditions before they can operate – with the aim of excluding low or inferior quality providers from an industry. However, positive licensing is a relatively blunt instrument, requiring all potential entrants to undergo assessment before being granted a licence, but often in practice refusing few. The fact that someone is granted a licence today does not guarantee that they will not act inappropriately tomorrow, and rogue traders will not be deterred from operating without a licence.

There is scepticism as to whether the overall benefits of positive licensing outweigh the associated costs. In many cases there may be alternatives that provide larger net public benefits including:

- reliance on the general consumer law, which regulates conduct
- certification schemes offering fewer constraints on standards but assisting consumers to make informed choices
- registration schemes which allow the regulator to know who is operating in the industry, and
- negative licensing – a powerful tool in that it can automatically exclude traders who fail to comply with regulatory requirements, without relying on the discretion of tribunals, which are often reluctant to take this step.

Strategies for Effective Compliance and Enforcement

There are some general limitations on the effectiveness of all states' and territories' compliance and enforcement activities. Penalties for breaches of the state Fair Trading Acts are generally lower than for breaches of the Commonwealth *Trade Practices Act 1984*, despite the fact that the conduct being dealt with may be the same, and courts have discretion around determining penalties.

The dichotomy between the remedies under the criminal and civil provisions is currently too great and the criminal provisions tend to be over-used. It would be desirable to include a civil penalty regime in the general consumer law so that a more comprehensive set of remedies for unfair conduct is available.

Proposals have been put to the Australian Government to remove the cost disincentive to states and territories of taking action under the Australian law.



Proposals have been put to the Australian Government to remove the cost disincentive to states and territories of taking action under the Australian law.



Informing and Educating Consumers

Information market failures play a central role in consumer policy – particularly where suppliers have more information than consumers about the characteristics of products. A big part of the work of consumer agencies in Australia therefore is providing information to consumers to help overcome these information problems. However, even if consumers have available to them sufficient information to guide their decision-making there is no guarantee they will, or are able to, use it or that they will make decisions in their own best interests. The recent upsurge of interest in behavioural economics research highlights the complex array of factors that may influence consumer behaviour in the marketplace and the need to take a much more considered approach to engagement with consumers.

Institutional Arrangements

Any review of Australia's consumer policy framework needs to consider the appropriateness of the current institutional structures. There are a number of key issues here that should be recognised:

- the need for a uniform general consumer law and administration
- the importance of local service delivery in the administration of this law
- the avoidance of duplication, uncertainty and unnecessary compliance costs for businesses (all of which also cause detriment to consumers) in the consumer policy framework, and
- the harnessing of consumers' potential to drive improvements in consumer policy and economic reform.

These considerations lead strongly to the view that new national institutions are required to implement consumer policy in Australia. Specifically, it is suggested that the following be established:

- a National Consumer Commission to administer a national uniform general consumer law based on the unfairness principle, and
- a National Consumer Council to provide informed consumer input into policy and regulatory decision-making.



Consumers are confident and small purchases living, when they know treated fairly.

to make the many large required for everyday they are going to be



General Industry

Achievements

- Processed over 64,000 business name applications
- Published research on stopping rogue traders and the nature and extent of consumer detriment in Victoria
- Continued to strengthen relationships with educators to facilitate consumer and financial literacy education for young people
- Made almost 300 presentations to targeted audiences through outreach programs
- Commenced preparatory work for introduction of lemon laws
- Piloted general fair trading compliance training in regional Victoria
- Continued a combined trader education and enforcement program in relation to implied warranties and refunds
- Provided advice culminating in amendments to Consumer Acts
- Secured changes to standard form contracts across four industries
- Leading a project to develop an alternative dispute resolution strategy for the Department of Justice



Fair trading is concerned with the ways traders conduct business. The Fair Trading Act 1999 is the primary legislation under which Consumer Affairs Victoria pursues its overall vision of informed and responsible consumers and traders.

The Act prescribes basic requirements for fair trading across all Victorian industries, addresses various trading practices that are potentially unfairly exploitative of consumers, and grants the Director of Consumer Affairs Victoria a range of powers to be used to enforce the Act.

This legislative framework is supplemented by the various pieces of industry-specific legislation referred to in other areas of this report.

Besides addressing fair trading issues on a case-by-case basis, CAV also addresses generic issues relating to particular trading practices, such as the use of unfair contract terms in standard form contracts, misleading and deceptive conduct, unconscionable conduct, breach of warranties implied by law, and scams.

Research papers

Consumer detriment in Victoria: a survey of its costs, nature and implications [New](#)
Stopping rogue traders [New](#)

Registration of Business Names

An important aspect of CAV's work in ensuring that consumers can act with confidence is making sure that traders are identifiable and traceable – this is fundamentally important if a consumer needs to enforce a fair trading right such as seeking a refund. Under the *Business Names Act 1962*, businesses trading in Victoria are required to register their business names with CAV unless business is carried on under a person's own name only, or under a company name registered by the Australian Securities and Investments Commission.

The business name registration scheme provides a stable and transparent business framework in Victoria and enhances business confidence and consumer protection. The public register administered by CAV ensures people can correctly identify those with whom they are dealing in contractual matters (including financing, sale of businesses, consumer purchasing and supplier arrangements).

Applications lodged 2006–07: 64,174

Applications processed 2006–07: 64,044

Total business names on register: 374,613
Up 2.5 per cent 

2005-06: 365,469

2004-05: 354,992

Publications and online resources

Business name registration
Choosing a business name
Fees and useful contacts
Rights, protections and disputes
What is a business name?
What is an authorised person?
What to do after registration

Forms

Business name application
Ceasing business under business name
Change of business details
Details of resident agent
Renewal of business name

National work

The Council of Australian Governments (COAG) through the Small Business Ministerial Council (SBMC) is investigating development of a national online system for registration of Australian Business Numbers and business names, and trademark searching. The intention is to minimise the burden of compliance on business, particularly the small business sector. Several options have been explored and the matter is now being considered by the Ministerial Council on Consumer Affairs (MCCA).

CAV is an active participant in the Steering Committee and the Taskforce which will investigate various models of delivery of registration services that will maintain or improve the protection that business name registration offers consumers whilst improving services to small business.

CAV through MCCA will continue to contribute to the process. While acknowledging the importance of reducing the regulatory burden on business where possible, CAV will work to ensure that the consumer protection rationale remains a central consideration.

CAV is currently the only jurisdiction in Australia that has developed an automated names test to provide clients with instant feedback on the availability of a business name that they may be considering registering.

Other states and territories have shown interest in purchasing the automated names test technology.

Empowering Consumers to Enforce their Fair Trading Rights

Fairness in consumer transactions is fostered when both traders and consumers know their rights and responsibilities. As reported elsewhere, CAV actively engages with traders to educate and inform them on statutory requirements and how to comply with these. With regard to consumers, CAV runs several education campaigns relating to specific transactions, and also focuses on education of young people. In addition to strategies run in relation to the other program areas discussed in this report, CAV offers consumer education on fair trading generally, to a range of audiences.

Consumer Education in Schools program

The Consumer Education in Schools program strives to ensure that young Victorians are able to make sound consumer decisions and avoid common pitfalls by working with educators and young people to raise financial and consumer literacy in schools.

Teacher resources

CAV publishes five teacher resources, designed to assist teachers to work consumer and financial literacy into their curricula. Two of the resources (*Health & wellbeing* and *Consuming planet Earth*) are cross-curricular and may be used by teachers of health, physical education, personal development, life skills for early school leavers, civics and citizenship, economics, science, geography, and environmental studies. The other three books are specifically for use by teachers of English, maths and commerce respectively.

In 2006–07, CAV presented a series of professional development workshops for teachers across Victoria, designed to increase the use of the resources. The workshops included an overview of the five teacher resources and detailed how the resources can achieve a range of learning objectives across the curriculum.

Through these workshops teachers generated 40 units of work, which have been collated and designed into the *Applied learning handbook*. This will be a valuable addition to the suite of resources available, and facilitate teachers' use of the books in their classrooms.

Consumer Affairs Victoria was also prominent at all relevant subject association annual conferences, which provided opportunities to distribute the resources and speak directly to teachers.

During 2006–07, CAV distributed 3,925 copies of *Health & wellbeing*, 3,820 copies of *Commerce*, 4,051 of *Consuming planet Earth*, 4,713 of *English* and 3,825 of *Maths*.

Newspaper supplement

A 16-page supplement *Consuming stuff: a guide for young consumers* was published in *The Age* to mark World Consumer Rights Day on 15 March 2007. Over 200,000 copies were distributed. Over 120 Victorian schools registered to receive teachers' kits to be used in the classroom in conjunction with the supplement. The kit provided a range of engaging activities suitable for students between years five and 10.

Consumer Stuff! Challenge

This annual competition provides CAV with the opportunity to stimulate students' thinking around consumer issues by offering a prize for the most effective consumer information product designed by students.

The winning entry in the 2006 competition, announced early in the financial year, was a rap song submitted by Emilio Kormanic and Paul Ioannidis from Lilydale High School, which cautioned young people against the trap of mobile phone debt.

In 2007, the competition was adapted to appeal to a greater number of teachers and to involve more students. Two streams were introduced to the competition, specific to the needs of students studying the Victorian Certificate of Applied Learning (VCAL) and the Victorian Essential Learning Standards (VELS), respectively.

An important component of the VCAL stream of the competition was the staging of the *Consumer Stuff! Challenge* Semi-finalist Workshop at Telstra Dome in April, attended by more than 250 students from across Victoria. The event provided an interactive consumer education experience for VCAL students and was a valuable stimulus to generate ideas for creating consumer information products. Ensuring that VCAL students have access to consumer education is a particular priority as frequently their next steps are to find employment and move out of home, increasing the need for financial and consumer literacy.

Publications and online resources

Bag searches

Buying a computer

Buying a mobile phone

Buying and servicing household electrical equipment

Buying furniture

Consumer waivers

Contact and non contact sales

Fair Trading Act – information for consumers

Getting a refund on the web

Going mobile?

Helping consumers

Insurance

Internet service providers

Lay-by

Online auctions

Online privacy

Online security

Refunds

Shopping online

Shopping tips

Shopping tips for visitors to Victoria

Telemarketing – information for consumers

Top 10 tips for shopping online

Teacher resources

Applied learning handbook **New**

Commerce

Consuming planet Earth

Consuming stuff: a guide for young consumers – teacher guide **New**

English

Health & wellbeing

Maths

Take the challenge competition kit

Indigenous audience

Buying a mobile phone

Indigenous Consumers Unit (brochure)

Know your rights when shopping

Multicultural audiences

Advice for consumers (Arabic, Bosnian, Chinese, Croatian, Farsi, Greek, Italian, Macedonian, Polish, Russian, Serbian, Somali, Spanish, Turkish)

Bag searches (Vietnamese)

Household electrical equipment (Vietnamese)

Lay-bys (Vietnamese)

Refunds (Arabic, Chinese, Vietnamese)

Shopping tips (Vietnamese)

Youth

Independent, informed, in control wallet card

Schoolies

As reported in 2005–06, CAV contributed to a Victorian Government initiative to ensure that 2006 Schoolies Week was a safe and enjoyable experience for VCE students celebrating after their final exams.

Schoolies raises health and safety issues for young people in relation to alcohol and drugs. CAV is actively involved in developing and making available information to assist young people to have happy and safe celebrations.

In the run-up to the 2006–07 Schoolies period, CAV also visited liquor licensees in key areas such as Rye, Rosebud, Portsea, Sorrento, Lorne, Torquay and Phillip Island, to ensure they were aware of their responsibilities in relation to young people. Licensees were reminded that they must not supply liquor to minors or allow minors on their premises, other than in accordance with their licences. They were also reminded to be diligent with checking patron ID.

CAV's role in the project also concerned Schoolies-related consumer transactions such as securing accommodation and travel. During the year, CAV updated advice on issues of concern on the CAV website as well as *youthcentral*, the Victorian Government online youth resource.

In the lead-up to Schoolies Week, staff from CAV, the Equal Opportunity Commission (EOC) and the Surf Coast Shire helped to improve its Schoolies Down South code of practice for accommodation providers and strengthen consumer protection for school leavers. It was circulated to accommodation providers in the Shire and many signed up to the revised code.

The code outlines the responsibilities of accommodation providers when booking accommodation, handling deposits and requesting bonds. It also covers anti discrimination issues.

In November and December 2006, CAV staff worked with two estate agents offering holiday accommodation in Torquay to modify or remove particular terms and conditions on their websites that were discriminatory or potentially in breach of the Fair Trading Act. The terms and conditions on their websites are now consistent with the requirements of the Surf Coast Shire code of practice.

CAV also successfully handled a number of complaints during Schoolies Week. In one case, two schoolies were asked to leave a unit in Cowes because of noise and damage to the property and had no alternative accommodation arranged. The girls contacted CAV claiming they had been wrongfully evicted and that the damage had been caused by other schoolies staying at the property who were also asked to leave.

Following contact from CAV staff, the property manager agreed to let the girls stay under strict conditions that there would be no further noise or disturbance.



CAV has a dedicated community education service operating from each of its offices, which engages face-to-face with Victorians, particularly vulnerable and disadvantaged consumers and tenants.



Community educators

CAV's community educators build relationships with communities, with the aim of increasing consumers' and tenants' awareness of and confidence to utilise services provided by CAV. They provide CAV with feedback from the community about issues affecting them and engage in issue-specific and general education and information campaigns.

In addition to the projects outlined below, community educators provide support to many of CAV's consumer education initiatives discussed elsewhere in this report, such as campaigns around retirement villages, rooming houses and infant nursery product safety.

Outputs 2006–07

Made 494 presentations on consumer and tenancy issues

Staffed 72 events

Attended 450 meetings with community and business organisations

Maintained information displays at 15 libraries, making available over 50 different information products

Seniors

CAV considers it important that older members of the community are informed about their consumer rights, aware of changes to legislation that might affect them and alert to rogue traders that could prey on them.

Besides work relating to retirement villages (reported elsewhere), CAV community educators engaged with seniors on issues such as:

- shopping and services
- owners' corporations
- telemarketing
- scams
- reverse mortgages
- household repairs and tradespeople

- development of the *Funerals Act 2006*
- product safety, and
- rogue traders.

Participating organisations included Probus clubs, the National Seniors Association, War Widows Associations, Smith Family VIEW clubs, Rotary Clubs, the Association of Independent Retirees, the Country Womens' Association and Womens' Friendship groups.

VCAL students

VCAL is a hands-on secondary education option for students in Years 11 and 12. It is designed to provide a practical work-related experience, as well as literacy and numeracy skills and the opportunity to build personal skills that are important for life and work. There are now over 10,412 students in secondary schools, Technical and Further Education institutions (TAFEs) and Adult Community Education institutions (ACEs) enrolled in VCAL throughout Victoria, and demographic evidence suggests they are generally from lower socio-economic backgrounds than mainstream VCE students.

The VCAL program offers CAV a unique opportunity to work with young people in this age group. These students can be a high risk, vulnerable and disadvantaged audience as they tend to live independently at a much earlier age than other VCE students, and tend to be more active consumers than their peers at the same age.

During 2006–07, CAV conducted a community education project with VCAL students. Each participating class attended four workshops, each dealing with the central consumer issues pertinent to them. Through the project, community educators also sought further feedback from VCAL teachers and students about what subject content was most relevant to students.

CAV sought to increase the skills and capacity of VCAL students to operate independently in relation to consumer and tenancy issues, identify potentially unconstructive behaviours and recognise that CAV is able to provide information, advice and assistance.

Youth networks

Local government youth service provider networks provide an excellent opportunity to develop relationships with agencies supporting youth. CAV participated regularly at these meetings across the metropolitan region. Involvement in these networks allowed community educators to become aware of issues affecting youth, to obtain feedback on the quality and accessibility of CAV services for youth, to increase opportunities to participate in forums and displays, and to conduct interactive workshops with youth groups.

ESL and literacy students

Migrants and refugees settling into new countries are often vulnerable when entering into contracts or purchasing goods and services. Equally, consumers and tenants with literacy problems are at a disadvantage in the marketplace.

CAV community educators conducted presentations to English language and literacy students attending Adult Migrant Education Service classes and Neighbourhood Houses, to assist them in learning about their consumer and tenancy rights and responsibilities.

Several other initiatives for this audience were conducted during the year and are reported on elsewhere in the report.

Consumer information in libraries

This year saw the conclusion of this pilot project targeting Eastern suburbs libraries. The project involved distribution of CAV publications at display stands located in 15 libraries. In place of the display stands, it is expected that a new, user-friendly general CAV information brochure will be distributed to all metropolitan libraries in the near future.

Information displays

A number of staffed information displays were set up at shopping strips, malls, shopping centres and community festivals in communities CAV wanted to reach.

The aim was to provide information at accessible locations and increase consumers' awareness of Consumer Affairs Victoria. At these events, staff responded to the many enquiries put to them and distributed a wide range of CAV publications and premium products.

Contact sales education pilot

The Home Sales project piloted by the Ballarat regional office provided information about visits by door-to-door salespeople, internet and mail orders, telemarketers, etc. The project targeted community groups, organisations and individuals who provide a support role to people at home.

The project was implemented by the Grampians and Gippsland offices between February and June 2007.

Almost 800 participants attended home sales training between February and June 2007. The Grampians region delivered 16 training sessions to a total of 577 participants (including 176 carers) and in Gippsland three sessions were delivered to 200 participants. Training by the Grampians region covered 10 of their 11 Local Government Areas. A further 10 sessions have been confirmed with 320 participants expected.

Participants responded positively to the training sessions, particularly to the case studies provided. Presentations to service groups such as Probus and Rotary were well received and have led to requests for information about blowers (scammers who operate by telephone), investment scams and other scams and schemes. In Gippsland, presentations to service groups have resulted in requests from clubs in neighbouring towns.

All regional offices will deliver the training in 2007–08.

Providing Advice and Resolving Disputes

One of CAV's key functions is to deliver information and dispute resolution services to consumers to help them avoid problems with their purchases, or overcome these when they arise.

CAV's enquiries services provide both traders and consumers with information about their rights and obligations and how to enforce or fulfil these, and dispute resolution services assist parties to negotiate settlement of disputes.

Enquiries

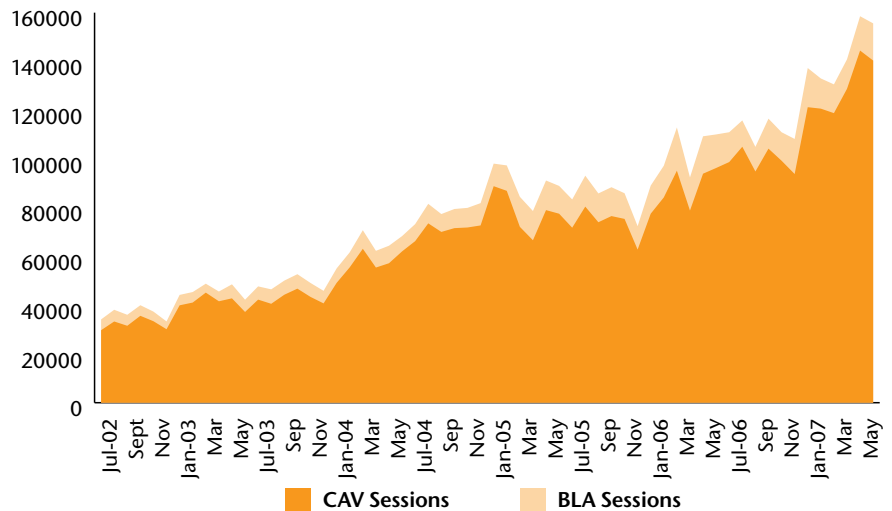
The Consumer Helpline is the first point of contact with CAV for consumers across the State.

Telephone information services for licensing enquiries as well as specialist services for Indigenous consumers and callers from multicultural backgrounds are also offered.

The telephone services are complemented by CAV's network of offices across the State, which includes the CAV customer service counter in the Victorian Consumer & Business Centre, and regional branch, sub-branch and mobile offices.

During 2006–07, CAV received more than 640,000 telephonic, written and email contacts, and over 47,000 counter visits.

The Consumer Affairs Victoria and Business Licensing Authority websites play a major role in ensuring that the many information resources and business transaction services provided or supported by CAV are accessible for Victorians. The number of visitors to the site continues to grow, ensuring it remains one of the Victorian Government's busiest online engagement points. This year a number of design improvements were introduced to help visitors find information more easily, and the content regarding associations, clubs and fundraising was updated and expanded. Among the most visited areas of the sites are those relating to renting, liquor licensing, and business names and structures.



Visitor sessions per month to CAV and the Business Licensing Authority (BLA) websites

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

In December 2004 the new CAV website was launched. Data for December 2004–February 2005 has been averaged.

CAV visitor sessions include Residential Tenancies Bond Authority and Liquor Licensing visitor sessions.]

Dispute resolution

Alternative dispute resolution (ADR) is an important aspect of making justice and redress available to everyone in the community. ADR is a highly successful alternative to legal action. It is generally quicker, more cost effective and less intimidating. It provides consumers and traders with an opportunity to negotiate and conciliate in a co-operative way. The dispute resolution service offered by CAV is a cost effective and highly successful alternative to court action, with 83 per cent of conciliated complaints being successfully resolved at CAV.

CAV's general ADR service provides assistance to parties in resolving disputes involving a wide range of industry and business types.

In addition, two industry-specific services are available: the Estate Agents Resolution Service (EARS) (which offers advice, information, mediation and dispute resolution on all types of estate agency matters) and Building Advice

and Conciliation Victoria (BACV), an information, advice and dispute resolution service offered jointly by Consumer Affairs Victoria and the Building Commission.

CAV inspectors also perform residential tenancies inspections, which are needed in various situations.

Across all the CAV dispute resolution services, parties are encouraged to resolve disputes between themselves. Where dispute resolution is inappropriate or unsuccessful, consumers may receive advice about alternative options.

While CAV's dispute resolution services operate from the Melbourne head office, regional offices also have conciliation capacity and do conciliate disputes in their areas.

In 2006–07, CAV received more than 18,500 complaints and inspection requests, and recovered over \$4.1 million for consumers through dispute resolution processes.

Encouraging traders to play fair

A sample of matters conciliated by CAV during 2006–07 shows some of the ways consumers are assisted and protected by the fair trading legislation.

Dress sense

A consumer bought a \$120 dress, wore it once and washed it as per the instructions on the label. The colours ran. The consumer approached the shop but staff declined to refund the consumer on the basis that the trader had received no other complaints about the dress. The consumer wrote to CAV, who contacted the trader. The trader offered to replace the dress and give the consumer a \$120 credit note.

Hire car

A car hire company deducted \$1,151 from a consumer's credit card for alleged damage to the roof of a car he had hired, though the company had not recorded any damage when he had returned the car. He complained to CAV who contacted the company's head office.

CAV ascertained that there were no photographic records of the damage, and that the hirer had not been adequately notified before his credit card had been billed. The head office made a quick decision to fully refund the charges to the consumer.

Sky's the limit?

A consumer received a \$300 skydiving gift certificate from his family for his 70th birthday in 2004. The consumer tried numerous times to redeem the certificate, but on each occasion the trader cancelled the booking, citing various reasons.

The consumer called the trader in July 2005, concerned that the voucher would expire. The (then) owner assured him that the voucher could be extended for up to three years.

The consumer contacted CAV and requested that a refund be negotiated, as he felt he would not get to use the gift. In March 2006 he was told by the trader that the business had been sold. CAV contacted the previous owner, but after two months of negotiations recommended that the consumer take the matter to VCAT.

Two weeks later the previous owner of the skydiving business contacted CAV, offering to send a full refund to the consumer via CAV. The offer was honoured and the consumer received his refund.

Concert ticket let-down

A consumer bought two tickets to a concert online. She arrived at the event with a printout of the confirmation of purchase, and was told by the door staff that there was no record of her order or authorisation number. Door staff advised her that she would need to pay full price for new tickets if she wanted to attend the concert, and that she could pursue her complaint with their head office at a later date. This is what the consumer decided to do.

The consumer contacted the trader regarding the refund, but received no response despite making numerous calls. As a result she lodged a complaint with CAV.

CAV contacted the trader and outlined the relevant fair trading responsibilities. The trader provided a full refund of the purchase price of the second set of tickets, as well as a 'Golden Ticket' allowing the consumer free access to all their events in 2007.

Damaged furniture

A consumer ordered two lounges from a large department store on credit. The credit was offered interest free for a fixed period, after which interest would accrue.

One lounge was delivered but was marked soon after. The department store offered to remove the stains (the consumer arguing that the store should have delivered the furniture already upholstery-protected), but the contractor engaged to remove the stains caused more damage to the lounge.

The consumer contacted CAV, wanting to ensure that the second lounge was upholstery-protected before delivery and that the first lounge was re-covered at the trader's expense. She also wanted to make sure that the interest free periods only commenced from the date the re-upholstered, fabric-protected lounges were delivered.

The trader informed CAV that upholstery protection was not included in the order and therefore would not be provided, but agreed to pay for the re-covering of the damaged lounge and to delay the start of the interest free period from the new date of delivery.

The consumer was satisfied with the outcome.

DEC Electrical

A significant number of consumers contacted CAV in relation to DEC Electrical during the year, alleging poor quality of products, lack of customer service and unreliability of product repairs. Products most commonly complained about included washing machines, fridges and freezers.

Consumers who had sought repairs reported to CAV that they had been required to pay for the repairs (and sometimes up to three sets of repairs) themselves.

Under the *Fair Trading Act 1999*, products must be of merchantable quality when sold, and CAV continues to assist consumers who have issues with DEC Electrical.

VG Refrigeration Pty Ltd and Blue Ice Refrigeration

VG Refrigeration was named in the 2005–06 Annual Report for accepting payments from consumers to do work and then failing to do the work. The company has since deregistered itself.

However, the Director of Consumer Affairs issued proceedings in VCAT against Shane Alley, who had been the company director, on behalf of an aggrieved consumer.

Mr Alley has been the subject of VCAT proceedings brought by consumers in the past, and has a history of defaulting on VCAT orders. Given this, the Director determined that it was appropriate to issue proceedings on behalf of one of the consumers who had lodged a complaint.

In August 2006, VCAT ordered Shane Alley to pay the consumer in question \$430, refunding her for repairs she had paid for but that had never been done.

Mr Alley did not pay, so a warrant to seize property was issued in the Magistrates' Court for action by the Sheriff. This was unsuccessful and as at financial year end a summons had been issued requiring Mr Alley to attend the Magistrates' Court for an oral examination regarding his ability to pay.

CAV will continue to pursue this matter.

After deregistering VG Refrigeration, Shane Alley registered himself as the owner of Blue Ice Refrigeration. Complaints have been received at CAV against Blue Ice, similar in nature to previous complaints against VG Refrigeration. Blue Ice operates mainly in the northern suburbs and advertises in the local papers. Consumers are warned not to deal with this trader.

Gino Carmignani

As previously reported, Gino Carmignani approached people at cemeteries and offered his services as a stone mason, in preparing and installing gravestones. Carmignani obtained substantial deposits and occasionally the full price of supplying and installing the gravestones, but did not deliver on the agreements. The gravestones were not supplied and Carmignani refused to refund consumers' money.

Consumer Affairs Victoria obtained injunctions on 3 August 2005, restraining Carmignani either by himself or as an agent of any other person from engaging in this type of conduct and from carrying on business under the unregistered business name

"Gino Memorials" or any other unregistered business name.

Consumer Affairs Victoria obtained orders for compensation in relation to 11 consumers totalling \$61,480, plus costs.

Carmignani subsequently breached these injunctions by entering into an agreement to supply and install a gravestone. Carmignani demanded and received the full agreement price but failed to supply and install the gravestone. All these actions took place while Carmignani was under injunction not to engage in such conduct.

CAV took contempt proceedings against Carmignani in the Magistrates' Court in May 2006. The Court found that Carmignani had defaulted on the orders made in August 2005, and that he was in contempt. The Court declined to impose a penalty, but accepted an undertaking by Carmignani that he would not go upon or attend a cemetery in Victoria. The Court ordered that Carmignani pay CAV costs of the contempt proceedings, fixed at \$1,401, but he has not paid CAV's costs or compensation for the consumers.

CAV continues to pursue Carmignani for payment.

Feature: Alternative Dispute Resolution across the Department of Justice

Alternative dispute resolution (ADR) is one of the eight strategic priorities for the Department of Justice in 2007, and an important element of the consumer policy framework.

The ADR sector is a significant supplier of services including mediation, conciliation and determination of disputes covering a broad range of issues. Consumer Affairs Victoria plays a significant role in delivering ADR services, and is the largest provider within the Department of Justice.

In addition, the Victorian Civil and Administrative Tribunal is the main provider of determinations, and the courts are increasingly offering mediation.

Over the past year, the Department has undertaken the Contemporary Justice Service Delivery – ADR Strategy Project. Consumer Affairs Victoria has led the project, working in conjunction with other divisions within the Department.

The project is evidence-based, and accordingly research into the ADR sector forms a major part of the early project output. The research approach recognises that the ADR sector possesses many of the characteristics of a service industry. This perspective frames the research components of the project and provides new insights into the issues facing the sector.

The project includes four major research components, two on the supply of ADR services, and two on the use of these services. The research reports are available on the CAV website and some of the key findings are detailed in this feature.

The research showed that Victorians will often (in 78 per cent of disputes reported) seek to resolve consumer disputes with the supplier of goods and services, and are able to identify consumer dispute resolution agencies available to them, when prompted. The consumer dispute resolution agency most recognised after prompting is CAV (92 per cent recognition when prompted). Other consumer dispute resolution agencies most frequently recognised after prompting were the Telecommunications Ombudsman (with 65 per cent recognition) and the Banking and Financial Services Ombudsman (with 61 per cent recognition).

CAV arranged a conference (held on 22 June 2007) to review the research findings from the project and consider priorities for the ADR sector. The conference was attended by participants in the research components, who represent a broad cross section of ADR suppliers and stakeholders in Victoria.

This research builds on research into consumer detriment undertaken in March 2006. Consumer detriment is the cost to consumers of replacing faulty goods and rectifying inadequate services. These costs include expenses in obtaining advice and seeking redress as well as the value of consumers' time. Not all consumer problems become disputes so the cost of resolving consumer disputes will be less than the cost of all consumer problems.

Though the consumer detriment survey was undertaken 12 months earlier, broad comparisons can still be made. For instance, consumer detriment experienced by Victorian consumers was estimated to be at around \$3.15 billion compared to the cost of resolving consumer disputes of \$1.18 billion.

Expenses were \$1.01 billion in the consumer detriment survey compared to \$0.75 billion in the community ADR survey, and the value of consumers' time was \$1.04 billion compared to \$0.43 billion.

Research findings

During the 12 months to June 2006, the 18 ADR service providers considered in the study reported:

- over one million contacts from Victorians
- 31,000 mediations performed, and
- 102,000 non court determinations made.

During the 12 months to March 2007:

- 35 per cent of Victorians surveyed had been involved in at least one dispute, and
- 3.3 million disputes in total.

Largest category of disputes:

- consumer issues (1.7 million disputes).

Most frequently raised consumer issues:

- electricity, water, gas and phone (477,000 disputes involving 8 per cent of Victorians), and
- credit, debt, banking, finance or insurance (204,000 disputes involving 4 per cent of Victorians).

Number of consumer disputes resolved without assistance of third party:

- 1.2 million (71 per cent) – this suggests a significant capacity for dispute resolution in the community.

Total cost to Victorians of resolving serious consumer disputes:

- \$1.3 billion actual expenditure (0.93 per cent of household expenditure and 0.54 per cent of gross state product), and
- 14 million hours of personal time (average number of hours spent per dispute: 14).

Securing Compliance

Trader activity is regulated to protect consumers from detriment caused by exploitative practices. CAV uses a range of methods to achieve this outcome, depending on the severity of the misconduct.

Educating traders

Most traders aim to comply with their legal obligations, or at most require little convincing to bring their conduct within the law. Many infringements of the law are due to ignorance rather than wilful abuse of consumers' rights. CAV aims to educate traders on the law, and how to comply.

New businesses

A fair trading guide for business sets out statutory obligations and rights of traders under the Fair Trading Act. The aim of the publication is to assist traders to know and comply with their legal obligations. CAV now distributes a copy of the guide to every new business name registrant. Over 100,000 copies were distributed to all new and renewed businesses in 2006–07.

Better Business in Latrobe

The Better Business in Latrobe project, encouraging voluntary compliance with consumer law by providing targeted advice and information to traders, was piloted in 2006–07.

The aims of the project were to:

- increase local small- to medium-sized traders' knowledge of rights and obligations under the Fair Trading Act
- increase confidence of local consumers to shop locally, and
- improve the management and resolution of disputes by developing the relationship between CAV's Gippsland regional office and local traders.

Three half-day training sessions were held in Moe, Morwell and Traralgon. Twenty-eight business owners and staff attended the sessions which were supported by the following project partners:

- Advance Morwell
- Gippsland Area Consultative Committee
- Latrobe City Council Economic Development Unit
- Moe Development Group
- Moe Traders Association
- Small Business Victoria
- Traralgon Chamber of Commerce, and
- Victorian Employers' Chamber of Commerce and Industry Gippsland Regional Office.

A further 40 traders in Latrobe are awaiting the next round of training. Bass Coast Shire has also requested training in their region in the near future.

Publications and online resources

A fair trading guide for business
Advertising requirements under the Fair Trading Act
Business charter
Complaint handling: why you should welcome complaints
Customer service guidelines
Customers who want to cancel – guide for tourism businesses **New**
Fair Trading Act – advertising requirements
Fair Trading Act – information for traders
Handling complaints effectively
Holiday accommodation – a guide for providers and booking agents
Internet tips
Lay-by (poster)
Lay-by cancellation form
Refund rights and obligations for businesses
Refunds (poster)
Telemarketing – information for industry
Tips for business going online
When do I have to give a refund?
Why your business should welcome complaints

Working with industries

Telecommunications

The telecommunications sector continued to feature prominently in Consumer Affairs Victoria's incoming enquiries and complaints this year. As well as resolving individual complaints where appropriate, Consumer Affairs Victoria relies partly on public complaints to provide marketplace intelligence and evidence of where traders might be breaching fair trading legislation.

Contact sales

In October 2006, the Director of Consumer Affairs Victoria accepted enforceable undertakings from Simplus Mobile, M8 Telecom and Optus regarding door-to-door selling and telemarketing activity. The undertakings required the companies concerned to implement a range of remedial actions including thorough staff training and an independent compliance audit. Consumer Affairs Victoria staff have been very pleased with the results which have been validated by a sharp decline in complaint volumes.

'Unlimited' broadband claims

In mid 2005, Consumer Affairs Victoria received complaints about advertising by internet service providers (ISPs) of broadband products described as 'unlimited', which in fact were subject to a download limit, after which customers' service was restricted to dialup speed. This limitation was disclosed only in fine print.

Enquiries by Consumer Affairs Victoria established that most major ISPs were incorrectly describing such products as 'unlimited'.

Consumer Affairs Victoria made contact with all the major ISPs, and all except Telstra BigPond agreed to voluntarily withdraw the advertisements in question.

While Telstra BigPond disputed Consumer Affairs Victoria's concerns, it revised its website to make the 'unlimited' claim less prominent in April 2006. Following further action Telstra agreed to amend its advertising, removing references to 'unlimited'. This it did, in October 2006.

Other issues

At year end, a number of compliance projects were underway dealing with telemarketing activity, premium SMS services, and the way in which emerging technologies are promoted and advertised. Consumer Affairs Victoria staff liaise with other agencies such as the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman (TIO) and the Australian Communications and Media Authority as appropriate, in pursuing such matters.

Dodo Australia Pty Ltd

In the second half of 2006, Consumer Affairs Victoria and other agencies such as the TIO received a significant number of complaints regarding Dodo Australia Pty Ltd, an internet and telecommunications provider. Complaints covered a wide range of issues, including difficulty in contacting Dodo, and continued debits to bank accounts and credit cards after services had been cancelled.

The company advised that it was experiencing protracted difficulties with its call centres and that this was impacting its level of customer service. This poor customer service was exacerbating the situation and causing Dodo customers to contact other agencies such as CAV and the TIO.

CAV staff provided callers with advice on how to seek resolution of their disputes, and where appropriate advised consumers to lodge complaints with CAV or the TIO.

After conducting preliminary inquiries and liaising with the TIO, the Australian Communications and Media Authority and the Australian Competition and Consumer Commission, Consumer Affairs Victoria staff met with Dodo's senior management, emphasising that it was not CAV's role to explain to Dodo customers why they could not reach the service provider, and that Dodo needed to address its customer service problems.

This is of particular concern since CAV is resourced by public funds and should not be in the position of taking on responsibilities that should be addressed by private companies themselves.

Dodo supplied Consumer Affairs Victoria with a priority customer service number that could be given to complainants to expedite the resolution of complaints, and was able to demonstrate significant improvement in the performance of its call centres. This was mirrored by a decrease in the volume of enquiries and complaints to Consumer Affairs Victoria and other agencies. Complaint volumes remain unacceptably high, however, and CAV is monitoring the situation.

This case study provides an example of conduct not addressed by the existing legislation, but which is detrimental to consumers and the public at large. Introducing a broader statutory unfairness standard than currently exists, as discussed in the 2007 CAV Lecture (summarised in the introductory pages of this report) would enable CAV to tackle such conduct.



CAV, along with Tourism Victoria, responded promptly to numerous calls to their respective helplines from tourism industry operators in areas affected by bushfires over the summer.



The then Minister of Consumer Affairs, the Hon Daniel Andrews MP launching the accommodation guidelines.



Tourism

Industry guide

One of the fair trading issues emerging during 2006–07 was the protection of consumers booking short-term accommodation via booking agents, in light of the exemption of short-term accommodation agents from the real estate licensing requirements of the *Estate Agents Act 1980* in September 2005.

During 2005–06, the Minister for Consumer Affairs announced that CAV and Tourism Victoria would work together to develop an industry code for short-term accommodation agents.

CAV established an industry working group in consultation with Tourism Victoria, Tourism Alliance and the Victorian Tourism Industry Council, and developed a draft code.

However, this approach was not supported by the majority of industry representatives at the first working group meeting, and it was agreed as an alternative that the Tourism Accreditation Board of Victoria and other members of the industry would review the Better Business Tourism Accreditation Program and associated code of practice to enhance consumer protection in the key areas of handling of monies and complaint handling.

It was also agreed that CAV would develop a guide for short-term accommodation booking agents that outlines legislative obligations, particularly those contained in the Fair Trading Act. The guide has expanded beyond the scope of the industry working group by including accommodation providers as well as booking agents.

The guide (*Holiday accommodation – a guide for providers and booking agents*) outlines key responsibilities of providers and booking agents in relation to advertising accommodation, representation to consumers, contract terms and conditions, receipts and customer payment advice, credit card transactions, cancellation policies and fees, refunds, and unlawful discrimination.

The guide applies to hotels, motels, B&Bs, backpacker hostels, tour operators, visitor information centres, estate agents and all other booking agents who arrange or offer accommodation. Booking agents that book travel with accommodation may need to be licensed as travel agents.

CAV developed this guide by working closely with Tourism Victoria and representatives of the tourism industry.

Response to bushfire impacts

CAV, along with Tourism Victoria, responded promptly to numerous calls to their respective helplines from tourism industry operators in areas affected by bushfires over the summer.

The agencies jointly developed an online guide for tourism operators and accommodation providers entitled *Customers who want to cancel*. The guide outlines operators' rights and responsibilities in relation to booking cancellations, including charging cancellation fees, refunding deposits, making credit card deductions and transferring bookings.

The guide is available on the CAV and Tourism Victoria websites and was distributed to businesses in bushfire-affected areas through the recently formed North East Victorian and Gippsland Tourism Response and Recovery Groups. It was also sent to other tourism businesses through peak tourism industry bodies.

Travel vouchers

A number of travel voucher schemes came to CAV's attention in 2006–07. Consumers enter into valid contracts – often over the telephone – for voucher booklets. When booklets are delivered, consumers discover that they contain vouchers for free or heavily discounted accommodation, which prove to be very different to that described, non-existent, or the same as (or more expensive than), travel deals available to the general public.

Consumer Affairs Victoria negotiated with several of these voucher providers to arrange refunds and written commitments that similar misrepresentations to the nature and effect of the vouchers would not be made in future. CAV advised callers that some operators within the industry were becoming notorious for this behaviour, and to be cautious when purchasing such vouchers.

Victorian Tourism Centre

Victorian Tourism Centre (VTC), a telemarketer of accommodation vouchers, was the subject of a high number of complaints, typically alleging misrepresentations about availability of accommodation and that vouchers did not give purchasers savings not already available to the public. Upon making enquiries, CAV also discovered that legal requirements relating to cooling-off periods and information to be supplied with contact sale contracts had not been met by this trader.

Complainants reported that their attempts to negotiate refunds directly with the trader were unsuccessful.

In 2005–06, CAV found that VTC would generally refund consumers after contact from CAV, however during 2006–07 there was a change in VTC's approach; while refunds were still eventually made, they were not made on first request, nor in a timely manner.

CAV formally put these concerns to VTC, but at time of writing had received no response.

Destinations R Us

CAV received numerous complaints about Destinations R Us, including allegations of delays in supplying (or failure to supply) travel vouchers after accepting payment for them. Complainants also reported difficulty in contacting the company, and that delays in response time meant that consumers missed deadline travel deals they wanted to book.

In trying to contact Destinations R Us, CAV found that the number given by the company always diverted to voicemail and that email was the only way to contact them. The trader was slow to respond to contact from CAV, but generally, once contact was made complaints were resolved, albeit after some further delay.

CAV has formally raised the systemic nature of complaints with the trader, with a view to obtaining commitments from the trader about future conduct.

Jetstar

Thirty-nine per cent of all complaints CAV received about airlines between 2004 and 2006 involved Jetstar. This level of complaints is particularly significant given that Jetstar's share of the domestic market is lower than the other two major domestic airlines.

Systemic complaints against Jetstar over the three-year period and the first six months of 2007 relate to:

- cancellation policies
- failure to provide adequate and/or timely refunds
- failure to provide flights on the dates or times booked, or satisfactory alternatives
- consumers seeking compensation for Jetstar's cancellation or rescheduling of flights
- the 30 minute check in/boarding policy for domestic flights and 60 minute check in/boarding policy for international flights
- unsatisfactory or substandard service including failure to advise of flight time changes, quality of service on flights, and failure to advise of travel or visa requirements, and
- fees, charges and penalties imposed when customers make, cancel and change flight bookings.

Many of these complaints are related to Jetstar's enforcement of its contract terms and conditions, for example stipulating that customers who fail to check in 30 minutes before scheduled flight departures will be denied access to their flights and forfeit fares paid.

Most airlines have similar contract terms and conditions, however the volume of complaints suggests that Jetstar is more rigid in enforcing these.

Jetstar has shown reluctance to resolve complaints when contacted by CAV. CAV staff met with Jetstar in late 2006 but this did not result in any changes to the trader's complaints-handling processes.

CAV is inquiring into whether particular contract terms and conditions used by airlines are unfair as defined in the Fair Trading Act and will continue to address the issue as appropriate.

Detecting and addressing non compliance

CAV monitors trader activity and, where breaches are detected, works with traders in various ways to assist them to bring their conduct within the requirements of the law. Often this will be done through issuing warning letters, or on occasion through service of an infringement notice on the trader concerned.



Where non compliant conduct persists, CAV may elect to use one of the range of administrative powers available by delegation from the Director, under the Fair Trading Act.



Implied warranties

Throughout 2006–07, CAV has continued a project aimed at increasing trader awareness of obligations to provide refunds for goods which are faulty, differ significantly from those shown or described, or do not do what they are supposed to do.

CAV staff have distributed trader education packs during regular metropolitan and regional compliance exercises. These packs contain detailed information about trader obligations.

Where significant non compliance with these obligations (and others such as lay-by requirements) has been detected, CAV has taken enforcement action.

Civil proceedings were successfully concluded against Busbrand Pty Ltd trading as Guess, Industrie Clothing Pty Ltd, Run Scotty Run Pty Ltd and Steve Madden (Aust) Pty Ltd.

In addition, the Director of CAV accepted enforceable undertakings from Events Retail Australia Pty Ltd, QS Retail Pty Ltd trading as Quicksilver and National Haircare Pty Ltd trading as Hairhouse Warehouse (Essendon DFO) for similar contraventions.

The civil proceedings resulted in the Magistrates' Court making declarations that the companies had contravened the Fair Trading Act, injunctions to restrain them from engaging in future similar conduct, and adverse publicity orders requiring the companies to publish details of the nature and effect of the court proceedings.

CAV in the sporting arena

The *Sports Event Ticketing (Fair Access) Act 2002* was proclaimed in September 2002 to regulate the sale and distribution of tickets to certain sporting events to ensure fair access, to control ticket scalping, and to improve major event ticketing practices.

Under the Act, the Minister for Sport and Recreation is able to require that certain sporting events are governed by ticket schemes approved by the Minister. Such schemes place conditions on the sale or distribution of tickets to an event.

During 2006–07, Consumer Affairs Victoria was engaged by the Department of Victorian Communities on a fee-for-service basis to monitor compliance by the Australian Football League and other applicable parties, with the Authorised Ticket Scheme (ATS) for the 2006 AFL Grand Final.

CAV also monitored compliance with the ATS for the 2006 Melbourne Commonwealth Games and the 12th FINA World Championships, held in March 2007.

Metropolitan compliance program

Consumer Affairs Victoria regularly undertakes compliance and enforcement exercises at metropolitan shopping centres including factory outlets and seconds stores. In November 2006, fair trading inspectors visited 55 stores at Nunawading Brandsmart and identified issues with 30 traders. Most of the problems identified by the inspectors were to do with refunds, lay-bys and business names.

Compliance outcomes in metropolitan inspections

	2005–06	2006–07
Total inspections (number)	102	76*
Non compliance resulting in enforcement action (%)	6.8	13.2
Non compliance not resulting in enforcement action (%)	57.8	39.5
Full compliance rate (%)	35.4	47.3

* The number of inspections conducted in 2006–07 differed as against 2005–06 because:

- in 2005–06 a significant number of inspections were conducted in preparation for the Commonwealth Games
- in 2005–06 CAV visited the Essendon Direct Factory Outlets premises, whereas in 2006–07 CAV visited the Moorabbin premises, which contains fewer shops.



Consumer Affairs Victoria regularly undertakes compliance and enforcement exercises at shopping centres including factory outlets and seconds stores.



Direct Factory Outlets, Essendon

During a compliance monitoring exercise conducted in the previous financial year, CAV officers visited DFO Essendon and surveyed 97 stores for compliance with various fair trading requirements. CAV identified non compliant conduct (of differing degrees of severity) in 48 out of 97 traders. This gave rise to substantial compliance and enforcement activity in the current financial year to address the issues identified.

Breaches mostly related to trading under unregistered business names (with many traders using variations of their registered business or company names) and using refund and/or lay-by policies that conflicted with the requirements of the Fair Trading Act.

Traders that had not previously been warned by CAV were served with warning letters, and many have since taken the necessary steps to register their business names and/or amend their refund and/or lay-by policies and contractual provisions.

CAV considered appropriate action against traders that had previously received warnings and were still non compliant. This resulted in the Director accepting enforceable undertakings from three traders, and instituting court proceedings against four traders. All court proceedings were successful.

CAV later instituted court action against one of the traders that was found to have breached the enforceable undertaking accepted. The outcome of this matter was pending at financial year end.

Regional areas

As part of Consumer Affairs Victoria's compliance and enforcement program, staff visit regional and rural centres around Victoria undertaking routine and targeted inspections.

The purpose of regional compliance and enforcement exercises is to ensure the needs and demands of consumers outside of Melbourne and metropolitan areas are addressed, and to raise community awareness of Consumer Affairs Victoria's role in protecting the interests of consumers and the broader community.

During such exercises compliance and enforcement officers focus on monitoring compliance with relevant legislation and educating traders and other persons subject to requirements under consumer legislation, to voluntarily comply with those requirements.

Officers distribute education packs and provide information and support to aid voluntary compliance.

Inspectors conduct audits and assess business practices of licensed traders, and in the supply of goods and services by traders generally.

In 2006–07, Consumer Affairs Victoria conducted regional compliance and enforcement exercises in and around Geelong, Mornington Peninsula, Bendigo and Wodonga. Only 2 per cent of cases resulted in subsequent enforcement action (such as the issuing of an infringement notice or acceptance of an enforceable undertaking), a decline on 2005–06.

In addition, staff in regional offices promote awareness of CAV's presence in regional areas (particularly during delivery of mobile outreach services) by visiting traders in outlying areas.

Officers outline CAV's role in relation to traders, and discuss refund and lay-by policies. Traders are given kits containing information on the Fair Trading Act, and staff emphasise that CAV can provide further information on request.

It is encouraging that traders appear to be improving compliance in response to CAV's visible presence in regional areas.

Compliance outcomes in regional inspections

	2005–06	2006–07
Total inspections (number)	986	1,040
Non compliance resulting in enforcement action (%)	3.4	1.7
Non compliance not resulting in enforcement action (%)	26.7	33.5
Full compliance rate (%)	69.9	64.8

Public warnings

Every year (and in some cases, over a period of several years) Consumer Affairs Victoria experiences high volumes of complaints in respect of particular traders. The organisation then targets compliance strategies towards these traders and, if necessary, enforcement action.

Publicly naming these traders can be a powerful tool in securing compliance, and also fulfils a consumer protection function. Many of the traders named in previous annual reports have since improved their trading practices and/or complaint-handling procedures, or have subsequently gone out of business (although some rogues who continue to flout the law – named elsewhere in this report – have become the subject of further action by CAV).

In addition, under section 162A of the Fair Trading Act, the Director may issue public warnings about unfair business practices and people who engage in such practices if he is satisfied that doing so is in the public interest.

Warnings may identify and give information about goods and services that are unsatisfactory and traders that supply them, as well as unfair business practices and traders that engage in such practices, and any other matters that might adversely affect consumers.

Five new public warnings were issued in 2006–07, concerning the Victoria Emergency Relief Fund Inc, John Stewart (trading as Bitumen Driveways), Christian Kalos, and Best Conferences Pty Ltd and Liam Crowley (discussed in greater detail under the relevant program areas) as well as Joseph (also known as Joe and Joey) Yelding (discussed in last year's annual report).

Warnings are published on the CAV website and also announced to the media.

Legal proceedings

Where appropriate, CAV institutes legal action against traders who have breached the law.

Various matters finalised this year are discussed throughout this report. A summary of outcomes achieved during the year appears below.

Matter	2005–06	2006–07
Number of criminal prosecutions finalised	47	44
Number of civil proceedings finalised	88	78*
Compensation secured for consumers	\$143,589	\$592,008
Value of fines issued in court	\$287,550	\$459,315
Value of Court Fund and VCAT penalties imposed	\$10,500	\$19,200
Value of costs orders obtained	\$43,840	\$119,141
Number of parties signing enforceable undertakings	43	121
Number of infringement notices served	386	188**
Number of information notices served	267	96**
Number of warning letters	791	643**
Number of substantiation notices served	6	3
Number of warrants executed	21	20

* The decline in number of civil proceedings finalised reflects CAV's increasingly targeted approach in determining when to pursue court action. As can be observed from the outputs reported above, this continued strategic approach has resulted in significant increases in the amount of consumer compensation and penalties obtained through court proceedings, and a concomitant increase in the number of enforceable undertakings accepted.

** The decline in the number of infringement and information notices and warning letters served reflects:

- CAV's decision to pursue an educational rather than punitive compliance program in regional Victoria for 2006–07. This decision was taken on the basis that non compliance in these areas may be attributable to uncertainty rather than disregard for the law, and that more education of traders was necessary, and
- the fact that in 2005–06 CAV undertook an extensive compliance exercise in relation to the Commonwealth Games, which give rise to an increased number of enforcement activities.

Legislative Developments

Consumer Acts amended

In 2006–07 the Fair Trading and Consumer Acts were amended to deal with concerns and issues identified through CAV's experience in applying the Act to specific matters over the past year.

Director's powers

During 2006–07 the *Fair Trading and Consumer Acts Amendment Act 2007* came into effect.

The Act introduces amendments to the *Fair Trading Act 1999*, for example clarifying that existing requirements on advertising publishers to disclose certain contact details apply equally to traders publishing their own advertising.

The amendments also make provision for delegation of the powers of the Director of Consumer Affairs in relation to obtaining evidence and testimony.

Court orders

Provision is made for courts to order destruction of dangerous goods that do not comply with prescribed safety standards, and for CAV to apply to court for warrants to enter premises for the purpose of monitoring compliance with embargo notices in relation to potentially dangerous goods. Such warrants also allow for seizure of the goods in question.

The application of asset freezing orders available under the Fair Trading Act is extended to include bank accounts. Courts are empowered to make declarations of contravention of the Fair Trading Act and other Consumer Acts, and the cease trading injunctions and adverse publicity orders previously available only in relation to contravention of the Fair Trading Act have been extended to contraventions of Consumer Acts as well.

Lemon laws

Before the 2006 Victorian election, the Government made a commitment to introduce lemon laws for motor vehicles. During the year, Consumer Affairs Victoria has been working to progress this commitment.

A product may be considered a lemon if it has persistent problems requiring ongoing repairs, to an extent that significantly impacts on the consumer.

The objective of lemon laws is to enable purchasers of such goods to obtain replacements or refunds from suppliers who are unable to repair defective items within a reasonable period.

Currently, consumers appear to face a number of difficulties in seeking replacements or refunds for defective vehicles. In the motor vehicle market, proving that problems exist – and in particular that they are caused by manufacturing faults or design flaws – can be problematic. The fact that motor vehicle manufacturers' warranties only require manufacturers to repair defective vehicles (and do not impose an obligation to replace defective vehicles or refund the purchase price) means that consumers have difficulty obtaining redress through warranty provisions.

The aim of introducing a lemon law for motor vehicle purchases would be to address these issues by:

- clarifying the rights and responsibilities of the purchaser, the seller (dealer), and the manufacturer
- providing a clear, simple and comprehensive system of redress for purchasers, and
- encouraging the prompt settlement of disputes.

Feature: ***Unfair Contract Terms***

A significant way in which consumers can be disadvantaged is through the inclusion of unfair terms in consumer contracts. Using standard form contracts customised to particular transactions in specific industries is practical for both consumers and traders. However these contracts frequently contain terms which unfairly favour traders, to the detriment of consumers.

Increasing concerns about unfair contract terms, especially associated with 'take-it-or-leave-it' standard form contracts, culminated in the amendment of the Fair Trading Act in 2003, to include provisions making unfair terms in contracts void.

Publications and online resources

Contracts

Preventing unfair terms in consumer contracts – guidelines for suppliers

Updated

Unfair contract terms – fact sheet for businesses

Unfair contract terms – industry guidelines

Unfair terms in vehicle rental contracts **New**

Multicultural audiences

Contracts (Vietnamese)

Facilitating Compliance

Consumer Affairs Victoria has been active in educating and informing Victorians (in particular key industry bodies, regulators and stakeholders) about the unfair terms legislation.

Presentations and training

CAV conducted training sessions on unfair contract terms for the staff of the Tenants Union of Victoria and the Energy and Water Ombudsman of Victoria.

Presentations were given on unfair contract terms to the Law Institute of Victoria, the Consumer Action Law Centre and the Banking and Financial Services Ombudsman. Presentations and training covered the background of the legislation in the United Kingdom, its introduction into Victoria, the impact of the decision in *Director of Consumer Affairs v AAPT*, the definition of an unfair term and how to assess terms for fairness, and how Consumer Affairs Victoria administers the legislation.



Consumer Affairs Victoria has been active in educating and informing Victorians (in particular key industry bodies, regulators and stakeholders) about the unfair terms legislation.



Industry guidelines

CAV has found that setting out its views on particular terms in specific industries helps traders to respond appropriately to the legislation. As a result, in 2006–07 guidelines were developed and published on the application of the legislation, customised to the vehicle hire industry. Guidelines for the window and floor covering, and health and fitness, industries are also being developed. These guides are intended to assist with fair drafting of contract terms and are distributed to the legal profession as well as traders.

CAV's general guide to the legislation for businesses, *Preventing unfair terms in consumer contracts*, was updated in this financial year. The update highlighted changes in the application of the law, particularly the effect of the Victorian Civil and Administrative Tribunal (VCAT) decision in CAV's case against the telco AAPT, and will assist business to comply with the legislation.

Reviewing contracts by industry

CAV reviews consumer contracts used by individual traders across specific industries for compliance with the unfair contract terms legislation, and identifies key areas of concern particular to each industry. CAV then works with the traders to address any alleged unfairness. Changes to contract terms are implemented following discussion with CAV. In this way CAV helps to ensure that consumers – who often do not have the confidence, expertise and/or bargaining power to negotiate terms in consumer contracts – are presented with fair contracts in the first instance.

During 2006–07 CAV worked with traders in the window and floor covering, internet service provider, health and fitness, online auction, Pay TV and mobile phone industries, as well as airline loyalty programs.

This approach has generally been very effective. However, if necessary and appropriate, CAV will enforce traders' obligation not to contract unfairly with consumers.

AAPT

As previously reported, CAV instituted proceedings against AAPT in VCAT in late 2004. CAV alleged that terms in AAPT's mobile phone and pre-paid mobile phone contracts were unfair because they enabled the company to unilaterally vary its contracts, suspend services while continuing to charge consumers, impose immediate termination conditions, and change suppliers, products or charges without notice.

In August 2006 the President of VCAT delivered his judgment, agreeing with Consumer Affairs Victoria's arguments. There was no need to grant orders against AAPT as it had already changed its contracts with retrospective effect. However, the finding that the terms challenged by CAV were unfair was significant as it clarifies the law for all businesses and consumers in Victoria.

These included terms purporting to provide for unilateral variation of terms, suspension of service whilst still requiring the consumer to pay, and immediate termination.

The decision also established important points about the interpretation of the unfair contract term provisions, and their application to consumer contracts – in this case, the mobile phone and mobile pre-paid contracts.

The Judge also held that telephone services, especially mobile phone services, are ordinarily acquired for personal use, and that it is not necessary to prove that the use is predominantly personal.

According to section 32W, a term "is to be regarded as unfair if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer."

The Judge held that "significant" in this context meant "important" or "of consequence", not "substantial"; and that the phrase "contrary to the requirements of good faith" performed an "adjectival" (descriptive) role and helped courts to assess whether a term was unfair.

The Judge agreed with an English academic that the section could have both a procedural and substantive content. A term might cause such an imbalance that it is unfair even if individually negotiated or brought to the consumer's attention. Other terms may not be unfair if and only if individually negotiated or if and only if brought to the consumer's attention.

This is the position taken by Consumer Affairs Victoria in its guidelines issued in 2003.

The Judge went on to say that a term could be unfair if one of the parties is unaware of another term that might be in its favour.

Health and fitness centres

Building on a review of contracts in the health and fitness centre industry conducted over the past two years, Consumer Affairs Victoria has worked with firms such as Fitness First, Beach House and Lifestyle Fitness to modify their contracts.

Some of the main issues related to cancellation fees, automatic renewal of memberships, liability, and penalties on consumers for breaching contracts.

Other firms have not participated in this process to CAV's satisfaction, and options for further action to ensure that these companies' contract terms are fair, are under consideration.

Cancellation

Original term

Any cancellation must be notified on the required form supplied by us. At the time of lodgment of the cancellation form, your membership fees must be paid up-to-date.

So there can be no mistake, for your membership cancellation to be effective, all your membership fees must be paid up-to-date and on the date you give notice AND you must pay or make satisfactory arrangements to pay all notice until the date it takes effect. Should you have outstanding fees, your cancellation will not be processed and you will have to reapply to cancel in writing once payment is up-to-date.

Revised term

Your termination notice must be in writing and delivered to your club...

Where either of us terminates your membership any fees that you have not paid (for example, if you have not paid for the previous month) will need to be paid or we may take action to recover the outstanding payments.

Cancellation & Availability of Services

Original term

4. [Company name] may delete, change, discontinue, repair or replace any part or all of the centre or centres or any facilities without any effect on this agreement. [Company name] has the right to refuse entry to its facilities and cancel membership at its discretion.

Revised term

- 4.1 [Company name] sometimes needs to alter, repair or replace its equipment and facilities to maintain high standards. If your usual centre has to close for renovations, then we will offer you facilities at another of our centres, but if that is inconvenient to you, then we will suspend your obligations (and extend any fixed term) for the period of the closure.
- 4.2 [Company name] also reserves the right in the interests of its members to refuse entry to the facilities to any member, or to remove a member, who fails to comply with the rules or a reasonable direction by the staff.
- 4.3 If you have nominated membership of a Home club and it is found necessary to close that facility permanently, then [company name] will make a refund for the unexpired period of any weekly, monthly or annual dues (and also a pro rata return of the enrolment fee) if in your opinion other [company name] Centres are not convenient for you.

Loyalty programs

Consumer Affairs Victoria has worked with various loyalty rewards programs including QANTAS Frequent Flyers, Virgin Blue Velocity Rewards and Dymocks Booklover Loyalty Program to modify their terms and conditions. Revised contract terms particularly related to withdrawal or termination of the loyalty programs, notification to consumers of any changes to the programs and the clarity of the terms and conditions.

Changes to Program

Original term

Subject to all applicable laws, [company name] will: ...

Use reasonable efforts to advise Members of changes to these Terms and Conditions, but will not be liable in any way for any failure to do so, and

Where circumstances are appropriate, use reasonable efforts to give Members at least six months' notice where a change will limit Benefits previously offered.

Revised term

[Company name] will use best efforts to advise Members of material changes to these Terms and Conditions and, where such changes will limit Benefits:

- (a) where the Benefit is provided by [company name], give Members at least six months' notice
- (b) where the Benefit is provided by a third party, where possible give Members at least 30 days' notice.

Withdrawal of Program

Original term

[Company name] gives no warranty as to the continuing availability of [loyalty program name]. [Company name] may terminate, or suspend [loyalty program name] at any time. Where circumstances are appropriate, [company name] will use reasonable efforts to give at least six months' notice to Members of such termination or suspension.

Revised term

[Company name] gives no warranty as to the continuing availability of [loyalty program name]. [Company name] may terminate or suspend [loyalty program name] at any time. [Company name] will give at least six months' notice to Members of such termination or suspension, except if [company name] ceases to operate an airline business in which case [loyalty program name] will cease immediately.

Changes to Terms

Original term

These Terms and Conditions are effective as at the date of publication ... and may be amended from time to time. Members should refer to this website for the current Terms and Conditions and applicable fees for [loyalty program name].

Revised term

These Terms and Conditions are effective as at the date of publication ... and may be amended by [company name] from time to time. Members will be provided with a copy of the Terms and Conditions at the time of joining [loyalty program name] and material changes will be notified to Members in accordance with clause 3.2. In addition, current Terms and Conditions are available at [company web address].

Window and floor coverings

Consumer Affairs Victoria has worked with window and floor covering firms including Carpet Choice, Carpet Call, Dollar Curtains and Blinds, Spotlight, Kresta and Vista to modify their contracts. Revised contract terms especially related to deposits and part-payments, cancellation costs, and statutory and express warranties (in particular goods corresponding with the sample in quality, and clear expression).

Cancellation for Unreasonable Delay

Original term

We will make every effort to complete the work on time but we cannot be held responsible for delays due to circumstances beyond our control. In this case, we will complete the work as soon as reasonably possible.

Revised term

The Company will make every effort to complete the work by the estimated date of supply or installation but it cannot be held responsible for delays due to circumstances beyond its control. In this case, the Company will complete the work as soon as reasonably possible. The customer, however, has the right to terminate the Agreement without penalty for unreasonable delays beyond the estimated date of supply or installation.

Deposits and Part Payments

Original term

A security deposit is payable by the Customer if you cancel this order, we reserve the right to charge you a cancellation fee and retain part of your deposit as a contribution to cover our lost expenses and handling charges. In the event that the retailer is unable to supply all of the order any security deposit paid in relation to that supply shall be returned to the Customer.

Revised term

A 30 per cent part payment is required upon placement of the Customer's order.

If the Customer cancels the order prior to work being commenced, the part payment will be fully refunded to the Customer less any costs already incurred by the Company, limited to 10 per cent of the Customer's total order.

Where the Customer's work has commenced and the Customer cancels the contract, the Company reserves the right to retain part or all of the Customer's 30 per cent payment as a contribution to cover the Company's lost expenses and handling charges.

Statutory Warranties Regarding Samples

Original term

Some cut pile carpets may exhibit an appearance change of random light and dark areas after installation. This is known as shading, tracking, pile reversal or watermarking and is caused by movement of the carpet fibres in different directions as the result of normal use. The Customer acknowledges that this does not indicate the floor coverings are defective.

Whilst manufacturers make every effort to match dye lots, the Customer acknowledges that colour shades may vary from the samples shown.

Revised term

Pile reversal is a characteristic of appearance which has no detrimental effect on the durability or life of the carpet. Pile reversal is not a manufacturing defect and neither the manufacturer nor the Company can accept claims on carpet which may be affected by pile reversal, except in extreme cases of pile reversal where the manufacturer deems the carpet to be defective.

The goods come with warranties under State and Commonwealth consumer protection legislation. For instance, where goods are supplied by sample the following statutory warranties are implied:

- (a) that the bulk of supply will correspond in quality
- (b) that the Customer will have a reasonable opportunity to compare the bulk with the sample
- (c) that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable inspection of the sample.

Event ticketing

CAV worked with the Melbourne 2007 Corporation to ensure the ticket conditions for the 12th FINA World Championships were fair. Prior to Consumer Affairs Victoria's intervention, the conditions drafted by the Melbourne 2007 Corporation allowed it to change the time, date, or venue of a session after the ticket was purchased.

Corporation conditions also stated that consumers could only obtain a refund if:

- the ticket was for a session which was cancelled and not rescheduled
- the entire championships were cancelled, or
- they were entitled to a refund 'by operation of the law' – a legal phrase that was not explicit about the conditions under which a refund might be made.

The changes made after discussion with CAV meant that consumers could obtain a refund if:

- there was a change to a session date or venue
- the start time was changed by more than two hours from the time advertised when the ticket was purchased
- there was a substantial change in the events included in a session, or
- after a session had started, it was cancelled for reasons within the Corporation's reasonable control.

A number of other changes were also made to the attendance conditions, including narrowing of terms which sought broad exclusions of liability.

Sharing Expertise Interstate

CAV provided assistance to an enquiry into unfair contract terms conducted by the Standing Committee on Law and Justice of the Legislative Council in New South Wales. The Committee recommended the amendment of the New South Wales *Fair Trading Act 1987* to incorporate unfair contract terms provisions modelled on Victoria's equivalent.

Policy Developments

In September 2006 the Victorian Government announced a comprehensive response to the *Report of the Consumer Credit Review*, including bringing all consumer credit contracts within the ambit of Part 2B of the Fair Trading Act (containing the provisions which make unfair contract terms void).

CAV has begun work on regulations to extend Part 2B to vendor terms contracts. A consultation paper proposing the process and priorities CAV will adopt over the next 12 months (before the legislation is applied broadly to consumer credit contract terms) has been published and distributed. This will ensure that industry has adequate lead time and sufficient guidance to amend contracts (where necessary) before the extension of Part 2B to consumer credit contracts takes effect.



CAV uses the powers conferred by the Fair Trading Act to enforce the provisions outlawing misleading and deceptive conduct.



Feature: Misleading and Deceptive Conduct

The Fair Trading Act prohibits trader conduct that is misleading and deceptive. In appropriate circumstances CAV prosecutes traders that deliberately make false representations.

Enforcing the Law

CAV uses the powers conferred by the Fair Trading Act to enforce the provisions outlawing misleading and deceptive conduct. The following are examples of enforcement outcomes obtained during 2006–07.

Aquiess Pty Ltd

In early 2006, Consumer Affairs Victoria received a written complaint alleging that misleading representations were being made by Aquiess on its website at www.aquiess.com.

Aquiess was making various references to the Bureau of Meteorology (BOM), the Country Fire Authority (CFA) and the Department of Sustainability and Environment (DSE) in order to promote 'weather modification services'. Specifically, Consumer Affairs Victoria noted that Aquiess made claims that BOM was the 'certifying authority' for 'official total rainfall figures', and that 'the Aquiess team offers weather stabilisation and fire incident weather downgrade support to the CFA and DSE operations in Victoria'.

After investigation, CAV became concerned that references to the BOM, the CFA and DSE on the website might mislead vulnerable farmers subject to drought conditions into believing that Aquiess and its technology had a sponsorship, approval or affiliation that they do not have.

In October 2006, Aquiess Pty Ltd gave an undertaking to the Director of Consumer Affairs Victoria to amend its advertising, including the contents of its website. Aquiess undertook to remove from its website references to Aquiess' support or offer of support to DSE or the CFA until such time as DSE or the CFA accept a support or an offer to support from Aquiess. The company also undertook to cease engaging in misleading or deceptive conduct, and making false representations in relation to goods and services.

Computer Wholesale Games and Christian Kalos

Between July and October 2005, Consumer Affairs Victoria received 30 complaints alleging non supply of Playstation 2, Xbox and Gameboy Advance consoles and games ordered at websites promoted by Mr Christian Kalos (also known as Christopher Tsakalos).

To attract customers, Mr Kalos is believed to have claimed to be the cheapest seller on online auction site eBay, promising even better prices if consumers purchased directly from his websites.

Neither the Victorian company name nor the registered business name displayed on the site had any connection to Mr Kalos.

Consumers who ordered goods said they were provided with order numbers and purported proof of postage of the goods, and were directed to deposit payment into a bank account in the name of Computer Wholesale Games, which Mr Kalos registered as a business name in New South Wales.

After investigation, CAV instituted action against Mr Kalos in the Melbourne Magistrates' Court, seeking injunctions preventing him from continuing to accept payment for goods not delivered.

In June 2006 the Court granted an interim injunction and at the final determination in August, found that Mr Kalos had contravened section 19 of the Fair Trading Act by accepting payment without being able to supply the computer gaming hardware and software he advertised on several websites. The Court ordered Mr Kalos to cease demanding or accepting payment for goods until he actually supplies those goods.

Mr Kalos was also ordered to refund four Victorian plaintiffs a total of almost \$1,500, pay more than \$3,000 in costs, and publish a notice outlining the results of the proceedings on his websites.

The decision reinforced that consumer protection laws apply to online store transactions in the same way that they do to in-store personal shopping.

The Director also issued a public warning statement, published on CAV's website and announced to the media.

Publications and online resources

Preventing misleading and deceptive conduct in trade or commerce – an Australian standard on commercial behaviour: guidelines on the false, misleading and deceptive conduct provisions of the Fair Trading Act 1999.

Car parks

Over the last year, CAV received a high volume of enquiries about Australian National Car Parks Pty Ltd (ANCP) in 2006–07, following substantial media coverage about the company allegedly ‘fining’ people for failing to display valid tickets while their vehicles were in ANCP-operated car parks.

CAV received a number of complaints from consumers who received demands for payment of \$88 (\$66 if paid within the required time) for not displaying tickets or for overstaying prescribed parking periods (usually three hours) in private car parks operated by ANCP. A number of complaints took issue with the apparent speed with which demand notices were placed on vehicles.

These complaints are similar to those received in previous years about car parks operated by Care Park Pty Ltd, and appear to arise because the car parks, often situated next to supermarkets and shopping centres, do not have barriers that prevent entry without obtaining a ticket. Consumers are required to notice a sign directing them to obtain a ticket from a vending machine after parking their cars. CAV does not receive the same high level or type of complaints about car parks that require consumers to obtain tickets prior to entry. Installation of barriers would, in CAV’s view, eliminate the cause of the complaints.

This year CAV has worked with ANCP and has required them to display their signs more prominently, use simpler language in the signs, and remove unfair exclusions of liability.

The changes negotiated by CAV clarify for consumers that these demands for payment are not fines or parking infringement notices but demands for liquidated damages arising from alleged breaches of contract. The changes further clarify that it is the person who parked the car in the car park, rather than the owner of the car, who is liable to pay. This is because the liability stems from alleged breach of contract, and the contract is between the person parking the car and the car park operator.

CAV is continuing its investigations in this area.

VCEC inquiry into food regulation

A key activity relating to the prevention of misleading and deceptive conduct in 2006–07 was a submission to the Victorian Competition and Efficiency Commission (VCEC) inquiry into food regulation in Victoria, announced in September 2006.

The submission highlighted the increased focus on the impacts of food and/or food production on health, the environment, animal welfare, social cohesion and many other areas of interest to consumers, and the difficulty consumers experience in evaluating and verifying related claims made by traders about particular food products.

The submission pointed to the opportunity for unscrupulous traders to exploit this situation, and noted the availability of provisions in the Fair Trading Act relating to misleading and deceptive conduct.

The need for a well-resourced program of enforcement of these and other provisions to deter dishonest traders and assure Victorians that such conduct will be detected and acted upon was emphasised in the submission.

The submission proposed that CAV assume responsibility for enforcement of claims about food, other than those related to its immediate safety from contamination – the responsibility of the Department of Human Services.

The importance of ongoing investment in scientific research and education programs was also stressed.

In April 2007, VCEC released a draft report in which Consumer Affairs Victoria's submission was well represented, quoted and analysed.

The VCEC report recommended (among other things) that:

- the memorandum of understanding concerning food regulation between CAV, the Department of Human Services and the Department of Primary Industries be updated to clarify responsibilities and required outcomes, and make provision for reporting on performance and addressing poor performance
- CAV develop new protocols to help local government enforce the provisions of the *Food Act 1984 (Vic)* relating to misleading and deceptive conduct, and
- the memorandum of understanding between CAV and the Australian Competition and Consumer Commission relating to misleading and deceptive conduct be updated, in particular regarding communication and enforcement protocols.

Consumer Affairs Victoria provided VCEC with a second submission in June 2007. This sought primarily to re-emphasise the importance of flourishing and efficient markets as another objective of food regulation, in addition to food safety. The second submission re-emphasised that CAV already has responsibility for misleading and deceptive conduct through the Fair Trading Act and that also giving this responsibility to administrators of the Food Act could weaken the existing accountabilities.

Advantages of appointing CAV as the lead agency in addressing misleading and deceptive conduct in relation to food include consistency of approach across industries and locations, and CAV's experience in enforcement in this area.

VCEC's final report is due to be released in September 2007, after which a whole of Government response to the report will be drafted and released.

Unconscionable Conduct

In dealing with purchasers, particularly those who are vulnerable or disadvantaged, some traders resort to conduct that is unconscionable or unfair, such as using aggressive selling tactics or taking advantage of a purchaser's lack of bargaining power, or, generally, of the purchaser's ignorance. Conduct can be unconscionable without there having been any misleading or deceptive conduct. The Fair Trading Act, reflecting the Trade Practices Act, prohibits three types of unconscionable conduct: unconscionable conduct as understood by the unwritten law (which applies to consumer and business transactions), statutory unconscionable conduct in the context of consumer transactions, and statutory unconscionable conduct in the context of small business transactions to the value of less than \$3 million. The statutory prohibitions against unlawful conduct extend the application of the unwritten law, which requires that the purchaser (in order to obtain legal redress) must suffer from a special disadvantage, of which the supplier has taken advantage. There is no such requirement in the legislation.

Publications and online resources

Preventing unconscionable conduct in trade or commerce against consumers or small businesses: guidelines on the unconscionable conduct provisions of the Fair Trading Act 1999

Real estate tort

In 2004–05, the Director of CAV brought Magistrates' Court proceedings against Astvilla Pty Ltd, Perna Pty Ltd and Livio Cellante, an officer of both companies (together referred to as 'the Cellante group'). The proceedings related to the sale of a rural property to a first home buyer in vulnerable circumstances.

The Court found that the Cellante group had behaved misleadingly, deceptively and unconscionably in its dealings with the consumer, and ordered payment of damages as well as granting injunctions restraining the group from repeating such conduct in the future.

The matter was appealed to the Supreme Court and in August 2006 the Court confirmed the Magistrate's decision.

The Supreme Court noted that the buyer was a single mother on a sole parent's pension, who had never purchased a home before, had very limited financial resources, and had no knowledge of house prices generally, or in the regional area to which the defendants had deliberately enticed her.

The Court found that the defendants had purposefully arranged to meet the buyer on a Sunday so that she would not have access to other estate agents or other relevant sources of information, and created a climate of urgency to induce her to contract to buy the property without making further enquiries.

Further, the Court held, the defendants concealed from the buyer that they were still in the process of purchasing the property at the time they offered it to her for sale, and were paying less than half the amount they were asking from her.

The Cellante group made application for leave to appeal to the Court of Appeal, which was postponed pending the outcome of a High Court appeal in another matter, *Houghton and another v Arms*.

This appeal brought before the Court an issue which was the basis of the principal ground of appeal put forward by the Cellante group, namely whether company employees can be held personally liable for their misleading and deceptive conduct, in trade or commerce, within the scope of their normal duties for a company.

The Director was granted leave to intervene and make submissions to the High Court in this case, in support of the Full Federal Court's decisions on this view of employee liability. In December 2006, the High Court decided the issue in the affirmative.

The Cellante group nonetheless proceeded with their application for leave to appeal, which was in the main dismissed. This in effect confirmed the Magistrates' Court award to the home buyer, Kellie Brown, in the amount of approximately \$45,000 including interest.

The Court of Appeal did allow the Cellante group's challenge to the scope of the injunction granted by the Magistrates' Court, and set it aside. The Cellante group was ordered to pay 90 per cent of the Director's costs of the proceedings in the Court of Appeal.

This matter was a significant test case, being the first case that was argued on the basis of the unconscionable conduct provisions of the Fair Trading Act.



Kellie Brown and family celebrate the decision of the Court of Appeal.

Acknowledgement: The Herald and Weekly Times Photographic Collection.



This matter was a significant test case, being the first case that was argued on the basis of the unconscionable conduct provisions of the Fair Trading Act.



Feature: Scams

During 2006–07, Victorian consumers continued to be the target of mass-marketed scams over the phone, via email, and in the post. The vast majority of scams reaching Victorians are sent from overseas. Most of these scams are not new – they are just old tricks dressed up with new names or stories, attempting to appeal to people’s desires, vanity, desperation, fears, greed and vulnerabilities.

Some online scams have the potential to do a lot of damage very quickly, particularly among consumers who are unfamiliar with technology or who do not take the necessary precautions online.

Dob-in-a-scam

Dob-in-a-Scam is a quick, easy-to-use online service that allows Victorians to alert CAV when there is a new scam in the marketplace.

In 2006–07, CAV received 1,245 contacts via Dob-in-a-Scam, relating to:

- phone/fax-back scams
- itinerant traders
- lottery and employment scams
- advanced fee fraud, and
- unauthorised advertising.

Publications and online resources

Blowers

Itinerant traders

Online scams

Pyramid selling

Scams

Multicultural audiences

Itinerant traders (Chinese)

Scams (Chinese)

National Co-operation

In March 2007, Consumer Affairs Victoria took part in a month-long scams awareness campaign. The annual campaign is run by the Australasian Consumer Fraud Taskforce, which is composed of 18 government regulatory agencies and departments which deal with consumer protection in relation to frauds and scams. Consumer Affairs Victoria is the Victorian Government representative on the Taskforce.

In 2007, the campaign focused on informing consumers about proactive steps they could take to prevent themselves falling victim to scammers. Each week of the campaign featured a theme – Protect your money, Protect your phone, Protect your computer and Protect your identity. Each week Consumer Affairs Victoria provided simple three-step messages to consumers giving useful advice on how to protect against scammers.

The messages were delivered in media releases, on the Consumer Affairs Victoria website, and direct to consumers (via mail-outs and publication displays in CAV regional offices and the Victorian Consumer & Business Centre).

The campaign and scams stories were in the media throughout March.

Scams Awareness Month received extensive Victorian media coverage in 2007, including 47 print media items and 17 radio spots. Consumer Affairs Victoria distributed 138,750 scams awareness flyers into the community, many of which were sent out through a partnership with Neighbourhood Watch Victoria.

The Australasian Consumer Fraud Taskforce agencies have now agreed to work together towards a new campaign for 2008.

Also during 2007–08, Consumer Affairs Victoria will co-fund national research into the prevalence of scams in Australia. The aim of the research is to determine, for the first time, the size and nature of the overall problem, and who is falling for scams. In this way, a more targeted and effective approach to consumer education can be developed. All of the agencies on the Australasian Consumer Fraud Taskforce are contributing towards this national research. This research will add to the evidence CAV obtained last year in its consumer detriment survey.

Email phishing scam

Phishing describes scams that attempt to gain access to victims’ financial records. One variation on the theme prevalent in 2006–07 was the use of spam emails ‘confirming’ an expensive credit card transaction, and containing a ‘Cancel Transaction’ link.

The link goes to a website where the credit card details must be keyed in, ostensibly to cancel the transaction.

People receiving the email are naturally concerned that their credit card details may have been stolen, and in order to prevent incorrect transactions going through on their credit card they type in their details on the cancellation page supplied.

Fraudsters thus obtain the credit card details of those who fall for the scam, and withdraw any available funds.



The consumer credit market in Victoria has grown significantly over the last 10 years. Credit makes a major contribution to the State's economy and the welfare of individual Victorians.

market in Victoria has grown significantly over the last 10 years. Credit makes a major contribution to the State's economy and the welfare of individual Victorians.



Credit and Debt

Achievements

- Consumer Credit Review options endorsed by Government
- No Interest Loans program expanded by \$7 million
- Financial counselling standards released
- Landmark research on small amount cash lending
- Landmark research on conciliation of credit disputes
- Serious Credit Code breach found by Court of Appeal
- Improvements to the national Consumer Credit Code
- Enhanced Victorian credit provider registration scheme in development
- Universal access to external dispute resolution in development
- Thousands of credit telephone enquiries answered



If the credit market does not operate efficiently consumers, especially those who are vulnerable and disadvantaged, can suffer serious harm.

Research commissioned by CAV indicates that in any given year as many as 1.3 million Victorians across the economic spectrum experience at least one episode of financial stress. Victorians entered into 1,781 debt agreements during the year, a 60 per cent increase over 2005–06. The number of home repossessions being pursued through the Supreme Court of Victoria has tripled in the last four years, and the incidence of low-doc loan arrears and bankruptcies continues to rise. At June 2007, credit cards in Victoria carried an average of \$3,014 of debt.

Consumers looking for small amount cash loans who cannot access mainstream credit may turn to the fringe lending market. Here they frequently encounter excessive credit costs and unfair contract terms, predatory lenders and exploitative lending practices. Research commissioned by CAV suggests that payday loans cost consumers an average of \$46 for every \$100 borrowed, while complaints to CAV have pointed to establishment fees of up to 100 per cent of the total amount borrowed.

These are all indications of market failures in some areas of the consumer credit market in Victoria. As a result, CAV is actively involved in this area of consumer protection.

Services for Consumers

Information and advice

A specialist credit and debt enquiries team respond to consumer queries relating to credit and debt. During 2006–07, the team dealt with more than 8,000 calls relating to credit and debt (up from around 5,000 last year). Team members are able to draw on an extensive array of information and accumulated expertise to assist consumers. Where necessary, callers with urgent problems (such as possible repossession action) can be referred directly to CAV's dispute resolution service. Another aspect of the enquiries service is that it can examine documentation from the consumer to help ensure the advice is as accurate and targeted as possible.

Dispute resolution

CAV also offers a specialist credit and debt dispute resolution service. The needs of vulnerable and disadvantaged consumers are prioritised in this area, with officers able to provide assistance on an urgent basis for problems such as imminent repossessions.

Credit provider plays fair

A consumer had purchased a laptop computer priced at \$2,662.75 on a rental contract over a fixed term of three years. After three days the consumer approached the finance company, wanting to pay out the rental contract. The company offered the consumer the options of paying \$2,915 towards the rental contract and returning the laptop, or paying \$4,212 to cancel the rental contract and keep the laptop. The consumer complained to CAV.

CAV viewed the payout figure as excessive and unfair, and contacted the credit provider. The company informed CAV that the rental contract did not allow for early cancellation. CAV was concerned that contract terms requiring such a high amount for early cancellation could be considered unfair and in contravention of the Fair Trading Act.

The credit provider then proposed that the consumer pay the full price to the retailer and that the credit provider cancel the contract on receipt of confirmation of payment from the retailer. Both parties agreed to these terms.

Mortgage broker pulled up

A consumer signed an application for a mortgage loan at 7.67 per cent interest, and paid \$660 in application fees. The consumer received a loan offer stating the annual interest rate at 8.02 per cent, and refused to proceed with the loan on the basis that this was not the rate agreed by the parties. The mortgage company then issued the consumer with an account for administrative fees and brokerage charges of \$5,992.80 (in addition to the application fees already paid) for cancelling the agreement, and demanded payment. At this point the consumer contacted CAV.

CAV pointed out to the company that they were in breach of section 37M of the *Consumer Credit (Victoria) Act 1995*, which carries a penalty for accepting valuation or application fees in cash. The company argued that they had incurred legal costs, valuation fees and other administrative costs in preparing the loan documents and that they were entitled to recover these costs.

CAV pointed out that the consumer had cancelled the transaction (rightfully, as the offer did not match the original agreement) and that by law a broker cannot charge any fees unless the client has accepted the offer. CAV also pointed out that the company was exposing itself to the possibility of prosecution and imposition of a penalty, and warned that in future the company should not accept any third party fees in cash. Payments for valuation or credit application should only be by cheque or money order and paid to the party providing the service, not to the broker.

The company agreed to withdraw the demand for payment and to refund the consumer the \$660 already paid.

Lender and consumer duped

A consumer entered into a contract to buy a block of land and build a house for her disabled son. The consumer (who did not read or write English) was assisted by her ex-husband and his friend, a finance broker, to apply for a mortgage. The consumer's ex-husband was the director of the company which sold the land and house packages. (The company subsequently went into liquidation). At the time the loans were approved, the consumer was only working part time and had been diagnosed with a terminal illness, and had disclosed both these facts to the bank manager. Nonetheless, she was granted loans from a major Australian bank to the value of \$471,204.

CAV formed the opinion that, at the least, the bank had been negligent in approving the loans without following due process regarding the consumer's capacity to service the loans.

In a meeting with senior representatives of the bank it was agreed by all present that the consumer had been a victim of the finance broker and her ex-husband, who had conspired to obtain funds by deception.

The bank agreed to write off \$354,204 of the loans and write a new mortgage agreement for \$87,000, refinancing the consumer's existing mortgage. The consumer agreed to sign over the rights to complete the building works and sale of the property to the bank.

The bank agreed to apply the proceeds of sale to payment of the costs incurred by the bank in completing the construction and related expenses, and pay any remaining excess to the consumer.

Banking on old age

An 84 year old consumer was struggling to service her credit card debt and contacted CAV for assistance. Over the years the consumer's bank had encouraged her to increase her credit card limit to \$23,000, and she had accumulated a debt of \$23,543.23. The consumer's only source of income was her pension, and she had several other financial commitments, including mortgage repayments, a personal loan, and rates payments.

The bank had agreed to a hardship payment plan, whereby the consumer was to pay \$40 per month instead of the minimum monthly amount required. That commitment also proved difficult to maintain, the consumer defaulted, and the bank served her with a default notice, threatening legal action for recovery of the debt.

CAV contacted the bank, arguing that the bank had acted irresponsibly in increasing the consumer's credit limit, considering her age and financial circumstances.

The bank agreed to write off \$13,543.23, leaving a balance of \$10,000 which would not accrue any interest, fees or charges for a period of 12 months, during which time the consumer would not be required to make any repayments.

In 12 months' time the bank will request the consumer to fill out a form identifying her financial position. If her situation has not improved the bank may consider writing off the \$10,000.

Maths study programs

CAV received numerous enquiries and complaints in relation to maths learning software programs. Callers and complainants made allegations about poor quality of goods, high-pressure sales tactics and failure to make consumers aware of the total cost of software when they signed up to linked credit contracts. CAV learned that some traders had charged interest rates as high as 24 per cent. These traders tended to sell their products directly, generally through home presentations.

Consumers reported difficulties in cancelling contracts, and some callers claimed they had not received correct documentation as required under the *Fair Trading Act 1999*. It was not clear to CAV whether the 10 day statutory cooling-off period that applies to contact sales was being observed.

CAV has successfully conciliated disputes with some of these traders, and has formally raised the systemic nature of complaints received, with some of the companies. CAV will continue to conciliate disputes, monitor this market and raise concerns about individual traders' business processes with the traders concerned.

Advocacy

The Consumer Action Law Centre (CALC) in Victoria is funded to provide consumers with legal advice and representation, and to undertake research in areas of consumer policy at state, federal and international levels.

Vulnerable and Disadvantaged Consumers

CAV reaches out to vulnerable and disadvantaged community groups to skill them to deal with credit issues specific to those communities. Many of these initiatives are funded from the Consumer Credit Fund, which is the repository of all civil penalties awarded under the Consumer Credit Code. CAV administers the Fund, and advises the Minister (on recommendations of an Advisory Committee) on grants to be made from the Fund within statutory guidelines.

During 2006–07, CAV's Indigenous Consumers Unit worked on developing a student and teacher resource relating to credit and debt, with funding from the Consumer Credit Fund. Focus group consultation has been completed and an Indigenous writer/educator engaged to develop the resource. The resource will be promoted through Koori education networks and could be used in the classroom to raise awareness of particular issues facing young Kooris and their families in relation to credit.

CAV, jointly with Victoria Legal Aid (VLA) is also funding CALC for a period of three years to undertake civil casework and policy research and advocacy.

CAV's funding of CALC will primarily support legal advice and professional development for financial counsellors, advocates and other service providers as well as policy research and advocacy on consumer issues. VLA's funding is primarily for casework.

Key policy areas for CALC are credit regulation, fringe lending, high pressure selling, debt collection, dispute resolution, unfair contract terms, telecommunications, reviews impacting on existing or proposed consumer protection mechanisms, and utilities, including water.

CAV community educators make presentations to older secondary and VCAL students, and seniors groups. The credit and debt modules presented to these groups are varied according to each group's needs. For example, mobile phone contracts are a frequent source of debt among young people, whereas seniors groups are more interested in learning about reverse mortgages and retirement villages.

Financial counselling program

Consumer Affairs Victoria administers the majority of the Government-funded financial counselling in Victoria. This means making more than 100 financial counsellors available to Victorian consumers, taking steps to ensure consistent standards of financial counselling and exploring ways to enable financial counsellors to assist Victorian consumers even before they reach financial crisis.

Consumer Affairs Victoria funds 44 community-based agencies providing counselling services in Victoria as well as the Victorian financial counselling peak body, the Financial and Consumer Rights Council. Financial counselling services aim to provide independent and practical assistance, advocacy, advice and information primarily to people on low incomes in financial difficulty, and improve people's capacity to manage their own financial circumstances more effectively. In this way the counselling services aim to ensure that families and individuals in financial difficulty function more effectively on a sound economic basis and are aware of their rights and options. Another key aspect of working towards this outcome is educating communities about financial issues.

More than 38,000 people were assisted by the program in the 2006–07 year.



Consumer Affairs Victoria administers the majority of the Government-funded financial counselling in Victoria.



Vulnerable consumers benefit from financial counselling services

Debt waived

Mr P, a war veteran with no assets, was on a service pension, and had been severely ill for a number of years.

Despite intervention from a solicitor, he was being harassed for repayment of a \$3,000 debt. This situation was aggravating his health problems.

A financial counsellor contacted the creditor's solicitor and communicated the nature and extent of Mr P's difficulties.

As a result the full amount of the debt was waived, an excellent result for Mr P.

Tax benefit misunderstanding

Mr X and Ms Y, a couple of African origin with four children, applied for a Family Tax Benefit. Ms Y could not speak English. Ms Y was persuaded by Mr X to transfer the Family Tax Benefit to him. The couple's relationship was quite rocky and the couple separated, off and on, over a period of time.

Ms Y received a bill from Centrelink for \$10,000 in relation to overpayment of the Family Tax Benefit and was referred by the local Migrant Resource Centre to a financial counsellor.

The financial counsellor provided details of the couple's periodic separations to Centrelink, and requested a reassessment of the Family Tax Benefit debt.

After months of negotiating Centrelink re-evaluated the payment and Ms Y was extremely happy when the debt was expunged and she received a \$200 refund.

Financial counselling standards project

As reported last year, CAV assumed responsibility for the financial counselling program in 2005–06. Aiming to ensure consistently high levels of service delivery across Victoria, this year CAV developed standards for generalist financial counselling. Stakeholder consultation was an essential part of the project, with a reference group of key stakeholders providing advice on the project and five stakeholder consultation forums held in Melbourne and regional locations in March and April 2007.

Energy hardship training project

Victoria has one of the best energy hardship policies in the country. Energy retailers are required to have processes in place to assist consumers who cannot pay for basic utilities. Some of the options available are waiver of part of the debt, setting up payment plans, and home audits (including making repairs and/or installations) to assist in reduction of energy bills.

In order for those most in need of this support to benefit from the policy, they must be aware it is available. Victorians experiencing the sort of financial stress associated with inability to pay utility bills may contact financial counsellors but also a range of community and welfare agencies. Financial counsellors and the thousands of volunteers staffing agencies need to be able to refer consumers to energy retailers to ensure that they have access to the required relief.

The Victorian Budget has allocated \$600,000 over a two-year period to train financial counsellors in energy retailers' hardship policies.

The project has been extended to include community and welfare agency volunteers as well, thereby ensuring that:

- consumers who opt to contact welfare or community agencies rather than financial counsellors nonetheless receive the appropriate assistance
- consumers not eligible for financial counselling can still be assisted in relation to energy, by referral from emergency relief workers and other associated agencies, and
- funding and charitable donations made to agencies that might otherwise be used to assist in paying utility bills remains free for use for other essentials and emergency purposes.

In partnership with the three major energy retailers in Victoria, other government agencies and a range of community agencies, CAV has developed resource materials and an education program. A trial of the program and resources began in June 2007, preparatory to full implementation.

Credit booklet

CAV has developed a booklet designed to help consumers make informed choices in relation to credit.

Targeting vulnerable and disadvantaged consumers, the booklet, *10 things you should know about credit*, contains advice on how to avoid pitfalls associated with the use of credit.

The booklet, which will be distributed through financial counsellors and other channels, covers the most common problems experienced by callers to CAV's credit advice line.

The booklet describes the varieties of credit that are available to consumers, explains the hazards posed by excessive debt and provides hints on using credit wisely. It also provides advice on how to handle disputes with lenders, deal with debt collectors and seek assistance from CAV and other relevant organisations.

Motor Finance Wizard

CAV has received a number of written complaints against Motor Finance Wizard, a licensed motor car trader which has dealerships in Maidstone and Dandenong. Motor Finance Wizard offers finance for used vehicles described as interest free, to consumers who are unable to access mainstream credit. Customers include pensioners, unemployed people, recently arrived migrants, people with intellectual disabilities, ex-bankrupts and low income consumers who have poor credit ratings and are unable to purchase vehicles from other sources.

The trader's in-house finance provider is Kwik Finance, which is not registered in Victoria as a credit provider. Although it appears that the finance contracts are structured so that there is no interest rate component, vehicles are sold at prices that exceed market value by up to three times.

Complainants allege that the trader uses high pressure sales tactics and that vehicles are unroadworthy and have been sold without the warranties required by law. CAV is also concerned that the way Motor Finance Wizard's credit agreements are structured may bring the agreements outside the protections offered by the Uniform Consumer Credit Code.

Publications and online resources

Borrowing money
Comparison rates decoded
Consultation paper on credit contracts and unfair contract terms
Credit cards
Dealing with credit problems
Debt collection guidelines
Debt collectors – your rights in Victoria
Dispute resolution processes for credit consumers
Finance brokers
Government response to the Report of the Consumer Credit Review
Investment seminars and get rich quick schemes
Know your rights when shopping
Mortgage and finance brokers
Mortgage minimisation
Must I pay?
My credit report
New rules for finance brokering in Victoria
Out of money and in debt?
Pay day lenders and the Consumer Credit Code
Regulating the cost of credit
Report of the Consumer Credit Review
Report on small amount lending in Victoria
Repossession of your goods
Reverse mortgages
10 things you should know about credit **New**
Tied contracts
Using credit
Vendor terms contracts

Indigenous audience
Debt collectors: your rights in Victoria
Using credit

Multicultural audiences
Credit cards (Vietnamese)
Borrowing money (Vietnamese)

Working with Credit Providers

The *Consumer Credit (Victoria) Act 1995* regulates the provision of credit and finance broking in Victoria. The Act applies the Consumer Credit Code in Victoria, which standardises consumer credit law throughout Australia, and sets out credit providers' rights and responsibilities.

People and corporations who provide money to purchase goods, services or land or offer to lease goods (credit providers), as a general rule must be registered under the Act.

People and corporations who negotiate or act as intermediaries to obtain consumer credit for a fee and/or commission (finance brokers, including mortgage brokers) must satisfy eligibility criteria but are not required to be licensed. Persons and corporations disqualified from engaging in finance/mortgage broking must seek permission from the Business Licensing Authority to be able to do so.

Applications lodged 2006–07: 163

Applications processed 2006–07: 163

Total credit providers on register: 950
Up 2.04 per cent

2005-06: 931

2004-05: 887

CAV has an important role in assisting industry to understand and meet its obligations, and to operate without causing detriment.

CAV is beginning to include credit providers and finance brokers in regular compliance monitoring exercises.

During 2006–07, CAV conducted inspections of 38 credit providers and finance brokers in the Geelong region. High levels of documentary compliance were found in general. One credit provider was given advice in relation to the possible misleading content of its advertising material.

Business purpose declarations

CAV remains concerned at the continued use of standard form documentation used in obtaining consumer credit, containing business purpose declarations.

The effect of such declarations is to put in doubt the jurisdiction of the Uniform Consumer Credit Code.

Often, consumers are unaware of the presence of business purpose declarations in the documents they fill out as part of their applications for credit. Where consumers are aware of such declarations, many do not appreciate the effect of these clauses on the operation of the Code.

CAV believes that continuing consumer education is required to alert consumers to the potential of such declarations to rob them of the protection otherwise afforded to them under the Code.

Enforcing the Law

Major credit litigation begun in previous financial years continued in 2006–07.

Geeveekay Pty Ltd

As reported last year, Consumer Affairs Victoria's previously instituted civil proceedings against Geeveekay Pty Ltd and Geoffrey and Veronica Keogh (trading as Great Australian Dream Providers) were the subject of various preliminary determinations by the Victorian Civil and Administrative Tribunal (VCAT) in the first half of 2006. The respondents entered into a total of 46 allegedly non compliant vendor terms contracts with consumers. The Director is seeking (among other things) declarations that key disclosure requirements under the Consumer Credit Code have been breached, and the imposition of civil penalties against the respondents.

As previously reported, the respondents' formal challenge to VCAT's jurisdiction over the contracts led to VCAT deciding in 2006 (consistent with the Director's submissions) that the respondents did provide credit within the meaning of the Code in respect of all 46 contracts and that the fact that the transactions were terms contracts as defined in the *Sale of Land Act 1962* did not rule out the possibility of Code regulation. The respondents appealed VCAT's decision to the Supreme Court of Victoria and at time of writing the appeal was part heard. The hearing was adjourned to recommence on 31 July 2007. Subject to the outcome of the appeal the matter in its entirety, including the credit providers' liability to pay civil penalties, will revert to VCAT for determination.

Australian Finance Direct

In November 2006, the Court of Appeal delivered judgment in proceedings brought by the Director of CAV against Australian Finance Direct (AFD). The decision was the culmination of work begun in 2003, when Victoria became the first State to take action against AFD.

The proceedings related to a holdback amount retained by AFD when it provided finance to people wishing to attend Henry Kaye seminars run through the National Investment Institute Pty Ltd (NII). AFD did not disclose to people entering into finance contracts with the company that AFD would retain part of the money loaned, by agreement with NII.

CAV initiated the proceedings in VCAT alleging that AFD's credit contracts breached four key requirements under the Consumer Credit Code relating to the disclosure of amounts financed and interest charges. CAV successfully sought declarations against AFD. In 2006, the Supreme Court (to which AFD had appealed) confirmed VCAT's decision in relation to the failure to disclose the holdback fee, but not in relation to the disclosure of interest.

AFD appealed against the former, and the Director cross-appealed. The Court of Appeal found that the failure to disclose the holdback fee was in breach of the Code.

AFD was granted special leave to appeal the decision of the Court of Appeal to the High Court. At time of writing the case had been argued and a decision was pending.

Regulatory Review

A major focus in 2006–07 was completing the extensive review of credit regulation at state and national levels, launched in 2005. During the past financial year, the review was completed and implementation has begun. The *Government Response to the Report of the Consumer Credit Review* was announced by the Minister for Consumer Affairs on 28 September 2006, and supported almost all of the recommendations in the report, either wholly or in principle. Significant strides have been taken in the implementation of the Response, including:

- allocation of \$4.71 million in the 2006–07 State Budget for the administration of a No Interest Loan Scheme (NILS) in Victoria over the next four years, which will mean access to affordable credit for many thousands of vulnerable and disadvantaged Victorians right across the State. The Government funding has been matched by funding from the National Australia Bank in excess of \$3 million over the same period as loan capital for NILS, and as at December 2006 over \$1 million had been earmarked for accredited NILS providers, including some new providers
- continued work on national and Victorian legislative changes recommended by the review and supported in the Government response, including extending the application of various powers available to CAV under the Fair Trading Act (relating to injunctions, enforceable undertakings and adverse publicity orders) to breaches of the Consumer Credit Code
- management of a credit advertising research project
- preparation for a summit on affordable credit, and
- a submission to the Australian Law Reform Commission on credit reporting.

The Consumer Credit (Victoria) (Administration) Regulations, remade in 2005–06, commenced on 1 August 2006. The Regulations relate to administrative matters concerning court and VCAT proceedings, and registration of credit providers, under the *Consumer Credit (Victoria) Act 1995*.

National Work

Victoria chairs the Uniform Consumer Credit Code Management Committee (UCCCMC), a national body which advises the Standing Committee of Officials of Consumer Affairs (SCOCA). During the year UCCCMC:

- has overseen new laws governing the use by credit providers of electronic communications in connection with credit
- sought out a research organisation to undertake consumer testing of proposed refinements to the scheme of pre-contractual disclosure
- completed an exposure draft Bill addressing a range of problems experienced by consumers in the fringe lending market
- completed work on amendments to clarify the application of the Code to vendor finance contracts
- carried out follow-up work from the independent review of comparison rates
- convened a special two-day SCOCA roundtable focusing exclusively on consumer credit policy issues, and
- contributed to public discussion and debate on current and emerging credit issues such as reverse mortgages.

Personal property securities reform

Loans to individuals and businesses are often secured by security interests in personal property (that is, property other than real estate) owned by borrowers. Currently there are more than 70 Acts governing personal property securities in Australia, administered by a range of government departments and agencies at both federal and state/territory levels. This complexity and fragmentation has created high transaction and compliance costs and legal uncertainty. If lenders are discouraged from accepting personal property as security for loans this may adversely affect consumers' ability to access credit.

During 2006–07, the Standing Committee of Attorneys-General (SCAG) decided, at the suggestion of the Australian Attorney-General, the Hon Philip Ruddock MP, to review the law on personal property securities.

Consumer Affairs Victoria is represented on the working group convened by SCAG to progress reform in this area, with the objective of establishing a single online electronic register of securities in personal property throughout Australia and a consistent legal framework providing a simpler and more secure system for security interests.

CAV officers (along with officers of the New South Wales Office of Fair Trading) also represent the Ministerial Council on Consumer Affairs (MCCA) at the Personal Property Securities Review Consultative Group, established by the Commonwealth Attorney-General.



Consumer Affairs Victoria will work with mainstream credit providers to identify the barriers to, and encourage greater involvement in, the provision of affordable credit.



During the year CAV officers attended meetings of these two groups, made regular reports to MCCA, consulted with government, industry and consumer group stakeholders on issues and discussion papers, and made submissions to the papers, as well as contributing to the preparation of a business case for the online register.

The Council of Australian Governments has approved in principle the establishment of a national system for registration of personal property securities by 2009, administered by the Commonwealth, subject to further consideration of financial arrangements.

Comparison rates

The Consumer Credit Code requires lenders and others involved in the provision of credit (such as brokers) to give consumers specified comparison rate information. Comparison rates are calculated according to a statutory formula. Their chief purpose is to give consumers a more accurate understanding of the cost of a loan and, just as importantly, to allow consumers to compare loans more easily.

The comparison rate does this by taking into account the fees and charges associated with a loan as well as the interest. The comparison rate is expressed as a percentage, so it looks like a special form of interest rate, but of course it is labelled as a comparison rate.

When lenders advertise consumer credit and wish to quote their interest rate, they must also quote the comparison rate. When merchants offer credit access to consumers and advertise a dollar repayment figure per month or per week, such as a car dealership, then once again they have to quote a comparison rate.

Further, lenders and brokers must make available to consumers a comparison rate schedule, which gives information about the comparison rate that applies to a specific range of loan amounts (and terms) offered by the lender. The idea is that the consumer can use schedules supplied by other lenders to make cost comparisons.

The comparison rate scheme was originally introduced for a three-year period, but has been extended until mid 2009 to allow time to consider whether it should become a permanent protection and if so, in what form.

There is no doubt that in its current form the comparison rate scheme has not been as successful as hoped. There are a range of problems including lack of consumer awareness and understanding, failure of the comparison rate to take into account major fees like deferred establishment fees and exit fees, and differing compliance levels among lenders.

Consumer Affairs Victoria has been leading a national project to determine the future of comparison rates. There has been an independent review and in addition, the scheme was discussed at a special roundtable meeting of SCOCA held in February 2007, which led to the establishment of a national taskforce led by Victoria. The ultimate goal is to determine whether comparison rates can be streamlined and made to work more efficiently, or whether this form of regulation should simply be abandoned.

Regulating the price of credit

The high cost of small amount credit (interest rates combined with high fees and charges) offered by small amount lenders has led to regulators and community advocates expressing concern with the fact that low income and vulnerable consumers pay more for credit than those who have access to mainstream credit.

In February 2007, heads of government consumer agencies from around Australia met in Melbourne to discuss problems associated with small amount lending including regulating the price of credit.

Given the demand for small amount lending, and the fact that many consumers use this option effectively, regulating small amount lenders out of the market through the imposition of caps on interest rates, fees and charges does not seem to be a proper response.

Consumer Affairs Victoria is working with the Ministerial Council on Consumer Affairs to:

- determine the best response to the impact of very high fees and charges
- improve the targeting of compliance and enforcement, and
- make the remedies for addressing breaches of the law more effective and flexible.

Consumer Affairs Victoria will work with mainstream credit providers to identify the barriers to, and encourage greater involvement in, the provision of affordable credit.



Having access to safe and accommodation is one Most Victorians, at some will rely on the rental accommodation.

affordable residential of life's basic necessities. stage of their lives, market for long-term



Accommodation

Achievements

- Developed a residential accommodation issues paper
- Established a dedicated team to handle residential accommodation disputes
- Developed and distributed educational materials to assist rooming-house residents to know and understand their legal rights and responsibilities
- Commenced presentation of seminars to private landlords on rights and responsibilities
- Initiated research into the nature and extent of underquoting in the real estate market
- Continued focused program of prosecution of unregistered builders and builders who flout the law





The strategy will also be designed to ensure that residents of mobile homes and caravan parks are protected by appropriate residential tenancy laws.



Feature: Co-operating to Address Vulnerable Consumers' Residential Accommodation Needs

New tenancy types and changes in the availability and nature of residential accommodation are factors which have prompted the Government to investigate enhancing existing protection for tenants, including residents of rooming houses, caravans, residential parks and student housing.

As part of the policy commitment outlined in the Victorian Government's *Addressing Disadvantage – Investing in a Fairer Victoria* policy, CAV in consultation with the Office of Housing is developing a Residential Accommodation Strategy.

The strategy aims to:

- improve the regulation of rooming houses, including strengthening and standardising legislation
- improve co-ordination and compliance activities under the *Residential Tenancies Act 1997* and the *Health Act 1958*, and
- develop targeted information for residents regarding their rights and avenues for assistance.

The strategy will also be designed to ensure that residents of mobile homes and caravan parks are protected by appropriate residential tenancy laws.

To further these policy commitments Consumer Affairs Victoria has developed a *Residential accommodation issues paper* to be released for consultation with the residential accommodation sector in early 2007–08. The paper is the first in a series of consultations that will help the Government to identify potential improvements in the residential accommodation framework and allow CAV to set priority areas in the administration of the law.

The paper canvasses, and raises questions for consideration in relation to:

- the existing regulatory framework
- rooming houses
- caravan parks, residential parks and rental villages
- student accommodation, and
- other issues.

Consultation and development of the strategy will continue into the coming financial year.



In many parts of Victoria demand for rental accommodation is rising, implying increased competition between potential renters for available properties.



Renting

In many parts of Victoria demand for rental accommodation is rising, implying increased competition between potential renters for available properties.

During the year, a high demand and restricted supply in the Melbourne metropolitan and some regional rental markets resulted in the onset of rental bidding for sought-after properties. The issue received a lot of media attention. CAV welcomed the action of The Real Estate Institute of Victoria (REIV) in issuing guidelines regarding residential rental bidding in response to this issue.

CAV is continuing to monitor this market to ensure that the advertising, application and selection process is fair and transparent for consumers, and that agents are not engaging in misleading or deceptive conduct in setting rents.

Consumer detriment in relation to tenancy and accommodation accounts for 6.1 per cent of the estimated \$3.5 billion lost by consumers through consumer disputes in the 12 months to March 2006 (as reported in *Consumer detriment in Victoria: a survey of its nature, costs and implications*). Consumer problems in relation to tenancy are some of the most expensive encountered in Victoria (third only to losses relating to building and renovating, and buying and selling a home).

Services for consumers

Information and advice

CAV operates a telephone enquiry service for tenants and landlords, and in the past financial year answered more than 98,000 calls, up by over 4,000 from the previous year.

This service can assist callers with general advice regarding tenancy matters such as:

- beginning a tenancy – the tenancy agreement, bond and condition report
- during a tenancy – rent and rent increases, repairs, rights of entry, duties of landlords and tenants, utility charges and sub-letting
- ending a tenancy – giving a tenant notice to vacate, giving the landlord notice of intention to vacate, possession orders, bond disputes and goods left behind.

Dispute resolution

In June 2006, CAV established a dedicated team to handle complaints relating to residential accommodation.

Existing tenancy inspection services and conciliators were incorporated into the team, which also has responsibility for many types of disputes previously not conciliated by CAV.

CAV is in the process of developing a conciliation code of conduct for parties to residential accommodation disputes to ensure clarity on the role of conciliators and help manage expectations. In addition, relationships are being developed in many areas of the industries concerned, including the REIV, the Housing for the Aged Action Group (HAAG), Residents of Retirement Villages Victoria (RRVV), the Tenants Union of Victoria (TUV) and a number of individual operators and property managers, estate agents and other workers in these fields.

Educating tenants

Renting a home: a guide for tenants and landlords is a CAV publication which outlines tenants', landlords' and agents' rights and obligations under Victoria's residential tenancy laws.

In terms of the *Residential Tenancies Act 1997* it is mandatory for landlords and agents to provide new tenants with a copy of the guide on or before the date of occupation.

The guide covers:

- tips for tenants, landlords and agents to protect their rights
- the tenancy agreement
- charges such as deposits, utilities, the bond and rent
- condition reports
- rights and responsibilities regarding the condition, cleanliness, maintenance and repair of the premises
- conditions on landlords or agents entering the premises
- rights and responsibilities in ending the tenancy, and
- dispute resolution processes.

Community educators delivered presentations in regional and metropolitan locations across Victoria to schools, English as a Second Language classes and community organisations to raise tenants' rights and responsibilities under the Residential Tenancies Act. During 2006-07, CAV delivered nearly 60 of these presentations reaching over 1,780 people.

Publications and online resources

Before you decide to rent
Ending a tenancy
Inspections for tenants
Moving house
New country – new home: renting a home in Victoria – a guide for landlords and estate agents
New country – new home: renting a home in Victoria – a guide for newly arrived migrants
Paying the rent
Privacy and access
Rental bonds
Renting a home: a guide for tenants and landlords
Repairs and maintenance
Resolving tenancy problems
Share houses
Uncollected goods

Indigenous audience

Renting a home

Multicultural audiences

Before you decide to rent (Arabic, Chinese, Vietnamese)
Ending a tenancy (Arabic, Chinese, Vietnamese)
Inspections for tenants (Arabic, Chinese, Vietnamese)
Moving house (Vietnamese)
New country – new home: renting a home in Victoria – a guide for landlords and estate agents (Chinese, Greek, Vietnamese)
New country – new home: renting a home in Victoria – a guide for newly arrived migrants (Amharic, Arabic, Burmese, Cambodian, Chinese, Dari, Oromo, Persian, Somali, Tamil, Tigrigna, Turkish, Vietnamese)
Paying the rent (Arabic, Chinese, Vietnamese)
Privacy and access (Arabic, Chinese, Vietnamese)
Rental bonds (Arabic, Chinese, Vietnamese)

Renting a home: a guide for tenants and landlords (Arabic, Chinese, Greek, Italian, Russian, Serbian, Turkish, Vietnamese)

Repairs and maintenance (Arabic, Vietnamese)

Resolving tenancy problems (Arabic, Vietnamese)

Share houses (Arabic, Chinese, Vietnamese)

Uncollected goods (Vietnamese)

Teacher resources

Settling in (English Second Language resource for providers of the Adult Migrant Education Program)

Forms

Application by landlord to VCAT

Application by tenant to VCAT

Bond claim

Bond lodgement

Bond transfer – landlord/agent to landlord/agent

Bond transfer – tenant to tenant

Composite notice to vacate to tenant/s of rented premises

Condition report

Notice for breach of duty to landlord of rented premises

Notice for breach of duty to tenant/s of rented premises

Notice of objection to landlord – alternative procedure for possession at end of fixed term tenancy

Notice of rent increase to tenant/s of rented premises

Notice to landlord of rented premises

Notice to leave to resident of managed premises or resident/s visitor

Notice to tenant – alternative procedure for possession for rent arrears

Notice to tenant/s of rented premises

Notice to vacate to tenant/s of rented premises

Request for inspection of goods left behind

Tenancy agreement

Tenancy application

Educating landlords

In 2006–07, CAV conducted its first seminars aimed at private landlords to advise them of their rights and responsibilities under the *Residential Tenancies Act 1997*. The training was piloted through the Bendigo regional office in response to high demand for face-to-face training for private landlords. Seminars were promoted through advertisements and via the Residential Tenancies Bond Authority (RTBA).

Vulnerable and disadvantaged consumers

Community education

CAV's community educators present a module on renting to older secondary, particularly VCAL, students. Often VCAL students' next steps after leaving school are to become employed and move out of home, so access to this information is timely.

Public tenants are also visited by the community education team. Issues most frequently raised by this group include repairs and rent increases. Community educators highlight the services available through CAV, in particular the inspections which residential tenancy inspectors conduct for rent increases, repairs and goods left behind.



Partnerships

During this financial year, CAV contributed funding (from the Residential Tenancies Fund) and staff resources to a project developed with the Springvale Community Aid Advice Bureau in the City of Greater Dandenong. CAV's role was to provide face-to-face advice on general consumer issues within the community (48 per cent of enquiries raised through this channel related to tenancy) and to participate in a project to educate new arrivals to Australia on starting, maintaining and ending a tenancy, through workshops. In developing the workshops CAV consulted with landlords and the REIV. The aim of these consultations was not only to ensure that landlords' perspectives were represented in the training resources but also to improve communication between landlords and tenants in this growing community group. A similar project was conducted in the City of Maribyrnong in partnership with Melbourne City Mission.

As part of this project, CAV developed and commissioned filming of a DVD, *Renting in Victoria*, which covers housing options, the private rental application process, and key skills concerning starting, maintaining and ending a tenancy. The DVD is available in easy English, Dinka, Nuer, Sudanese and Arabic.

Building on the success of these initiatives, CAV this year established the Indigenous People in Private Rental project. The aim of this research project is to:

- develop a greater understanding of the difficulties specific to Indigenous people in renting accommodation in the private rental market, and
- make appropriate recommendations for improvement.

The project steering committee, chaired by the Director of CAV, consists of representatives from:

- Aboriginal Housing Board of Victoria
- REIV
- TUV
- Victorian Equal Opportunity and Human Rights Commission, and
- Victorian Aboriginal Legal Service.

The committee will provide CAV with analysis and advice regarding the issues specific to Indigenous people in the private sector rental market.

The Australian Housing and Urban Research Institute (AHURI) is conducting a literature review which will assist in:

- identifying and analysing the factors which contribute to the difficulties experienced by Indigenous people in the private rental market
- reviewing consultation which has already been undertaken with Indigenous people in Victoria and elsewhere regarding difficulties experienced in the private rental market
- examining initiatives which have been undertaken in Victoria and other jurisdictions to address these difficulties, and
- evaluating best practice.

The results of this literature review will be published on the Consumer Affairs Victoria website.

Funded agencies

In 2006–07, CAV provided the Housing for the Aged Action Group (HAAG) with funding of \$96,096 to deliver statewide services to older Victorians who are tenants or who are residents of accommodation for the aged. HAAG's activities focus broadly on issues pertaining to permanent residents of caravan and residential parks, retirement villages, and public and private rental housing for senior Victorians.

HAAG provides information, advice, outreach services and referral to CAV and/or other services if necessary.

HAAG has supported the establishment of the Caravan and Residential Park Residents Statewide Working Group which examines emerging issues facing those residents. Key issues are caravan park closures and the complexity of contracts some park managers enter into with the residents.

HAAG is undertaking a demographic study of caravan and residential parks in Victoria to map the current state of the industry in Victoria. HAAG inputs to CAV policy development – by identifying emerging trends and systemic issues and providing comment on legislative reviews – and provides community education sessions to tenants and residents.

CAV also funded the Peninsula Community Legal Centre (PCLC) to run the Young Renters project, which aims to address the high level of vulnerability and disadvantage facing young renters, including perceptions that they are high risk tenants, lack of knowledge about rights and responsibilities, and problems arising from shared tenancies.

The project was run in the PCLC catchment area, guided and supported by a reference group made up of local estate agents and representatives from government and community agencies.

The training aimed to contribute to participants' confidence in applying for tenancies and capacity to maintain tenancies, as well as to change estate agents' and landlords' perceptions of young renters as 'high risk' tenants.

The PCLC was also funded by CAV to run the Victorian Civil and Administrative Tribunal (VCAT) Civil Claims project, which offered training to participants in completion of VCAT forms and self-representation at the Residential Tenancies List of VCAT. The project included the presentation of workshops and the production of a workbook, intended to assist consumers in completing the VCAT application form. The workbook is also of use to referral agency staff and advocates.

Working with industry

At CAV's request, the TUV sourced residential tenancy agreements from a range of estate agencies in the metropolitan area and reviewed these for issues relating to unfair contract terms. TUV then drafted a report to CAV, outlining the various issues identified. Clusters of types of unfair contract terms were noted, for example terms in relation to cleaning, or termination of leases.

The report was examined from CAV's consumer protection perspective and will be used as a basis to draft guidelines for landlords and estate agents regarding terms that could be regarded as unfair under the Fair Trading Act. The guidelines will highlight what is unfair about each term discussed and explain how best to write the term so that it is fair to both parties, taking into account recent case law clarifying the application of the unfair contract terms provisions in the Act (the AAPT decision is discussed under **Unfair contract terms**).

Residential Tenancies Bond Authority (RTBA)

**RTBA telephone enquiry service
1300 137 164**

Web www.rtba.vic.gov.au

The RTBA is a statutory authority established by the *Residential Tenancies Act 1997*, to hold all Victorian residential tenancy bonds including those applying to long-term caravan and rooming house residents.

The RTBA is constituted by the Director of Consumer Affairs Victoria. The RTBA has no other members, employs no staff and is reliant on the staff and resources of Consumer Affairs Victoria, and external service providers.

The RTBA holds bonds in a neutral capacity as trustee for landlords and tenants, and can only repay bonds as agreed by the landlord and tenant, or as directed by VCAT or a court.

The core processing activities of registering bonds and making bond repayments are undertaken through an outsourcing arrangement. These functions are currently undertaken by Computershare Investor Services Pty Ltd (a controlled entity of Computershare Limited, a publicly listed registry company).

As at 30 June 2007, the RTBA held 388,048 bonds, valued at \$388.7 million. This represents an increase of 4.3 per cent in the number of bonds since 30 June 2006, and an increase of 10.1 per cent in value.

During the year, more than 179,500 residential tenancy bonds were lodged, more than 191,600 bond claims were repaid and more than 39,700 bonds were transferred.

The RTBA telephone enquiry service is available from anywhere in Australia for the cost of a local call. In the year ending 30 June 2007, the RTBA call centre received over 87,000 telephone calls from tenants, landlords, and estate agents.

RTBA online

The RTBA's online functionality was further enhanced during the year with the capability to complete bond lodgement forms using the online service.

Some of the key features of the online service include:

- the ability to generate lodgements and claim forms online worldwide, 24 hours a day, seven days a week
- automatic completion of key fields
- data validation to prevent avoidable errors
- streamlining of the online bond lodgement process for registered users by provision of the option to create a bond lodgement at an existing address, and
- ability to print the completed form, which can then be signed by all relevant parties and submitted to the RTBA.

The RTBA online service operates in two modes:

- Registered users – property managers with portfolios of bonds are registered with the RTBA have access to all of their bonds via a password-protected login. Information can be retrieved by a variety of search techniques including bond number, form number, tenant name, and address of premises.
- Tenants and landlords – access to the details for a single bond through a simplified login process based upon a combination of the bond number and tenant's name.



There are over 300 retirement villages in Victoria and around 25,000 retirement village residents. At any time, many Victorian seniors are thinking about their long-term accommodation options.



Access to RTBA Online is available through www.rtba.vic.gov.au.

Further details concerning the RTBA may be obtained from the RTBA's annual report to Parliament which is available by contacting the RTBA telephone enquiries service.

Retirement Villages

There are over 300 retirement villages in Victoria and around 25,000 retirement village residents. At any time, many Victorian seniors are thinking about their long-term accommodation options.

The *Retirement Villages Act 1986*, administered by CAV, regulates this industry.

Registration

Under the Act, CAV maintains a register of retirement villages that provides members of the public with access to information about those villages that have lodged a notification form with CAV. The register is an online facility that provides a list of villages that can be sorted by name or by postcode. As at 30 June 2007, there were 352 villages on the register. This is a net increase of 30 from the same time in the previous year.

The legislation also requires that charges be registered over retirement village land as security for the in-going contributions that are made by people entering retirement villages. The legislation also requires that the title for retirement village land contain a notice stipulating that the land is retirement village land.

Amendments to the Act introduced in May 2005 provided an 18-month transitional opportunity for the owners of residential care facilities to apply to extinguish retirement village charges and notices over land, where persons to whom accommodation was being provided on the premises were approved aged care recipients under the Commonwealth *Aged Care Act 1997*. This enabled eligible retirement village operators that were required to comply with the provisions of the Commonwealth Act, to be placed (on application) outside the operation of the Victorian Act, thus reducing the regulatory burden.

During 2006–07, 101 such applications were processed. The transitional period ceased on 23 November 2006.

Applications lodged: 30

Applications processed: 30

Retirement villages registered: 30

Total on register: 352
Up 9.3 per cent



2005-06: 323

2004-05: 0

Village Life

During April 2007, the media reported that residents of four Victorian 'retirement villages' were facing eviction as a result of a dispute between the owner of the villages, MFS Diversified Trust, and the village operator, Village Life.

The Victorian properties (which are not retirement villages as defined in the legislation) are located in Ballarat, Warrnambool, Shepparton and Mildura. Other villages are located in New South Wales, Tasmania and Western Australia.

CAV contacted the two companies involved, and the residents and managers at the four Victorian sites, on several occasions, and determined that the villages were in fact regulated under the *Residential Tenancies Act 1997* rather than the *Retirement Villages Act 1986*. Initial concerns that residents might face eviction were averted, and CAV has continued to ensure that residents' rights under the Residential Tenancies Act are observed by the companies involved.

CAV is in discussion with SCV Group (which will be replacing Village Life as operator of the villages) and will be reviewing the lease the company proposes to offer both existing and incoming residents for compliance with the Residential Tenancies Act.

CAV worked closely with the Department of Human Services' Aged Care office and the Office of Housing on this issue as well as its counterparts in other states.

Legislative developments

The Retirement Villages Act has been the subject of an extensive review over several years. Consultations indicated the need for amendments to the Act to keep pace with developments in the industry since the Act's commencement.

Based on the review, amendments to the Act have been passed and are coming into effect in several stages.

Under amendments to the Act introduced on 1 August 2006, residents buying units in retirement villages under strata title are entitled to choose their own selling agent when they leave the village. The amendments also require that payment of any refunds of in-going fees that may become due on termination of lease, licence or similar arrangements must be made within six months, unless deferred in terms of the Retirement Villages (Contractual Arrangements) Regulations.

These Regulations also address issues in relation to calculation of refund amounts, for example, where a retirement village resident needs to move to an aged care facility. The Regulations include provisions which limit the accumulation of interest on outstanding aged care accommodation bonds where retirement villages are in possession of funds refundable to the resident concerned.

Regulations dealing with retirement village contracts are expected to be made in 2007. There have been two rounds of consultation on draft documentation and substantial progress has been made. However, further consultation will be necessary on a number of issues, prior to the settling of a formal exposure draft for the purposes of a regulatory impact statement. The emphasis will be on increasing the clarity and comparability of contracts.

A reasonable transition period will be necessary for the industry to rewrite its contracts to comply with the final regulation.

Consumer empowerment

Telephone enquiries service

Commencement of the amendments to laws relating to retirement villages prompted a large number of enquiries from residents of retirement villages in Victoria, in relation to a range of subjects including:

- charges – maintenance fees, in-going contributions
- proxies – when they are allowed and how they must be prepared
- selling rights – fees and general contract provisions
- residents' committees – setting up and maintaining, and
- dispute resolution – advice regarding the internal dispute resolution process.

Dispute resolution service

The rebuilding of relationships – frequently a key element in the conciliation process – is a necessary component of resolving disputes in retirement village matters since residents cannot simply opt to move elsewhere. Thus a major part of CAV's conciliation role is reconciling differences between managers and residents in the hope that relationships are renewed and lessons from mistakes are learned.

One key factor for residents to bear in mind is to keep copies of contracts and all other relevant documentation.

Keeping contract pays off

A 92 year old resident forwarded his dispute to CAV, enclosing a copy of his contract as well as other documentation and letters from former village employees.

These substantiated his claim that he had been promised a life agreement, not only to live in a unit in the retirement village concerned, but to move into the village's hostel (which provided higher care) if it became necessary.

Meanwhile the village changed hands. By law, the terms and conditions of the contract remained in force in relation to the new operator however, when the time came for the resident to move into the hostel he was charged \$15,000, in contravention of the terms of the contract.

Using the information the resident provided, CAV was able to negotiate a total refund.

Keeping communication lines open

Retirement village operators may be able to avoid disputes by maintaining open lines of communication and transparent internal processes.

In one matter referred to CAV, management and the Residents' Association at a retirement village had been involved in a long-standing dispute regarding a number of issues.

The Residents' Association believed that the root of the problem was that the operator's internal processes governing decision making were confusing. The operator had attempted to negotiate a written agreement with the Association and their advocates to clarify the roles of the organisations.

Communication between the parties had broken down to such an extent that the parties could not agree on attempting mediation through the Institute of Arbitrators and Mediators or the Dispute Settlement Centre of Victoria. However, all parties agreed to come to CAV and attempt to resolve their issues through the conciliation process. CAV met with both parties to discuss their concerns and found out whether a resolution was possible. The residents were happy that the operator agreed to sit around a table and discuss their concerns. Both parties were willing to move forward and work together to resolve their issues.

A relationship agreement was developed through collaboration with both parties and, to both parties' relief, the dispute was resolved to the satisfaction of all involved.

Strata title challenges

In 2003 an elderly married couple signed a strata title agreement for an independent living serviced apartment. The wife was wheelchair-bound and fully dependent upon her frail husband. Eleven months later, the operator insisted on the couple having an aged care assessment. The result was that the couple was admitted into a nursing home, the husband requiring low care and the wife high care accommodation.

Accommodation bonds were required for the nursing home accommodation, but as the serviced apartment was strata title, the couple was also liable to continue to pay the body corporate fees until the apartment was sold.

The couple's son contacted CAV, advising that the apartment remained unsold nearly two and a half years after his parents had moved into higher care. He also advised that at the time of purchase his parents had felt pressured into buying the unit as the developer had informed them that there was a waiting list and that this was the last apartment. The apartment was proving difficult to sell, since it was disadvantaged in terms of size and locality to other amenities the village offered.

The retirement village had changed hands since the couple had purchased their unit. CAV contacted the new operator and sent a written request encouraging the operator to take into consideration the circumstances of the case. At the next meeting between the operator and the son, the operator agreed to buy back the apartment for \$380,000.

Self advocacy

CAV also provided funding to enable the establishment of RRVV, a volunteer member based organisation. RRVV provides information and support to members, educates members and the broader community about the issues affecting retirement village residents, contributes to policy debate, advocates on behalf of retirement village residents, and promotes interaction between retirement village residents.

RRVV has over 12,000 members from 104 retirement villages statewide. Members receive a bimonthly newsletter to inform them of issues related to living in a retirement village and procedural matters such as elections. Members of the RRVV Committee of Management provide presentations about the association and issues affecting residents.

Education and information

Moving into a retirement village is a major financial and lifestyle decision and it is crucial that consumers are able to make informed decisions. CAV publishes the *Guide to retirement village living* to assist in this process, and to enable residents to clarify their rights and responsibilities.

In qualitative research conducted this year the guide was well received by all focus group participants, who found it to be an objective, reliable source of information and something that would assist them in their decision to move to a retirement village (potential residents) or keep them up-to-date with useful information (current residents). Current residents in the focus groups said they had not been aware of anything like the guide when they were making the decision to move into a retirement village, but that it would have helped them if it had been available and they had known about it.

Both current and potential retirement village residents in the focus group reported that the guide was easy to read and contained useful and relevant information. Key messages participants took from the guide were that it armed them with the knowledge they needed, and alerted them to issues and potential pitfalls of which to be aware.

The publication was updated during the year to reflect the changes in the law, and distributed (along with a fact sheet) to about 6,000 readers who during the review had requested to be updated on changes. Advertisements were placed in targeted media promoting the guide and other relevant CAV resources to senior Victorians. Demand for the guide is ongoing.

During 2006–07, CAV sent letters to all retirement villages registered with CAV, promoting a community education module on retirement village residents' rights and responsibilities. This was timely given the changes to the *Retirement Villages Act 1986* and associated regulations which have come into effect and those still pending. By year end, CAV had made 30 presentations to metropolitan retirement villages, attended by 9,880 participants.

CAV's *Guide to retirement village living* is made available at all presentations to seniors groups.

Publications and online resources

Guide for retirement village living
Internal dispute resolutions guidelines for retirement villages

Accessible publications

Guide for retirement village living – Audio – CD

Guide for retirement village living – Audio – internet

Guide for retirement village living – Large print – on demand

Guide for retirement village living – Large print – internet

Accessibility

Working with Vision Australia, CAV has also made the guide available in various formats for visually impaired and print handicapped Victorians. There are audio versions available on both CD and the internet, and a large text version available for downloading from the CAV website and in print, on demand. The CD has been distributed to around 4,000 contacts who have registered their interest with Vision Australia in receiving audio information about rights and responsibilities.

During 2006–07, targeted education presentations were made to elderly members of Victoria's Chinese population, in Cantonese and Mandarin.

Rooming Houses and Caravan Parks

Many residents of rooming houses and caravan parks are some of the most vulnerable or disadvantaged members of the Victorian population. Rooming houses and caravan parks come within CAV's mandate to the extent that the *Residential Tenancies Act 1997* (administered by CAV) applies to residents' tenancies.

Rooming houses play an important role in accommodating a diverse range of people who often have very limited options in the housing market. CAV works to ensure rooming house residents know how to access information and advice for issues concerning their accommodation.

Policy developments

The *Residential accommodation issues paper* identified rooming houses, caravan and residential parks and student accommodation as critical issues that needed to be further investigated.

The residential accommodation sector has been invited to put forward submissions on these issues. These submissions will be taken into account in developing a three-year residential accommodation strategy for CAV.

Educating residents

During 2006–07, CAV's community educators developed new educational materials for rooming house residents. The brochures synthesized residents' rights and responsibilities into easy English and outlined that residents can seek assistance from Consumer Affairs Victoria and the TUV.

Community educators disseminated these educational resources to agencies that have engagement with rooming house residents. The objective was to ensure that the special information produced for rooming house residents was accessible and useful in informing them of their rights and responsibilities.

The brochures were distributed to Centrelink offices, 250 community organisations, statewide transitional housing agencies, housing information workers, peak bodies and local housing networks.

The project also engaged with housing workers and housing service providers who have contact with rooming house residents.

At year end, CAV was working towards commissioning a special edition of *Parity* magazine, published by the Council to Homeless Persons. The special edition will focus on issues relating to boarding and rooming houses.



Many residents of rooming houses and caravan parks are some of the most vulnerable or disadvantaged members of the Victorian population.



International students also encounter issues and difficulties with rooming houses. CAV worked with the Student Housing Officers Association of Australia, the Department of Immigration and Citizenship and the Victorian Department of Education, International Division, to improve the understanding of what constitutes a rooming house and what is a private homestay arrangement. This will assist in clarifying the rights of international students in various types of accommodation, as different laws apply to each.

Community educators also engaged with Victoria University housing and welfare workers over issues relating to international student accommodation. Displays were staffed at Latrobe University and various campuses of Victoria University during Orientation week and at other events.

CAV funds TUV to provide advocacy services to residents of rooming houses and caravan parks who are involved in disputes regarding tenancies. This includes information and advice, dispute resolution, VCAT assistance and VCAT representation.

TUV is also funded to perform a policy role, which includes community education activities, identifying and reporting systemic issues, and policy advocacy on these issues. In 2006–07, TUV worked on putting together a guide to caravan park closures, to assist residents to enforce their rights by educating them about their rights and responsibilities in relation to issues like notice requirements and options for extension of notice. The guide also provides referral sources for handling various difficulties that can arise for residents in connection with closure of parks.

In November 2006, CAV representatives spoke at the Inner Urban Rooming House Forum for rooming house owners and operators. This was the first opportunity that managers and operators have had to communicate their views directly to representatives of the Government and the Forum clearly indicated the need for greater communication with this group.

The issue of rooming houses and caravan parks is also being explored in the Working Together Forum, a regular meeting of consumer and community representatives convened by CAV to ensure representation of the most vulnerable and disadvantaged in society.

Frank Cassar

CAV has received several complaints against rooming-house owner Frank Cassar, and at financial year end was initiating court action against him for alleged breaches of the *Residential Tenancies Act 1997*, such as failures to provide condition reports, statements of rights and duties and bond lodgement forms; failure to lodge bonds with the Residential Tenancies Bond Authority; failure to comply with Tribunal orders; and illegal evictions.

Publications and online resources

Caravan parks: a guide for residents, owners and managers

Do you live in a rooming house or boarding house? (poster)

Rooming houses – your rights (DL card)

Rooming houses – your rights (wallet card)

Rooming houses: a guide for residents, owners and managers

Multicultural audiences

Rooming houses (Chinese, Vietnamese)

Forms

Composite notice to vacate to resident/s of a rooming house

Notice for breach of duty to owner of caravan or caravan park

Notice for breach of duty to owner of rooming house

Notice for breach of duty to resident/s of caravan or caravan park

Notice for breach of duty to resident/s of rooming house

Notice of rent increase to resident/s of rooming house

Notice of rent/hiring charge increase to resident/s of caravan park

Notice to owner of caravan or caravan park

Notice to owner of rooming house

Notice to proposed rooming house resident: exclusive occupancy right

Notice to proposed rooming house resident: shared rooming right

Notice to resident/s of caravan parks

Notice to resident/s of rooming house

Notice to rooming house resident: consent to increase in room capacity

Notice to vacate to resident/s of a caravan park

Notice to vacate to resident/s of a rooming house

Transfer of residency right (caravan park)



Buying a home is the single biggest investment many Victorians will make in their lifetime.



Buying and Selling Real Estate

Buying a home is the single biggest investment many Victorians will make in their lifetime. Thus, while the great majority of real estate transactions run smoothly, the potential for consumer detriment when things do go wrong is high in this market.

Regulatory framework

Under the *Estate Agents Act 1980* the Business Licensing Authority (BLA) administers a licensing scheme for estate agents. CAV provides the BLA with the services necessary to implement the scheme, which restricts who may trade as an estate agent or agent's representative, and imposes statutory obligations on agents, in order to limit consumers' exposure to risk. In addition, CAV administers the Victorian Property Fund, which is funded mainly by interest earned on monies held in trust by estate agents on behalf of their clients. The Fund compensates people who lose trust money as a result of the activities of estate agents or agents' employees. In addition, grants may be made from the Fund for purposes specified in the legislation. In recent years the Act has been updated to expand the range of programs for which grants may be made.

In 2006–07, \$163,769 was paid out in 15 claims approved against 10 traders. Grants totalling \$10,184,274 were made from the Fund, to enable projects such as an affordable housing project to provide housing for refugee Victorian families in Footscray. For this project, the Minister for Consumer Affairs approved funding of \$300,000 from the Victorian Property Fund, in a joint effort with the Office of Housing and Melbourne Affordable Housing, to assist

in providing access to accommodation for Victorian families. See Appendix 11 for full reporting on grants from the Victorian Property Fund approved in 2006–07.

Applications lodged 2006–07: 656

Applications processed 2006–07: 688 (includes applications lodged in previous financial year)

Total agents on register: 7,767
Up 3.84 per cent



2005-06: 7,480

2004-05: 7,266

Services for consumers

Because property dealings can be amongst the most confusing and complex financial and legal transactions, CAV offers specialist services to support consumers in this area.

Information and advice

CAV's Estate Agents Resolution Service (EARS) operates a dedicated telephone enquiry line, which in the past financial year logged almost 11,000 calls from both consumers and agents.

In 2006–07, the majority of complaints and enquiries about estate agents' conduct made by people selling their homes related to:

- over estimating expected selling price
- claiming to have buyers waiting
- giving little or no feedback
- marketing expenses charged
- unclear or ambiguous sale authorities or agent engagements
- failing to collect full deposits, and
- misrepresenting the level of interest in a seller's property.

For buyers, typical complaints and enquiries about agents' conduct concerned:

- apparent underquoting of property prices
- auction practices
- advertising features that were not included in the sale
- failing to present offers, and
- gazumping (whereby a purchaser's verbal agreement with an agent or seller is not honoured – usually because the seller has decided to sell the property to someone else, for a higher amount).

Dispute resolution

EARS also deals with complaints to CAV about estate agents, assisting consumers to resolve disputes across a range of issues that arise during the buying and selling or the management of property in Victoria. In 2006–07, some 860 complaints were lodged with EARS by mail, by email and online.

Part of the EARS dispute resolution process can involve the service convening a mediation between disputing parties. This enables both the complainant and estate agent to put their particular views on a matter in dispute to an impartial EARS conciliator who will assist the parties in trying to reach a resolution.

Instances of continued or serious breaches of legislation are referred for consideration for enforcement action.

Vulnerable consumer protected

The EARS enquiries line received a call from an elderly consumer whose language difficulties required the conciliator to contact the telephone interpreter service. The consumer, who was also vision impaired, had been in the process of selling her home and had signed two concurrent exclusive sales authorities with different estate agents. In so doing she had potentially exposed herself to two separate claims for commission.

The property had been sold through the second estate agent and to make matters worse, the non selling agent had placed a caveat on the property, thereby preventing settlement.

Recognising the vulnerability of the consumer, the EARS conciliator hastily arranged a meeting with the consumer and verified the sequence of events with both agents and the consumer's solicitor. The non selling agent maintained his entitlement to \$10,500 commission (based on the signed authority) but withdrew this claim following EARS intervention. He also gave an undertaking that he would remove the caveat on the property.

The EARS conciliator also found that the authority held by the selling agent was ambiguous in relation to the amount of commission to which he was entitled, and after discussion the selling agent agreed to reduce his claim by \$1,000.

Agent's cooling claims all hot air

The new owner of an inner city apartment alleged to EARS that pre-purchase advertisements by an estate agency had promoted the availability of reverse cycle heating and cooling. During inspections it had been noted that the unit was a feature of the property but as these had taken place in winter the purchaser had not checked the unit's cooling capacity. With the onset of summer, the new owner soon discovered that the reverse in the cycle was non existent – the unit was a heater only.

The purchaser contacted EARS. After examining copies of the advertising and contacting the estate agency, an EARS conciliator was able to secure reimbursement of half the costs associated with installing air conditioning to the property, some \$5,000.

The agency, which had not been the subject of a similar complaint previously, was issued with a formal written warning for publishing false and misleading advertising.

Consumer education

Consumer guide for home buyers and sellers

CAV's consumer education campaign for buyers and sellers of real estate centres around the promotion of the consumer guide *Real estate: a guide for buyers and sellers*. The guide is particularly useful for first home buyers and includes advice on:

- finance
- dealing with an estate agent
- bodies corporate, buying-off-the-plan, and vendor statements
- methods of sales and campaigns
- sourcing and inspecting properties
- private sales
- auctions, and
- after sales.

Methodology

The guide was revised and updated during 2006–07, and promoted through a direct marketing campaign conducted through newspaper, magazine and internet advertising. The campaign promotes the guide not only directly to consumers but to estate agents and financiers as well, with the aim of developing distribution partnerships with them.

During the first 12 months of the current campaign over 100,000 hard copies and PDF downloads were distributed.

The success of the campaign can be attributed to:

- flexible advertising buys with commitment limited to a short timeframe to allow adjustments to be made as responses are analysed
- a prominent call to action to buyers and sellers to obtain the guide via a range of ordering choices including mail, phone and internet
- a comprehensive system for receiving, registering, tracking and filling orders, including profiling respondents, and

- ongoing monitoring by media channels of responses to placement and design and progressive refinement of advertising choices based on the analysis of responses.

Evaluation results

Results from the mid-term evaluation of the campaign were positive. Ninety-five per cent of consumers agreed that it was important that an independent body like Consumer Affairs Victoria produce a guide for buying and selling real estate. Thirty-six per cent of consumers surveyed were already aware of the existence of the guide, and 96 per cent of consumers who had read the guide had found it useful.

Consumers who used the guide were in strong agreement that the guide had allowed them to:

- better understand their rights and responsibilities (98 per cent)
- avoid common pitfalls and problems (97 per cent), and
- deal more effectively with estate agents (83 per cent).

Eighty-six per cent of consumers who read the guide said they would recommend it to family and friends, and 82 per cent had kept it as a reference document.

Eighty-six per cent of estate agents surveyed, and 52 per cent of financiers, were aware of the guide. Of those who were aware of the guide, 76 per cent of estate agents and 38 per cent of financiers had it available for consumers in their offices.

Campaign results (June 2006–June 2007)

Copies ordered from call centre: 48,051

Copies downloaded from internet: 43,809

Copies distributed to intermediaries
(agents and banks): approx 46,718

Total copies: 141,861

Multicultural audiences

Vietnamese, Arabic and Chinese translations of the guide are underway, and will be available later in 2007.

First Home Buyers Seminars

Officers from CAV's Estate Agents Resolution Service spoke at six Mortgage Choice First Home Buyers Seminars, providing general advice and information about prospective first home purchases.

First Home Buyers Expo

CAV is sponsoring the inaugural First Home Buyers Expo in August 2007. The expo is a great opportunity for face-to-face contact with consumers at the start of the building and/or buying process and for distributing CAV's guides for home buyers and sellers, and for domestic building consumers (see Building and Renovating, see page 59). As well as exhibiting at the event, CAV will also provide speakers and content for seminars.

Market research

CAV is conducting market research to enhance understanding of:

- home buyer and seller audience segments
- each segment's awareness and use of different forms of information, and
- estate agents' and lenders' views of the real estate guide and attitudes to distribution.

The results of the research will inform communication and distribution strategies to ensure the most appropriate strategic communications approaches are used, and may identify other communications options for other segments in the marketplace.

While detailed information in the form of a consumer guide is useful for key segments of the market, it is anticipated that research will identify other approaches to those who do not use traditional forms of information.

Publications and online resources

Buying a home

Estate Agents Resolution Service
(fact sheet)

Frequently asked questions about the Sale of Land Act (Amendment) Act 2003

Property management

Real estate: a guide for buyers and sellers

Selling a home

Working with estate agents

CAV publishes *Real Estate News*, a quarterly newsletter for estate agents, containing updates on legislative changes and emerging issues relevant to estate agents and others connected with the industry. This assists agents to keep up-to-date with information that assists in facilitating compliance with the legislation.

During 2006–07, officers from CAV's Estate Agents Resolution Service conducted 25 presentations on complaint-handling to real estate groups and REIV divisional meetings.



CAV publishes *Real Estate News*, a quarterly newsletter for estate agents, containing updates on legislative changes and emerging issues relevant to estate agents and others connected with the industry.



Monitoring compliance

Trust account audit program

In October 2005, Consumer Affairs Victoria commenced an ongoing real estate inspection program to monitor estate agents' compliance with the trust account provisions of the Estate Agents Act.

Inspections take place in accordance with the legislation, targeted to areas where CAV believes there are potential risks to consumers' trust monies. These areas are identified on the basis of past inspections, which indicate where regulatory breaches are likely to occur.

In 2006–07, 515 inspections were conducted on targeted agents. Minor breaches of the Act or Estate Agents (General, Accounts and Audit) Regulations 1997 by 294 agents were detected. In these instances CAV staff brought the contraventions to the attention of an officer in effective control or the licensed estate agent, requesting rectification.

CAV is of the opinion that 136 estate agents inspected have been more seriously in breach of applicable legislation, and is pursuing appropriate action in relation to these alleged breaches.

Averwood Pty Ltd

The Minister for Consumer Affairs, on the recommendation of the Director, directed a Frankston estate agency to cease trading and froze its bank accounts after a breach of an earlier court injunction restraining access to the estate agent's trust account by its officer in effective control and company officer. This action was initiated following a routine audit that confirmed almost \$68,000 in deficiencies in sales and rent trust accounts.

In December 2006, Averwood Pty Ltd trading as Pro Active Real Estate and its Director Robert Swan had limits placed on their access to trust accounts by the Melbourne Magistrates' Court and another agent was brought in to handle three settlements threatened by the deficiencies.

The officer in effective control gave an undertaking to the Court that he would refrain from being involved in the estate agent's business.

Following a further withdrawal from the agent's trust account made despite the Court orders, the Minister for Consumer Affairs ordered that the Averwood bank accounts be frozen and that the estate agency cease trading.

Fortunately because Averwood Pty Ltd was registered as an estate agent, affected consumers will have access the Victorian Property Fund.

This was the third estate agent trust account deficiency matter CAV had dealt with in a two-month period.

The Act requires agents to keep strictly audited accounts and records, and not take commissions in advance or use them for their own purposes.

Agents who breach these regulations risk loss of licence and severe civil or criminal penalties.

Graeme Drew

In November, CAV successfully concluded its case against Malvern estate agent Graeme Ralph Drew who pleaded guilty to deficiencies in trust accounts totalling \$83,500.

During the real estate inspection program CAV formed the opinion that Mr Drew (who had been a licensed estate agent, but whose licence had been automatically cancelled following admission of a claim against the Victorian Property Fund) was in serious breach of legislation governing administration of trust accounts by estate agents.

After an investigation, the Director laid charges against Mr Drew for failure to maintain trust monies. In court Mr Drew pleaded guilty to three counts of failure to maintain trust monies. He was sentenced to six months' imprisonment, wholly suspended for two years, and ordered to perform 125 hours' community work with conditions to attend counselling as directed.

Investigating Underquoting

CAV has been actively monitoring the real estate market during the year, for systemic breaches of the laws against underquoting. In response to significant media comment CAV also initiated a project aimed at assessing the extent of the issue across the entire market.

Underquoting occurs where a salesperson:

- advertises a property at an amount that is less than the vendor's asking price or auction reserve price
- advertises or advises a prospective purchaser of a price that is less than the estimated selling price provided to the vendor
- advertises a price that is less than an offer by a prospective purchaser and previously refused by the vendor, or

- gives an inaccurate appraisal of the current market price of a property.

Key elements of the project are to:

- assemble data from a range of sources including property advertisements, auction results, industry information, government property sales information and CAV complaints
- analyse and evaluate this data and use findings to investigate possible underquoting by estate agents
- develop an appropriate and systematic compliance response where estate agents are not complying with legislative obligations based on common principles
- implement ongoing proactive compliance, and
- develop strategies to improve knowledge and awareness in the industry of legislative obligations when advertising or quoting a selling price.

Key activities during 2006–07 were enhanced monitoring of property advertising and sale prices, and increased focus on compliance and enforcement. CAV inspectors attended the auctions of 72 randomly-selected properties in inner and outer suburbs of Melbourne, during the year. CAV is developing written guidelines for estate agents, with input from a working party established with REIV.

The main purposes of the working party were to identify the ways in which agents and their representatives advertise property, consider issues arising from estate agents' dealings with buyers and sellers, and scope issues for inclusion in CAV guidelines for estate agents.

Enforcing the law

Where appropriate, CAV initiates legal proceedings against estate agents who breach the law. The following cases are examples of proceedings brought by CAV in the past financial year.

Simon Lukauskas

As reported last year, Mr Lukauskas was an agent's representative who purchased a property for a below-valuation amount and charged the vendor (an elderly lady wanting an expedient sale of her house to finance moving into a retirement village) commission on the sale.

In a disciplinary hearing at VCAT, nine contraventions of the Act were alleged.

On 26 July 2005, VCAT found that eight of the charges were proven.

Mr Lukauskas was disqualified from

holding an estate agent's licence or being employed as an agent's representative for two years, and a penalty of \$2,000 was imposed. Mr Lukauskas appealed the Tribunal's decision at the Supreme Court of Victoria.

On 20 October 2006, the Supreme Court dismissed the appeal and confirmed the penalty imposed by VCAT.

Peter Clements

Consumer Affairs Victoria successfully prosecuted Mr Clements (acting in his personal capacity rather than as an agent or agent's representative) for placing a dummy bid at a real estate auction.

In November 2006, the Melbourne Magistrates' Court found Mr Clements to have contravened section 38 of the *Sale of Land Act 1962*.

Mr Clements was placed on a 12-month good behaviour bond without conviction, and directed to pay \$5,000 into the Court Fund. Mr Clements was also ordered to pay Consumer Affairs Victoria's legal costs of \$12,250.

Industry reform

In the past financial year work continued on a number of national and state projects examining various aspects of the framework underpinning the regulation of estate agents.

SCOCA harmonisation projects

At the national level Victoria is leading two projects on behalf of the Standing Committee of Officials of Consumer Affairs (SCOCA) to identify options for achieving greater consistency in regulation across states and territories.

The first project is examining the scope of real estate and related specialist licences. CAV has engaged a consultant to assist with the project and is leading the multi-jurisdictional working party that manages the consultancy.

The project aims to identify the rationale and context for requiring people to be licensed to undertake functions such as the sale and lease of rural property, commercial property, livestock and businesses and to recommend options for reducing the current differences between jurisdictions regarding the licensing of these functions. An issues paper is being prepared to guide consultation, which will be conducted with a broad range of industry stakeholders at state and national levels. The final report is expected to be presented to SCOCA in early 2008.

The second project is working towards implementing SCOCA's longer-term harmonisation agenda.

In 2005 SCOCA, in consultation with industry, identified some 23 examples of regulatory inconsistency between jurisdictions. CAV is chairing a working party that is prioritising the issues for further consideration by each jurisdiction.

COAG mutual recognition project

In 2006, the Council of Australian Governments (COAG) hosted a number of action groups which put in place improved mutual recognition arrangements for a selection of trade occupations with critical skill shortages. In line with COAG's undertaking to have mutual recognition in place for all occupations by the end of 2008 a second cluster of occupations has been identified for consideration, including estate agents, agents' representatives, auctioneers, stock and station agents, conveyancers and valuers.

The Property Action Group is to start meeting from July 2007, and will be comprised of state and territory regulators, and employer, employee and industry representatives. The CAV representatives on the Action Group, including the Director, will ensure that this work complements the work being undertaken by SCOCA.

Updated mutual recognition arrangements for real estate and related occupations are expected to be in place in early 2008.

Victorian project

CAV is managing a consultancy on behalf of the Estate Agents Council (EAC), which is researching segmentation in the estate agency market in Victoria. The study is the second stage of a review of the scope of real estate licensing that the EAC is undertaking for the Minister for Consumer Affairs. The purpose of the review is to examine the feasibility of creating greater competition within the real estate industry, in particular by relaxing the present requirement on lawyers and accountants who wish to practice as estate agents to obtain estate agents' licences.

The research is the first comprehensive study of the industry since the 2000 National Competition Policy Review of the *Estate Agents Act 1980*. The study is expected to be completed before the end of 2007.

The study will assist CAV, the EAC and all stakeholders to understand the industry better, and will provide a platform from which to consider the most appropriate form of industry regulation for the current day.

New legislation

The *Conveyancing Act 2006*, to be administered by CAV, was passed in October 2006, introducing the first comprehensive regime to protect Victorians dealing with non lawyer conveyancers. This Act is expected to increase competition in the market by allowing conveyancers to compete with lawyers for the legal work associated with conveyancing. The Act (which is expected to come into operation before July 2008) requires conveyancers who are not Australian legal practitioners to be licensed and to comply with important consumer protections such as keeping proper trust accounts and holding professional indemnity insurance. Further details are provided elsewhere in this report.

Regulatory activity

CAV was engaged with four sets of regulations in terms of the *Estate Agents Act 1980* during 2006–07.

The Estate Agents (Fees) (Interim) Regulations 2007 came into operation in February 2007, ensuring that fees remain regulated while the impact of the proposed Estate Agents (Fees) Regulations 2007 is being assessed.

Remaking of the Estate Agents (Contracts) Regulations 1997 is underway.

The Estate Agents (General, Accounts and Audits) Regulations 1997 and the Estate Agents (Professional Conduct) Regulations 1997 have both been extended for a period of 12 months, while the industry considers proposed new arrangements for trust accounting and agents' conduct.

Feature: Owners' Corporations Regulatory Review

A common form of property ownership in Victoria is through an owner's corporation (or body corporate). At the end of 2005 there were approximately 65,000 Victorian owners' corporations comprising around 480,000 lots and accommodating over a million Victorians.

As a result of the significant growth in this form of ownership the legislative framework governing bodies corporate came under review, culminating in the passing of the *Owners Corporation Act 2006* in September 2006. The Act comes into operation at the end of 2007.

The changes to the framework governing this form of ownership will require owners' corporation managers to be registered by the BLA and will delineate more clearly the respective roles and responsibilities of owners' corporations, committees of management, managers, lot owners and occupiers. Funds belonging to owners' corporations will be better protected, and improved avenues for dispute resolution are provided for in the new legislation. Provisions relating to governance, disclosure of information, and enforcement are also improved under the new regime.

Regulations and model rules are being developed and are expected to be available for public comment in mid 2007.

Telephone Enquiries Service

During the year, CAV's enquiries team assisted callers with information and advice on a range of matters concerning owners' corporations. Typical enquiries related to:

- the operation of owners' corporations – running owners' corporations, forming committees
- making decisions – voting and meetings, resolving disputes
- managing finances – owners' corporation fees
- repairs and maintenance, insurance and rules, and
- the new legislation.

Dispute Resolution

One effect of the new legislation will be the introduction of a three-tier dispute resolution process, which will allow owners' corporation members to come to CAV for dispute resolution.

During 2006–07, CAV conciliated a number of disputes through voluntary mediation. The mediation process is particularly appropriate to body corporate disputes since, in most cases, the parties to the dispute will be required to maintain an ongoing relationship after the proceedings are over.

One early challenge noted is some managers' lack of awareness of provisions in the Subdivision (Body Corporate) Regulations 2001, requiring bodies corporate to make body corporate documents and records available. A number of body corporate managers have refused to comply, citing privacy legislation as the reason for refusal.

Publications and online resources

Body corporate: what to consider when buying a flat, unit or apartment

Body corporate: running an Annual General Meeting

Body corporate: useful contacts

New laws for bodies corporate

Paint job

An elderly body corporate member forwarded a complaint to CAV after receiving an invoice to pay a special levy for painting of the units in a body corporate. The Annual General Meeting agenda did not reflect the painting works as an item to be raised. The manager claimed that as the cost of the work was less than twice the total amount of the current annual fees, a special resolution to undertake the painting was not required. The manager advised that some members had already paid the special levy.

Subsequent to the initial complaint, another two members contacted CAV about the same matter. After further discussions, the manager agreed to forward postal ballots to the body corporate members. The ballot determined that the majority of members did not want the painting works to be carried out. The manager returned payments to the members who had already paid and has decided that future agendas would include maintenance, repairs, painting as a standard item.



During 2005–06, the Australian Bureau of Statistics valued domestic building work in Victoria at over \$10 billion – \$8.4 billion in new construction and \$1.7 billion in renovations.



Building and Renovating

During 2005–06, the Australian Bureau of Statistics valued domestic building work in Victoria at over \$10 billion – \$8.4 billion in new construction and \$1.7 billion in renovations.

The industry has been growing rapidly, doubling over the last decade according to a recent VCEC report. Due to the size of the domestic building industry, its efficiency is important to the overall economic welfare of the State. It is estimated that in 2005 domestic building contributed 3 per cent to Victoria's gross State product and the building sector as a whole accounted for 6.5 per cent of State employment.

According to the CAV research paper *Consumer Detriment in Victoria: a survey of its costs, nature and implications*, released last financial year, 22.4 per cent of all consumer detriment costs incurred in Victoria in the 12 months ending March 2006 related to building and renovating, the largest of all the categories. Detriment relating to building and renovating was also the most expensive, with each incidence costing the consumer an average of \$1,600 in money, time and emotional cost. This was also the area in which the largest number of consumers reported the emotional costs as very high. However, the building and renovating incidences comprised only 5.7 per cent of total consumer detriment incidences reported. Thus while consumers may have fewer complaints about building and renovating than other consumer issues (such as food and drink, utilities and electronic goods), the high economic and emotional costs involved mean the dollar amount lost is substantial.

The paper identifies three main problem areas for consumers building or renovating a home: customer service (difficulty in having faults rectified); substandard workmanship; and delays in delivery (or non delivery) of goods or services.

In 2006–07, CAV also undertook an internal investigation into the problem areas consumers experience in this industry, causes of the problems, and possible and preferred policy options in response. This information, contained in the *CAV Building background paper*, is being used to inform, change and add to the strategies CAV employs in this industry as part of CAV's commitment to ongoing improvement across all of its roles.

Services for consumers

Enquiries and complaints

Building Advice and Conciliation Victoria (BACV) is a specialist service which helps resolve disputes between builders and consumers where the builder is able to complete or repair the home. CAV is the central point of contact for both enquiries and complaints to BACV.

Disputes not resolved by information provision at the enquiries stage may be referred for resolution by dedicated BACV conciliators.

The dispute resolution service is enhanced by the Director's power under the *Domestic Building Contracts Act 1995* to request an inspection report from the Building Commission, in certain circumstances. An inspector conducts the inspection and prepares a report for the Director. The Building Commissioner and the parties to the dispute each receive a copy of the report.

Reports assist in clarifying disputed issues for the parties concerned, and if necessary can be used as evidence by either party to proceedings before the Victorian Civil and Administrative Tribunal.

In 2006–07, BACV received over 24,000 enquiries and finalised 2,189 complaints. Of these, 1,209 were subject to conciliation, and 80 per cent of those conciliated were resolved successfully. Inspection reports were not required in the majority of disputes successfully conciliated. The Director requested 312 inspection reports from the Building Commission to assist the dispute resolution process.

During the year, Consumer Affairs Victoria improved the effectiveness of dispute resolution in the domestic building sector by allowing builders to lodge written complaints to the BACV, subject to defined criteria.

This enhancement is designed to facilitate the resolution of building disputes as early as possible.

Consumer Affairs Victoria and the Building Commission have agreed on a broad range of performance indicators in order to provide an objective overview of the effectiveness and efficiency of the building advice and conciliation. The indicators cover the range of services provided including:

- enquiries
- conciliation
- compliance and enforcement
- referrals for disciplinary action, and
- customer satisfaction.

Negotiations back on track

An owner-builder had become involved in a contractual dispute with a builder in relation to alleged substantial defects in the building works. The subsequent purchaser of the home contacted CAV, alleging that there was a water leak from the balcony of the home into the garage below and in addition that this defect was causing rotting of the timber in the walls, mould and a pooling of water on the garage floor.

The owner-builder, who had been involved in the dispute for over two and a half years, indicated that he was unable to contact the builder and did not want to accept rectification as a solution.

A BACV conciliator spoke at length with both parties, and secured their agreement to make one last attempt to resolve the matter by negotiation. The parties met at the home and agreed to a schedule of works to rectify the defects. This resolved the matter to the consumer's satisfaction.

Inspection clarifies issues

A consumer entered into a domestic building contract involving the construction of a new home, but became involved in a dispute with the builder. The consumer alleged that there were numerous defects in the building work and that although the builder had addressed many of them, there were still a number of items still in dispute, including uneven roof tiles and poor quality rendering.

Consumer Affairs Victoria obtained all relevant information relating to the contract and attempted to conciliate the matter. In order to clarify the issues in dispute, the Director of Consumer Affairs Victoria made a formal request to the Building Commission for appointment of an inspector to inspect the building work and provide a written report. Following receipt of that report, CAV conciliation continued and the matter was settled, with the builder rectifying the alleged defects supported by the report.



Consumer Affairs Victoria and other industry bodies have worked together to improve co-ordination of information and education on building issues to consumers.





Consumer education

Education of domestic building consumers (including renovators) is a high priority for CAV. CAV publishes *Building and renovating: a guide for consumers* and promotes this resource through a direct marketing campaign.

Direct marketing campaign

The most recently completed campaign (June 2006–June 2007) was closely based on learnings from the previous campaign.

CAV promoted the guide through a direct marketing campaign directing consumers to send in a coupon, call a 24-hour phone line, or visit the CAV website or CAV counter at the Victorian Consumer & Business Centre, to obtain a copy of the guide.

The campaign employed strategic advertising placement over a range of print and internet media.

A new distribution channel was selected (via a tender process), which saw 34 Bunnings Warehouse outlets distribute the guide on behalf of Consumer Affairs Victoria.

Throughout the life of the campaign CAV tested different media channels, advertising creative and ordering methods to continually refine understanding of consumer responses and preferences. Media placement, creative and other aspects of the campaign were readjusted accordingly throughout the campaign to maximise results.

Events

The campaign was supported by CAV's presence at the HIA Home Ideas Show in April 2007 as well as the MBAV Building and Home Improvement Expo in June.

CAV also used sample, referral and double-sell methods, enabling captured audiences to refer the guide to friends or family.

A *Quick reference guide* was also produced for consumers who found the full guide too long to read.

Campaign results (June 2006–June 2007)

Copies ordered from call centre: 13,188

Copies downloaded from internet: 12,750

Copies distributed to Bunnings Warehouse: 16,000

Total copies: 41,938

Quantitative evaluation results

Total awareness of guide (prompted and unprompted): 23 per cent (first-time builders and renovators: 30 per cent)

Main source of awareness: advertising (40 per cent) (second highest source – recommendation from friend or relative)

Usefulness rating: high

Interest in obtaining: exceptionally strong

Seminars

Consumer Affairs Victoria and other industry bodies have worked together to improve co-ordination of information and education on building issues to consumers. In this vein, CAV held a series of consumer seminars (in partnership with the Building Commission, the Building Design Association Victoria, Archicentre, the Victorian Municipal Building Surveyors Group, the Australian Institute of Building Surveyors and the Plumbing Industry Commission) during March and April 2007 in Melbourne and regional areas to outline the roles and responsibilities of various industry groups as well as providing other important information for consumers to consider with respect to the domestic building process.

Market research

In June 2007, CAV conducted market research into the issues that arise when Victorians build or renovate, in order to better inform future policy directions and education campaigns.

The research focused on ascertaining the type of information that would most benefit consumers when they are building and renovating, and how to reach them with such information.

In addition, the research will help CAV understand the make-up of this audience so that it may more strategically provide people with information appropriate to their needs. It also assessed builders' and building surveyors' attitudes to promoting and distributing CAV information to consumers.

Based on the outcomes of the research, CAV will develop a targeted information program to assist Victorians in navigating what can be a difficult, complex and expensive process.

Publications and online resources

Builders warranty insurance

Building Advice and Conciliation Victoria – summary of information for consumers

Building and renovating: a guide for consumers

Building and renovating: quick tips

Choosing a domestic builder

Owner builders

The domestic building contract

Useful contacts when building



In the past year, CAV has bolstered its efforts to prosecute or take civil proceedings against both registered and unregistered builders who contravene the standards of behaviour mandated by the *Fair Trading Act 1999* and the *Domestic Building Contracts Act 1995*.



Working with builders

In March 2007, Consumer Affairs Victoria initiated a program for monitoring compliance with the Domestic Building Contracts Act aimed at both registered and unregistered builders, to be piloted during regional compliance programs conducted in Bendigo and Wodonga. CAV prepared a fact sheet outlining the obligations and responsibilities of builders when entering into contracts with consumers.

During the compliance exercises, CAV staff visited 100 builders (68 registered and 32 unregistered). The inspections and fact sheets were well received in the industry and Consumer Affairs Victoria detected overall compliance in the area.

Standard form contracts

Ensuring contract terms fairly balance the rights of the consumer and the builder in line with the unfair contract terms provisions in the Fair Trading Act is one available policy option that targets several of the consumer problems experienced in building and renovating, simultaneously.

A CAV review of consumer problems in the building industry noted the need for an examination of the terms in standard contracts put out by the Housing Industry Association (HIA) and Master Builders Association Victoria (MBAV).

CAV considers that the standard industry contracts published by these two peak bodies are too long and complex for terms to be well understood by either builders or individual consumers, and that this is contributing to, or worsening, disputes.

In 2005, CAV began a project analysing the terms in the suite of HIA and MBAV major domestic building contracts in light of Part 2B (unfair terms) and section 163 (clear expression) of the Fair Trading Act and the Domestic Building Contracts Act.

The main areas of concern are:

- allocation of responsibility for pre-construction activities such as planning and building permits and foundations data
- in what circumstances it is appropriate to revert from the statutory percentage allocation for progress payments
- how completion is determined and the effects of this on claims and payments
- the effect of an owner's default in payment obligations where there is a genuine dispute about the work relating to the payment
- the role and extent of defects liability periods under the contract
- a term allowing the builder to require evidence of the owner's ability to pay during the contract without cause
- restrictions on owners' access to land during construction
- inclusion of security of payments terms in standard domestic building contracts
- whether the builder's obligations in relation to commencement and timing are clear and in accord with the Domestic Building Contracts Act, and
- inclusion of terms which purport to water down statutory protections relating to prime cost and provisional sum items.

During 2006–07, CAV had extensive discussions with HIA and MBAV about these issues. CAV will continue to pursue improved standard form contract terms in this industry.

Enforcing the law

In the past year, CAV has bolstered its efforts to prosecute or take civil proceedings against both registered and unregistered builders who contravene the standards of behaviour mandated by the *Fair Trading Act 1999* and the *Domestic Building Contracts Act 1995*. The total value of fines imposed in prosecutions of builders has doubled this financial year, and four times the amount of consumer compensation levied last financial year has been imposed this year.

Master Roof Pty Ltd

James McDonald and Mary Anne Costalis, as directors of Master Roof Pty Ltd (the company was subsequently liquidated) advertised in local community newspapers as a roof repair business. They would quote for roofing repairs, mainly for elderly clients, take deposits in excess of the legal maximum of 10 per cent of the quote, and fail to begin the work, despite giving consumers repeated promises that they would.

In the few instances that they did perform repairs, the consumers involved had to employ other tradespeople to rectify Master Roof's faulty workmanship.

Consumer Affairs Victoria charged James McDonald and Mary Anne Costalis with offences under both the Domestic Building Contracts Act and the Fair Trading Act, relating to demanding/receiving excessive deposits before the commencement of building works, making false and misleading representations, and accepting payment without supplying goods and services as ordered.

The Melbourne Magistrates' Court convicted Mr McDonald and fined him an aggregate amount of \$150,000. He was ordered to pay compensation of \$5,520 and CAV's costs of \$2,800.

Ms Costalis was convicted and fined an aggregate amount of \$25,000.

Karl Meyer

Karl Thomas Doyle (also known as Karl Meyer) advertised in local community newspapers as a concreter trading under an unregistered business name Melbourne Dec Crete. He would quote consumers for concreting work, take deposits, and demand instalment payments on the pretext of ordering material, then fail to either begin or complete the work.

CAV charged Mr Doyle with offences under both the Domestic Building Contracts Act and the Fair Trading Act. The offences related to entering into building contracts whilst unregistered, using non compliant contracts, making false and misleading misrepresentations, accepting payment without supplying goods and services, and using an unregistered business name. Mr Doyle was convicted and fined an aggregate amount of \$138,000, and ordered to pay compensation totalling \$1,750 to consumers, and CAV's costs of \$2,860.

Darren Millar

Consumer Affairs Victoria successfully prosecuted Mr Millar after receiving a complaint that he sold a unit that was incomplete and failed to complete the building works as promised. Consumer Affairs Victoria contended that Mr Millar engaged in misleading and deceptive conduct and failed to supply goods and services that had been paid for.

The Melbourne Magistrates' Court fined Mr Millar \$3,000 and ordered him to pay costs of \$2,061.30. He was also ordered to pay \$107,515 in compensation and \$1,000 for pain and suffering to consumers.

Michael Woodhouse

Consumer Affairs Victoria was granted an injunction in late 2006 in the Ringwood Magistrates' Court restraining Michael Woodhouse from accepting payment before supplying goods and services. The injunction also prevented Mr Woodhouse from entering into domestic building contracts to the value of \$5,000 or more unless he was registered to do so. He was also ordered to pay compensation of \$25,559 and Consumer Affairs Victoria's costs of \$3,738. Mr Woodhouse was also required to publish a notice outlining the Court's orders.

Steelsmart (Vic) Pty Ltd & Gary Newton

Mr Gary Newton, a registered builder, contravened section 19 of the Fair Trading Act when he failed to supply goods to his customers.

He was issued with an injunction restraining him from future similar conduct in a civil proceeding at the Melbourne Magistrates' Court. The Court ordered Mr Newton to pay an aggregate compensation sum of \$25,559 for loss and damages. He was also required to publish an adverse publicity order outlining the Court's order and to pay CAV's costs of \$3,738.

Scott Christian

Consumer Affairs Victoria took action against Scott Christian, an unregistered cabinet-maker, in the Melbourne Magistrates' Court in 2006. Mr Christian entered into contracts for building works and failed to supply or complete work to a satisfactory standard. The Magistrate issued a declaration that Mr Christian had contravened section 19 of the Fair Trading Act, section 5 of the Business Names Act and sections 11, 29 and 31(1) of the Domestic Building Contracts Act.

Mr Christian was issued with an injunction, restraining him from accepting payment for the supply of goods and services until they were supplied, using unregistered business names and entering into a domestic building contract for the value of \$5,000 or more unless registered to do so.

Further, the Court ordered Mr Christian to pay compensation of \$17,600 and Consumer Affairs Victoria's costs of \$1,365. He was also ordered to place a notice in the local paper advising the public of the orders made against him.

Consumer Alert: John Stewart trading as Bitumen Driveways

The Director of Consumer Affairs Victoria, Dr David Cousins, has issued a warning to consumers about the activities of an itinerant trader, John Stewart, who carries on the business of supplying and laying bitumen in the State of Victoria, under the unregistered business name Bitumen Driveways.

CAV has received complaints from individuals who claim that the bitumen supplied and laid to their property by John Stewart was defective.

John Stewart travels throughout regional Victoria in a large black truck which carries a trailer with the words Hot Bitumen in bright orange on the side.

He goes door to door, approaching individuals at both their residential and business addresses. John Stewart claims to have bitumen left over from a previous job and entices consumers by telling them he has a good deal valid for one day only.

The alleged good deal offered by John Stewart to unsuspecting consumers is the supplying and laying of bitumen at a price that sounds attractive but has been shown to be above the industry standard price.

In one instance, in addition to overcharging the consumer for the bitumen used, John Stewart also over-calculated the area to which he supplied and laid bitumen, by up to 50 square metres.

Once work is fully or partially completed, John Stewart demands payment in the form of cash or a cash cheque. John Stewart claims that he will return to the consumer's property to complete any unfinished work after he has received payment. CAV has no reports of John Stewart returning to a consumer's property after payment has been made.

Where consumers do not have the full amount in cash, Mr Stewart reportedly uses pressure tactics, including following consumers to their bank and obtaining payment immediately after the funds are withdrawn.

The work completed by Mr Stewart is often of substandard quality. Consumers are left, at their own expense, to hire another tradesperson to complete the work, which often amounts to more than the sum paid to John Stewart in the first instance.

John Stewart's use of aliases, cash payments and an unregistered business name make it difficult, if not impossible, for consumers to recover their losses. The only form of contact consumers are offered by John Stewart is a mobile telephone number, which is disconnected shortly after the work is completed.



For many Victorians, the second largest will make. The motor licensing scheme to freely engage in a market.



a motor car is purchase they car trading allows consumers fully competitive



Motor Cars

Achievements

- Provided advice culminating in passage of legislative amendments designed to reduce compliance costs for motor car traders
- Publication of quick reference guide to purchasing, maintaining and selling a motor vehicle
- Update of guide to purchasing, maintaining and selling a motor vehicle
- Extended trader engagement strategy





In the motor vehicle market the regulatory scheme is designed to ensure that consumers can transact confidently.



The 2006 consumer detriment survey commissioned by CAV shows that transport (including repairs, motor vehicle hire or purchase, public transport and fuel) is in the top three categories where consumers most frequently experience detriment.

While the majority of transactions involving motor vehicles progress smoothly, because a car is a big ticket item a relatively small number of problem transactions can add up to a large amount of money lost.


Consumer Protection Framework

In the motor vehicle market the regulatory scheme is designed to ensure that consumers can transact confidently in two ways.

Firstly, under the *Motor Car Traders Act 1986* motor car traders must be licensed by the Business Licensing Authority (BLA), to which CAV provides support services. The licensing requirements go some way toward limiting who may trade as a motor car dealer. The Act imposes statutory duties on licensed motor car traders and also enables the BLA to impose conditions on licences.

Secondly, the Motor Car Traders Guarantee Fund indemnifies consumers against certain categories of loss incurred in dealings with licensed motor car traders, up to a maximum of \$40,000.

Licence fees paid by motor car traders make up the bulk of the money held in the Fund. Claims against the Fund are decided by the Motor Car Traders Guarantee Fund Claims Committee (MCTGFCC), providing access to a simple and quick process for claimants with genuine claims, and protecting the Fund from unsubstantiated claims and claims outside its jurisdiction.

Applications lodged 2006–07: 140
Applications processed 2006–07: 167 (includes applications lodged in previous financial year)
Total motor car traders on register: 2,219 Up 0.96 per cent 
2005–06: 2,198
2004–05: 2,230

MCTGFCC activity summary 2006–07

Claims finalised: 136
Admitted: 55 (of these, 56 per cent only partially admitted)
Refused: 7
Withdrawn: 74
Total claimed: \$1,326,039.80
Total paid out: \$340,919.36
Proportion: 26 per cent
Average amount claimed: \$8,631.13
Average amount paid: \$6,198.53
Amount recovered from traders: \$100,944.95
Proportion: 30 per cent of amount paid out
Net payout: \$239,974.41 (amount paid on admitted claims less amount recovered)
Decisions of the Committee brought to VCAT on review:
Affirmed: 1
Withdrawn: 4
Pending: 2

Services for Consumers

CAV's enquiries and conciliation services provide support to this framework, enabling consumers to empower themselves with information about their rights in relation to motor car traders and to obtain help when a motor car deal goes wrong.

High complaint levels lead to prosecution

CAV's complaints data sometimes assists in identifying traders with problematic trading practices. Daniel Luke Pty Ltd, trading as Costanzo Suzuki, was one such trader.

During 2004–05, CAV received a large number of complaints against this trader, alleging such conduct as high pressure sales, refund issues in relation to cancellations, and selling motor cars without first discharging security interests. Although some of these allegations were not substantiated and most of the remainder had been resolved through CAV's conciliation service, the information provided by consumers raised concerns about aspects of the trader's business practices.

CAV inspectors attended the car yard operated by the business and observed 11 vehicles being offered for sale without the prescribed Form 7 specifying particulars, attached. On a second inspection nine more vehicles were observed being offered for sale without a Form 7 attached.

CAV conducted an investigation into the conduct of the trader and, with the assistance of information received from the BLA, established that the company and its director, Mr Costanzo, had knowingly employed a prohibited person in a customer service capacity in further contravention of the Motor Car Traders Act.

Consumer Affairs Victoria initiated criminal proceedings against the trader.

On 6 March 2007 at the Melbourne Magistrates' Court, Daniel Luke Pty Ltd was convicted of contravening the Act and fined an aggregate total of \$3,500, plus costs.

Mr Costanzo was also convicted on the charge of employing a prohibited person and fined \$500.

Gentlemen's agreement?

A consumer paid a deposit of \$1,000 for a 1997 Toyota Prado. The dealer provided him with an invoice receipting the price of the car, deposit paid, trade-in given and balance owing, but the parties did not sign a sales contract. The trader had made promises to the consumer to make certain repairs, which he did. The consumer remained concerned however, that the car was still making a strange noise that could not be located, and cancelled the deal. The trader refused to refund the deposit, on the basis that he had incurred costs in making the vehicle roadworthy, and threatened to take the consumer to court to enforce the contract.

CAV rang and tried to explain to the dealer that no contract existed and that the consumer was entitled to a full refund. The trader offered to refund half the deposit the consumer had paid, and to guarantee not to pursue the matter in the courts. The trader argued that this offer was generous, alleging that he could secure a better outcome through the courts, which would uphold the gentleman's agreement. After some discussion with CAV and an explanation of the applicable provisions of the *Motor Car Traders Act 1986*, the trader agreed to refund the consumer his deposit.

Old for new

A consumer had ordered a brand new latest model (2006) Alfa Romeo 147, and signed a sales contract for the vehicle, which he was informed was being shipped from Europe. When the car arrived at the dealership, the consumer observed a few problems with the vehicle but was convinced by the salesperson to accept delivery. On further inspection the consumer developed a concern that the vehicle, for which he had paid \$40,000 on the basis that it was brand new, was a demonstration model or second-hand vehicle.

After several conversations with the dealership the consumer discovered that the vehicle had been built in 2005. The dealership proposed repairing, touching up and respraying the car, and refused the consumer's request for a refund or delivery of a brand new vehicle.

The consumer complained to CAV. After some negotiation with the trader, CAV suggested that the sales contract should be cancelled because of a number of discrepancies with the goods delivered, including the build date and the condition in which the car had been delivered. After a short period of negotiation, the consumer agreed to offset the trader's registration and transfer costs, and the trader agreed to refund the consumer the full purchase price.

Consumer Education

Comprehensive guide for consumers

For several years CAV has published *Better car deals*. This is a comprehensive guide to buying a motor car, designed to assist consumers to minimise their own risk when venturing into this market.

This financial year CAV has worked in co-operation with the Royal Automobile Club of Victoria (RACV) and the Victorian Automobile Chamber of Commerce (VACC) to jointly produce an update of the publication. This approach results in more comprehensive content as well as better distribution and promotion, ensuring that *Better car deals* reaches a larger audience. In addition a range of environmental sustainability messages relating to purchasing, running and maintaining a vehicle have been added to the publication, to raise awareness of these factors and assist consumers who wish to take them into account.

Targeted quick reference

During 2006–07, CAV also produced the *Better car deals quick reference guide*. This simple and easy-to-read shortened version of *Better car deals* targets those less inclined to read a detailed brochure. As at 30 June 2007, 3,016 copies of the publication had been distributed.

CAV and its partners, the RACV and VACC, funded the translation of the *Quick reference guide* into a number of languages. These translated guides assist people from non English speaking backgrounds who, because of cultural and linguistic differences, often have difficulties obtaining information about their consumer rights.

The guide is being translated into Vietnamese, Arabic and Chinese as well as Dinka, Nuer, Dari, Burmese, Khmer and Amharic – languages spoken by recent migrants to Victoria.

These guides will be distributed through CAV's regional offices and the Department of Justice Diversity Unit. They will also be made available to the public through external agencies including Springvale Community Aid and Advice Bureau, Melbourne City Mission, the Adult Migrant Education Service, the Student Housing Offices Association and selected Migrant Resource Centres.

Training for first car buyers

In 2006–07, CAV funded the Peninsula Community Legal Centre to develop the *Buying a Car on Credit* project, which aims to develop an interactive education program and supporting materials to inform consumers of their rights and responsibilities when buying a car on credit. A train-the-trainer community education model will be used to facilitate the delivery of the education package to first car buyers.

Whilst most first car buyers are young people, this package could also be used with other vulnerable and disadvantaged consumers such as newly arrived migrants and older consumers with low literacy skills.

The desired outcome of the project is that first car buyers have a greater knowledge of the legislation related to buying a car and credit, an awareness of high pressure sales techniques and the ability to resist them, and an awareness of the risks associated with buying a second-hand car, particularly mechanical defects.

Working with Traders

During the year CAV extended its trader engagement strategy for the motor car industry. The strategy aims to ensure Consumer Affairs Victoria is interacting with traders in a meaningful and timely manner as well as providing relevant ongoing support and education to encourage compliance.

CAV has undertaken internal and external consultation to detail what CAV currently offers to traders, as well as identify challenges and opportunities.

Once consultation with traders is complete, findings will be documented and a proposal will be developed.

Newsletter

CAV issued the first edition of its quarterly newsletter for licensed motor car traders in September 2006.

The newsletter, *Driving a better industry*, aims to keep traders up-to-date with legislative news and compliance and enforcement activities.

Driving a better industry is an important industry communication channel for the Government. It is a key component of a communication strategy that was developed in response to a need for stronger communication with motor car traders and the apparent high levels of non compliance with legislative requirements in the industry.



CAV monitors advertisements for the sale of motor vehicles on an ongoing basis, to detect non compliance with the Fair Trading and Motor Car Traders Acts.



Enforcing the Law

Consumer Affairs Victoria proactively monitors compliance with, and responds to allegations of contravention of, the *Motor Car Traders Act 1986* by both licensed and unlicensed motor car traders.

Consumer issues in the industry

In the past financial year CAV identified and targeted the following issues as likely to result in consumer detriment:

- odometer tampering
- failure to disclose the details of previous owners of the vehicle
- failure to disclose and/or discharge security interests, and
- irregularities in dealings books kept by licensed traders.

Unlicensed traders

Section 7 of the Motor Car Traders Act requires any person or company trading in motor vehicles to be licensed. Unlicensed trading has practical implications for consumers, since statutory protections (such as access to the Motor Car Traders Guarantee Fund, cooling-off rights and warranty protection) do not apply to transactions with unlicensed traders.

Vehicle Advertisement Tracking System

CAV monitors advertisements for the sale of motor vehicles on an ongoing basis, to detect non compliance with the Fair Trading and Motor Car Traders Acts.

In the last financial year, six individuals were detected through this program, trading in motor vehicles without being licensed. Almost 400 advertisements placed by these parties (advertising a total of 136 vehicles) were detected.

CAV brought proceedings against these unlicensed traders. As part of the final settlement of the proceedings, each defendant was required to publish notices in the same publication as their advertisements had appeared, warning members of the public of their unlicensed status. The defendants bore the substantial costs of these advertisements themselves. In addition, the Court ordered the defendants to pay Consumer Affairs Victoria's legal costs incurred in the proceedings.

Regional compliance monitoring exercises

CAV conducts an ongoing program of compliance monitoring activities in regional areas of Victoria. These exercises enable CAV to engage with traders and provide education and information about legislative requirements that traders must satisfy. Through these activities CAV inspectors may also identify traders who are trading unlicensed.

Publications and online resources

Better car deals: a guide to buying, owning and selling a car

Quick reference guide: tips on buying and selling a car

Unfair terms in vehicle rental agreements

Indigenous audience

Buying a used car

Irregular record-keeping

CAV regularly conducts inspections of motor car traders' premises, both in the metropolitan and regional areas, for compliance with the Fair Trading and Motor Car Traders Acts. An inspection conducted during an exercise in Wangaratta revealed deficiencies in the records kept by the licensed motor car trader De Maria Motors Pty Ltd.

Certain books and records were seized by the inspectors and further examination of these records revealed substantial breaches of the Motor Car Traders Act.

Consumer Affairs Victoria commenced proceedings in the Cobram Magistrates' Court, and obtained orders against De Maria Motors Pty Ltd and its director Francesco De Maria declaring that both the company and its director had breached key provisions of the Act; restraining both defendants from committing future breaches of the Act; directing the defendants to publish adverse publicity orders making consumers aware of their conduct; directing the defendants to have their compliance with the relevant provisions of the Act audited, and provide a compliance report to Consumer Affairs Victoria; and directing the defendants to pay CAV's costs of \$950.

Odometer tampering

Efstratios 'Charlie' Maglogiannis and CFM Enterprises Pty Ltd trading as Right Way Motors

CAV received information from VicRoads in relation to alleged odometer tampering by Efstratios 'Charlie' Maglogiannis who was

operating an automotive repair business in Sunshine under the trading name Right Way Motors (company name CFM Enterprises Pty Ltd).

It was alleged that Mr Maglogiannis, who was a licensed Road Worthy Certificate (RWC) provider and Vehicle Identification Verification (VIV) tester for VicRoads, had replaced the odometer of a vehicle that had clocked over 287,000 kilometres with an odometer which read just over 165,000 kilometres.

Allegedly, Mr Maglogiannis then sold the vehicle to a member of the public, falsely representing the accuracy of the lower odometer reading to the consumer in the process. Shortly after acquiring the vehicle, the consumer suspected the vehicle had travelled more kilometres than indicated on the odometer and raised the matter with VicRoads.

After investigation, VicRoads stripped Mr Maglogiannis of his RWC and VIV testing licences. Although Mr Maglogiannis provided the consumer with a full refund, VicRoads referred the matter to Consumer Affairs Victoria.

After conducting its own investigation, CAV found that in addition to the odometer tampering allegations, Mr Maglogiannis appeared to be carrying on the business of a motor car trader without having a licence to do so.

In order to put a stop to the conduct, CAV brought civil proceedings in the Melbourne Magistrates' Court, seeking injunctions restraining

Mr Maglogiannis and CFM Enterprises Pty Ltd from continuing with this unlawful conduct, and directing them to publish adverse publicity orders informing consumers of the conduct. These orders were obtained by consent.

CAV then initiated criminal law proceedings against Mr Maglogiannis and CFM Enterprises Pty Ltd. Both defendants pleaded guilty to charges related to odometer tampering and unlicensed motor car trading. The company was convicted of the charges and ordered to pay an aggregate fine of \$20,000, plus a further \$1,000 in costs. Mr Maglogiannis was ordered to pay an aggregate fine of \$10,000 without conviction.

In determining sentencing, the Magistrate considered that the gravity of the odometer tampering offences called for a severe penalty on top of the losses already sustained by the defendants. The Magistrate also accepted CAV's submission that the defendants had shown a flagrant and deliberate disregard for the licensing system that regulates the motor car industry in Victoria.

Morwell 4 Wheel Drive & Commercial Sales Pty Ltd and Lawrence Robert Bonnici

A consumer had complained to CAV alleging that the odometer of a vehicle he had purchased had been tampered with.

CAV inspectors attended the Morwell 4WD car yard during the Latrobe Valley regional compliance exercise. Inspection of the company records confirmed the allegation of odometer tampering.

Further investigations identified 17 more motor vehicles sold by Morwell 4WD over a 23-month period that had had their odometers tampered with, altering mileage by amounts ranging from 60,000 to 200,000 kilometres.

Twelve of the affected consumers had lodged claims against the Motor Car Traders Guarantee Fund for compensation for loss incurred as a result of the odometer tampering. The Committee held these claims pending the outcome of proceedings against the company, initiated by CAV.

The company pleaded guilty to 17 counts of obtaining property by deception and 18 counts of odometer tampering. The company director, Lawrence Robert Bonnici, pleaded guilty to 18 counts of odometer tampering.

The company was fined \$10,000 plus costs and Mr Bonnici was sentenced to four months' jail suspended for 12 months.

The Motor Car Trader Guarantee Fund Claims Committee then considered the amount to be awarded to each claimant and ultimately partially admitted all claims.

The Committee recovered 95 per cent of the amount paid out, from the trader, without incurring any legal costs.

Unlicensed traders

Michael Stirton

Mr Michael Stirton was detected by the Vehicle Advertisement Tracking System, and had also previously been brought to the attention of Consumer Affairs Victoria for non compliant conduct.

On further investigation CAV established that Mr Stirton had advertised 19 vehicles on 93 occasions, in a variety of publications, whilst unlicensed.

The matter was settled by consent, with the Melbourne Magistrates' Court making orders restraining Mr Stirton from trading in motor vehicles, and directing him to pay legal costs of \$450 to Consumer Affairs Victoria. He was also ordered to place corrective notices in the publications in which he had attempted to sell vehicles to alert consumers to his unlicensed status.

Andrew Amalfi

Mr Amalfi, an unregistered motor car trader, advertised 31 motor cars for sale to the public on a total of 84 occasions over a 31-month period.

CAV instituted proceedings against Mr Amalfi in the Melbourne Magistrates' Court, and obtained an injunction restraining Mr Amalfi from engaging in similar conduct. The Court ordered Mr Amalfi to publish a notice identifying the nature and extent of his contraventions of the Motor Car Traders Act in the same publications in which he had advertised, and to pay CAV's costs of \$955.

Haysam Elmir

Haysam Elmir carried on the business of trading in motor cars while unlicensed, principally by advertising used motor cars for sale in the Melbourne *Trading Post* and *Things that Go* magazine. Over a 31-month period CAV inspectors detected 22 occasions on which

Mr Elmir placed advertisements in these publications for the sale of used motor cars.

Additional inquiries confirmed that he had also purchased used motor cars at auction during the same period.

Proceedings were instituted against Mr Elmir. The Court made orders declaring that the defendant had breached section 7 of the Motor Car Traders Act, and directing him to cease carrying on the business of trading in motor cars until licensed to do so; place corrective advertising in the Melbourne *Trading Post* and *Things that Go*, in a form prescribed by Consumer Affairs Victoria; and pay CAV's costs of \$650.

Peter Newton

During a regional exercise, Consumer Affairs Victoria received information that there was an unlicensed motor car trader operating in the Ballarat area.

Investigations detected advertisements offering used motor cars for sale in Ballarat and Melbourne newspapers. Further inquiries identified the unlicensed trader as Peter Newton.

CAV obtained final injunctions against Mr Newton, restraining him from carrying on business as a motor car trader until licensed.

The Court declared that Mr Newton had contravened section 7 of the Motor Car Traders Act by advertising a total of 65 motor cars on a total of 79 occasions over a 21-month period when he was not licensed to do so, and ordered him to publish notices stating the nature of the orders made against him. Costs of \$984 were also awarded to Consumer Affairs Victoria.



Amendments introduced to the Motor Car Traders Act brings the law into line with present-day realities, making it easier for traders to meet their statutory obligation to record certain aspects of their dealings.



Regulatory Review

In September 2006, the *Government Response to a report on the review of the Motor Car Traders Act 1986* (led by Noel Pullen MP) was published. The response gave in principle support to a number of proposals, subject to a Business Impact Assessment (BIA), as they would have potentially significant effects for business. Examples of these proposals included recommendations for the extension of cooling-off rights to new cars and amendment of the definition of commercial vehicle so that purchasers of light goods vehicles have a statutory warranty. The BIA was prepared in 2006–07, following discussions with the key stakeholders that would potentially be affected.

One of Mr Pullen's key recommendations was implemented this financial year with the amendment of the Motor Car Traders Regulations to allow for the keeping of electronic dealings books. Traders are required by law to record certain aspects of their dealings, and this amendment brings the law into line with present-day realities, making it easier for traders to meet their statutory obligation. Benefit to the industry in administrative cost savings has been estimated at \$7.5 million.

In addition, amendments were made to provisions of the Motor Car Traders Act concerning the Guarantee Fund, clarifying that only actual pecuniary (rather than consequential or future) loss may be claimed from the Fund. This upholds the original policy intention behind the Fund.

These amendments also enable the Motor Car Traders Guarantee Fund Claims Committee to require a person seeking to make a claim on the Fund to seek to recover their loss by other means of legal redress before allowing a claim.

Feature: Fuel

Fuel Price Monitoring

CAV monitors prices on an ongoing basis and produces ad hoc reports on pricing anomalies. International, wholesale and retail prices of regular unleaded petrol, diesel and LP autogas are monitored in Melbourne, selected centres in regional Victoria and, for comparison purposes, in Sydney and Brisbane. Absolute and relative prices and notional margins are analysed to identify price trends.

Price monitoring enables the Victorian Government to be better informed about the effect of international and domestic factors on the pump price of petrol and diesel.

In September 2006 CAV provided a copy of its *Report on Automotive Fuel Prices in Victoria* to the Senate Economics Legislation Committee which was conducting an inquiry into petrol prices in Australia. The report analysed movements in international and domestic prices of petrol, diesel and LP autogas over the period January 2003 to April 2006.

The report pointed to a number of significant changes in fuel markets in Victoria that raised concerns about automotive fuel prices, in particular the terminal margins for petrol and diesel. It found that notional terminal margins for both petrol and diesel had increased significantly over the review period, particularly after 2004. The margins for petrol had risen by 2.5 cents a litre or 131 per cent and for diesel by 2.2 cents or 56 per cent. The increase was found to be due to terminal gate prices in Victoria increasing more rapidly than international prices.

In contrast, retail prices increased more slowly than terminal gate prices, causing notional retail margins for petrol and diesel to fall. The report concluded that the supermarket petrol retailers were putting competitive pressure on independent retailers and that this may have been a contributing factor in the continued rationalisation of service stations.

However, the strong increase in terminal margins meant that notional industry margins (terminal margins combined with retail margins) also rose. This was not isolated to Melbourne, with both Sydney and Brisbane experiencing similar increases in industry margins. Rising margins are a concern, particularly when international prices have risen significantly, the majority of domestically consumed fuel is produced and refined locally, and the industry is undergoing changes in competition.

Testing of Petrol Bowsers

As part of CAV's targeted inspection program for petrol and LPG pumps, trade measurement inspectors each year check approximately 25 per cent of all petrol pumps in Victoria.

This financial year over 9,700 of the approximately 36,000 pumps in Victoria were tested or inspected.

In addition, all consumer complaints are investigated by inspectors.

If a petrol pump is identified as deficient, the inspector will require the instrument owner to rectify the problem within seven days. If the pump is significantly short measure the pump is rejected and cannot be used until repaired. CAV takes further enforcement action in cases of deliberate and/or significant short measure.

In the 2006–07 financial year, a total of 471 consumer complaints relating to petrol or LPG pumps were received and investigated. Where the inspections identified an inaccuracy outside of permissible tolerance, the majority were in favour of the consumer. Less than 5 per cent of the total complaints received were proven on investigation.

Terminal Gate Pricing

A national terminal gate pricing scheme was introduced by the Commonwealth Government on 1 March 2007. CAV worked co-operatively with the Australian Competition and Consumer Commission, which administers the national scheme, to determine how terminal gate pricing would operate in Victoria.

A terminal gate price is the price at which petrol or diesel is first sold into the Victorian wholesale market. A terminal gate pricing scheme aims to ensure that all customers are able to find out a terminal gate price.

Victoria was the first state to introduce a terminal gate pricing scheme in 2001 under the *Petroleum Products (Terminal Gate Pricing) Act 2000*, to improve the bargaining position of fuel resellers, in particular independent operators. The Commonwealth Government followed Victoria's example when it introduced its Oilcode terminal gate pricing scheme.

While many of the new national provisions mirror Victoria's approach, the scheme as a whole has a lower level of wholesale price transparency. The national scheme does not clearly specify the basis on which terminal gate prices should be determined, nor does it require full and immediate disclosure on a sales invoice of the additional charges above the terminal gate price.

For these reasons the Victorian Government continues to operate its own more transparent scheme alongside the national Oilcode. The tighter provisions in the Victorian scheme mean that requiring compliance with both the Oilcode and the Victorian provisions does not increase the burden on wholesalers.

CAV continues to monitor the operation of terminal gate pricing in Victoria closely, and is looking forward to the results of the scheduled review of the Oilcode in 2008.

“CAV provides services of Liquor Licensing, office appointed *Control Reform Act*

to the Director an independent under the *Liquor 1998.*



Liquor

Achievements

- Liquor Control Advisory Council established
- Assisted licensees and Police at almost 200 Liquor Licensee Forums
- Provided training to almost 56,000 people in relation to liquor
- Supported five regional liquor licensee seminars



The necessary powers for operation of the liquor licensing and related provisions of the Act and associated regulations are vested in the Director of Liquor Licensing to enable achievement of the legislated objectives of the Act.

Regulatory Framework

One of the ways the objectives of the Act are pursued is through the licensing scheme provided for by the legislation.

The licensing scheme seeks to ensure that only people and entities described as suitable in the Act are granted liquor licences or BYO permits. CAV supports achievement of this objective by administering and investigating liquor licence applications. Conditions on licences are imposed to minimise the potential negative impact of granting of licences or permits on communities and are therefore drafted to be pragmatic and enforceable.

However, the licensing scheme is only part of the overall regulatory framework for liquor. One of the objects of the Act is to minimise harm arising from the misuse and abuse of alcohol.

The licensing scheme can only indirectly contribute to the achievement of this objective through measures such as mandated Responsible Service of Alcohol training.

Victoria Police, a regulatory partner with CAV, has primary responsibility for the enforcement provisions of the Act, targeting licensee misconduct and anti-social behaviour by patrons.

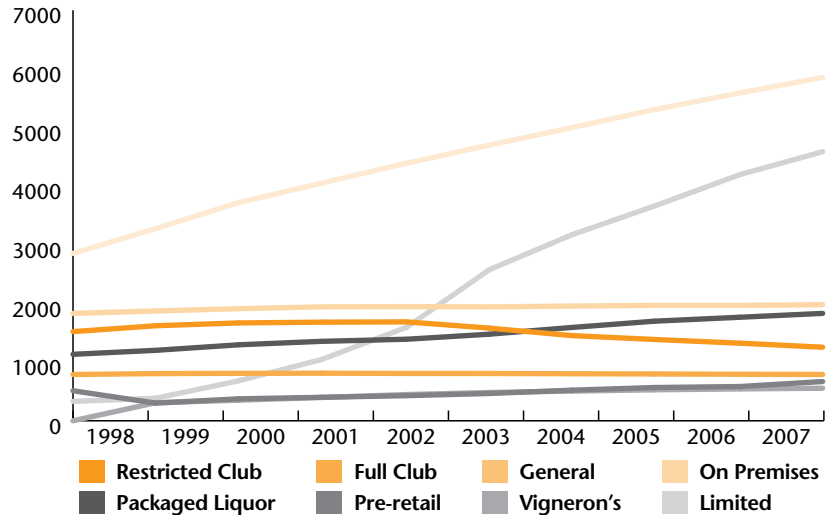
Applications lodged: 19,125

Applications processed: 18,841

Total on register: 17,519
Up 4.52 per cent

2005-06: 16,761

2004-05: 15,912



The number of liquor licences has continued to increase over the last decade. Since the end of financial year 2002–03 when the rate increase peaked at around 11 per cent, the rate of annual increase has dropped to around 5 per cent at the end of financial year 2005–06 and to 4.5 per cent for 2006–07.

In the last year, four of the eight licence types have had minor growth or a small decline. These are general (hotels, accommodation), full club (RSL, sporting, community or ethnic clubs), restricted club (seasonal sporting clubs) and vignerons' licences.

Four licence types have had larger increases, namely on-premises, limited and packaged liquor licences and pre-retail licences.

The growth in number of on-premises licences is significant, however over 60 per cent of these licences are in respect of restaurant businesses. Many others relate to café or similar businesses such as catering companies, convention or cultural centres, nightclubs and bars. These licences are associated with businesses that make a significant contribution to a vibrant tourist and hospitality industry.

The growth in number of limited licences can be attributed in part

to better knowledge within the club community about the obligation to hold a liquor licence. Other prominent groupings in the limited licence category are small primary producers who do not qualify for vignerons' licences, businesses that are only authorised to hold wholesale licences or to sell a very limited number of liquor products, internet-based businesses, florists and gift hamper makers, and B&B businesses. In all cases there are clear restrictions set out in the licence on where, when and to whom liquor may be supplied.

Many of the new licences granted in the packaged liquor licence category have been issued to independent businesses; a smaller number relate to the expansion activities of Woolworths and the Coles group of companies.

The growth in pre-retail licences (wholesalers, distributors, brewers and importers) reflects growth of the range of liquor products being distributed.

The Act provides for a review of the Director's licensing decisions by VCAT. During 2006–07, 15 applications for review of a decision by the Director were finalised. VCAT affirmed five of the contested decisions, and varied another five. Three applicants chose to withdraw their applications, and VCAT dismissed another two applications.

Trader Engagement

An essential aspect of implementing the liquor licensing regime is working with the industry and stakeholders to facilitate compliance with the various responsibilities placed on each group through the legislation.

During 2006–07, numerous outcomes were achieved in support of this aim.

- Five regional liquor licensee seminars were held by the Director of Liquor Licensing, with CAV staff providing local licensees with updated information on liquor licensing issues.
- 89 Liquor Licensee Forums are in place across Victoria. At these Forums, licensees, Victoria Police, Consumer Affairs Victoria and in some cases local councils meet to work through local issues relating to licensed premises – CAV staff attended 186 of these meetings in 2006–07.
- Street Talk (where Consumer Affairs Victoria staff visit different areas and meet licensees at their premises to provide information and answer questions) was conducted at 63 locations throughout the State and involved 753 licensed premises.
- 25 club seminars were held as part of the Australian Drug Foundation's Good Sports Program for committee members of community sporting and social clubs, to provide up-to-date information and education on liquor licensing and related issues.
- 1,357 new subscribers received the electronic newsletter *Grapevine*, bringing the total number of subscribers to 5,835.
- 59 new or updated publications on licensing information were developed.
- 3,798 Proof of Age cards were issued (primarily to young people) to assist licensees to comply with responsibilities concerning underage persons on licensed premises.

Ballarat accord

The Ballarat Liquor Licensing Forum commenced in 2003 under the guidance of the local Victoria Police Licensing Inspector. Currently it is chaired by a local hotelier and is attended by local licensees, Police and CAV. Meetings are quarterly.

The accord forum aims to make Ballarat a safer place, particularly in relation to issues surrounding the supply of alcohol.

Recent issues discussed include a safe taxi rank, issues arising from the Ballarat Cup, and amenity problems which may result from the impending changes to tobacco laws.

Among the achievements of the Ballarat accord was the first voluntary late night lockdown in Victoria. This resulted in an immediate drop in street crime in the early hours and an even greater drop in incidents within licensed venues.

Training and Education

CAV supports the Director of Liquor Licensing to ensure that licence applicants receive adequate training on their statutory responsibilities, since this is a requirement in the liquor licence application process. CAV also works with licensees to assist them in achieving compliance with statutory responsibilities. Education and training of those involved in the provision of alcohol (for example, licensees and bar staff) promote knowledge of, and compliance with, the liquor laws, and a culture of responsible service throughout the liquor and hospitality industries. Communication between licensees, Consumer Affairs Victoria, Victoria Police and local councils promotes responsible trading by licensees.

Activities conducted during 2006–07 are summarised below.

- 46,408 hospitality students and bar staff received Responsible Serving of Alcohol (RSA) training, bringing to 336,298 the number of people trained throughout Victoria since inception of the program in 1992.
- 7,037 undertook the online RSA refresher training, with 32,134 having used this facility since its introduction in 2001.
- 12 Quality Assurance seminars with RSA trainers were conducted to ensure that the trainers were current with their training material.
- 2,507 licence applicants received new entrant training, a day-long course that includes an RSA program and segments on understanding liquor law and best practice. The training must be completed prior to granting of a liquor licence.

Publications and online resources

18 – can you prove it?
A guide to liquor licensing in Victoria
A guide to the responsible serving of alcohol
A4 Be safe in public places (poster)
A4 Intoxication (poster)
A4 Minors (poster)
A4 No proof no entry (poster)
A4 No proof no purchase (poster)
Barring problem customers
Changes to the Liquor Control Reform Act 1998
consumer.vic.gov.au webcard
Don't gamble with your liquor licence
Drink spiking
Dry areas
Getting on with the neighbours
Guidelines for advertising applications for packaged liquor
Guidelines for caterers
Intoxication guidelines
Licensing of large scale dance/music events
New entrant training for liquor licensees
On the spot fines
Plans of licensed premises
Reducing noise problems around licensed premises
Related entity for the purposes of the Liquor Control Reform Act 1998
Required signage for licensed premises
Residents' registers on licensed premises
Responsible liquor pricing and promotion
Responsible serving of alcohol (brochure)
Responsible serving of alcohol (pocket card)

Sale of liquor on the internet
Seizing fake identification
The challenges of underage drinking
Underage entertainment events held on licensed premises
Understanding your liquor licence
Young people and Victoria's liquor laws

Multicultural audiences

A4 Be safe in public places (poster) Chinese and Vietnamese
A4 Intoxication (poster) Chinese and Vietnamese
A4 Minors (poster) Chinese and Vietnamese
A4 No proof no entry (poster) Chinese and Vietnamese
A4 No proof no purchase (poster) Chinese and Vietnamese

Forms

A3 Guidelines for the display of liquor licensing applications
A3 Public notice, liquor licensing application
Accord decals
Application by an amalgamated club for a club licence
Application for a BYO permit
Application for a full club licence
Application for a general licence
Application for a limited licence
Application for a packaged liquor licence
Application for a permanent authority to permit underage persons on a licensed premises
Application for a pre-retail licence
Application for a renewable limited licence
Application for a renewable limited licence to allow a club to supply liquor

Application for a variation to an existing licence/permit
Application for a vigneron's licence
Application for an on-premises licence
Application for approval to sub let premises or the right to supply liquor
Application for bed & breakfast licence
Application for nominee or director of a licensee or permittee
Application for the endorsement of a name on a licence or permit
Application for the renewal of a licence or permit by owner, mortgagee or other affected person
Application to change existing licence/permit
Application to relocate an existing licence/permit
Application to surrender a licence or permit
Application to transfer an existing licence/permit
Appointing a nominee to operate licensed premises
Consent form
Fees
Registration of an owner or mortgagee of a licensed premises
Request for a permanent underage approval to allow underage persons on licensed club premises
Request for a temporary underage approval to allow underage persons on licensed premises
Request for removal of a partner from a licence or permit
Schedule 1 of the Liquor Control Reform Act 1998 – club licences
Statement of display
Victoria Police questionnaire – liquor licence application

Audio and podcasts

MP3 audio and podcasts are now being provided to licensees.

Three audio lessons were developed this year:

- Minors on licensed premises.
- Minors and liquor.
- Fines under the Liquor Control Reform Act.

Compliance and Enforcement Activities

The *Liquor Control Reform Act 1998* creates over 60 offences addressing issues of concern such as underage drinking, drunkenness, anti-social behaviour in and around licensed premises, and disturbance of the neighbourhood amenity.

CAV has a strong partnership with Victoria Police, aimed at supporting enforcement activities, and frequently reviews and updates the legislative framework to ensure that it is optimally suited for enforcement needs dictated by current realities.

In recent years CAV has developed web-based access to licensed trading conditions and during 2006–07 developed similar access to floor plans of licensed premises.

Victoria Police liquor licensing enforcement outcomes in 2006–07:

3,272 on the spot infringement notices issued

35 official warnings to licensees by Victoria Police

13 disciplinary proceedings under the Act lodged at VCAT

Go Tubes

On 25 May 2007 the Minister for Consumer Affairs announced his intention to ban the sale and supply of alcohol filled Go Tubes and similar products.

Go Tubes are aluminium tubes containing nearly two standard premixed vodka drinks. The tubes are opaque, and easily concealed.

The tubes contain alcohol at varying strengths ranging from 4 to 10.5 per cent volume and were marketed in flavours such as lemon, cranberry, strawberry and grapefruit.

Some tubes were also marketed as alcoholic energy drinks.

Regulations are to be prepared to implement the ban.

Bendigo late night entry declaration

Victoria Police made an application in January 2007 to the Director of Liquor Licensing for a late night entry declaration (lockout) for licensed premises in the City of Greater Bendigo.

This followed the successful introduction of lockouts in Ballarat, Warrnambool and Traralgon.

On 5 June 2007, the Director of Liquor Licensing issued a declaration in relation to a number of late night venues in the entertainment precinct of Bendigo, in an effort to address ongoing adverse amenity issues.

The effect of the declaration is that patrons may remain in premises after the lockout time until closing time but may not attempt to enter other premises after the lockout time.

Some licensees have taken the matter on appeal to VCAT.

Country racing

Country Racing Victoria in conjunction with the Director of Liquor Licensing has developed a liquor management guide for country racing clubs.

The aim of publishing the guidelines is to:

- contribute to maintaining the image and integrity of country racing
- minimise risk to clubs
- raise awareness of liquor management issues and offer potential solutions to clubs, and
- take a proactive approach in relation to responsible liquor consumption on racecourses.

Legislative Developments

Regular review of legislation and legislative tools is essential to ensure that the statutory framework deals adequately with current realities and emerging issues in the liquor industry, balancing the various objectives Government aims to achieve in regulating this sector. The Director of Liquor Licensing and the Director of Consumer Affairs Victoria provide policy advice to the Minister for Consumer Affairs to facilitate this process.

New Liquor Control Advisory Council

In July 2006, a new Liquor Control Advisory Council (LCAC) was established to advise the Minister for Consumer Affairs on problems of alcohol abuse and on any other matters referred to it by the Minister.

During its first year of operation the Council considered the appropriateness of the regulatory regime for the sale of packaged liquor in Victoria in contributing to minimising harm from the misuse and abuse of alcohol and best meeting the expectations of the community.

The Council is to consider four new references made in 2006–07:

- whether the Act should be amended to express harm minimisation as its primary aim and objective in all licensing matters
- liquor licensing legislation in other jurisdictions
- liquor outlet density in Victoria, and
- the possible use of screw top resealable capped bottles to reduce drink spiking and encourage more moderate consumption of alcohol.

The founding members of the LCAC have backgrounds in the liquor industry, drug/alcohol and public health agencies, community services, Victoria Police and a union. The Director of Liquor Licensing is an *ex officio* member of the Council.

Intoxicated patrons

The Act states that it is an offence for a licensee or permittee to supply liquor to a person in a state of intoxication or to permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

For the purposes of the Act, a person is intoxicated if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.

During the year the Director of Liquor Licensing issued guidelines detailing a range of information about how to determine if a person is in a state of intoxication and should be refused service of alcohol.

Sale of packaged liquor

In October 2006 a Ministerial Statement of Government Policy on the grant of liquor licences that may allow the sale of packaged liquor was published in the *Victoria Government Gazette*.

The policy provides that:

- the grant of 24-hour packaged liquor licences is contrary to the aims of minimising harm from the misuse and abuse of alcohol and ensuring the amenity of community life
- the Director of Liquor Licensing should grant extended hours licences only if applicants can demonstrate that exceptional circumstances apply
- in all circumstances the extended hours for packaged liquor licences should not extend past midnight, and
- the policy does not affect existing operational licences.

A code of conduct for packaged liquor licensees was approved by the Minister for Consumer Affairs during the year. The code represents the final range of initiatives in the phasing out of the 8 per cent cap on packaged liquor licenses which ended in January 2006. The code is now incorporated as a condition of each packaged liquor licence and covers issues such as the responsible serving and promotion of alcohol, the presence of minors on licensed premises and the sale of alcohol through the internet.

Whole of Victorian Government Activities

Crowd control, venues and events

The Director of Liquor Licensing participated in a working group chaired by WorkSafe to develop a practical occupational health and safety guide for crowd controllers and licensees.

This guide identifies common safety problems and suggests solutions to ensure crowd control work is conducted as safely as it reasonably can be. It also provides numerous recommendations and tools to effectively secure the health, safety and welfare of crowd control staff as well as other staff and patrons, when:

- controlling entry into venues or events
- monitoring and communicating on crowd and individual behaviour
- dealing with potentially aggressive, abusive or violent behaviour
- administering and co-ordinating 'first response' first aid or critical care, and
- co-ordinating emergency evacuation of a venue or event.

Impact of tobacco reforms

From 1 July 2007, all enclosed licensed premises and some outdoor drinking and dining areas are required to be smoke free.

During this financial year the Director of Liquor Licensing considered some 500 applications for variation of liquor licences to accommodate changes to premises to accommodate smoking in outdoor areas.

Examples of variations sought include construction of new outdoor decks and balconies, permission to trade on footpaths, and extension of the licensed areas of premises.

The Director also participated in a number of working groups involved in the development of information to support the changes to the tobacco laws.

Harmful alcohol consumption

In September 2006 the Government tabled in Parliament its response to the final report of the Parliamentary Committee on strategies to reduce harmful alcohol consumption.

The report comprises some 165 recommendations including some suggested reforms to the liquor licensing regime.

Pedestrian accidents

In February 2007 the Government tabled in Parliament its response to a Parliamentary Enquiry into the incidence and prevention of pedestrian accidents.

A number of recommendations related to initiatives to address pedestrian intoxication and the associated potential harms.

National Activities

Australasian Liquor Licensing Authorities Conference

The 36th Conference of the Australasian Liquor Licensing Authorities was held in Canberra in November 2006.

The Conference brings together all liquor regulators and officers of respective government agencies to discuss issues of concern.

Many issues of common concern are explored at these conferences and different regulatory processes are examined. Issues discussed this year included:

- the success or failure of lockouts
- drink promotions
- Liquor Accords
- tobacco reforms
- alcohol management plans, and
- legislative reform.

Working Party on National Indigenous Issues

In June 2007 the Director of Liquor Licensing attended a meeting of the Working Party on National Indigenous Issues which was held in Sydney.

The working party is a forum for the exchange of ideas and information about supply and demand reduction interventions relevant to Indigenous communities.

Thinking Drinking II

The Director of Liquor Licensing presented a paper on intoxication at the Thinking Drinking II Conference held in Melbourne in February 2007.

The aim of the Conference was to explore the challenges for changing the culture of drinking in Australia including attitudes to drinking, and drinking customs and behaviours in various settings.



During this financial year the Director of Liquor Licensing considered some 500 applications for variation of liquor licences to accommodate changes to premises to accommodate smoking in outdoor areas.





Through the trade system, CAV monitors instruments used to sold by reference to weight or volume)

measurement the accuracy of check that products measure (such as are full measure.



Trade Measurement

Achievements

- Final report of Victoria-led trade measurement review submitted and approved by COAG
- Trade Measurement Regulations 2007 commenced
- Trade measurement section of CAV website upgraded to facilitate communication with licensees
- Trade measurement inspection services tender completed



The value of goods sold by reference to measure in Victoria each year is estimated at around \$80 billion. These goods consist of imported or locally produced articles that move through local, interstate and international markets.

An effective trade measurement system provides significant economic benefits to both traders and consumers. Trade measurement systems are aimed at promoting consumer and business confidence, and reducing transaction costs by introducing uniformity. A formal system of trade measurement regulation has underpinned Victoria's trading environment since 1862.

Since Federation, the Commonwealth has had the constitutional power to legislate for matters regarding weights and measures, pursuant to section 51(xv) of the Commonwealth Constitution. The Commonwealth, apart from introducing the *National Measurement Act 1960* (and its predecessor), has not introduced laws that apply to day-to-day transactions made by reference to measurement and has left this area of regulation to the states and territories. As a consequence, trade measurement in Australia is controlled by complementary Commonwealth and state and territory legislation.

Since 1990 the majority of states and territories have been signatories to an inter-government agreement with respect to enacting and maintaining model Uniform Trade Measurement Legislation (UTML) – enacted in Victoria as the *Trade Measurement Act 1995*.

In addition to the UTML, there are state and territory administration Acts that provide for fees and charges, infringement notice offences and other associated administration matters (although the administration Acts are not uniform).

The trade measurement system covers:

- the sale of goods by measurement (of quantity or quality)
- packaging and labelling of pre-packed articles
- licensing of operators of public weighbridges
- licensing of businesses that certify measuring instruments, and
- inspection of trade measuring instruments and pre-packed articles, and penalties for breaches of the law.

The major benefits delivered by the trade measurement system are:

- ensuring that consumers receive the full measure of what they pay for
- a level playing field, which is the basis for market efficiency and fairness
- industry and consumer confidence in domestic and international trade transactions, and
- the international reputation of Australia's marketplace and exporting systems.

Regulatory Framework

In Victoria the trade measurement system (enacted by the *Trade Measurement Act 1995* and the *Trade Measurement (Administration) Act 1995*) is administered through Consumer Affairs Victoria.

CAV implements an annual program that remains responsive to the Victorian market, and is contemporary with new developments in Australia as well as overseas.

During 2006–07, CAV progressed the remaking of the Trade Measurement Regulations supporting this legislation. Two regulatory impact statements were prepared (one relating to fees and the other to the remainder of the content of the regulations) and issued for public comment. The Trade Measurement Regulations 2007 commenced on 18 June 2007.

Publications and online resources

Buying and selling firewood
Contacts for labelling
Correct measure is good business
Ethanol labelling guide for consumers
Ethanol labelling – guide for fuel suppliers and retailers
Garden and landscape material
Guide for packers, importers and sellers of pre-packaged food, beverages and groceries
Measuring instruments in use for trade
Petroleum products
Pre-packed articles
Private weighbridges
Retailers guide to weight and measurement requirements
Sale of liquor
Sale of meat Updated

Compliance Monitoring

Pre-Christmas inspection program

The end of the calendar year sees retail sales peak due to the Christmas shopping period. Each year CAV conducts trade measurement inspections to detect short measure products and have these removed from traders' shelves.

In the lead-up to Christmas 2006, inspectors commenced visits to supermarkets and retail outlets inspecting traditional Christmas products, to ensure there were no breaches of the trade measurement legislation.

This year's pre-Christmas inspection program identified only a small number of compliance issues compared to previous years, possibly indicating that the proactive inspection program is having a positive effect on compliance with trade measurement legislation.

Licensee seminars

During 2006–07, CAV held two Licensee Seminars in July and October 2006. Participants were provided with information regarding trade measurement legislation and future changes to the legislation.

Consumer Affairs Victoria also outlined what was expected of licensees in the performance of their field-based activities and associated reporting requirements.

The program included an afternoon workshop during which licensees received reports on instrument performance and were given the opportunity to raise issues relating to Uniform Test Procedures.

Licensees

In October 2006, to assist prospective licensees and streamline applications for new licences, the trade measurement section of Consumer Affairs Victoria's website was upgraded, enabling interested parties to download information, application forms and other forms.

An ongoing proactive audit program of trade measurement licensees has been implemented. The audit of a licensee looks to verify the reporting and payment of certifications by the licensee and the adequacy of the licensee's quality assurance programs and reference standards used for certifications.

The audit program will continue in the 2007–08 financial year.

Trade measurement inspection services tender

During 2006–07 Consumer Affairs Victoria completed arrangements for the engagement of providers of trade measurement inspection services for 14 regions across Victoria.

Selected as a result of a competitive tender process and under individual contract to CAV, these contractors are responsible for the testing and inspection of trade measurement instruments and pre-packed articles, and the operations of traders, to ensure accuracy of measurement and compliance with the trade measurement legislation, within designated regions throughout Victoria.

In particular, contractors are responsible for undertaking random and programmed compliance audits of measuring instruments, public weighbridges and servicing licensees. The latter are licensed by CAV to certify measuring instruments at the request of an instrument's owner (for example when an instrument has undergone repairs affecting its metrology, or a new instrument is being installed).

Enforcement

Baiada Poultry

As reported last year, during a routine audit and inspection of pre-packed articles on sale at supermarkets, inspectors found pre-packed food articles prepared by Baiada Poultry to be short measure, and a warning letter was issued. Despite this, breaches of the same sort were discovered in the products when additional tests were conducted a short while later.

CAV accepted an enforceable undertaking from Baiada, under which the company undertook to ensure that its existing compliance program was consistent with the relevant Australian Standard and that it was designed to produce ongoing compliance with the *Trade Measurement Act 1995*. In addition, the company undertook to employ a compliance professional to audit the existing compliance program to ensure consistency with the relevant Standard, and ensure that any recommendations made were implemented.

The company also undertook to appoint a senior officer to be responsible for the compliance program and to audit its performance against the compliance program annually and ensure that any recommended changes were implemented within a reasonable period of time.

Further terms of the undertaking included commitments to conduct regular tests in retail outlets within Victoria where Baiada products are sold to monitor compliance with the Act, to ensure that compliance with the Act was reported on at least every three months, and to make Baiada's board of directors, senior management group and all employees aware of the program.

In December 2006, a meeting was held between trade measurement officers, representatives from the quality assurance auditors appointed by Baiada, and Baiada's chief executive, to review the report prepared by the QA auditor.

The report contained a number of recommendations to improve the operations of the food manufacturing operations to meet requirements under trade measurement legislation. The chief executive gave a commitment to the meeting to address all of the recommendations and to introduce the changes as a matter of priority.

Prince Aurora Pty Ltd

Prince Aurora Pty Ltd trading as Aurora Spa Retreat, Acland Street, St Kilda offered jars of herbal tea marked 480 grams that contained less than 50 grams of herbal tea, in breach of section 32(1)(a) and (b) of the Trade Measurement Act.

Prince Aurora Pty Ltd and its directors entered into an enforceable undertaking with the Director of Consumer Affairs Victoria, undertaking to:

- take all reasonable steps to ensure that any pre-packed article it packs or offers for sale contains a quantity not less than the measurement marked on the package
- prominently display at the reception area of the Aurora Spa Retreat a notice of apology, for a period of not less than three months, and
- provide Consumer Affairs Victoria within seven days after three months of the commencement of the undertaking with a written report detailing the number of refunds provided to consumers who had purchased herbal tea, where the quantity of the herbal tea was less than measurement marked on the package.

Supermarket register scales

During early 2007, CAV trade measurement inspectors identified a number of poor practices by supermarkets in the use of their point of sale register scales. A number of consumer complaints were also received about the operation of these scales.

For example, scales at one register indicated an additional 175 grams because a charity collection tin had lodged itself against the scale. A register at a regional supermarket indicated 246 grams when nothing was on the scales. There were instances of nearby plastic bags interfering with the accurate measurement of register scales by contacting the edge of the weighing platforms, and of primary displays on scales not being visible to either the check-out operator or the consumer.

In another case a scale indicated 155 grams when the weighing platform was empty because a fixture had broken off the register, causing false over-readings, and resulting in over-charging.

Trade measurement legislation requires scales to be positioned where customers can view the measuring process and can see a display indicating the weight of articles being weighed. Consumers should make sure the display on the register scales start and return to zero, and check that the platforms are operating without interference.

Consumer Affairs Victoria has written to the major supermarket chains regarding weighing practices and advised them that as part of its ongoing trade measurement proactive inspection program, particular attention will be given to the operation of their register scales.



In February 2006 the Council of Australian Governments agreed to a National Reform Agenda for Commonwealth, state and territory governments.



Short measure pre-packed article withdrawals

The pre-packed article inspection program has identified a number of products that have resulted in national product withdrawals by major supermarket chains. These products have included aluminium foil, pet food, fruit and vegetables, baking paper, dried noodles and poultry products.

Various enforcement actions have been or will be taken against the packers of these products.

National Work

At a planning meeting in December 2002 the Standing Committee of Officials of Consumer Affairs, (SCOCA), the senior advisory group to the Ministerial Council on Consumer Affairs (MCCA), discussed the effectiveness of trade measurement arrangements around Australia. As a result, SCOCA established a Working Party to analyse possible improvement options and their costs and benefits.

To further this analysis, in August 2004 MCCA agreed that Victoria would lead an independent review of trade measurement administration in Australia. Victoria developed a process for undertaking this review and SCOCA approved the engagement of consultants, the terms of reference, reporting timelines and the nomination of a SCOCA Project Steering Committee chaired by Victoria.

In February 2006 the Council of Australian Governments (COAG) agreed to a National Reform Agenda for Commonwealth, state and territory governments.

Under the heading “Best Practice Regulation” COAG requested MCCA to: *“develop a recommendation for introducing a national system of trade measurement that would rationalise the different regulatory regimes of the Commonwealth, states and territories and streamline the present arrangements for cost recovery and the certification of trade measuring instruments; and report back to COAG with its recommendations and a proposed timeline for implementation for COAG consideration before the end of 2006.”*

The terms of reference of the SCOCA Working Party review of trade measurement administration in Australia were accordingly revised to accommodate this development.

Committed to meet the SCOCA deadlines, Victoria engaged the services of a consultant and commenced the review in early May 2006. The review involved consulting with a broad range of stakeholders in Australia and New Zealand. Consultation also took place with SCOCA and trade measurement representatives in the states and territories, Commonwealth departments and the New Zealand Ministry of Consumer Affairs.

The review’s final report was delivered on 31 August 2006 and state and territory SCOCA members agreed with the main finding that the preferred option was for the Commonwealth to assume full control of trade measurement legislation and administration. MCCA also agreed with this decision at their September 2006 meeting.

In line with the Prime Minister’s request as chair of COAG for a report on progress, the Minister of Consumer Affairs, as chair of MCCA, wrote to COAG on 31 October 2006 to recommend that the transfer of the trade measurement function to the Commonwealth be ratified at the next COAG meeting.

At the 13 April 2007 meeting of COAG this recommendation was accepted and the COAG Communiqué that followed the meeting announced that the Commonwealth would take over full regulatory responsibility for trade measurement on 1 July 2010.

In a media release issued on 16 April 2007, the Australian Government announced that the National Measurement Institute (NMI), within the Department of Industry and Resources, would be the home for trade measurement administration.

CAV has commenced working with the NMI on the transfer details to ensure the transition is seamless and that Victorian interests are well represented during the process.

Trade Measurement Advisory Committee (TMAC)

TMAC is an advisory committee to SCOCA, consisting of senior officers responsible for trade measurement from the Commonwealth, states (including a representative from CAV) and territories, and New Zealand. TMAC’s core roles are to provide advice to SCOCA on emerging and current trade measurement issues; and to facilitate the implementation of policy decisions of SCOCA and MCCA in relation to trade measurement.

TMAC, during 2006–07, considered many different issues including a review of the model Uniform Trade Measurement Legislation, requirements for pre-packed articles, quality measurements of bulk agricultural commodities and uniform test procedures for measuring instruments.



An important consumer to save lives by reducing and deaths caused by and services that are meet prescribed safety

protection objective is the risk of injuries consumer products defective, or fail to standards.



Product Safety

Achievements

- Seized over 76,000 dangerous products (more than combined total of all other Australian states and territories)
- Provided advice resulting in two ban orders being made
- National reform advice to MCCA
- Launched consumer education program for safe use of infant and nursery products
- Conducted research into two dollar shops and importers



In Victoria, consumer product safety policy is led by CAV's broad product safety strategy, underpinned by the Fair Trading Act 1999.

The Act makes provision for:

- banning the supply of unsafe goods
- recalling consumer goods which pose a safety risk to the community where a voluntary recall has not been made or is considered inadequate, and
- imposing safety requirements by regulation.

Product safety activity in Victoria incorporates compliance and enforcement activity, education, information provision and the development of product safety and information standards.

CAV's strategy aims at ensuring that product safety activities are contemporary, appropriately targeted and efficient, and aligned with the needs of consumers and business.

Through the product safety function, CAV:

- investigates alleged unsafe products and services, and prohibits or restricts the supply of unsafe products and dangerous services
- promotes compliance with – and enforces – laws on consumer product safety
- participates in the development of Australian/New Zealand consumer product standards
- develops mandatory safety and information standards and bans for consumer products

- provides advice to consumers, industry and government on safety and standards relating to consumer products
- manages projects on safety, to maintain and develop the consumer protection framework
- responds to new and emerging issues on consumer product safety, and
- drafts parliamentary briefings and briefings for the Consumer Products Advisory Committee, SCOCA and MCCA, on product safety and standards issues.

Feature: Infant and Nursery Products

Monash University Accident Research Centre statistics indicate that every year an average of 400 Victorian children under five years old require hospital treatment for serious injuries associated with infant and nursery products.

The results of research commissioned by CAV in the Cities of Casey and Latrobe indicated that most parents surveyed placed high importance on using safe nursery products. However the survey revealed a range of issues that might prevent this priority from being realised.

Using this information CAV developed *Safe products for your baby*, which aims to assist new parents to choose safe products, and to use them safely.

The booklet was launched in September 2006 at the Latrobe Regional Hospital and Casey Hospital. Distribution through maternity hospitals during early stages of pregnancy (when parents are most likely to be acquiring nursery products) is being piloted, along with subsequent reinforcement through maternal and child health centres, which are using the guide as part of their curriculum.

CAV is also working with established child safety agency networks in Casey and Latrobe, to establish safe products and safe use as norms in these communities. Statewide implementation of some of these initiatives will be investigated after evaluation of the pilot.

Distribution of the guide was supported by a small direct marketing campaign in each pilot area and by CAV's community educators, who developed an education module in line with the guide, and contacted relevant agencies and groups to organise and conduct workshops in areas where the pilot took place.

This distribution model was replicated in Gippsland and Geelong, and supported by:

- trader walks in various centres, during which unsafe products were identified and referred for follow-up compliance action
- development of displays that can be used by the mobile services operating out of the Geelong and Warrnambool offices, and
- installation of window displays in these two offices.

Ban Orders and Regulations

CAV is responsible for ensuring compliance with the 57 orders in existence in Victoria at 30 June 2007, banning the supply of certain dangerous goods and services. Two interim ban orders were passed during the financial year.

Non compliant babies' dummies

Consumer Affairs Victoria was the first jurisdiction in Australia to introduce an interim ban order which prohibited the supply of babies' dummies that failed to comply with clauses 6, 7 and 8 of the Australian Standard AS 2432 – 1991, excepting dummies that comply with the European Standard or the American Code of Federal Regulations.

Subsequently, on 12 June 2007 the Governor in Council made the Fair Trading (Safety Standard) (Babies' Dummies) Regulations 2007, adopting the essential safety requirements in relation to babies' dummies that apply at Commonwealth level.

Anti-drowsiness devices

The second interim ban order prohibited the supply of a product styled Cure Sleepiness Right Away and any similar device. The product is designed to be attached to a driver's ear, and is contained in packaging claiming that the product is "Especially suitable for long distance driving, drunk driving and night driving".

The interim order has been extended pending further analysis and consideration of available policy responses.

Banned products

Expanding novelties

On 19 February 1985, the then Minister for Consumer Affairs signed a permanent ban order prohibiting the sale of dangerous goods known as Magic Eggs, Wonder Growing Pet, Instant Sealife or any other similar product (small plastic toys and/or novelties which have two dimensions less than 45mm and which expand considerably in volume when immersed in liquid), as these goods pose a choking hazard to children and may cause serious injury or death.

CAV inspectors became aware that Gorgeous Girls R Us Pty Ltd through its directors Bradley and Tania Allat were supplying banned Growing Pet products to traders.

CAV obtained a search warrant for the company premises and seized 29,994 Growing Pet novelties in execution of the warrant.

The Director of Consumer Affairs Victoria accepted undertakings from the Allats and the company that they would stop supplying these or any other banned goods, and place a warning notice in the *Herald Sun* advising consumers to destroy and dispose of the novelties.

The parties recorded their consent to CAV destroying and disposing of the goods that had been seized, and undertook to pay \$480, being the cost of destroying the goods.

Disposable cigarette lighters

In October and December 2006, Consumer Affairs Victoria inspectors seized 14,158 RHINO brand disposable cigarette lighters from several premises belonging to The Reject Shop Limited, in exercise of their powers under section 121 of the Fair Trading Act. The faulty lighters were found to be dangerous because they exhibited abnormal burning due to flame surges, failed to extinguish the flame within four seconds, were found to be structurally unsafe on the basis that one of the lighters burst during operation, and were incorrectly labelled.

A director of The Reject Shop Limited acknowledged that the company directors had breached the Fair Trading Act by supplying the dangerous lighters in contravention of prescribed safety standards. The Director of CAV subsequently accepted an undertaking made by a company director on behalf of the company and its other directors, to refrain from supplying disposable cigarette lighters which do not comply with the Regulations or other product ban orders and mandatory product safety standards listed on the Consumer Affairs Victoria website. The company also undertook to place a warning notice in the *Herald Sun*, and authorised Consumer Affairs Victoria to destroy and dispose of the lighters.

Ice pipes

Consumer Affairs Victoria inspectors confiscated 925 banned ice pipes from two retailers at Preston Market and a Springvale tobacconist. These raids bring the total of ice pipes seized over the past three years to more than 3,000.

The ice pipes were intended for the smoking or inhaling of methamphetamine crystals (ice). Methamphetamine causes increased heart rate and blood pressure and can cause irreversible damage to blood vessels in the brain, producing strokes. Its use can result in cardiovascular collapse and death.

The supply of ice pipes was permanently banned in Victoria, under the Fair Trading Act, in January 2004 because they were likely to cause death or serious injury to the body or health of users.

The Government announced tough new initiatives to combat the ice war including setting up an amphetamines taskforce, \$14 million for education and prevention programs, and new police powers and laws.

Pressure relief valves

The State Coroner wrote to CAV outlining concerns raised by the Metropolitan Fire Brigade in relation to the failure of Sidek PRX pressure relief valves fitted to automotive LPG tanks. The valves are designed to relieve any build-up of pressure in LPG tanks. However, problems had been encountered with the Sidek PRX pressure valves stamped AGA 6394 when fitted to LPG tanks installed or modified between May 2003 and August 2005.

The Coroner advised CAV that since 2005 there had been seven incidents of LPG tanks fitted with this valve rupturing, mostly involving vehicles fitted with two tanks. Investigations indicated that if the wrong torque levels were used during installation of the valves, tanks might rupture, particularly if full and if exposed to warm temperatures.

On 30 August 2005, Manchester Tank & Equipment Co (Aust) had conducted a national voluntary recall of Sidek PRX pressure relief valves fitted to Manchester tanks. The recall applied to vehicles fitted with autogas and to vehicle tanks retested between August 2003 and August 2005.

However the Metropolitan Fire Brigade was still encountering tank ruptures. The Coroner enquired of CAV whether any further action could be taken to raise awareness of the problem.

CAV published a public warning notice in the *Herald Sun*, and issued a media release. Consumer Affairs Victoria wrote to Sidek Industries Pty Ltd, the Taxi Directorate, Automotive Insurers and the Federal Chamber of Automotive Industries requesting them to take whatever actions they consider appropriate to assist in eliminating the safety hazard.



Consumer Affairs Victoria inspectors confiscated 925 banned ice pipes from two retailers at Preston Market and a Springvale tobacconist. These raids bring the total of ice pipes seized over the past three years to more than 3,000.



Inspections/surveys

CAV conducts an ongoing program of compliance monitoring activities to support Victorian traders' knowledge of, and compliance with, product safety legislation and orders.

During 2006–07, 457 premises were inspected during regional compliance exercises, pre-Christmas toy survey, and metropolitan compliance inspections. Thirty inspections were emergency entries conducted under section 121 of the Fair Trading Act and 17 were done in execution of search warrants.

Royal Melbourne Show

CAV inspectors, on invitation from Melbourne Showgrounds Marketing, have been conducting safety assessments of the contents of showbags since the mid-1980s. Inspectors take the opportunity to distribute product safety guidelines for the safety of toys and novelties sold at shows, to all showbag suppliers so that they can achieve compliance with product safety standards.

Prior to the 2006 Royal Melbourne Show, product safety inspectors assessed the contents of 307 showbags. A high degree of compliance was found, with only one item proving problematic: caps were removed from Bob the Builder sipper bottles in one stand's showbags because they presented a choking hazard.

Rural shows inspections

CAV conducted rural show inspections at Geelong and Mildura and seized a total of 47 Push/Pull Butterfly toys and 85 flashing dummies.

Regional compliance exercises

As part of the regional compliance and enforcement exercises conducted in Geelong and the Mornington Peninsula 104 premises were inspected and 40 hot water bottles and one baby walker were seized.

Pre-Christmas product safety inspections

The end of the calendar year often sees numerous products enter the market as traders seek to capitalise on the peak Christmas shopping period. Each year CAV conducts product safety compliance monitoring exercises to detect and remove unsafe products from traders' shelves.

In the lead up to Christmas 2006, Consumer Affairs Victoria inspectors seized over 1,130 banned and dangerous products from two separate premises. The products seized included over 500 candles decorated with flammable coffee beans and over 600 dangerous toys including grow toys, drawing boards, counting frames and dart rifles.

Publications and online resources

Baby bath seats and supports

Baby dummies

Baby walker safety

Bunk bed safety

Children and water – keeping them safe

Choosing a cot

Curtain and blind cords

Keeping baby safe (available in English, Arabic, Chinese, Croatian, Serbian, Spanish and Vietnamese)

Laser pointers

Monkey bikes

Monkey bikes – frequently asked questions (for consumers)

Monkey bikes – frequently asked questions (for suppliers)

Moveable soccer goals

Pram and stroller safety

Product hazard alert guide

Product safety and you

Safe products for your baby **New**

Supplying safe cots – facts for traders

Toughened glass

Toy safety checklist

Toy safety regulations for children under three years old

Multicultural audiences

Baby walkers (Vietnamese)

Toy safety (Vietnamese)

Toy survey

During the pre-Christmas toy survey carried out in October and November 2006 CAV inspectors conducted a survey of 94 toy suppliers throughout metropolitan and country Victoria. Both retail and wholesale suppliers were surveyed, including retail stalls at regional agricultural shows.

Consumer Affairs Victoria inspectors seized 31,128 toys that contravened ban orders and prescribed safety standards. Of the 31,128 products seized, 224 products were seized from retail outlets and 30,904 products were seized from importer or distributor warehouses. Retailers who were found to be stocking prohibited toys were co-operative with regard to supplying details of wholesalers and distributors.

Product safety enquiries 2006–07, by subject matter	
Play items	256
Other (textiles, furniture, weapons, therapeutic goods, gas appliances, chemicals, general, stationery, footwear and miscellaneous)	230
Transport items	212
Nursery products	212
Sport and recreational	152
Consumer durables	124
Electrical	95
Personal	85
Hardware	76
Food and drink	75
Miscellaneous	74
Total	1,591

Products investigated 2006–07, by subject matter	
Play items	37
Electrical	16
Consumer durables	14
Transport	13
Sport and recreational	11
Other (textiles, therapeutic goods, footwear, gas appliances and stationery)	10
Hardware	9
Nursery products	9
Personal	9
Furniture	8
Food and drink	5
Total	141

Products seized 2006–07, by subject matter	
Grow toys	36,649
Cigarette lighters	14,157
Various toys intended for under three years	8,666
Lead wick candles and flammable candle holders	8,646
Toy guns	3,779
Yo-yo balls	2,973
Ice pipes	1,253
Message in a bottle (poisonous seeds)	195
Hot water bottles	161
Imitation dummies	85
Baby bath seats	69
Monkey bikes	8
Baby walker	1
Total	76,642

Information Gathering and Exchange

The Commonwealth Product Safety Recalls website provides information about voluntary safety-related product recalls and allows information to be shared between regulators. CAV maintains a database of product safety investigations and enquiries on safety and standards matters, which is used for monitoring trends in product-related problems. Consumer Affairs Victoria has communicated on product safety issues with other government agencies, specific interest groups and industry. Some examples include:

- Australian Competition and Consumer Commission – monkey bikes, vehicle jacks, children's toys and babies' dummies
- Australian Customs Service – identification of dangerous products
- Australian Toy Association – toys for children under three years of age
- Country Fire Authority Metropolitan Fire Brigade – unsafe candles
- Department of Human Services – food safety and novelty contact lenses
- Infant Nursery Products Association – infant nursery furniture
- Monash University Accident Research Centre – statistics for injuries associated with the use of consumer products
- other state and territory consumer affairs and fair trading agencies – various products
- Royal Agricultural Society – inspection of showbags
- Safe Communities Network – developing networks for community safety
- VicRoads, WorkSafe Victoria and LPG Australia – LPG cylinders fitted with faulty pressure relief valves
- Victoria Police – sale of ice pipes
- Victorian Automobile Chamber of Commerce – monkey bikes and quad bikes.

Court Actions

During the year CAV successfully prosecuted two criminal matters relating to product safety.

I Witness Solutions Pty Ltd and Oran Harel were prosecuted for breaches of section 44 of the Fair Trading Act (supplying goods or services in contravention of a permanent ban order or a fixed term ban order). The Court imposed a fine of \$4,000 and awarded CAV costs of \$1,000.

The second was against Fruits of Nature Pty Ltd and Mr Andrew Michlin (the sole company officer).

In late 2005, CAV inspectors had seized a total of 15 mini bikes in execution of two separate warrants issued against Fruits of Nature Pty Ltd. CAV inspectors found that six of the bikes seized did not comply with the standards imposed by Permanent Ban Order No S 100.

CAV initiated proceedings against the company and its sole officer, and in 2007 the parties were found to have breached section 44 of the Fair Trading Act.

The Magistrate imposed an aggregate fine of \$3,500, without conviction, and ordered the defendants to pay costs in the sum of \$2,000. Furthermore, the Magistrate ordered the destruction of five of the non compliant bikes, exempting the bike that the company officer claimed as his own property.

Additional outputs 2006–07

Received 1,591 enquiries from consumers and industry, seeking advice on matters relating mainly to the safe use and design of consumer products.

Conducted 141 investigations into the safety of consumer products, with 10 product categories accounting for 92.9 per cent of these.

Seized 76,642 consumer products that contravened ban orders and regulations (highest number of seizures nationally).

Issued warning letters to eight retailers who were found selling banned products during store inspections carried out as part of a marketplace monitoring program.

Obtained enforceable undertakings from 23 companies or businesses and 57 individuals in relation to the supply of banned consumer products (see Appendix 3 for details).

National Work

Responsibility for Australia's consumer product safety system is shared between the Commonwealth and states and territories. Although individual jurisdictions have largely the same policy objectives in relation to consumer product safety, each administers and enforces its own regulatory regime.

During 2006–07, CAV led several national product safety initiatives conducted under the auspices of the Council of Australian Governments (COAG) and the Ministerial Council on Consumer Affairs (MCCA).

Harmonisation of the Australian consumer product safety system

In August 2004, MCCA commenced a review of Australia's consumer product safety system, with the release of a discussion paper followed by consultation with key business and consumer groups.

In March 2005, the Commonwealth Treasury, at the instigation of MCCA, commissioned the Productivity Commission to undertake a study examining the benefits and costs of the existing product safety system as well as the options to reform the system.

The Commission released its final report on 7 February 2006. The Commission provided three options for reform:

- the introduction of a single national consumer product safety law and regulator, with the law to be the Commonwealth Trade Practices Act and the regulator to be the Australian Competition and Consumer Commission
- a modified approach with a single law but with the states and territories retaining power to impose interim product bans, with national bans remaining the province of the Commonwealth, or
- the adoption of harmonised laws with state and territory enforcement and administration.

The Commission's report was presented to MCCA at its meeting in May 2006. As part of its consideration of reform options for consumer product safety, MCCA asked Victoria to prepare a paper on what a uniform consumer product safety system would look like both in relation to its legislative base and the manner in which national bans and standards would be developed.

In relation to the latter, the major difference between the model advanced by the Productivity Commission and that put forward by Victoria was that in the former, decision making was centralised in the Commonwealth whereas in the latter, decision making around bans and standards was shared. MCCA also asked the Commonwealth to prepare a paper on the single law, single regulator option.

MCCA considered the two reform options at its meeting in September 2006 and agreed to develop a uniform consumer product safety system in Australia. In April 2007, COAG agreed that the states and territories would develop a uniform consumer product safety system within 12 months.

Victoria's model is now the major option under consideration nationally. Queensland is leading drafting of legislation based on this model.

In May 2007, in a related decision, MCCA agreed to immediately commence a review of all existing product safety bans and standards with the aim of achieving greater harmonisation across the Commonwealth, states and territories. This work is to be carried forward by Victoria and Queensland.

National baseline research study

Another project resulting from the 2006 Productivity Commission's review report was the need for better data on which to base consumer product safety policy interventions.

It has long been acknowledged that data capture on injury and death caused by consumer products is haphazard and inconsistent throughout Australia. MCCA approved funding of a baseline study into identifying the range, number, causes and costs of injuries and deaths caused by consumer products and/or their misuse.

The research (which CAV was strongly in favour of) commenced in June 2007.

Developing and revising Australian and International Standards

CAV is represented on a number of committees developing or reviewing Australian or joint Australian and New Zealand standards for particular groups of products and, as a result, is required to comment on draft standards from the International Organisation for Standardisation (ISO) and vote on the adoption of existing internationally-recognised ISO standards. This work is becoming increasingly important given the trend to align domestic and international standards.

CAV was represented on Standards Australia Committees and reviewed and/or commented on consumer product standards for products including children's toys, children's household cots, folding portable cots, high chairs, change tables, prams and strollers and babies' dummies.

Consumer Products Advisory Committee

The Consumer Products Advisory Committee (CPAC) consists of representatives responsible for product safety and standards from consumer affairs and fair trading agencies in the Commonwealth, states and territories and New Zealand. CPAC, which provides advice on consumer safety matters and develops and implements a national approach to consumer product safety and standards issues, met twice during the year.

The issues discussed included nursery furniture (cots, baby walkers and bunk beds), domestic furniture, internal window coverings, baby bath seats, mini motorcycles, hot water bottles, portable soccer goals, new safety information for children's products, uniform product safety legislation, review of safety and information standards, and review of Australia's product safety framework.

Feature: Two-dollar Shops

Many of the items which are subject to Victorian ban orders are imported from China and sold through gift and novelty retail outlets, sometimes referred to as two-dollar shops. Traders who operate in this market sector often come from culturally and linguistically diverse backgrounds.

During the year CAV commenced a research project to enhance the organisation's understanding of the motivations and barriers to compliance that are sometimes evident in this sector. The findings of the research will assist CAV to design more effective compliance strategies, commencing in 2007–08 with improved communication with, and education of, wholesalers supplying two-dollar shops.

Research Findings

The researchers commissioned by CAV undertook a range of in-depth interviews in metropolitan and regional Victoria among a range of retailers, importers/wholesalers and community business leaders.

Retailers

The retailers interviewed tended to have minimal business background; often the two-dollar shop was the first business venture and the object in going into the business was short-term – to generate income and then go on to another business. Proprietors tended to have few skills but similarly, there were minimal set-up demands. Retailers tended to have poor or limited English proficiency and tended to distrust government officials. There was a poor to non-existent awareness of consumer product safety laws with a general belief that importers or customs officials may already have made sure goods were safe. Despite a general lack of knowledge, retailers were keen to obey the law not because of potential financial penalties but because they did not want their store to get a bad business reputation.

Importers and wholesalers

Importers and wholesalers tended to have higher levels of English proficiency and literacy and have a better understanding of the role of regulatory authorities. While recognising that as importers they had a special responsibility to ensure product safety, some importers noted that it was in fact difficult to know what tests regulatory authorities applied to determine whether products were unsafe. In this situation it was sometimes difficult for them to know when a product might be unsafe especially when advised by Chinese manufacturers that a product complies with the law.

The research findings supported a view that trading in banned goods continued because:

- there was significant consumer demand for cheap goods
- it is easy to locate and import goods directly, and
- the goods are profitable.

There was sometimes a view that if the retailer did not sell a banned good, then it would be sold by another retailer anyway. Some reported the view that there was little chance of getting caught. The research did not clearly establish that (if the prospect of being caught was considered likely) the current range of financial penalties would act as an effective deterrent.

CAV response

While CAV needs to carefully consider the results of the research, some issues are clearly highlighted. For example, this market sector may not have access to information in either content or form that meets its needs. Also, there is no clear understanding of the penalty system in place in relation to consumer product safety.



In addition to the requirements of the industry-specific to some occupations

generally applicable Fair Trading Act, regulation applies in Victoria.



Other Industry Regulation Schemes

Achievements

- Leading Department response to whole of Government project to reduce regulatory burden
- Convened Victorian Regulators' Forum
- Leading review of regulatory practice across Department of Justice
- New scheme for licensing of non lawyer conveyancers
- New scheme for registration of funeral directors



As well as the regulatory schemes that apply to credit providers and finance brokers, estate agents and agents' representatives, motor car traders and liquor licensees (reported on elsewhere in this report), CAV administers or provides administrative support to the licensing and registration schemes discussed in this chapter.

Research papers

Using licensing to protect consumers' interests **New**

Choosing between general and specific regulation **New**

Conveyancers

The *Conveyancers Act 2006* was passed by Parliament in October 2006 and is expected to commence operation before July 2008. It will establish a new system of regulation and licensing for non lawyer conveyancers in Victoria.

Scope of the new legislation

A person operating a conveyancing business will be required by the Act to:

- be licensed by the Business Licensing Authority (BLA)
- be properly qualified and experienced
- be covered by a prescribed level of professional indemnity insurance
- disclose all costs and any commissions received to clients
- actively supervise their conveyancing business
- have their trust accounts audited annually, and
- contribute to the Victorian Property Fund (which compensates consumers who lose money because of fraudulent use of monies held in trust).

Licensing requirements

Once the Act comes into operation, only a person who has a conveyancer's licence from BLA or is an Australian legal practitioner will be permitted to carry on a conveyancing business in Victoria.

To be eligible for a licence, a conveyancer must have obtained 12 month's work experience and completed qualification requirements that will be set out in regulations. During the financial year CAV worked on developing regulations to bring this into effect.

Conveyancers who are currently conducting a conveyancing business and do not have the prescribed educational qualifications will be eligible to apply for a provisional licence if they can demonstrate that they have already been working in the industry for at least 12 months before the Act comes into operation.

A provisional licensee cannot carry out any legal work associated with his or her conveyancing business, or in connection with the transfer or conveyance of a freehold or leasehold interest in land. Nor may a provisional licensee give legal advice.

Once a provisional licensee has passed the competency qualifications prescribed in the Regulations (this must be done within five years of obtaining a provisional licence) and been granted a full conveyancer's licence by BLA, he or she will be able to conduct the legal work referred to above.

Insurance

Conveyancers will be required to be covered by professional indemnity insurance. A Ministerial Order will prescribe the minimum insurance requirements.

Professional obligations

Professional obligations similar to those in place for legal practitioners will apply to licensed conveyancers. These include obligations to disclose costs and conflicts of interest to clients. They also include strict obligations relating to the maintenance and auditing of trust accounts, which will reduce the risk of fraud in relation to trust monies.

Consumer protection against fraud

Licence fees and interest on trust monies held in conveyancers' trust accounts will be paid into the Victorian Property Fund to be used for administration of the scheme and, where appropriate, to compensate eligible consumers who suffer the fraudulent use of the consumer's money held in trust by a licensed conveyancer.

Publications and online resources

Conveyancing

New conveyancers laws

Funeral Directors

The new *Funeral Act 2006*, passed by Parliament in early October 2006, aims to enhance consumer protection by regulating the funeral industry and strengthening enforcement and inspection powers. The legislation also seeks to improve how the funeral industry is monitored and how it delivers services and information to the public. The Act is expected to commence in late 2007, and will apply to funeral providers who supply both funeral goods and funeral services to the public.

Registration

All funeral providers will be required to provide information to Consumer Affairs Victoria, including the name of the business, the physical and postal address of the chief place of business, and the physical addresses of all sites from which the funeral provider operates. Registration will be free.

Having this information will enable Consumer Affairs Victoria to monitor funeral providers more effectively. It also means CAV can keep funeral providers up-to-date with legislative requirements.

Securing compliance

In March 2007, Consumer Affairs Victoria initiated a compliance monitoring program covering pre-paid funeral contracts, which was piloted during a regional compliance exercise in Bendigo.

A fact sheet outlining the obligations and responsibilities of funeral organisers entering into pre-paid funeral contracts with consumers was prepared. Consumer Affairs Victoria staff inspected seven funeral organisers. The inspections and fact sheets were well received in the industry and inspectors found that there was overall compliance in the area.

Funeral Industry Ministerial Advisory Council

The Act will establish a Funeral Industry Ministerial Advisory Council. Funeral providers, funeral industry employees and consumer and health industry representatives will sit on the Council. The Council will monitor the operation of the Act and provide ongoing advice to the Minister for Consumer Affairs on issues relating to the operation of the funeral industry. It may also have specific issues referred to it by the Minister.

Introduction Agents

The *Introduction Agents Act 1997* was introduced to overcome unfair and unscrupulous practices which had become common in the industry and which the industry had been unable to eradicate. At the time, the Act successfully dealt with matters that had not been adequately addressed through the promotion of industry self-regulation initiatives.

The Act limits who can operate as an introduction agent to prevent undesirable people from acting as agents, and imposes standards to ensure that both agents and clients have clear, enforceable rights and obligations.

Parties wishing to trade as introduction agents must notify the BLA (supported by CAV) 30 days before they commence trading. This allows the BLA time to check parties' eligibility.

Applications lodged 2006–07: 10

Applications processed 2006–07: 9

Total agents on register: 50
No increase or decrease

2005-06: 50

2004-05: 62

Publications and online resources

Introduction agents

Prostitution Service Providers

CAV administers the *Prostitution Control Act 1994*, which aims to minimise the harms associated with prostitution by seeking to protect children, ensure criminals are not involved, promote public health, protect prostitutes from violence and exploitation, and lessen community impacts.

Under the Prostitution Control Act, individuals who engage other people to provide sexual services in their businesses must obtain licences from BLA (supported by CAV). Independent sex workers working in their own small businesses are exempt from the registration requirements, but are required to notify the BLA that they are trading. The Act also provides that at all times a brothel is open for business it must be supervised by the licensee or an approved brothel manager. The BLA approves brothel managers.

Consumer Affairs Victoria ensures licensees comply with the Prostitution Control Act (where those functions are not allocated to other agencies). The Act sets out the circumstances under which Consumer Affairs Victoria inspectors can enter licensee-operated brothels – both with and without the consent of the licensee.


Effective harm minimisation requires the involvement of a range of agencies across several government departments, as well as independent authorities. An Inter-Departmental Committee (IDC) meets regularly to ensure information flow between relevant agencies is co-ordinated. Consumer Affairs Victoria chairs the Committee.

The IDC has developed a communications strategy for industry participants, including the delivery in 2006–07 of safe sex signs for brothels and a Victoria-wide tollfree number for sex workers to get help and information. The St Kilda-based outreach service for sex workers, Resourcing Health & Education in the Sex Industry (RhED), manages the telephone service (1800 458 752).

A number of other communication products are under development for the coming year.

Applications lodged 2006–07: 15

Applications processed 2006–07: 26 (includes applications lodged in previous financial year)

Total prostitution service providers on register: 149
Down 1.32 per cent 

2005-06: 151

2004-05: 171

Publications and online resources

Safe sex poster **New**

Multicultural audiences

Safe sex poster (Arabic, Croatian, Greek, Hindi, Italian, Korean, Macedonian, Mandarin, Russian, Thai, Vietnamese) **New**

Monitoring prostitution service providers

CAV inspectors conduct ongoing monitoring of compliance with the Act by prostitution service provider licensees. In line with a harm minimisation approach, as priorities CAV inspectors ensure that:

- health and safety standards, both for consumers and service providers, are being met
- there are no children on or near any brothel premises
- no alcohol or drugs are being sold, supplied or consumed on the premises, and
- recording obligations are being followed – this ensures that businesses are operating in accordance with the Act and associated regulations, which in turn ensures that the consumer protections inherent in the regulation scheme are in effect.

Enforcing the law

Some issues that have been identified with legal brothels during the course of the compliance monitoring inspection program in 2006–07 include:

- employment of sex workers in contravention of the *Migration Act 1958*, some of whom have been identified as having been trafficked into Australia and working under servitude conditions
- evidence of consumption of alcohol and drugs on brothel premises
- improper processes by licensees to ensure that all sex workers are undergoing appropriate medical examinations to rule out sexually transmitted infections, and
- various other contraventions of the *Prostitution Control Act 1994* and *Prostitution Control Regulations 2006*.

Proceedings under the Act in relation to these contraventions are underway or are being proposed.

CAV inspectors and other government agencies (such as the Australian Federal Police, Victoria Police and the Department of Immigration and Citizenship) work together to ensure timely and thorough information sharing so as not to compromise others' current inquiries and investigations, and maintain awareness of issues and trends in the prostitution industry. Where relevant, matters uncovered during the course of CAV's ongoing inspections are referred for investigation to appropriate agencies.

The Prostitution Control Act empowers councils and the Police (but not CAV unless voluntary agreement is given or a search warrant obtained) to enter suspected illegal brothels or make an application to the Magistrates' Court to declare a premises as a proscribed brothel. During the year CAV assisted Victoria Police in making proscription applications to the court.

In addition CAV inspectors attended seven warrants and obtained orders in the Magistrates' Court directing operators to cease trading or publish corrective advertising.

Licensed service providers

Mr Fouy Shine and Mr Wei Min Yin
Consumer Affairs Victoria initiated disciplinary proceedings at VCAT against prostitution service provider licensee Mr Fouy Shine and approved manager Mr Wei Min Yin, for contraventions of the *Prostitution Control Act 1994* and Prostitution Control Regulations 2006, identified during an inspection of the brothel Moon Club conducted by CAV inspectors and officers from Victoria Police.

On 12 April 2007, Mr Shine was reprimanded pursuant to section 48A(1)(a) of the Act, and a penalty of \$2,000 payable to the Prostitution Control Fund was imposed.

In addition, Mr Yin was reprimanded pursuant to section 54A(1)(a) of the Act, and a penalty of \$1,000 payable to the Prostitution Control Fund was imposed.

*Ronald and Ann Turner,
Sumalee Ratanapongbandith and
Sut Chuen Kwok*

During a routine compliance inspection at Fantasy Dreams, located in Clayton South, CAV inspectors found that the premises were unsupervised and that a sex worker had been left alone in the premises with a client.

As a result of these deficiencies, CAV issued proceedings at VCAT for an inquiry into both the licensees (Mr and Mrs Turner) and the approved managers on duty at the time of the inspection (Mr Sut Chuen Kwok and Ms Sumalee Ratanapongbandith).

VCAT reprimanded Mr and Mrs Turner and imposed a penalty of \$500 each, payable to the Prostitution Control Fund. In addition Mr and Mrs Turner undertook to comply with the Act and Regulations.

Mr Kwok and Ms Ratanapongbandith were also reprimanded and directed to pay penalties of \$2,000 each, payable to the Prostitution Control Fund.

Licence cancelled

Consumer Affairs Victoria inspectors, assisted by immigration officers, discovered five illegal sex workers on premises licensed to Mr Alfonzo Di Conza.

The Director invoked his power under the Fair Trading Act to suspend a prostitution service provider's licence.

An inquiry into the conduct of the licensee was then lodged with VCAT, mainly concerning alleged improper management of the brothel.

Prior to the final determination of the inquiry, Consumer Affairs Victoria found a further three illegal sex workers on the premises.

VCAT upheld all eight grounds of inquiry and cancelled Mr Di Conza's licence. He was ordered to pay a penalty of \$1,000.

Unlicensed operator

Under the Prostitution Control Act, CAV has limited powers to deal directly with unlicensed operators, but works in partnership with other regulatory agencies to ensure action is taken against these operators.

However, there are occasions where CAV's regular monitoring of various advertising channels detects not only non compliance by licensees but also unlawful trading by unlicensed operators.

CAV and Victoria Police launched a joint investigation into the activities of Kim Thatcher, alleging the operation of an unlicensed brothel. Pending a final hearing CAV obtained an interim injunction in the Melbourne Magistrates' Court restraining Ms Thatcher from operating an unlicensed brothel and from providing premises for prostitution in contravention of her exempt escort status.

Following final determination of the matter, a permanent injunction was granted restraining Ms Thatcher from operating an unlicensed brothel. The Court also issued an adverse publicity order, and directed Ms Thatcher to pay the costs of the proceedings.

Prostitution Control Act Advisory Committee

Established under section 67 of the *Prostitution Control Act 1994*, the Advisory Committee advises the Minister on issues relating to the regulation and control of prostitution in Victoria. Ms Glenyys Romanes chairs the Committee, and members are appointed by the Governor in Council on the recommendation of the Minister. Members include persons with knowledge of prostitution in Victoria and persons who are representative of religious and community interests.

In 2006–07, the Committee completed reports considering models for career transition support for sex workers and examining the advertising, liquor and occupational health and safety provisions in the Act. Government responses to the reports are pending.

The issue of trafficking of women for sexual servitude was also referred to the Committee in 2006–07. The Committee will report to the Minister on the issues referred, to assist in the formulation of options for effective and co-operative measures across all levels of Government.

Second-hand Dealers and Pawnbrokers

The *Second-hand Dealers and Pawnbrokers Act 1989* regulates who can trade as second-hand dealers or as pawnbrokers. People and corporations who trade in second-hand goods (second-hand dealers) or advance money on the security of pledged goods (pawnbrokers), must be registered by BLA, unless exempted under the Act.

Under the Act, Victoria Police have enforcement responsibilities in relation to both second-hand dealers and pawnbrokers, while CAV has

enforcement responsibilities in respect of pawnbrokers only. These include inspection of registered dealers' premises and records, and identification of unregistered dealers. CAV assists the Police by providing information from its registration database, on request, in support of their compliance activities and prosecutions involving stolen goods.

Applications lodged 2006–07: 496

Applications processed 2006–07: 550 (includes applications lodged in previous financial year)

Total agents on register: 6,093
Down 2.82 per cent



2005-06: 6,270

2004-05: 6,531

Travel Agents

The Victorian *Travel Agents Act 1986* regulates people and corporations providing or offering travel services for profit. Persons trading as travel agents in Victoria must hold a travel agent's licence from the BLA (supported by CAV), unless they are exempt under the Act. Retail and corporate agents, tour wholesalers, consolidators, inbound tour operators, general sales agents, some bus or coach operators and some airlines are regarded as travel agents for the purposes of the Act.

Every licensed travel agent in Victoria must be an ongoing member of the Travel Compensation Fund (TCF). This national compensation fund compensates people who have suffered financial loss as a result of a travel agent's failure to account for money or other considerations entrusted to them. The TCF is made up of subscriptions from licensed travel agents, money forfeited by unlicensed travel agents and income from the investment of Fund money.

The trustees of the Fund are appointed by the Ministerial Council of Consumer Affairs. Three of the trustees are persons representing the Ministerial Council (and are from relevant consumer agencies). CAV is represented on the Board by its Deputy Director, Geoff Browne. During the 2006 calendar year, one Victorian travel agent went into liquidation resulting in claims on the Fund. A total of \$458,440 was paid out in 2006, in respect of 114 consumers' claims against this agent and two others who defaulted in 2005.

The major strategic issue considered by the TCF during 2006–07 was a review of member premium structures, with a view to moving towards a more risk-based premium structure.

Applications lodged 2006–07: 73

Applications processed 2006–07: 66

Total agents on register: 928
Up 0.32 per cent



2005-06: 925

2004-05: 938



CAV is leading a Department of Justice Better Business Regulation project to improve the practices and processes of regulators.



Conciliation prompts compassionate response from travel agent

CAV received a complaint from a 78 year old consumer on a Veterans' Affairs Extreme Disability and Service Pension. The consumer suffered from bowel cancer, bronchitis and emphysema, and walked with the aid of a walking frame.

The consumer had paid a travel agent a \$3,000 deposit for a package tour including cruises to Barcelona and Chile. The consumer alleged that he had not been advised at the time that the deposit was non refundable. His doctor subsequently advised him that he was scheduled to undergo chemotherapy treatment during the time he had planned to be away. The doctor wrote a letter to the travel agent to this effect, and the agent offered the consumer a \$355 refund.

Following intervention to assist the consumer, CAV managed to secure from the agent and their suppliers, on compassionate grounds, a refund of 50 per cent of the deposit, despite the fact that the paperwork clearly stated that deposits were not refundable upon cancellation.

Feature: Reviewing Regulatory Practice

Reducing the Regulatory Burden

Consumer Affairs Victoria is leading the Department of Justice response across the Attorney General, Consumer Affairs, Gaming and Racing, and Police and Emergency Services portfolios to the Victorian Reducing the Regulatory Burden (RRB) initiative.

This initiative, announced in the 2006–07 Budget, commits Victoria to reducing the administrative burden imposed on businesses and not-for-profits in relation to demonstrating compliance with government regulation (including requirements such as record-keeping, licence application forms, annual reporting and assisting with inspections by regulators).

The RRB initiative requires Government to cut the administrative burden of regulation by 15 per cent over three years and 25 per cent over five years. Progress towards the achievement of these targets will be measured using the Standard Cost Model (SCM), which is the internationally accepted best practice approach to measuring administrative burdens.

The regulatory reform team, based in CAV, co-ordinated the development of a three-year work plan for the Department of Justice. The plan identifies regulation that needs to be assessed for its potential to reduce the administrative burden for business. CAV's recognition of the need to ensure regulation in the marketplace is efficient and effective is demonstrated by the significant administrative burden reduction achieved by the introduction

of the Motor Car Traders (Amendment) Regulations 2006 to the Motor Car Traders Act in December 2006.

The Regulations simplified the paperwork requirements for dealings books used by motor car traders. The Regulations resulted in an estimated burden reduction of \$7.5 million per year. The analysis for the burden reduction was independently reviewed, and accepted by the Victorian Competition and Efficiency Commission.

CAV is in the process of reviewing opportunities to reduce the administrative burden associated with occupational and licensing schemes administered by CAV and BLA. The project will significantly reduce the administrative burden associated with the application process through the implementation of new information systems. CAV aims to save businesses \$6.7 million over five years through this part of the RRB initiative.

Better Business Regulation Project

CAV is leading a Department of Justice Better Business Regulation project to improve the practices and processes of regulators. The Department and its statutory entities administer more than 30 regulatory schemes for businesses and occupations in Victoria. Consequently, the Department is well placed to promote better outcomes for the community by identifying opportunities where regulation can be improved by assisting the regulators.

During 2006–07 a framework was developed for promoting continuous improvement of key aspects of regulatory practice, including the making, operating and reviewing of regulations.

CAV is currently piloting the framework on two regulatory schemes, which involves:

- evaluating current practices against best practice
- evaluating the maturity of regulatory processes
- establishing performance measures associated with regulatory practice, and
- identifying areas for improvement in the piloted schemes.

The review aims to minimise compliance costs for business and increase transparency and accountability in Government.

Regulators' Forum

The 6th Victorian Regulators' Forum (which commenced in 2003–04 and is convened by CAV) was held in 2006–07. Over 20 agencies were represented. This year, the theme of the Forum was 'Better Business Regulation: improving the performance of regulators'.

The Victorian Government is committed to regulatory reform. In this context of increasing interest in improving regulatory performance, the Forum focused on mechanisms for improving the performance of regulators. Speakers from Consumer Affairs Victoria and the Allen Consulting Group discussed the progress on the Better Business Regulation initiative by the Department of Justice to develop an evaluation tool that identifies opportunities and measures for improved regulatory practice. The Victorian Competition and Efficiency Commission discussed opportunities to improve the measurement and reporting of regulators' performance. The Australian Government has also focused on this with the release of the Australian National Audit Office's (ANAO) *Administering Regulation Better Practice Guide* in March 2007.

The ANAO outlined an approach to improving the quality of administrative practices and identifying specific improvement measures. The Forum also heard an industry perspective on regulators' performance from the Victorian Employers' Chamber of Commerce and Industry, particularly the need for industry consultation and building partnerships between regulators and industry. Contributions from participants on their organisations' experiences added to the usefulness of the Forum's discussion.

Compliance and enforcement

During 2006–07, Consumer Affairs Victoria continued to monitor compliance with the *Travel Agents Act 1986* in regional Victoria, inspecting a large number of travel agencies in Geelong, the Mornington Peninsula and Bendigo, and found a good level of compliance. However, one ongoing compliance issue that CAV has identified has been failure to meet the requirement that traders state their licensee names and licence numbers in advertising. Given that many travel agencies are franchisees of major national operators, responsible parties often are not easily identifiable to consumers wanting to follow up on complaints or enforce their rights in other ways, unless these details are provided.

Special interest group tours have emerged as a significant compliance issue in the past year with the rise in special interest travel. This section of the market covers a wide range of interests such as travel for religious, artistic, cultural and sporting reasons as well as travel for those with special needs. Although the individuals involved often possess specialist content knowledge, traders operating outside the licensed travel agents regime can pose a serious risk to consumers. Without the protection provided by the licensing regime and the safety net of the TCF, consumers risk losing their money and bookings if businesses collapse or are fraudulent. If traders are not licensed travel agents, they must ensure that consumers deal directly with a licensed travel agent in order to book travel and accommodation, playing a co-ordination role rather than arranging the travel themselves.



During 2006–07, Consumer Affairs Victoria continued to provide advice to MCCA on the appropriateness of the risk-based premium structure being developed by the TCF.



In addition, they must ensure that all information and promotional material accurately describes the tour content, together with a statement of who has responsibility for each component. In this way, there can be no misunderstanding by consumers as to the nature of the transaction.

Policy developments

Over the past year the TCF Board has been working on developing a risk-based premium structure for the TCF to enhance the current fee arrangements, which do not account for businesses' risk profiles.

This work has followed on from Australia Post's application for an exemption from the National Scheme for the Regulation of Travel Agents, to sell Jetstar domestic airline tickets. In May 2006, the Ministerial Council on Consumer Affairs (MCCA) considered Australia Post's application for exemption and, based on advice provided by Victoria, requested the TCF Board to develop a risk-based premium.

During 2006–07, Consumer Affairs Victoria has continued to provide advice to MCCA on the appropriateness of the risk-based premium structure being developed by the TCF.

Enforcing the law

As reported in previous years, Bevan and Ann Crowley and their daughter Hannah Crowley were unlicensed travel agents who arranged, promoted and accepted monies for overseas study tour travel packages marketed as half scholarships. Consumers complained that the Crowleys undertook unfair business practices and did not honour promises relating to the supply of the travel packages, or provide refunds when they were due.

CAV's 2005–06 Annual Report noted that the Director of Consumer Affairs Victoria had obtained interlocutory orders against Bevan, Ann and Hannah Crowley and associated companies Australasian Corporate Events (2004) Pty Ltd and Enews Publications Pty Ltd, restricting them from trading while unlicensed, making misleading and deceptive statements, and using unregistered business names until the matter was determined at a final hearing.

In July 2006, the Director obtained a second set of interlocutory orders in similar terms, this time against Liam Crowley (the eldest son of Bevan and Ann Crowley), along with Hannah Crowley and their respective companies Best Conferences Pty Ltd and OHS Worldwide Resources Pty Ltd.

In February 2007, Consumer Affairs Victoria obtained successful outcomes in the Magistrates' Court of Victoria in the proceedings against all the parties referred to above.

CAV obtained a final order directing Australasian Corporate Events (2004) Pty Ltd and/or Hannah Crowley to pay CAV the total amount of \$82,582 on behalf of specific consumers who had sustained loss.

Injunctions were granted permanently restraining Australasian Corporate Events (2004) Pty Ltd and Hannah Crowley from trading as travel agents while unlicensed to do so, falsely representing that affiliations with Travelscene American Express or any other organisation existed, using unregistered business names, and accepting money for goods and services before delivery.

The Court granted injunctive orders restraining Ann and Bevan Crowley from aiding and abetting or being knowingly concerned in such activities.

The Court ordered the defendants to email each person in their databases, notifying them of the proceedings and informing them of the outcome.

An order was also made directing the defendants to pay CAV's costs in the amount of \$17,600. (Enews Publications Pty Ltd did not have orders made against it because in the interim a liquidator had been appointed to the company.)

Regarding Best Conferences Pty Ltd, OHS Worldwide Resources Pty Ltd, Liam Crowley and Hannah Crowley, the Court granted permanent injunctive orders restraining each of them from trading as travel agents whilst unlicensed to do so or aiding and abetting any other unlicensed travel agent, and directed them to pay CAV \$5,416 on behalf of specific consumers, and costs of \$2,675.

Almost the entire amount due in compensation orders has already been recovered by CAV, and the consumers involved may look forward to receiving restitution for their losses.

CAV also published a public warning notice advising consumers of the companies' conduct.



Registering an association a group of people with a a governance structure to CAV provides information groups and oversees these

or co-operative allows common aim to develop achieve a shared outcome. and support to such registration schemes.



Governance

Achievements

- Assumed responsibility for regulation of patriotic funds
- Provided advice and assistance to community groups and businesses regarding governance of entities registered by CAV





CAV maintains a register of Victorian incorporated associations and monitors their compliance with the Act.



Incorporated Associations and Co-operatives

Applications lodged 2006–07: 1,439

Applications processed 2006–07: 1,418

Total incorporated associations on register: 33,434
Up 2.7 per cent



2005-06: 32,552

2004-05: 31,616

Incorporated associations

In Victoria, clubs, special interest groups and community groups can apply to CAV to become incorporated under the *Associations Incorporation Act 1981*. These groups support community needs and activities including education, health, the arts and sport. They are important to the community in terms of contributing substantially to the economy and to the social capital.

Incorporation of an association means the creation of a legal entity, separate from the individual members.

The main reason for incorporation is the protection of the members and office holders against personal liability for debts and other legal obligations of the organisation. Other advantages include the ability to buy and sell property in the name of the association, the ability to sue and be sued in the name of the association, the ability to accept gifts and bequests, the ability to invest and borrow money and greater eligibility to apply for grants.

Incorporation is entirely voluntary and a minimum of five members is required to form an incorporated association.

CAV maintains a register of Victorian incorporated associations and monitors their compliance in accordance with the Act. It also supports the incorporation and operation of associations with advice on legislative requirements and the development of rules under the Act for the orderly conduct of association activities.

Co-operatives

A co-operative is a democratic organisation owned and controlled by members who join together for a common benefit such as running housing co-operatives or education facilities. They are often formed for the conduct of a business activity, although the main purpose is not to profit the members but to advance the activities of the co-operative. Co-operatives are traditionally based on values of self-help, self-responsibility, democracy, equality, equity and solidarity.

The *Co-operatives Act 1996* provides for the formation, registration and management of a range of co-operatives including non trading government guarantee co-operatives. These types of co-operatives are formed for the purpose of providing community services or benefits, including the acquisition, provision and maintenance of land and buildings for education, recreation, or other community purposes. The scheme is available for use by any co-operative registered under the Act; however, it is ideally suited for co-operatives sponsored by organisations having no security to offer a lender. As a result, the majority (99 per cent) of users of the scheme are non trading co-operatives sponsored by school councils.

As well as keeping a register of all Victorian co-operatives, CAV is responsible for receiving annual returns, processing changes that co-operatives wish to make (such as a change of director, registered office, or rules), monitoring their operations, and assessing and making recommendations to the Department of Treasury and Finance on applications for government guarantees.

As with companies and incorporated associations, a co-operative is a legal entity that allows members the ability to purchase property, sue and be sued in the name of the co-operative and affords members limited personal liability. Under the Act a co-operative's board of directors is responsible to the membership in much the same way as the board of a company is responsible to its shareholders.

Applications lodged 2006–07: 13

Applications processed 2006–07: 13

Total on register: 742
Down 0.8 per cent



2005-06: 748

2004-05: 755

A co-operative approach to a co-operative

A leading co-operative was approached by one of its two major purchasers (which between them usually purchased the whole of the co-operative's product) with an offer of a large sum of money to cease the contract to purchase.

Had the co-operative agreed to this offer, it would have meant that the co-operative was no longer carrying on its primary activity, that is, its reason for existing. In order to pass this decision the co-operative required a special resolution passed by 75 per cent of voting members.

The co-operative approached CAV for its assistance to pass the resolution within the timeframe required so that they would not lose the opportunity to accept the offer.

The Registrar provided the assistance – and exemptions on some of the requirements – to ensure that (whilst proper consultation with members took place) legislative requirements did not stop the co-operative from achieving a positive outcome for the members.

The resolution was passed by over 90 per cent of the members and the contract was completed.

Indigenous associations

CAV's Indigenous Consumers Unit plays a central role in building the capacity of Indigenous associations and co-operatives to understand and embed the principles of good governance within their organisations. There are 36 Indigenous co-operatives and 57 Indigenous associations registered in Victoria that provide services including housing, health, education, employment, and child and aged care.

A partnership between Aboriginal Affairs Victoria, the Office of the Registrar of Aboriginal Corporations and CAV ensures the delivery of governance training to senior employees, organisation members and board and committee members of these associations and co-operatives.

CAV has continued to assist in developing the governance capacity of many Indigenous not-for-profit organisations. For example, in one organisation, this included assisting in the convening of Annual General Meetings, attending community meetings, providing advice on alteration of rules, attending committee meetings, and conciliating disputes between factions.

CAV has acted to support the interaction of the organisation with Government funding agencies and its own auditors and accountants and provided advice on the procedural requirements on how to apply to the Magistrates' Court for appropriate orders to resolve the disputes when required.

Fundraising

CAV, as administrator of the *Fundraising Appeals Act 1998* and associated regulations, and the generous Victorians who donate to the many fundraising appeals run in the State each year have an interest in ensuring that funds donated reach the intended recipients. This also boosts public confidence in fundraising bodies, which in turn improves legitimate operators' prospects of success.

The Act and regulations provide for a fundraiser registration scheme and impose certain requirements on fundraising entities.

In 2006–07, CAV continued to develop advice to the Government in response to a review of the Act. The broad aims of the review are to evaluate the regulatory framework for fundraising so that it can better:

- promote transparency and public confidence in the fundraising industry
- protect consumers who contribute money or benefits for non commercial purposes in response to public fundraising
- ensure that fundraisers engage in fair practices
- promote the efficient use of funds raised through public fundraising to support beneficiaries, and
- where possible, reduce the regulatory burden imposed by the Act.

To promote public confidence in fundraising and protect the public interest, the Director can impose conditions upon the registration of fundraisers on a case-by-case basis at the time of registration or at any time during the period of registration where there are grounds for concern.

The CAV registration/renewal policy provides that:

- the Director may apply conditions to promote transparency where fundraisers disclose at the time of registration that less than 50 per cent of the proceeds raised will be distributed to the beneficiaries. This disclosure condition requires that the fundraiser clearly identify in all solicitations, and by clearly labelling all products offered for sale, the percentage of funds raised that will be distributed to the beneficiary
- where a fundraiser discloses that less than 35 per cent of fundraising proceeds will be distributed to the beneficiaries, the Director will request the fundraiser to show cause why it should be registered. The registration will not proceed until the Director is satisfied that the proposed fundraising activity is in the public interest.

A public register records details of all fundraisers registered by CAV.

The register contains information including the nominated beneficiary, the percentage of funds that the fundraiser intends to distribute to the beneficiary and any conditions imposed on the fundraiser.

During the reporting year, CAV registered and renewed 1,017 applications. As at 30 June 2007, there were 1,019 approved fundraisers on the CAV public register, and 25 of these had disclosure conditions imposed on their registration. In October 2006, CAV deregistered one fundraiser for breaching the Act.

Publications and online resources

Accounting and audit requirements for prescribed associations

Amalgamation

Annual general meetings

Annual statements

Cancel or wind up an incorporation association

Dispute resolution

Guide to forming and running a co-operative

How does an association become incorporated?

Model rules of a non-trading co-operative (no shares)

Model rules of a non-trading co-operative (with shares)

Model rules of a non-trading co-operative with shares (government guaranteed)

Model rules of trading co-operative

Model rules for an incorporated association

Special resolutions

The management committee

The public officer

The rules of an incorporated association

The statutory obligations

of an incorporated association

Forms

Amalgamation of incorporated associations

Application for alteration of rules or purpose

Application for amalgamation of incorporated associations

Application for association incorporation

Application for association incorporation by a company/co-operative/society

Application for change of association name

Application for extension of time

Change of association details

Distribution of assets on voluntary windup

Victorian Emergency Relief Fund Inc (VERF)

Consumer Affairs Victoria received information alleging that VERF had failed to distribute fundraising appeal proceeds to the beneficiaries it had nominated at the time of renewing its registration as a fundraiser.

CAV investigated, and on the strength of its findings used statutory powers to obtain information from VERF about its income. This showed that from March 2002 to May 2005 the organisation had received donations and other income totalling nearly \$440,000.

However, only \$55,000 (or 12.9 per cent) of these funds had been distributed to the nominated beneficiaries. The amount of \$68,160.23 (15.5 per cent) had gone to consultancy fees and payments to Australian Press Holdings Pty Ltd, of which Mr Dale Peters (a VERF committee member) was the sole director and shareholder. VERF's records showed that a further \$40,905.32 (9 per cent of donations) had been paid to Mr Peters as reimbursements.

The remainder of the donations had been absorbed in administrative costs of fundraising campaigns, which included printing and postage costs.

CAV was concerned that monies had not been distributed in accordance with details given to the Director at the time of its original or renewal applications for registration as a fundraising entity.

CAV deregistered VERF as a fundraiser on 6 January 2006, and ordered VERF to distribute all appeal monies retained as at that date to three regional hospitals (nominated as beneficiaries by VERF in its solicitations to the public). West Wimmera Health Service, Orbost Regional Health and Northeast Health Wangaratta have each received a one-third share of the \$8,251.54 in VERF's remaining funds.

The Director issued a public warning notice alerting Victorians to VERF's conduct.



In 2006-07, CAV continued to develop advice to the Government in response to a review of the Act.





In August 2006, day-to-day responsibility for the regulation of patriotic funds was transferred to CAV.



Patriotic Funds

Patriotic funds, which have their origin in the First World War, are trust funds raised or used for a range of purposes in connection with military service or duty, and are administered by legally appointed trustees in accordance with clearly defined objectives.

There are two types of patriotic fund. Welfare patriotic funds provide relief, assistance or support for service members who are, as a result of any service or duty, sick, wounded, disabled, out of employment, or in difficult circumstances. These funds also provide for relief, assistance or support for dependants of service members, including members who have died as a result of any service or duty.

Building patriotic funds provide for the purchase or lease of land, and the building on the land of halls or buildings suitable for use as clubrooms by service members and their dependants, including dependants of service members who have died as a result of any service or duty. Building funds also may be used for the purchase or lease of furniture, fittings or fixtures suitable for use in such halls and clubrooms, and for the alteration, renovation, and maintenance of halls or clubrooms.

In August 2006, following the introduction of the *Veterans Act 2005*, the day-to-day responsibility for the regulation of patriotic funds was transferred from the Patriotic Funds Council (PFC) to CAV. CAV was already regulating many veterans' organisations under the *Associations Incorporation Act 1981*. At the time of the transfer PFC records indicated that there were 405 welfare patriotic funds and 240 building patriotic funds.

To provide a high level of service to the veterans community, CAV directed specific resources to this new function and supplied the trustees of the funds with direct CAV contact details. This initiative has already facilitated the resolution of a range of issues.

In consultation with the Victorian Veterans Council (VVC), a new independent statutory body established in 2006, CAV developed draft guidelines on trustees' obligations, enforcement provisions and the consultation process between the VVC and CAV. Once finalised these guidelines will be issued to existing fund trustees and placed on the CAV website.

CAV also revised and simplified the content of the welfare and building fund trust deeds and established new processes to manage the range of its patriotic fund responsibilities. These include approving the establishment of new funds, assisting in the administration of funds, approving fundraising for funds and approving transfers of funds.

Under the *Veterans Act 2005* trustees of these funds must notify CAV whenever there is a change in trustees or trust deed or a change in administrative officers or bank account signatories. On an annual basis the trustees must lodge with CAV an audited statement of income and expenditure and an audited balance sheet of the fund.

To determine existing compliance rates CAV undertook, in early 2007, an audit and reconciliation of past annual statements that had been submitted to the PFC prior to August 2006. This audit and reconciliation identified a number of matters that are being followed up with the trustees of the funds involved.

CAV issued the 2006 annual statement forms to the trustees of 645 funds in December 2006, for completion and return. No serious non compliance was detected for the 108 trustees of patriotic funds in Victoria (several trustees are involved with more than one fund).

CAV has also taken action that has resolved a number of matters that existed at the time of the transfer of the regulatory function, and has progressed several complex legal issues involving the administration of patriotic funds.

During 2006–07 CAV processed 49 applications to transfer funds.

Applications lodged 2006–07: 4

Applications processed 2006–07: 3

Total patriotic funds on register at 30 June 2006: 644
Estimated variation from previous year less than one per cent

2005-06: not available

2004-05: not available

Partnerships

Under the *Partnership Act 1958*, CAV maintains a register of limited partnerships and incorporated limited partnerships. As at 30 June 2007 there were 116 limited partnerships on the register. This is a net increase of 22 from the same time in the previous year.

Venture capital funds, established as limited partnerships to gain advantages under the Commonwealth *Venture Capital Act 2002*, can be registered as incorporated limited partnerships. As at 30 June 2007, there were 11 incorporated limited partnerships, an increase of three from the same time in the previous year.

A recurring issue with partnership applications submitted to CAV is the presumption that a trust can be a general or limited partner in the application. A trust cannot be a general or limited partner as a trust is not a legal person. The people named as trustees of the trust have to be the general or limited partners.

Applications lodged 2006–07: 22

Applications processed 2006–07: 26

Total limited partnerships on register: 116
Up 23.4 per cent 

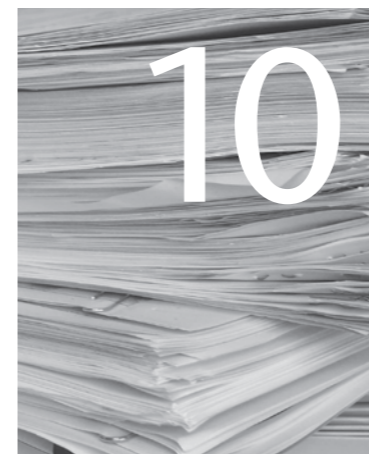
2005-06: 94

2004-05: 81



Some aspects of consumer protection - in particular consumer policy reform - require a national focus, as the differences between laws in the various jurisdictions can cause uncertainty and increase compliance costs for businesses, to the ultimate detriment of consumers.

protection - in particular consumer policy reform - require differences between laws can cause uncertainty costs for businesses, of consumers.



Other National Initiatives

Achievements

- Co-ordinating Victorian Government submission to Productivity Commission national review of consumer policy
- Progressed priorities under National Indigenous Consumers Strategy
- Founding National Education and Information Taskforce



CAV's contributions to consumer protection initiatives at the national level takes into account the interests of Victorian consumers, since they are CAV's first priority.

Many initiatives at state level also call for co-operation across business units within the Department of Justice.

In addition to the work done in program areas specified elsewhere in this report, CAV led or contributed to the following initiatives during 2006–07.

Review of National Consumer Policy

Consumer Affairs Victoria is playing a leading role in a major Federal Government inquiry that will shape the direction of consumer policy in Australia for the next decade.

The review of the nation's consumer policy framework is being conducted by the Productivity Commission – the Federal Government's review and advisory body on microeconomic policy and regulation. Its recommendations could have a significant impact on consumers and consumer protection agencies around Australia.

Victorian Government submission

CAV co-ordinated the Victorian Government's submissions to this far-reaching 12-month inquiry. The comprehensive review of the national consumer policy framework – which is necessary to ensure that consumers are not disadvantaged and that the policy environment keeps pace with changing economic, social and environmental conditions – has been welcomed by CAV.

The inquiry focuses on the regulatory principles and objectives underpinning state, territory and federal consumer legislation, education programs, dispute resolution services and compliance and enforcement tools.

Its terms of reference, which were announced by the Federal Treasurer in December, require the Productivity Commission to report on a range of items including:

- ways to improve the consumer policy environment to assist and empower consumers, including those who are vulnerable and disadvantaged
- the role of self-regulatory and co-regulatory tools, such as codes of practice and industry guidelines
- the extent to which more effective use could be made of consumer education and information programs, and
- the structure of, and relationships between, agencies involved in the development and administration of consumer policy.

CAV has also been leading a Ministerial Council on Consumer Affairs' Working Party on Consumer Policy, which prepared an information paper for the Productivity Commission. The group was formed after concerns were raised last year at the CAV-hosted National Consumer Congress that Australia had fallen behind international best practice in consumer policy.

Empowering consumer advocates

It is a priority for CAV to ensure that advocacy for the interests of business during the inquiry is balanced by strong representation of the consumer viewpoint. CAV is working to ensure that the consumer voice is heard during the inquiry, via the Working Together Forum, which brings together Victorian consumer groups, advocacy bodies and welfare agencies for information sharing and consultation around consumer issues.

Under the auspices of the Forum, CAV conducted two workshops during 2006–07. The first raised awareness of the upcoming review, and canvassed how CAV can assist organisations to become involved. The second workshop focused on the Commission's Issues Paper. The workshop aimed to answer participants' questions about the paper, and generate discussion and ideas to assist them to write submissions or otherwise participate in the inquiry.



Members of the Ministerial Council on Consumer Affairs 2006-07.

National Indigenous Consumers Strategy

A national strategy for protection of Indigenous consumers (developed in co-operation by several agencies, including CAV) was released in 2005.

The strategy – Taking Action, Gaining Trust – identifies eight key areas of national priority for consumer agencies, in order of importance.

These are:

- 1 employment of Indigenous staff in consumer agencies
- 2 advocacy of Indigenous consumers' interests
- 3 housing
- 4 financial management and banking
- 5 motor vehicles and boats
- 6 trading practices
- 7 arts industry, and
- 8 managing Indigenous community organisations.

CAV contributes to all these priority areas in Victoria, either through its broad programs or through the Indigenous Consumers Unit. Progress during 2006–07 included:

- Delivery of five Kooris Know Your Rights forums during the year in the Loddon Mallee, Hume and metropolitan regions: these forums are designed to promote inter-agency co-operation in addressing under-utilisation of consumer and justice related agency services by Indigenous people, by promoting awareness of the services and developing referral processes between agencies (priority 2).
- Signing a revised co-operation agreement with the Victorian Aboriginal Legal Service (VALS) Co-operative Limited to promote co-operation between the agencies in consumer protection initiatives targeting Victoria's Indigenous communities (priority 2).

- Establishment of a research project investigating discrimination in the private rental market facing Indigenous tenants in Victoria. The Australian Housing and Urban Research Institute has been engaged to undertake a literature review and CAV's Indigenous Consumers Unit has also met with Indigenous workers in the Loddon Mallee region to gather information about discrimination in the private rental market in the local area and begin to develop strategies to collectively address issues (priority 3).
- Managing a project to develop an educational resource kit for Koori youth in the area of credit and debt, funded through the Consumer Credit Fund (priority 4).
- Partnering with the Office of the Registrar of Aboriginal Corporations, Aboriginal Affairs Victoria and Swinburne University, to deliver corporate governance training to board members and senior staff of Indigenous organisations in Victoria (priority 8).
- Managing enquiries and complaints raised by members of Indigenous organisations registered under the *Associations Incorporation Act 1981* and the *Co-operatives Act 1996* (priority 8).
- Development of training for Indigenous community members to improve their understanding of governance particularly around conducting Annual General Meetings, reporting to members, and making rule changes (priority 8).

National Education and Information Taskforce

At its May 2007 meeting the Ministerial Council on Consumer Affairs (MCCA) accepted a Victorian proposal to establish an Education and Information Taskforce to help identify, develop and implement new strategies to empower consumers to make informed and timely marketplace decisions.

The taskforce's terms of reference are to:

- co-ordinate major national behavioural change campaigns
- liaise with other MCCA Advisory Committees to identify the need for, and co-ordinate the development and implementation of, national education and information campaigns
- provide advice to MCCA and the Standing Committee of Officials of Consumer Affairs on the development and implementation of such national programs, once they are agreed to, and
- establish and maintain an accessible bank of research, evaluations, strategies, campaign creative concepts, publications and other information that can assist other states in the development and implementation of their own education and information activities.

The emphasis on behavioural change programs as opposed to information and education campaigns takes into account the findings of behavioural economics that consumers are not always motivated by economic self-interest and that information provision alone does not always result in behavioural change.

CAV has begun consultation and planning work towards the first meeting of the taskforce. It is expected that the group will identify one to three priority projects that will form the subjects of major national behavioural change programs.

*The Victorian
Government's key
messages to the
Productivity
Commission*

- In some circumstances, markets will develop mechanisms to address information problems reducing (but not eliminating) the need for government intervention.
- Self-regulation through the introduction of codes of practice can reduce compliance costs for business, but may not be an effective tool for addressing consumer problems, in particular where there is a serious market failure or important social objective to be achieved.
- There is a need for further research into behavioural economics and the implications for consumer policy.
- Behavioural change strategies, such as social marketing techniques, should be considered in the policy development process alongside more traditional responses such as information campaigns and regulation.
- Unfair contract terms legislation has been successful in achieving change for the benefit of consumers. It should be introduced nationally.
- Although industry-specific regulation will still be appropriate in some areas, such as utilities and credit, consumer policy strategies should place greater reliance on the fair trading Acts.
- The scope and adequacy of the general law should be examined to ensure the regulatory framework is as effective as possible. There is a case for adopting a broader unfairness test for business conduct.
- A structured, objective and rigorous approach should be applied to determine when licensing schemes should be used and what form these schemes should take.
- Effective consumer policy requires input from consumers as well as business and government and needs to be based on evidence.

- Ensuring enforcement powers and remedies are appropriate can increase the effectiveness of general regulation and create scope to reduce the reliance on more prescriptive rules-based regulation.
- Whilst Alternative Dispute Resolution (ADR) provides opportunities for consumers and suppliers, government must play a role in the relevance, suitability and performance of ADR schemes.
- Enforcement of the regulatory framework may be improved if consumer organisations had a greater role in assisting consumers resolve disputes and obtain redress. Mechanisms such as the super complaints system in the United Kingdom and representative actions, also being considered in the United Kingdom, should be examined.
- In its recommendations, the Commission should retain the federalist nature of current arrangements and adhere to the principle of subsidiarity.
- There is constructive inter-jurisdictional comparison in the area of consumer policy. Throughout its review, the Commission should promote inter-jurisdictional learning and improvement in the development and implementation of consumer policy.
- The federal system of governance does not lead to significant inefficiency within the consumer policy framework. However, nationally uniform regulation and co-operation may be appropriate in some circumstances, when assessed on a case-by-case basis.
- The Ministerial Council and the Standing Committee of Officials play an integral role in co-ordinating policy development and enforcement within Australia's consumer policy framework. There are a number of impediments and challenges to achieving best practice in relation to these national processes but significant improvements have been made in recent years.



Consumer Affairs Victoria is playing a leading role in a major Federal Government inquiry that will shape the direction of consumer policy in Australia for the next decade.





An ongoing priority in strategic objectives and protection services is updating its business developing its people.

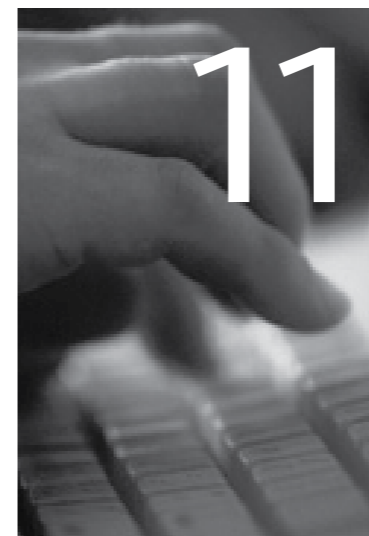




An ongoing priority in strategic objectives and protection services is updating its business developing its people.



CAV's pursuit of its delivery of consumer improving and processes, and



Optimising Organisational Capacity

Achievements

- New case management system to improve service delivery
- Review of protocols around cross-jurisdictional consumer issues
- Progressed development of strategy for protection of consumers with disabilities
- Developing organisational performance measures
- Commenced volunteer engagement project
- Established market monitoring capacity
- Commenced development of a sustainability strategy





As the leading Victorian consumer protection agency, CAV has a responsibility and opportunity to actively address the sustainable consumption agenda.



Sustainability

Concerns about climate change are coming to prominence around the world. At the same time, consumption of resources is at an all-time high. The State Government's 2006 sustainability action statement *Our environment, our future* indicates Victoria's commitment to sustainability. As the leading Victorian consumer protection agency, CAV has a responsibility and opportunity to actively address the sustainable consumption agenda.

CAV has undertaken to improve its own sustainability performance, and to use its existing communication channels with consumers in various market segments (in partnership with key agencies) to reinforce key messages around sustainable consumption.

In late 2006 CAV developed a comprehensive Environment and Sustainability Action Plan, designed to improve CAV's environmental performance and to engage its customers, stakeholders and clients. This program is occurring in close alignment with the Department of Justice focus on environment with the establishment of the Built Environment and Business Sustainability Unit.

Key milestones achieved over the last financial year include:

- CAV's involvement, as a foundation sponsor and participant, in Melbourne's first ever Green Christmas event at Federation Square, in partnership with the Gould Group
- the revision of key CAV products, including *Better car deals* and *Building and renovating: a guide for consumers*, to include comprehensive sustainability information
- the recruitment and formation of the CAV Environment Action Team and its implementation of initiatives including a mobile phone recycling event and improved waste signage within CAV lunchrooms
- a regular *Going green* environmental update for CAV staff
- distribution of information about energy saving to both landlords and tenants in several hundred tenancy kits per week, and
- establishment of an audio visual display in the Victorian Consumer & Business Centre, promoting a series of sustainable consumption messages concerning topics such as energy, water, waste and reducing ecological footprint.

Case Management System

During the year CAV implemented a new case management system, Resolve, replacing Fairgo which had been used since the 1990s.

Resolve is provided by Beethoven Computer Services Pty Ltd and is a major business system used by around 250 CAV staff.

The new system was a response to substantially changed business requirements as CAV wished to:

- manage cases end-to-end across its enquiries, dispute resolution, investigation and prosecution functions
- improve service delivery by taking complaints by phone as opposed to requesting callers to lodge written complaints
- manage documents electronically
- manage the flow of cases between the Melbourne office and regional offices
- improve work practices using alerts and escalation when targets are not met
- better record and manage the intelligence gathered through interaction with consumers, and
- participate in the national program of intelligence sharing, AUZSHARE
- CAV staff started using the new system in March 2007 following a major effort in clarifying business rules, configuring the system, testing and implementation.

These advances enable CAV to continue to improve its performance and service delivery.

Review of Principles for Handling Cross-jurisdictional Matters

With the exponential growth in online shopping transactions, thousands of Victorian consumers are routinely buying from traders in other Australian states. Cross-border trade has become a feature of everyday life, but when things go wrong, the problem arises of which state should handle the complaint, and which state's law applies to the transaction.

In 2007, Consumer Affairs Victoria undertook an in-depth review of its policy on cross-jurisdictional complaints. Up to this point, CAV's policy had been to handle only complaints relating to traders based in Victoria. All other complaints were referred to the jurisdiction where the trader was based.

The review came in the wake of work by the Fair Trading Officers Advisory Committee (FTOAC) (an advisory body to the Standing Committee of Officials of Consumer Affairs) on uniform cross-jurisdictional protocols.

The review was prompted by:

- the need for a general principle of referral to deal simply with one-off complaints (which comprise the bulk of CAV's work)
- difficulties with interpreting the current principle and its myriad of exceptions
- the unsustainable number of conciliations CAV undertakes for consumers living in other states (in 2005–06 approximately one in 12 complaints listed for conciliation were lodged by consumers in other states), and
- the belief that Victorian consumers are disadvantaged by the current policy.

CAV aimed to formulate a new principle that was simple, fair and equitable to both consumers and traders, reflected current thinking in jurisdictional policy and was sustainable from a resource point of view.

The new principle also takes into account the differing parameters imposed by the nature of conciliation and enforcement work. Conciliation is best done in the consumer's jurisdiction, whereas enforcement action involves physical service of notices etc, and as a result must usually be undertaken in the jurisdiction of the trader.

In terms of the new policy CAV will refer all disputes that are suited for conciliation to the jurisdiction where the goods were supplied. In almost all cases this will be the jurisdiction where the consumer lives.

For enforcement matters, CAV will accept all disputes with a Victorian connection and then apply the current *Compliance and enforcement guidelines* which form the basis for determining appropriate compliance or enforcement action.

Where the Victorian connection or impact is only slight or another jurisdiction is already investigating, CAV will refer the matter to the appropriate jurisdiction.

The new rules provide consumers with the maximum protection of their own consumer affairs agency and better access to justice should conciliation fail, which reflects the current trend in Tribunal and international policy.

It is important to note that the new policy will apply only to one-off complaints. For significant multi-party complaints a lead agency approach developed by FTOAC will be used.

Optimising Organisational Capacity

CAV Performance Measures

Work on developing performance measures for CAV continued during 2006–07, with the focus on identifying appropriate efficiency, effectiveness and outcome measures for the key activities that enable CAV to perform its regulatory functions.

A suite of performance indicators has been identified and is being tested through a pilot program, which is due for completion in July 2007. The performance measurement framework, which draws heavily on the Better Business Regulation project CAV is conducting for the Department of Justice, will be extended to support the priorities identified during CAV's corporate planning processes.

Given that CAV administers nearly 50 Acts of Parliament, including 20 separate regulation schemes, establishing a common performance measurement framework is a challenge of substantial complexity.

The aim of the project is development of a framework that:

- reflects the extent to which CAV's activities are achieving organisational objectives
- can measure the outcomes achieved through pursuit of those objectives
- makes use of stable data sources that will provide consistent data in forthcoming years, making comparisons and trend analysis possible, and
- can accommodate changes to the delivery of services and organisational change.

Ultimately, when completed and operating fully, CAV's new performance reporting framework will serve a number of important functions, including:

- informing the Government through consistent reporting over time about the extent to which CAV is meeting its objectives in the medium and longer term and the impact its services and initiatives are having in the community
- informing CAV's strategic and program planning, through improved evaluation capability, and
- enabling CAV to report on outcomes for specific groups within the community, such as disadvantaged and vulnerable consumers and consumers in particular regions.

Measuring Customer Satisfaction

In 2007, CAV implemented a research framework to monitor customer satisfaction with services delivered by CAV.

The primary focus for creating such a framework was to develop a unified approach to customer satisfaction measurement that will drive continuous improvement in customers' experience with CAV services.

The framework facilitates ongoing tracking of performance through standardised survey tools and reporting templates, and establishes service delivery benchmarks for the organisation.

CAV will also use the research to further improve understanding of customer needs and wants, and to track the impact of customer service improvements.

As at financial year end customer satisfaction surveys under the framework had been completed for the CAV contact centre, the CAV customer service counter in the Victorian Consumer & Business Centre, and occupational and liquor licensing services. A number of measures to obtain improvements have been identified and action plans have been developed to implement these.

In 2007–08, the framework will be implemented in the remaining service areas.

Disability Strategy

During 2006–07 CAV formally released the draft *Disability strategy action plan* to stakeholders in the disability, community and industry sectors for comment.

Implementation work on several critical elements of the plan was also undertaken during the year.

Internally focused initiatives

Work was progressed across a range of initiatives associated with improving the accessibility of CAV services.

These included:

- making CAV's *Guide to retirement village living* available in formats accessible to vision impaired and print handicapped Victorians
- reviewing and improving the accessibility of core CAV services including the Consumer Helpline, the CAV website, and the Victorian Consumer & Business Centre, and
- working in partnership with Vision Australia and Scope (a non profit organisation providing disability services throughout Victoria) to progressively re-publish key educational and informational resources into more accessible formats including Easy English and audio versions.

Plega Health Care

As reported last year, CAV received a high volume of complaints against Plega Health Care in the 2005–06 financial year, involving delays in supplying products such as scooters, lift chairs and electric beds ordered by elderly and disabled consumers. Consumers reported that Plega's listed service agents were often unwilling to perform repair work and that Plega failed to honour undertakings to give refunds within a reasonable time. Consumers who were terminally ill often felt the effects of this behaviour even more acutely, as they were in need of the funds in order to purchase necessary aids elsewhere.

While the number of complaints against this trader declined by almost half in 2006–07, complaint volumes remain substantial and the problems reported are similar.

Plega's director Pierry Bilotto does not dispute consumers' complaints, acknowledges that refunds are due, and always undertakes to CAV to make the refunds, but does not do so. He does not return calls, respond to emails or send cheques, as agreed.

For example, in one representative case CAV contacted the trader in relation to non supply of a mattress for an elderly consumer with terminal lung cancer, who required a more comfortable mattress owing to a 30kg weight loss related to her illness.

According to the consumer's daughter, Plega had failed to supply the mattress despite having accepted payment, had not met subsequent agreed delivery dates, and had not responded to several requests for a refund. After contact from CAV the trader agreed in writing to provide a full refund, but at the time of writing had not done so.

CAV is continuing to monitor this company.

Externally focused initiatives

During 2006–07, projects commenced in collaboration with key external partners in two areas of particular significance to people with a disability: aids and equipment, and attendant care services.

In partnership with the Department of Human Services (DHS) Disability Services area and the Transport Accident Commission, work has commenced on a project involving the development of industry guidelines aimed at improving aid and equipment suppliers' and repairers' awareness of their obligations under the *Fair Trading Act 1999*. An important component of this project involves the development of an outreach program aimed at providing Victorians with disabilities with information to better inform them of their rights as consumers.

A project is also underway to address difficulties associated with the provision of attendant care for people with disabilities, in partnership with DHS and key providers of attendant care services. This project focuses on issues experienced by the DHS Direct Payments Project. The Direct Payments Project involves a trial where disability support funding is paid directly to people with disabilities who then contract with providers or suppliers for services and equipment. Specific problems associated with provision of attendant care services include variable or non attendance, training and experience levels of carers, and contractual issues.

A CAV internal working party, comprising representatives from all CAV functional areas, was set up during the year to co-ordinate CAV-wide implementation efforts and to develop an appropriate framework to measure and report on progress.



Dr David Cousins and Chris Noone accepting a Making a Difference Award from Gerard Menses, CEO Vision Australia.

CAV, working with DHS, developed and delivered several presentations on issues affecting disabled consumers, to participants of the Direct Payments Disability Project. This group of disabled people were developing skills to enable them to receive and manage their funding for disability support directly, rather than through a support organisation. They would then choose, arrange and purchase the supports they required to meet the goals they had identified in their individual plans.

Disability strategy makes a difference

CAV's efforts in making information accessible to people who are blind or who have low vision was recognised by Vision Australia at an awards ceremony held on 4 June 2007.

Vision Australia presented CAV with a Making a Difference Award for making the recently updated *Guide to retirement village living* booklet available on audio CD, and for ongoing work with Vision Australia towards making information accessible to all people with disabilities.

Vision Australia grants Making a Difference Awards to local businesses, organisations or individuals which show outstanding support for people who are blind or have low vision in their community; develop practical solutions for everyday challenges, enabling better access and participation in local communities for people who are blind or have low vision; and employ best practice in considering the needs of people who are blind or have low vision.

Volunteer Engagement Project

In January 2007, CAV commenced a project exploring how voluntary action and volunteering can contribute to achieving CAV's broader strategic objectives. CAV already has contact with volunteers and voluntary agencies in many contexts and the project provides an opportunity to consider how these relationships are managed and where there may be opportunities to strengthen these to achieve greater consumer benefit. A focus on supporting volunteering is emphasised in current government social policy and is integral to achieving the broader government community-strengthening agenda.

A broad definition of voluntary activity has been adopted which recognises an extensive range of activities performed on behalf of people other than the volunteers, without financial reward and of their own free will.

This extends the definition of volunteering to include such activities as advocacy or campaigning, providing input into consultative processes, or acting as a consumer representative on a committee.

The first stage of the project has identified national and international trends in volunteering, examples of voluntary activity in other consumer affairs agencies and volunteering in other Victorian Government departments.

In light of the findings to date, a community capacity building approach towards supporting voluntary activity is recommended. This seeks to engage with and strengthen the skills, resources, and networks of local agencies that are already operating in the community and where community and CAV interests can be aligned.

Optimising Organisational Capacity

This approach is consistent with current government policy and provides greater opportunity for CAV to work collaboratively with the community for the benefit of consumers.

Working in partnership with volunteer networks or agencies in the community will be a key strategy in this broad approach.

Consultation is now underway to map the existing relationships CAV has with volunteers and volunteer-based community groups. For example there are over 32,000 incorporated associations and co-operatives registered through CAV, many of whom are volunteer based. The final stage of the project will provide a framework for volunteer engagement and identify strategic opportunities for implementation.

Monitoring Markets

Reflecting CAV's commitment to increasing its intelligence base to guide decision making in determining when and how to intervene in markets, a small Market Monitoring branch was established toward the end of 2006.

The branch comprises a small team dedicated to assisting CAV to monitor the operation of markets and identify ways to improve outcomes for consumers, beyond the analysis of enquiries and complaints data (which continue to provide an important intelligence base, but are by nature incomplete and do not necessarily reveal causes of particular types of detriment).

A systematic analysis of market characteristics – the number, nature and size of suppliers; the ease of entry and exit from a particular market; the nature of the products and services supplied; and the characteristics of the consumers involved (for example how skilled or informed they are) – provides a framework for evaluating consumer experience and developing options to improve outcomes for consumers.

To obtain adequate information to inform interventions will often necessitate a new way of working for CAV, for example performing quantitative and qualitative research, and undertaking survey work.

The range of research initiatives reflected elsewhere in this report demonstrates the results already achieved by the branch and the impact on CAV's strategic and program planning.

Keeping Employees and Stakeholders Informed

CAV staff receives regular fortnightly communication from the Director in the form of the staff newsletter, *CAVeat Emptor*. In this way staff members are kept informed of developments that may impact their work areas, and useful debate on emerging issues is stimulated.

The various branches regularly report on their activities in the newsletter, providing the opportunity for greater co-ordination and consistency in the conduct of CAV's many functions.

As well as publishing the industry-specific newsletters referred to elsewhere in the report, CAV regularly updates stakeholders on the latest developments in consumer issues dealt with by the agency, through the quarterly email publication *CAVLink*.

Learning and Development

At the end of the financial year CAV had an equivalent full-time staff of 424.6 (as compared to 409.8 at 30 June 2006). In addition to its own staff, CAV was able to utilise resources transferred to, or centralised in, the Department of Justice, including communications, information technology, human resources and library staff.

CAV has made significant gains this year in learning and development, equipping more staff with a variety of skills supporting delivery of a high quality service to consumers. More courses and other training interventions were run than in previous years, including the key strategic areas of legislation and policy, leadership and management, selection and recruitment, customer service, and case management. Improved marketing of programs along with high quality of delivery ensured high participation rates, with CAV continuing to annually increase the training days delivered to staff and the number of participants attending training. CAV will be looking to consolidate these gains and continue to improve the training function.

Legislation

A key training objective for 2006–07 was to significantly improve the understanding and use of legislation amongst our staff, particularly those on the frontline giving information and advice to consumers. Along with existing programs on residential tenancies and credit law, programs were developed and delivered on the Fair Trading, Motor Car Traders, Domestic Building Contracts, Associations Incorporation, Estate Agents and Sale of Land Acts.

In 2006–07, 129 staff attended one or more courses through this program, which delivers consistent messages on CAV's approach to administering the Acts. The development of a pilot online learning module for residential tenancies law is another important step for CAV in ensuring new staff have fast access to introductory material on Acts they need to use in day-to-day work.

Leadership development

A program was put in place to ensure a high level of current and future leadership capacity for the organisation. The Corporate Management Group along with selected senior staff were assessed against an internationally recognised leadership model, and then offered coaching over a three-month period to develop new skills and capitalise on identified strengths. This exercise improved both the leadership capacity of the organisation as well as the understanding of the strengths and opportunities that lie in its current leadership group and senior staff.

Customer service

Last financial year more than 250 frontline and corporate staff attended customer service training as part of a major quality enhancement project.

This training was reviewed in 2006–07 and formally became part of the CAV induction program for new starters. As a result, all new staff now attend training providing information on the CAV Customer Charter and our approach to assisting vulnerable and disadvantaged consumers, and teaching active listening, note taking and teamwork skills.

Optimising Organisational Capacity

Recruitment and selection

During 2006–07, CAV conducted a project to increase the number of CAV staff trained in the key disciplines of selection – developing key selection criteria, preparing for, and conducting interviews. The aim was to ensure that recruitment processes are equitable and produce the best result for both CAV and staff.

CAV is now sufficiently well-resourced to comfortably achieve an aim of ensuring at least one person on any interview panel has been trained in selection and recruitment.

Training plan and calendar

This financial year saw an increase in training marketing activity based on the development of a detailed plan and accompanying calendar distributed to all staff at the beginning of the performance planning cycle. This has resulted in significantly higher numbers of staff accessing training than in previous years.

The 2006–07 year also saw a new emphasis on the development of tools and processes to support and improve the delivery of learning and development services to the staff and the organisation. Training liaison officers were identified in each branch of the organisation to report back to the Learning and Development Unit about training initiatives going on in their areas. This has resulted in better tracking of training attended, and more sharing of training resources developed.

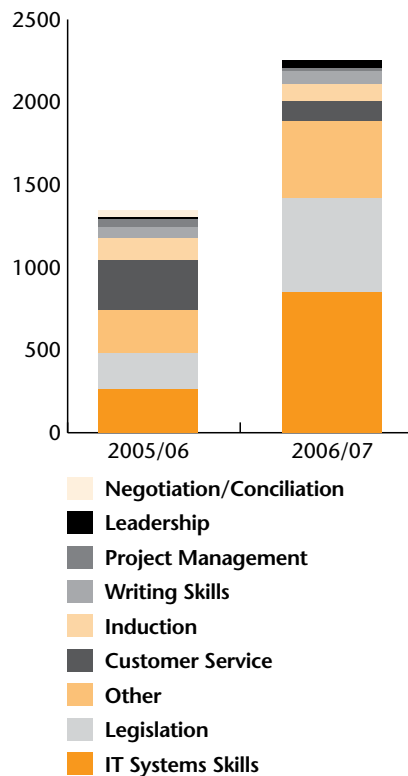
Competency mapping

Functions in CAV's key operational areas (taking public enquiries, conciliation, investigation, and transactional processing) are being observed and documented, to develop a picture of the skills and knowledge required across these different roles.

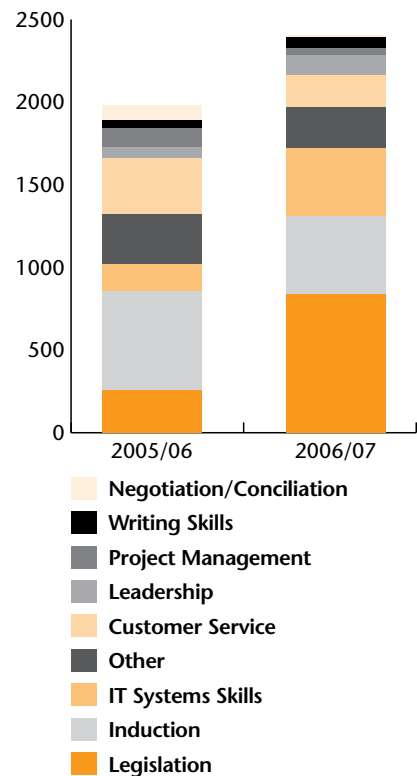
This information will be used to inform training planning (particularly legislation training), allow staff to see clear career paths through the organisation, and allow for assessment of competency.

This project will continue into the new year along with others aimed at further improving marketing of training, developing a process for the consistent evaluation of the workplace impact of training programs, and implementing a database for training nominations and reporting.

CAV recorded training attendances 2005/06-2006/07



CAV recorded training days 2005/06-2006/07



David Cousins:
Won a landmark case



Unfair consumer contracts under scrutiny

National companies will need to watch their marketing as Canberra and the states settle into a protracted stand-off over unfair contracts.

In Victoria, the Bracks government has gone it alone, and some national companies – including Foxtel, Avis, Telstra and Virgin – are already feeling the pain of being forced to rewrite their contracts for services.

In August, David Cousins, the activist head of Consumer Affairs Victoria, won a landmark case in the Victorian Civil and Administrative Tribunal when Justice Stuart Morris found that AAPT's mobile-phone contracts were "unfair".

Consumers who signed up after watching enticing AAPT advertising featuring the comedian "Effie" found some disturbing clauses. These included AAPT's right to unilaterally vary the contract, suspend services while continuing to charge customers, and impose immediate termination conditions.

With this victory under his belt, Cousins is thought to be looking at furniture removal companies and fitness centres.

The CAV team is also casting an eye at Foxtel's shock decision to drop Fox Footy, its 24-hour football channel.

For national marketers, the AAPT decision raises unsettling questions about varying contract laws across the country.

Other states want to follow Victoria's lead and develop uniform national legislation, but those plans have hit a snag in the form of the federal government and its red-tape watchdog, the Office of Regulatory Review.

The ORR says it is not convinced such potentially "heavy handed" action is necessary. The federal government's view is that unfair contracts are covered by the unconscionable-conduct provisions of the Trade Practices Act.

Barrister Sitesh Bhojani says this is nonsense. He acted for CAV in the AAPT case, and in a former life as a commissioner of the ACCC handled trade practices prosecutions.

Bhojani says the unfair AAPT terms would not amount to actions having no regard for conscience – "unconscionable conduct" under the Trade Practices Act.

While lawyers argue about "substantive unfairness" as opposed to "procedural unfairness", marketers will just have to put up with disjointed rules about consumer contracts.

FRED BRENCHLEY

Charter to promote business

By ROSLYN LANIGAN

CONSUMER Affairs Victoria (CAV) will trial a pilot program in the Latrobe Valley to increase consumer confidence and inform retailers of their rights and responsibilities.

As part of the 'Better Business in Latrobe' project, CAV will work with traders and other stakeholders to develop a Charter of Better Business, based upon the Fair Trading Act 1999.

CAV regional manager Helen McAdam said the idea for the project was coined by the Gippsland regional office of Consumer Affairs.

"We've noticed that sometimes having good relationships between consumers and traders is the secret to resolving com-

plaints or disputes," Ms McAdam said.

"Generally, when local shoppers deal with local

traders, there's less disputes.

"But when people travel outside the area, they might end up in a bit more strife when it comes to warranty and things like that because there's not that rapport with the trader."

Ms McAdam said CAV would be working with a group of traders to develop the charter, rather than just imposing one upon local businesses.

As part of the project, CAV will provide training for shop staff and support to traders.

Businesses who participate in the project will be given a certificate which they can put on display, indicating they are aware of their rights and responsibilities under the Fair Trading Act.

"In most cases, it's not that they (traders) don't want to do the right thing, they just need to know what their rights and obligations are under the Act.

"Traders will be able to

put up their hand and say 'we've done this training, so if you shop here you can be confident'."

The project is supported by the Traralgon Chamber of Commerce and Industry, who will help to develop the charter.

Traralgon business owner Lorraine Paulet said she had signed on to CAV's project to ensure fairness for retailers and consumers.

"I see the need for retailers to understand the rules and regulations of the Fair Trading Act," Ms Paulet said.

"There's a lot of misunderstanding."

Ms Paulet said she hoped the charter would show local customers the benefits of shopping in their own town.

Ms McAdam said CAV would also help retailers to develop their own internal complaints system.

"We think it's a win for traders and a win for consumers. There'll be

even less local conciliation between shop keepers and customers.

"The beauty is that the businesses will develop a loyal band of local customers who will be confident and feel more comfortable in dealing locally."

Ms McAdam said she

hoped to have 100 businesses involved in the project by Christmas. About 30 businesses have already signed on.

CAV is targeting small

to medium sized businesses that are locally owned and controlled to take part.

To get involved in CAV's 'Better Business in

Latrobe' project, contact Helen McAdam at Consumer Affairs on 5135 6638 or email helen.mcadam@justice.vic.gov.au.



Fair trading: Traralgon Chamber of Commerce members Lorraine Paulet (left) and Harvey Pynt (right) discuss the new pilot program with Helen McAdam (centre) from Consumer Affairs Victoria.

Above
Latrobe Valley Express
11.09.06 | page 2

Opposite page and right
Australian Financial Review
09.10.06 | page 4

Individuals may escape prosecution in business

Fred Brechley

Individuals may be able to escape prosecution for misleading conduct in business under state and territory fair trading laws, even though making their employer liable under the Trade Practices Act for their actions.

Last week, the High Court heard a major challenge to a federal-state agreement establishing uniform legislation covering both corporate and employee liability for misleading conduct in business.

The joint legislation is widely regarded as setting minimum standards for commercial conduct in Australia. So serious are the consequences of a successful challenge that Victoria's consumer affairs agency sought and won High Court approval to appear in the case.

At the heart of it is the crucial issue of whether employees are directly liable for misleading conduct to customers in the course of their duties for a company.

Consumer advocates fear an adverse decision will lead to a rash of fraudsters hiding behind \$2 shell companies, giving consumers no redress as well as lowering standards of acceptable conduct.

The High Court late last week granted Victoria's Director of Consumer Affairs, David Cousins, *amicus curiae* (friend of the court)

"The High Court is rare turf for state fair trading agencies."

status to appear in an appeal against a decision of the Full Federal Court.

The High Court is rare turf for state fair trading agencies and the fact that Mr Cousins was represented by

former attorney-general Daryl Williams, QC, and barrister Suresh Bhojani, a former ACCC commissioner, was indicative of the consumer significance of the case for the states.

James Houghton and James Student are appealing a full Federal Court decision that they contravened Victoria's Fair Trading Act by giving false information to Simon Arms on construction of a website for a proposed wine marketing business.

Trial judge Donnell Ryan in the Federal Court had earlier ruled that Mr Houghton and Mr Student's employer, WSA, had contravened the Trade Practices Act, ordering it to pay \$58,331 damages but did not find them also liable under state law.

This was overturned by the full Federal Court, with Mr Houghton and Mr Student then appealing to the High Court on the grounds their conduct was not distinct from their employer.

The case has significant implications for federal-state consumer laws. The federal Trade Practices Act covers misleading conduct by a corporation while Victorian law, mirrored in other states, covers individuals.

The High Court case could also affect a series of other consumer cases either in the pipeline or under investigation around the states.

On the same day the High Court granted Mr Houghton and Mr Student leave to appeal, judge Kevin Bell in the Supreme Court of Victoria dismissed an appeal by Livio Cellante and others against a finding they had engaged in misleading, deceptive and unconscionable conduct in selling a property to a sole parent pensioner.



THE SUNDAY AGE

Canberra must act on dangerous imported toys

AUSTRALIA'S federal regulatory bodies are neglecting the most vulnerable group in society — our young children. *The Sunday Age* today reports that tens of thousands of cheap, dangerous toys are flooding into the country with little being done to stem the flow. State consumer affairs departments are left to try to mop up the mess.

The toys come mainly from China and are imported with no sanction by small businesses that distribute them to markets, megasales, discount variety stores and other outlets. Many do not meet Australian safety standards and pose choking, strangulation and other hazards to infants.

Consumer Affairs Victoria seized almost 50,000 of these toys in the past two years and has acted to prevent several businesses from supplying unsafe toys. Yet it is likely that state regulators are merely scratching the surface of this type of trade. It should be cut off at its source. Not only are children at risk, but counterfeit toys cost the local toy industry

about \$132 million a year, one study found.

A spokeswoman for the Australian Customs Service told *The Sunday Age* customs intercepted very few toys on safety grounds because officers were not in a position to ascertain if they met safety standards. She said the matter was one for state authorities. This is short-sighted. The Federal Government must provide customs with the resources and skills to stop the entry of dangerous and counterfeit toys. It should ask Chinese authorities to further restrict the export of them.

Last week, *The Sunday Age* reported that children were being killed or injured by unsafe nursery equipment not required to meet safety standards. Today, the nursery industry body calls on the Federal Government to provide leadership in injury prevention in this area. We support this call and also believe the Federal Government should make safety standards mandatory for all nursery products.

Product Safety Warning Notice

Dear Customers,

Following advice received from Consumer Affairs Victoria, The Clearance Store at 1398 Hume Hwy, Fawkner and at 282 Hampshire Road, Sunshine is alerting customers to a safety hazard. The 'Anipals Collection' Hot water Bottle pictured in this notice is banned in Victoria because it does not meet the safety requirements of British Standard BS1970:2001 and has the potential to cause serious injury or death. In the interests of public safety, The Clearance Store – Fawkner and Sunshine urges customers to either immediately destroy and

...e of the item or return or a full refund. The nce Store apologises for



Product Safety Warning Notice

Dear Consumers,

Following advice received from Consumer Affairs Victoria, CTM International Pty Ltd of Huntingdale, Victoria is alerting consumers to a safety hazard. The children's toys identified as "Funny Toys" push pull turtle are capable of producing small parts which pose a choking hazard to children and "Police Play Set" no. 391A with brown gun and "Police Play Set" no. 391A with black gun are likely to cause serious eye injury. In the interests of public safety, CTM International urges consumers immediately destroy and dispose of these products. CTM International Pty Ltd apologises for any inconvenience.

Above
Sunday Age
24.09.06 | page 14

Far left
Brimbank Leader
15.08.06 | page 6

Left
Herald Sun
31.10.06 | page 24



Woman faces charges

Brothel in flat raided



Police operation: Police lead a woman away from the Essendon flat for questioning.

Picture: Scott McNaughton

By **Charmaine Camilleri**

POLICE swooped on an illegal brothel in Essendon after it allegedly operated for more than a year.

Carried out under Operation Bomber, the raid on a Nicholson Street property last Thursday netted cash, documents, DVDs and a television.

A 35-year-old Caroline Springs woman faces a string of charges, including breaching the conditions of a prostitution licence.

Four police officers of the Fawkner divisional response unit and two Consumer Affairs

Victoria compliance officers were at the scene about 8pm after a search warrant was issued.

Senior Constable Carl Whibley said the brothel had operated in a block of flats.

"It's been running for well over 12 months and that's unusual. It's uncommon for a suburban area. The raid is the first of my knowledge in the [Moonee Valley] area.

"It [a brothel] creates an undesirable climate for local residents."

Senior Constable Whibley said the raid sent a clear warning to the community.

"This type of activity won't be tolerated. It's an indictable offence, quite a serious offence. People running brothels illegally are risking imprisonment."

The property had been under investigation for about two months, he said.

"It was the culmination of a thorough investigation. It was excellent teamwork by police and outside agencies, including CAV."

Operation Bomber supervisor Sergeant Jeff Cox said police would catch offenders.

"Our raid sends a clear mes-

sage to the community — offenders will be prosecuted."

The woman will be charged on summons at a later date.

A spokeswoman for Consumer Affairs Victoria declined to comment on the operation, but said CAV had been involved in more than 60 enforcement actions against legal and illegal brothels since June 2004.

"Those caught operating illegally face the full force of the law and the prospect of their unlawfully derived property being forfeited."

Left
Community News
Moonee Valley
10.10.06 | page 1

Below
Northcote Leader
15.05.07 | page 9

Ice rears amid sea of drugs

Julia Irwin

ICE use has tripled in Darebin during the past 18 months, say police who now brand it a serious local drug problem.

Sgt Mick Sheahan said youths as young as 14 were using the drug, a highly addictive form of methamphetamine that can cause violent mood swings and brain damage. The officer, who heads a unit to combat drugs in Darebin and Whittlesea, said up to three people a week on average were being arrested for ice possession or dealing.

"People on ice ... are more on edge, violent and aggro and have no fear," he said. "They think they're indestructible. I've seen people on ice running in front of cars."

Ice has been associated with 12 deaths in Victoria since last July. Sgt Sheahan said heroin was "no longer the drug of choice" among users, who opted for ice because it was more available and cheaper.

"If we get information in relation to ice sales we are target-

ing it as a priority over any other drug," he said. "Once someone gets started it's very hard for them to stop." Sgt Sheahan said there had also been a rise in domestic violence associated with ice use, particularly youths attacking parents.

Consumer Affairs Victoria recently seized 925 banned ice pipes, used to smoke or inhale methamphetamines, from two Preston Market traders and a Springvale tobacconist. Service spokeswoman Amy Carmichael said action against the traders was yet to be determined, with penalties of up to \$60,000 for anyone selling the pipes, banned in the state in 2004.

Last week the Federal Government pledged \$150 million to help combat the ice problem. The State Government announced its ice war fight plan, including forming a taskforce, \$14 million for education and prevention programs and new police powers and laws.

■ Contact Darebin Community Health Services on 9489 1388 for drug treatment options.

Below and right
Herald Sun
05.08.06 | page 7

Agent duped single mum

Holly Ife

A REAL estate agent has been ordered to repay a single mother who was duped into paying twice as much as her home was worth.

Supreme Court Justice Kevin Bell yesterday described the actions of Astvilla Pty Ltd, Perna Pty Ltd and the general manager of both companies, Livio Cellante, as unconscionable.

Justice Bell ordered them to repay Kellie Jayne Brown \$37,566.82.

Ms Brown, who bought her Warracknabeal home for about \$55,000 in June 2001, said she was ecstatic after her win yesterday.

The mother of three had been horrified to find the house had been on the market for years, and that the property owner had agreed just days earlier to sell it to the real estate companies for \$25,600.

Justice Bell yesterday dismissed an appeal by the companies against an earlier Magistrates' Court ruling.

"This is just a magical outcome," Ms Brown

said outside court.

Justice Bell found Mr Cellante and the companies had engaged in "misleading, or deceptive and unconscionable conduct in the way it sold the house".

Justice Bell said the salesman persuaded Ms Brown to buy the house "at a price represented to be reasonable, which was false, and immediately, because the property was in demand, which was also false".

Mr Cellante declined to comment yesterday.

Ms Brown, who was on a sole parent's pension, said when she learned of the deception she was devastated. "My world fell apart," she said.

The court heard the companies involved did not own the property at the time of sale, and had only a verbal agreement to buy it from the owner.

Ms Brown still lives in the house with her children Kora, 11, Alayna, 9 and Samantha, 6.

Consumer Affairs Victoria director David Cousins investigated the 2001 transaction and brought a test case to the Magistrates' Court, alleging the companies



Court win: an ecstatic Kellie Brown yesterday with daughters Samantha, 6, Alayna, 9 and Kora, 11. Picture: CRAIG BORROW

had taken advantage of Ms Brown.

"We are delighted in the outcome. It's not just a win for Ms Brown, but also for all consumers," Mr Cousins said.

Ms Brown said she was extremely grateful to Consumer Affairs.

"It wasn't about the money. We did this to ensure that it didn't happen to anyone else," said Ms Brown, who said the cash would go towards her mortgage.

She advised others to be well informed when they bought real estate: "You've just got to watch out for the nasties. It's certainly prudent to ask a lot of questions."

Enzo Raimondo, CEO of the Real Estate Institute of Victoria, said the REIV supported the original decision of the Magistrates' Court and was pleased the appeal to the Supreme Court had been unsuccessful.

"People who prey on the vulnerable and the disadvantaged for financial gain should feel the full weight of the law," Mr Raimondo said.

Disgraced agent loses appeal on suspension

By **BEN SCHNEIDERS**
PROPERTY EDITOR

A REAL ESTATE agent who sold a flat for as much as \$35,000 below its market value to his friend and sometime lover has lost an appeal in the Supreme Court of Victoria against his disqualification.

Justice Harper dismissed the appeal by former Hocking Stuart agent Simon Lukauskas against the director of Consumer Affairs Victoria — supporting the orig-

inal decision by the Victorian Civil and Administrative Tribunal.

In October last year, VCAT suspended Mr Lukauskas for two years and fined him \$2000 when he was found guilty of eight breaches of the Estate Agents Act after he failed to disclose to the vendor the relationship between himself and the purchaser.

The vendor was Clare Raw, an elderly woman about to enter aged care, whose daughter had a power of attorney over the flat. Mr Lukauskas knew the family through the elderly woman's granddaughter. He had described the purchaser as a "naive young couple".

The Carnegie property was sold for \$160,000 but valuers said it was worth between \$185,000 and \$195,000.

While disputing some of VCAT's ruling, Justice Harper endorsed its penalties, suggesting they could have gone even

further.

"By his dishonesty, Mr Lukauskas gained an advantage for his friend and flatmate, Mr (Richard) Hampton, at the expense of the client to whom he owed the duties of a fiduciary, Mrs Raw," he wrote.

"I agree with the tribunal that such conduct in someone acting in the estate agents profession is a matter of great seriousness.

"I also agree that the protection of the public from conduct of this kind can best be achieved by ensuring that Mr Lukauskas does not work as an estate agent for a significant period."

Mr Lukauskas, who was reported by his former employers, was ordered to pay a yet to be determined portion of costs.

LINK

▶ www.supremecourt.vic.gov.au



Bombard out: Simon Lukauskas (right).

Herald Sun EDITORIAL

Dodgy laws

VICTORIA'S relatively weak consumer protection laws allow dodgy builders, rip-off merchants and shonky salesmen an open field to fleece the elderly, the weak and the trusting.

In the latest case a disabled McKinnon pensioner was charged almost \$70,000 for house repairs worth less than \$5000.

The so-called repairs to her roof look like some sort of mad modern art sculpture.

A qualified roofing contractor said it was the worst job he had seen in 40 years.

Police have confirmed that they are

investigating the original workman, Saroush Saeedi, from Moona Painting.

Far from being ashamed Mr Saeedi said he had broken no laws.

"The law doesn't say you have to be ethical about prices," he said.

Mr Saeedi's comment neatly sums up the deficiencies in our consumer laws, which should ensure dealings are ethical.

It is time we had all-encompassing consumer protection legislation that outlawed conduct that a reasonable person would judge to be unconscionable.

Left
The Age
21.10.06 | page 3

Below
Herald Sun
11.08.06 | page 20

Associations Incorporation Act 1981

Business Licensing Authority Act 1998

Business Names Act 1962

Carriers and Innkeepers Act 1958

Chattel Securities Act 1987 (except Part 3 – this Part is administered by the Minister for Roads and Ports)

Collusive Practices Act 1965

Companies (Administration) Act 1981

Consumer Credit (Victoria) Act 1995

Conveyancers Act 2006

Co-operatives Act 1996

Credit Act 1984

Credit (Administration) Act 1984

Credit Reporting Act 1978

Disposal of Uncollected Goods Act 1961

Domestic Building Contracts Act 1995 (except Part 5 – this Part is administered by the Attorney-General)

Estate Agents Act 1980

Fair Trading Act 1999

Frustrated Contracts Act 1959

Fuel Prices Regulation Act 1981

Fundraising Appeals Act 1998

Funerals Act 2006

Funerals (Pre-Paid Money) Act 1993

Goods Act 1958

Hire-Purchase Act 1959

House Contracts Guarantee Act 1987

Introduction Agents Act 1997

Landlord and Tenant Act 1958

Liquor Control Reform Act 1998

Marketable Securities Act 1970

Motor Car Traders Act 1986

Owners Corporations Act 2006

Partnership Act 1958

Petroleum Products (Terminal Gate Pricing) Act 2000

Petroleum Retail Selling Sites Act 1981

Private Agents Act 1966

Prostitution Control Act 1994

Residential Tenancies Act 1997 (sections 24, 25, 27, 32, 33, 45–48, 74–77, 82, 90, 91, 102, 103, 104(1), 104(4), 104(5), 105(2), 105(3), 124, 128, 130–134, 141–212, 214, 215, 230, 232–234, 241, 277, 291–333, 335–341, 343–366, 373–376, 385, 388, 390, 395–398, 400–439, 486–504, 506–511; section 66(1) is jointly administered with the Minister for Housing; the Act is otherwise administered by the Attorney-General, the Minister for Housing and the Minister for Planning)

Retirement Villages Act 1986

Sale of Goods (Vienna Convention) Act 1987

Sale of Land Act 1962

Sea-Carriage Documents Act 1998

Second-Hand Dealers and Pawnbrokers Act 1989

Subdivision Act 1988 (Part 5; section 38; section 43 in so far as it relates to Part 5 and section 38; the Act is otherwise administered by the Minister for Planning)

Trade Measurement Act 1995

Trade Measurement (Administration) Act 1995

Travel Agents Act 1986

Trustee Act 1958

Trustee Companies Act 1984 (jointly administered with the Treasurer)

Utility Meters (Metrological Controls) Act 2002

Veterans Act 2005 (Part 4; the Act is otherwise administered by the Minister for Veterans' Affairs)

2

Acts

Name	Date of Royal Assent
<i>Owners Corporation Act 2006</i>	19 September 2006
<i>Conveyancers Act 2006</i>	10 October 2006
<i>Funerals Act 2006</i>	10 October 2006
<i>Justice Legislation (Further Amendment) Act 2006 (Part 20)</i>	10 October 2006
<i>Fair Trading and Consumer Acts Amendment Act 2007</i>	29 May 2007

Regulations commenced

Name	Date commenced
Second-Hand Dealers and Pawnbrokers (Exemption) Regulations 2006	25 July 2006
Retirement Villages (Records and Notices) (Amendment) Regulations 2006	25 July 2006
Consumer Credit (Victoria) (Administration) Regulations 2006	1 August 2006
Estate Agents (Retirement Villages) Regulations 2006	1 August 2006
Retirement Villages (Contractual Arrangements) Regulations 2006	1 August 2006
Estate Agents (Infringements) Regulations 2006	15 August 2006
Estate Agents (General, Accounts and Audit) (Amendment) Regulations 2006	15 August 2006
Veterans (Patriotic Funds) Regulations 2006	21 August 2006
Subordinate Legislation (Travel Agents Regulations 1997–Extension of Operation) Regulations 2006	24 October 2006
Motor Car Traders (Amendment) Regulations 2006	1 December 2006
Trade Measurement (Interim) Regulations 2006	17 December 2006
Estate Agents (Fees) (Interim) Regulations 2007	27 February 2007
Associations Incorporation (Infringement Penalties Amendment) Regulations 2007	27 February 2007
Co-operatives (Infringement Penalties Amendment) Regulations 2007	27 February 2007
Fundraising Appeals (Infringement Penalties Amendment) Regulations 2007	27 February 2007
Residential Tenancies (Amendment) Regulations 2007	27 February 2007
Domestic Building Contracts Regulations 2007	28 April 2007
Subordinate Legislation (Estate Agents (General Accounts and Audit) Regulations 1997–Extension of Operation) Regulations 2007	15 May 2007
Fair Trading (Safety Standard) (Babies' Dummies) Regulations 2007	12 June 2007
Subordinate Legislation (Estate Agents (Professional Conduct)-Extension of Operation) Regulations 2007	12 June 2007
Trade Measurement Regulations 2007	18 June 2007

Regulations revoked

Name	Effective date
Second-Hand Dealers and Pawnbrokers (Exemption) Regulations 1997	25 July 2006
Consumer Credit (Victoria) (Administration) Regulations 1996	1 August 2006
Patriotic Funds Regulations 2001	21 August 2006
Domestic Building Contracts and Tribunal (General) Regulations 1996	28 April 2007
Domestic Building Contracts and Tribunal (General) (Amendment) Regulations 1999	28 April 2007
Domestic Building Contracts and Tribunal (General) (Amendment) Regulations 2004	28 April 2007
Trade Measurement (Amendment) Regulations 2002	18 June 2007
Trade Measurement (Fuel Measurement) Regulations 2002	18 June 2007

Where appropriate in terms of the CAV *Compliance and Enforcement Guidelines*, the Director of Consumer Affairs Victoria accepts enforceable undertakings from traders regarding their conduct. Enforceable undertakings signed in 2006-07 are listed here. They concern matters regulated by the following legislation:

DBCA	<i>Domestic Building Contracts Act 1995</i>
EAA	<i>Estate Agents Act 1980</i>
FAA	<i>Fundraising Appeals Act 1998</i>
FTA	<i>Fair Trading Act 1999</i>
MCTA	<i>Motor Car Traders Act 1986</i>
SLA	<i>Sale of Land Act 1962</i>
TMA	<i>Trade Measurement Act 1995</i>

Date	Party	Act	Section
12/7/06	Baiada Poultry Pty Ltd	TMA	32(1)(a)
12/7/06	Country Road Clothing Pty Ltd	FTA	12(k) 32L 32M
16/8/06	DTS Group Pty Ltd Justin Scrobogna Mark Ticli	FAA	17A
23/8/06	Murray Holderhead t/a Holderhead First National	EAA	55(14)
23/8/06	Neptune Group Company Pty Ltd t/a Hot Potatoes Brunswick He Henry Xiaohai Wu Sue Yuhua	FTA	44

	Breach summary and nature of the undertaking
	<p>Baiada Poultry Pty Ltd (Baiada) is involved in the manufacture and distribution of a variety of food goods, predominantly poultry. Baiada breached the TMA by using an uncertified instrument to measure pre-packed articles and supplying short measure pre-packed articles. Baiada undertook to ensure its existing compliance program is consistent with the Australian Standard for compliance programs; employ a compliance professional to audit the compliance program for consistency with the Australian Standard; ensure that the compliance professional's recommendations are notified to the Baiada board of directors and implemented; appoint a senior officer of Baiada to be responsible for implementation and management of the compliance program and training of employees; annually audit performance against the compliance program and implement any recommended changes; conduct regular compliance tests at Victorian retail outlets where Baiada products are sold; arrange for three-monthly reports on compliance with the TMA; and ensure that the board of directors, Baiada's senior management group and all employees of Baiada are aware of the company's compliance program.</p>
	<p>On three occasions Country Road Clothing Pty Ltd (Country Road) displayed 'No refunds, returns or exchanges' signs and provided receipts stating 'No returns or refunds', during sales of excess stock. Country Road undertook to place corrective advertising in the <i>Herald Sun</i>; send a corrective email to staff and those who received an email promoting the sale; ensure the Country Road customer service telephone was manned with sufficient staff following publication of the advertisement; and provide refunds in accordance with Part 2A of the FTA.</p>
	<p>DTS Group Pty Ltd and its directors had been conducting fundraising appeals in Victoria while unregistered. DTS Group and its directors undertook to make a formal application for registration under the FAA; abide by conditions placed on the registration; notify the Director of Consumer Affairs Victoria of any additions to appeal beneficiaries 28 days prior to commencing an appeal; refrain from undertaking any fundraising activities in the State of Victoria unless registered by the Director as a fundraiser and in accordance with any conditions imposed; and refrain from making representations that would lead a member of the public to believe he or she was donating to a charity, unless the company had complied with the provisions of the FAA.</p>
	<p>Murray Holderhead, t/a Holderhead First National, sold a property to the father of one of his employees without first making an application to CAV for permission to do so. Mr Holderhead undertook to comply with the obligations imposed on agents by s 55(14) of the EAA; and to provide CAV with details of a training program for his staff in relation to conditions imposed by s 55(14) and evidence that all staff have completed the training program.</p>
	<p>Neptune Group Company Pty Ltd t/a Hot Potatoes Brunswick is a retail supplier of discount variety products including children's toys. CAV inspectors seized 30 units of toys that did not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods. The Neptune Group and its directors undertook to refrain from supplying goods which are subject to the ban order and goods that do not comply with the product safety ban orders and mandatory product safety standards listed at www.consumer.vic.gov.au; and display a corrective notice in their shop window and in the <i>Moreland Leader</i>. They also authorised CAV to destroy the seized goods.</p>

Date	Party	Act	Section
23/8/06	Delaspray Pty Ltd t/a The Clearance Store Carey John Smith	FTA	44
23/8/06	Chhiba Australia Pty Ltd t/a Wonderful Gifts Hamesh Kapadia	FTA	33 44
18/9/06	Triple J Car Sales Pty Ltd John Galea James Galea	MCTA	35(2) 41(2)
18/9/06	Circuit Lake Pty Ltd t/a Ron Laney Autos Ronald John Laney	MCTA	52(1)
18/9/06	Barry Coulter Motors Pty Ltd Barry James Coulter	MCTA	35(2)
18/9/06	John Samuel Brain	MCTA	35(2)
18/9/06	Preferred Vehicle Consultants Pty Ltd Justin Matthew Kroussoratis	MCTA	35(2)
18/9/06	Azrudin Osmic	MCTA	35(2)
18/9/06	Furst Motors Pty Ltd Vladimir Furst (aka Vladimir Chaloupek)	MCTA	25(1) 41(2)
18/9/06	Xue Rui Chen t/a Hot Price Trading	FTA BNA	33 44 5

Breach summary and nature of the undertaking

Delaspray Pty Ltd (Delaspray) t/a The Clearance Store and its director were found supplying hot water bottles that did not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods. Delaspray and its director undertook to refrain from supplying products which are subject to the ban order and product safety ban orders and mandatory safety standards listed on www.consumer.vic.gov.au; and to display a corrective notice in The Clearance Store and in the *Geelong Advertiser*. They authorised CAV to destroy and dispose of the hot water bottles seized.

Chhiba Australia Pty Ltd (Chhiba) t/a Wonderful Gifts supplies retailers with a wide variety of goods including children's toys. CAV inspectors seized 114 units of children's toys that did not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods and the children's toys mandatory safety standard. Chhiba and its director undertook to cease supplying products which are subject to product safety ban orders and prescribed safety standards listed at www.consumer.vic.gov.au; and to place a notice in the *Herald Sun*. They also authorised CAV to destroy and dispose of goods seized.

Triple J Car Sales Pty Ltd and its directors failed to maintain the company dealings book as prescribed by the MCTA, and failed to use prescribed sale agreements when selling used cars. Triple J Car Sales and its directors undertook to make entries in the dealings book as to the prescribed matters required under the regulations, and when selling used cars to use sale agreements containing the legally prescribed particulars, terms and conditions.

Circuit Lake Pty Ltd t/a Ron Laney Autos failed to attach notices in the prescribed form containing required particulars to used motor cars it was offering for sale. Circuit Lake Pty Ltd and its director undertook not to offer or display for sale used motor cars, without having attached notices in the prescribed form.

Barry Coulter Motors Pty Ltd failed to enter matters prescribed by law in the dealings book. The company and its director undertook to make entries in the dealings book as to the prescribed matters required under the regulations.

John Samuel Brain failed to enter matters prescribed by law into his dealings book. He undertook to make entries in the dealings book as to the prescribed matters required under the regulations.

Preferred Vehicle Consultants Pty Ltd failed to enter matters prescribed by law in the dealings book. The company and its director undertook to make entries in the dealings book as to the matters prescribed under the regulations.

Azrudin Osmic failed to enter matters prescribed by law into his dealings book. He undertook to make entries in the dealings book as to the matters prescribed.

Furst Motors Pty Ltd failed to display its motor car trader's licence and sold used motor cars without using prescribed sale agreements. The company and its director undertook to display the licence to trade in motor cars in a prominent position at each place at which they trade; and to refrain from selling used motor cars to parties otherwise than by agreements for sale containing the prescribed particulars, terms and conditions set out in the regulations.

Hot Price Trading supplied baby walkers and children's toys that do not meet safety requirements specified in the Permanent Ban Orders Prohibiting the Supply of Dangerous Goods and the children's toys mandatory safety standard. The proprietor Xue Rui Chen undertook to refrain from supplying products which are subject to product safety ban orders and mandatory safety standards listed at www.consumer.vic.gov.au. He further undertook to display a corrective notice in the retail store and publish a notice in the *Moreland Leader*. He authorised CAV to destroy and dispose of items seized, and to undertake to register the trading name Hot Price Trading, as required by the BNA.

Date	Party	Act	Section
18/9/06	The Clearance Store Pty Ltd Angelo Durso Neil Peluso	FTA	44
18/9/06	Wang Xiao Yi t/a Wendy's Tobacconist & Gifts	FTA	44
18/9/06	Monlach Pty Ltd Stephen Leigh Miller	MCTA	35(2)
18/9/06	Graham George Corbett t/a Graham's Car Sales	MCTA	35(2)
18/9/06	Garliz Pty Ltd Gary John Ryan	MCTA	35(2)
28/9/06	Alimroad Pty Ltd Craig Anthony Fort	MCTA	35(2)
28/9/06	Eastern Toys and Gifts Pty Ltd Pardeep Bir	FTA	33
28/9/06	Key 2 Communications Pty Ltd t/a Discount Premium Holidays Derang Harendra Parikh	FTA	19 67F

	Breach summary and nature of the undertaking
	<p>The Clearance Store Pty Ltd supplied hot water bottles that did not meet the safety requirements specified in a permanent ban order, prohibiting the supply of dangerous goods. CAV inspectors seized 118 units of hot water bottles from two of the company's retail outlets. The company and its directors undertook to refrain from supplying products which are subject to the ban order and product safety ban orders and mandatory product safety standards listed on www.consumer.vic.gov.au; and to display a corrective notice at the retail stores, in the <i>Hume Leader</i> and the <i>Brimbank Leader</i>. They authorised CAV to destroy and dispose of the items seized.</p>
	<p>Wang Xiao Yi is the proprietor of retail store Wendy's Tobacconist & Gifts, which supplied candles that did not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods. CAV inspectors seized 31 candles held by metal frame objects in the shape of swings or tricycles. Wang Xiao Yi undertook in his personal capacity and as proprietor to refrain from supplying products which are subject to the ban order and product safety ban orders and mandatory product safety standards listed on www.consumer.vic.gov.au; display a corrective notice in the retail trading premises; and publish a notice in the <i>Springvale Dandenong Leader</i>. He also authorised CAV to destroy and dispose of the seized candles.</p>
	<p>Monlach Pty Ltd failed to enter into the dealings book the matters prescribed by law. The company and its director undertook to cease failing to record prescribed information in the dealings book.</p>
	<p>Graham George Corbett t/a Graham's Car Sales failed to enter into the dealings book matters prescribed by law. Graham George Corbett undertook to cease failing to record prescribed information in the dealings book.</p>
	<p>Garliz Pty Ltd failed to enter into the dealings book matters prescribed by law. The company and its director undertook to cease failing to record prescribed information in the dealings book.</p>
	<p>Alimroad Pty Ltd failed to enter into the dealings book matters prescribed by law. Craig Anthony Fort, both personally and as director of Alimroad Pty Ltd, undertook to cease failing to record prescribed information in the dealings book, and to retain all documents that are required by law to be kept for at least seven years after the date of creation.</p>
	<p>Eastern Toys and Gifts Pty Ltd supply discount variety goods including children's toys, homewares and novelties. CAV inspectors seized over 2,000 toys that did not meet safety requirements specified in the children's toys mandatory safety standard. The company and its director Pardeep Bir undertook to cease supplying products which are subject to mandatory product safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and to publish a notice in the <i>Herald Sun</i>. He authorised CAV to destroy and dispose of the toys seized.</p>
	<p>Between 30 May 2006 and 30 June 2006 CAV received numerous complaints against Key 2 Communications Pty Ltd t/a Discount Premium Holidays. Investigations revealed that on several occasions the company had breached its telephone marketing agreement obligations and its obligations to provide goods within the period specified. The company and its director Derang Harendra Parikh undertook to comply with ss 19 and 67F of the FTA; publish a notice on its website; post or email the notice to consumers who had entered into telemarketing agreements but were yet to use goods supplied; modify any published and/or printed documents containing statements contrary to those portions of the FTA relating to telemarketing agreements; provide CAV with copies of all documents containing any statements referring to and/or associated with telephone marketing agreements entered into; and provide to CAV details of all training programs conducted by the company to educate its staff on the nature and effects of statutory obligations on companies in connection with telemarketing agreements.</p>

Date	Party	Act	Section
28/9/06	National Haircare Pty Ltd David Mansour	FTA BNA	12(k) 32M 5
28/9/06	Shane Falls Wholesale Cars Pty Ltd t/a Shane Falls Auto Torque Shane Falls	MCTA	83A 83C
11/10/06	Prayosha Pty Ltd Rakesh Padia	FTA	33 44
11/10/06	Aussie Auto Fix Pty Ltd Paul Alexander Lilley	MCTA	35(2)
11/10/06	Quatro Grande Pty Ltd Lynne Garry Curtis	MCTA	35(2)
11/10/06	Andrew John Dyce t/a Alpine Car Sales	MCTA	35(2)
11/10/06	Simplus Mobile Pty Ltd	FTA	12 21 62 67D(7)

	Breach summary and nature of the undertaking
	<p>National Haircare Pty Ltd supplies hair and beauty products and was found to have a non compliant refund policy and to be trading under an unregistered business name. The company and its director David Mansour undertook to register the business name Hairhouse Warehouse Essendon DFO and/or Hairhouse Warehouse DFO; modify any published or printed documents containing an unregistered business name; modify any published or printed documents containing non compliant refund policies; and provide CAV with details of all training programs conducted by or on behalf of National Haircare Pty Ltd staff on the nature and effect of obligations imposed by the provisions of the FTA relating to implied warranties. The parties gave an undertaking that, if they did not have such a training program, they would within three months provide CAV evidence in writing that such a training program had been implemented, and that all staff employed by the company had completed the training program.</p>
	<p>Shane Falls Wholesale Cars Pty Ltd failed to retain sale agreements for the purchase of cars for a period of seven years and failed to supply copies of sale agreements to purchasers of motor vehicles. The company and its director undertook to retain sale agreements and provide copies of these to purchasers.</p>
	<p>Rakesh Padia, sole director of Prayosha Pty Ltd, supplied various children's toys that did not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods and the children's toys mandatory safety standard. CAV inspectors seized 1,660 toys from Prayosha Pty Ltd. The company and the director undertook to cease supplying products subject to product safety ban orders and prescribed safety standards listed at www.consumer.vic.gov.au. He further undertook to publish a corrective notice in the <i>Herald Sun</i> and authorised CAV to destroy and dispose of goods seized.</p>
	<p>Aussie Auto Fix Pty Ltd failed to enter matters prescribed by law into its dealings book as required. The company and its director Paul Alexander Lilley undertook to enter the prescribed information into the dealings book.</p>
	<p>Quatro Grande Pty Ltd failed to enter prescribed material into its dealings book. Lynne Garry Curtis and Quatro Grande Pty Ltd undertook to make the dealings book entries required by law.</p>
	<p>Andrew John Dyce t/a Alpine Car Sales failed to enter prescribed information into the dealings book. Mr Dyce undertook to make the required entries in the dealings book.</p>
	<p>CAV investigated a series of complaints from Simplus Mobile Pty Ltd (Simplus) customers and found Simplus to be in breach of several sections of the FTA. Simplus undertook to offer redress to any consumer who had been recruited through a contact sale, or a telephone marketing agreement, and had relied on or been adversely affected by misleading, deceptive, unlawful or unconscionable conduct; identify all such affected customers through a compliance audit at its own expense; require each of its dealers engaged in contact sales or sales made by a telephone marketing agreement to nominate a senior officer responsible for compliance and for training of sales representatives; require all dealer compliance managers and customer-facing staff to attend training on fair trading compliance; require dealers to record all telemarketing calls in their entirety, and provide copies of such recordings to CAV immediately upon request; enforce strictly its contractual rights against its dealers, including terminating the contract of any dealer identified to be breaching the FTA; and implement a verification call process to better capture compliance issues.</p>

Date	Party	Act	Section
11/10/06	M8 Telecom Pty Ltd Optus Mobile Pty Ltd	FTA	12 62
31/10/06	Marlo Woods (Australia) Pty Ltd t/a Yen Huot Gift Shop Choung Heng Taing	FTA	33 44
31/10/06	H&C Trading Pty Ltd Damon Hong Tan Chang Tan Tiang Meng Tan	FTA	33
31/10/06	Events Retail Pty Ltd Neil Leonard Forster	FTA	12(k) 32M
31/10/06	CTM International Pty Ltd Zhi Xiong Ru	FTA	33 44
31/10/06	QS Retail Pty Ltd t/a Quicksilver	FTA	12(k) 32M
31/10/06	Aquiess Pty Ltd David John Miles	FTA	9 12(e)

Breach summary and nature of the undertaking

CAV investigated several complaints against M8 Telecom Pty Ltd and found the company to be in breach of several sections of the FTA. M8 Telecom Pty Ltd and Optus Mobile Pty Ltd undertook to offer redress to any customer (other than corporate or business customers) who had relied on or been adversely affected by misleading, deceptive, unlawful or unconscionable conduct; require all dealers engaged in contact sales and telemarketing sales to nominate senior officers responsible for compliance and training of sales representatives; require all relevant dealer compliance managers and customer-facing staff to attend training on fair trading compliance; require dealers to record all telemarketing calls in their entirety and provide copies to CAV immediately on request; and strictly enforce its contractual rights against dealers found to have breached the FTA.

Choung Heng Taing, the director, secretary and shareholder of Marlo Woods (Australia) Pty Ltd t/a Yen Huot Gift Shop, supplied children's toys and hot water bottles that did not meet the requirements specified in the children's toys mandatory safety standard and the Permanent Ban Order Prohibiting the Supply of Dangerous Goods. The director and the company undertook to refrain from supplying products which are subject to product safety ban orders and mandatory product safety standards listed at www.consumer.vic.gov.au. The parties further undertook to display a corrective notice in all three of the company's retail premises, and publish the notice in the *Western Times Leader*, *Oakleigh Monash Leader* and *Springvale Dandenong Leader*. They authorised CAV to destroy and dispose of dangerous goods seized from the company's retail stores.

Damon Hong Tan, Chang Tan and Tiang Meng Tan, proprietors of the retail store H&C Trading, supplied children's toys that did not meet safety requirements specified in the children's toys mandatory safety standard. CAV inspectors seized over 1,000 children's toys. The proprietors and the company undertook to cease supplying products which are subject to prescribed safety standards and product safety ban orders listed at www.consumer.vic.gov.au, and to publish a corrective notice in the *Herald Sun*. They also authorised CAV to destroy and dispose of the toys seized.

During a retail compliance inspection CAV found that Events Retail Pty Ltd's policies did not comply with the requirements of the FTA, particularly in relation to refunds. The company and its director undertook to comply with the provisions of the FTA; modify any published/printed documents referring to the non compliant refund policy; place a notice on its website and at each cash register of its several retail stores; provide CAV with details of staff training programs related to implied warranty obligations; and, in the event that such training programs did not exist, provide CAV with evidence that such a program had been implemented.

Zhi Xiong Ru, director, secretary and shareholder of CTM International Pty Ltd, supplied children's toys that did not meet the requirements specified in the children's toys mandatory safety standard and the Permanent Ban Order Prohibiting the Supply of Dangerous Goods. The company and the director undertook not to supply products which are subject to prescribed safety standards and product safety ban orders listed at www.consumer.vic.gov.au. They further undertook to publish a corrective notice in the *Herald Sun*, and authorised CAV to destroy and dispose of toys seized from the retail premises.

QS Retail Pty Ltd (QS), t/a Quicksilver, supplied clothing, footwear and surfwear. CAV conducted a retail compliance inspection and found that the QS refund policy did not comply with the FTA. QS and its director undertook to modify printed and published company documents containing any non compliant refund policy; publish a notice in the *Herald Sun* and display the notice at their several retail outlets; provide CAV with details of training programs conducted by QS on the nature and effect of the implied warranty provisions of the FTA; and, in the event it did not have such a program, provide CAV with evidence in writing that such a program had been implemented.

CAV became concerned that references by Aquies Pty Ltd to government agencies might mislead consumers to believe that Aquies and its technology had a sponsorship, approval or affiliation that they did not have. Aquies and its director undertook to comply with the FTA, and to modify or remove printed and/or published documents containing the references that had caused concerns.

Date	Party	Act	Section
17/11/06	Broadford Car Sales Pty Ltd Peter Alan Cook	MCTA	41 52(1)
6/12/06	Atimox Pty Ltd t/a Halloran Motors Michael John Halloran	MCTA	41 52(1)
16/1/07	JD & RT Nominees Pty Ltd John Benjamin Hall	EAA	47A(1) 47A(3)
19/2/07	Lim Khy t/a New Line Gifts	FTA	44
19/2/07	Yi Qun Shen t/a Alladin's Cave	FTA	44
9/3/07	SPH Import Pty Ltd Peel Sun James Peng Zhen Huang	FTA	44
9/3/07	Global Toys (Australia) Pty Ltd t/a Globalwide Import (Australia) Wei Jie Yang Xian Weng	FTA	33 44

	Breach summary and nature of the undertaking
	<p>Broadford Car Sales Pty Ltd failed to display notices in the prescribed form and failed to use the prescribed form of sale agreements when selling used cars. Peter Alan Cook, as director, and Broadford Car Sales Pty Ltd undertook not to offer or display for sale a used motor car unless there is attached a notice in the prescribed form; and to use the prescribed form for agreements of sale when selling used motor cars.</p>
	<p>Atimox Pty Ltd failed to display notices in the prescribed form and failed to use the prescribed form of sale agreements when offering for sale and selling used cars. The company and its director Michael John Halloran undertook not to offer or display for sale a used motor car unless there is attached a notice in the prescribed form; and to use sale agreements that comply with legal requirements.</p>
	<p>JD & RT Nominees Pty Ltd failed to document an estimated selling price for a property prior to obtaining an appointment to sell, as required by law, and expressed an estimated selling price using a range greater than 10 per cent, contrary to the law. The company and its director undertook to ensure that in future the difference between the upper and lower limits of any estimated selling price range provided would not exceed 10 per cent of the amount of the lower limit of the range; and that all real estate sales authorities would show an estimated selling price or a range that did not exceed 10 per cent of the amount of the lower limit of the range. They also undertook to have an auditor prepare a report on the company's compliance with section 47A of the EEA and to submit this to CAV.</p>
	<p>Lim Khy, proprietor of company New Line Gifts, supplied candles decorated with coffee beans that did not meet the safety requirements specified in a permanent ban order prohibiting the sale of dangerous goods. Lim Khy undertook not to supply products which are subject to the ban order and product safety ban orders and mandatory product safety standards listed at www.consumer.vic.gov.au. He further undertook to display a corrective notice on the premises and in the <i>Oakleigh Monash Leader</i>, and authorised CAV to destroy the goods seized.</p>
	<p>Yi Qun Shen, proprietor of the company Alladin's Cave, supplied toys and novelty goods that did not meet the safety requirements specified in a permanent ban order prohibiting the sale of dangerous goods. The proprietor undertook that he would not supply products subject to the ban order and product safety ban orders and prescribed safety standards listed at www.consumer.vic.gov.au; and to place a corrective notice in the <i>Mordialloc Chelsea Leader</i> and the business premises. He authorised CAV to destroy the goods that had been seized from the premises.</p>
	<p>Peel Sun, James Peng and Zhen Huang, directors of SPH Import Pty Ltd, supplied toy guns that did not meet the safety requirements specified in a permanent ban order prohibiting the sale of dangerous goods. The directors and the company undertook not to supply products subject to the ban order and product safety ban orders and mandatory product safety standards listed at www.consumer.vic.gov.au; place a corrective notice in the <i>Herald Sun</i>; and write to known Victorian clients who had been supplied with the dangerous goods. They also authorised CAV to destroy goods that had been seized.</p>
	<p>Wei Jie Yang and Xian Weng, the directors of Global Toys (Australia) Pty Ltd t/a Globalwide Import (Australia), supplied goods that did not meet the safety requirements specified in the children's toys mandatory safety standard and a permanent ban order prohibiting the sale of dangerous goods. The company and its directors undertook not to supply products subject to mandatory safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and place a notice in the <i>Herald Sun</i>.</p>

Date	Party	Act	Section
9/3/07	Morientaz Pty Ltd Xubao Miao Wen Lei Zhang	FTA	33
9/3/07	The Reject Shop Limited John Shuster Barry Albert Edward Saunders Brian John Beattie Alexander Craig McMorrison	FTA	33
9/3/07	Sun's Aust Trading Pty Ltd Tao Sun	FTA	44
9/3/07	Eurosport Cars Pty Ltd t/a Eurosport Automobile Mark Brient	MCTA	34 52(1)
9/3/07	Best B Pty Ltd Al Min Ling David Sun	FTA	33 44
9/3/07	Gorgeous Girls R Us Pty Ltd Tania Ann Allat Bradley Douglas Allat	FTA	44
13/4/07	Totalspan Warragul Daniel James Beddome Donald Vincent Beddome	DBCA	11 31
13/4/07	Prince Aurora Pty Ltd t/a Aurora Spa Retreat Craig Joel Lyndall Mitchell	TMA	32(1)(a) 32(1)(b)

Breach summary and nature of the undertaking

Xubao Miao and Wen Lei Zhang, company directors of Morientaz Pty Ltd, supplied goods that did not meet the requirements specified in the children's toys mandatory safety standard. The directors and the company undertook not to supply goods subject to prescribed safety standards and ban orders listed at www.consumer.vic.gov.au; and place a corrective notice in the *Herald Sun*. They authorised CAV to destroy and dispose of the goods in question.

The Reject Shop Limited was supplying dangerous disposable cigarette lighters that did not meet the requirements of the mandatory disposable lighters safety standard. The company and its directors undertook not to supply products subject to mandatory safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and to place a corrective notice in the *Herald Sun*. They also authorised CAV to destroy and dispose of the over 14,000 lighters seized.

Tao Sun, director of Sun's Aust Trading Pty Ltd, was supplying coffee-bean decorated candles that do not meet the safety requirements specified in the Permanent Ban Order Prohibiting the Sale of Dangerous Goods. The company and its director undertook to refrain from supplying goods subject to the ban order, and product safety ban orders and mandatory product safety standards listed at www.consumer.vic.gov.au; and to place a corrective notice in the *Herald Sun*. They also authorised CAV to destroy and dispose of the goods.

Eurosport Cars Pty Ltd t/a Eurosport Automobile failed to include the required particulars in notices attached to cars offered for sale and failed to display a prescribed signed at each place of sale. The company and its director Mark Brient undertook to attach the required notices when displaying cars for sale, and to display the prescribed sign at each place where they carried out the business of trading in motor cars.

Al Min Ling and David Sun, directors of Best B Pty Ltd, supplied goods subject to a permanent ban order prohibiting the supply of dangerous goods and the children's toys mandatory safety standard. The company and its directors undertook not to supply products which are subject to prescribed safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and to place a corrective notice in the *Herald Sun*. They also authorised CAV to destroy the goods in question.

Tania Ann Allat and Bradley Douglas Allat, directors of Gorgeous Girls R Us Pty Ltd, supplied goods that did not meet the requirements specified in the Permanent Ban Order Prohibiting the Sale of Dangerous Goods. The company and its directors undertook not to supply products subject to prescribed safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and to place a corrective notice in the *Herald Sun*. They also authorised CAV to destroy and dispose of the over 29,000 goods in question.

Daniel James Beddome and Donald Vincent Beddome, directors of Totalspan Warragul, undertook a major domestic building contract as defined by the DBCA. The builders did not provide the consumer with a contract as required by s 31. The directors and the company undertook to use contracts that conform with legal requirements; not to demand or accept deposits exceeding 5 per cent or more of any contract price of \$20,000 or more; and not to demand or accept deposits of more than 10 per cent of a contract price of less than \$20,000.

Prince Aurora Pty Ltd offered for sale 480g jars of herbal tea that contained less than 50g of herbal tea, in breach of ss 32(1)(a) and (b) of the TMA. The company and its directors, Craig Joel and Lyndall Mitchell, undertook to comply with ss 32(1)(a) and (b) of the TMA by taking all reasonable steps to ensure that any pre-packed article it packs or offers for sale contains a quantity not less than the measurement marked on the package; to display a notice in the premises advising customers who had bought the short measure product that they were entitled to a refund; and to provide CAV with details of all the refunds given to customers who had purchased short measure products.

Date	Party	Act	Section
11/5/07	Sally Maree Bridle	EAA	29B(2)(a) 29B(2)(b) 29B(2)(c) 29B(2)(d)
11/5/07	Metrolink Victoria Pty Ltd t/a Yarra Trams	FTA	9 12(e) 12(n)
18/5/07	Steven Xerri t/a Interior Design Outlet	FTA	19(1)(a) 19(1)(c)
8/6/07	Foxtel Management Pty Ltd on behalf of the Foxtel Partnership	FTA	67E
8/6/07	Chen-Seas Pty Ltd t/a Happy Choice Gift Shop Cheng-Fa Chen Pi Chu Chang	FTA	44
8/6/07	Dove Publishing t/a Chelsea Heights Ly Meng Ung Guek Huong Tang	FTA	44
8/6/07	Yun Ping Liu Ze Weng Li Best Buy Everyday	FTA	44



...authorised CAV to destroy and dispose of the goods in question.



Breach summary and nature of the undertaking

Sally Maree Bridle, an officer in effective control of an estate agency (OIEC), was found to have failed to fulfil some of the obligations of an OIEC under the EAA. She undertook to meet those requirements.

Metrolink Victoria Pty Ltd engaged in misleading or deceptive conduct in breach of the FTA. The company undertook to comply with the misleading and deceptive conduct provisions of the FTA; modify any published or printed documents containing any potentially misleading or deceptive statements in regard to the tramTRACKER service offered by Metrolink; and publish an apology notice on their website for three months.

Steven Xerri t/a Interior Design Outlet advertised goods (predominantly furniture) on eBay. He accepted payment without supplying the items of furniture in the timeframe stated or at all. Mr Xerri undertook to refund all monies owing to consumers and limit his trading on eBay to a cash on delivery basis for a period of no less than three years.

Foxtel failed to serve a required document on 428 telemarketing customers, and served a further required agreement document on 3290 purchasers in a form which was, in CAV's view, defective. Foxtel undertook to serve the documents; amend the welcome letter sent to new customers secured through telemarketing; allow any affected customers to cancel their services without attracting early cancellation fees (or refund termination fees already charged); monitor the performance of dealers and ensure that contracts entered into with dealers in Victoria would grant Foxtel the right to terminate contracts if dealers' conduct breached fair trading legislation and was not rectified on notice; and inform CAV of the number of customers who elected to terminate their services or sought refunds of termination fees. Foxtel further undertook to audit compliance with the undertaking and report on this to CAV annually.

Cheng-Fa Chen and Pi Chu Chang, directors of Chen-Seas Pty Ltd t/a Happy Choice Gift Shop, supplied novelty goods that did not meet the requirements of a Permanent Ban Order Prohibiting the Supply of Dangerous Goods. The company and its directors undertook to refrain from selling such prohibited items and any products which do not comply with mandatory product safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and to display a corrective notice on the premises and in *The Courier*. They also authorised CAV to destroy and dispose of the goods.

Ly Meng Ung and Guek Huong Tang, directors of Dove Publishing t/a Chelsea Heights, supplied novelty goods that did not meet the requirements specified in the Permanent Ban Order Prohibiting the Supply of Dangerous Goods. The company and its directors undertook to cease supplying such prohibited items and any products which do not comply with mandatory product safety standards and product safety ban orders listed at www.consumer.vic.gov.au; and to display a corrective notice in the *Mordialloc Chelsea Leader*. They also authorised CAV to destroy and dispose of the goods in question.

Yun Ping Liu and Ze Weng Li, directors of Best Buy Everyday, supplied novelty goods that did not meet the requirements of a Permanent Ban Order Prohibiting the Supply of Dangerous Goods. The company and its directors undertook not to supply products which are subject to the ban order and product safety ban orders and prescribed safety standards listed at www.consumer.vic.gov.au; and to place corrective notices in the *Frankston Standard Leader* and the company premises. They also authorised CAV to destroy and dispose of the goods.

4

Where appropriate in terms of the CAV *Compliance and Enforcement Guidelines*, CAV participates in civil proceedings.

Civil proceedings in which final orders were handed down (whether or not an appeal is pending) or which were withdrawn, in 2006-07 are listed here.

In 2006-07, civil proceedings were brought under the following legislation:

BA	<i>Building Act 1993</i>
BNA	<i>Business Names Act 1962</i>
DBCA	<i>Domestic Building Contracts Act 1995</i>
EAA	<i>Estate Agents Act 1980</i>
FOIA	<i>Freedom of Information Act 1982</i>
FTA	<i>Fair Trading Act 1999</i>
LCRA	<i>Liquor Control Reform Act 1998</i>
MCTA	<i>Motor Car Traders Act 1986</i>
PCA	<i>Prostitution Control Act 1994</i>
TAA	<i>Travel Agents Act 1986</i>

The proceedings were conducted in the Melbourne Magistrate's Court (MMC), Ringwood Magistrate's Court (RMC), Shepparton Magistrate's Court (SMC), Victorian Civil and Administrative Tribunal (VCAT) and the Victorian Supreme Court (VSC).

Date	Matter	Court	Act	Sec
3/7/06	Haus Vaterland Pty Ltd	VCAT	LCRA	44
7/7/06	Flight Centre Limited	VCAT	FOIA	30 33 34 35
7/7/06	Pyramid Hill & District Fuel Suppliers Pty Ltd	VCAT	LCRA	44
2/8/06	AAPT Limited	VCAT	FTA	32W 32X 32Y 32ZA 32ZC 32ZD 163

	Compensation	Costs	Other	Details
				Application to review a decision of the Director of Liquor Licensing refusing an application for a licence transfer. The decision was referred back to the Director for further consideration after the police and the applicant provided further information and the applicant agreed to a licence condition variation.
				Application to review the decision of a Department of Justice freedom of information refusing an application for release of certain documents under the FOIA. Application withdrawn after the Department of Justice and a joined party filed material in VCAT.
				Application to review a decision of the Director of Liquor Licensing refusing a licence application. The decision of the Director was overturned and the licence was granted, with conditions as to the entrance of the licensed area, signage and stopping petrol sales from the premises.
				VCAT agreed with CAV's arguments that AAPT's mobile phone and pre-paid mobile phone contracts contained unfair contract terms as prohibited by the FTA. However, as AAPT had since amended its contracts, retrospectively, VCAT declined to grant the declarations and injunctions sought by CAV, since they would be of no effect. Application dismissed.

Date	Matter	Court	Act	Sec
2/8/06	Michael Read	VCAT	LCRA	44
3/8/06	David John Pope	MMC	FTA	129A
3/8/06	Christian Kalos	MMC	FTA	19
4/8/06	Domenico Cellante Astvilla Pty Ltd Perna Pty Ltd	VSC	FTA	7(1) 9(1)
7/8/06	Mark Wilson	VCAT	EAA	55
18/8/06	Shane Alley	VCAT	FTA	105(1)
19/8/06	Steelsmart (Vic) Pty Ltd Gary Newton	MMC	DBCA FTA	8 31 19

	Compensation	Costs	Other	Details
				Application to review a decision of the Director of Liquor Licensing, imposing on a liquor licence a condition that two crowd controllers be present at the venue in question. Application withdrawn.
		\$1,036		CAV inspectors had seized eight monkey bikes from Mr Pope after becoming aware that the bikes were subject to a permanent ban order. The Court ordered the destruction of the monkey bikes.
	\$1,495.75	\$3,070		Christian Kalos sold goods on www.ewholesalegames.com. CAV received consumer complaints that they ordered goods at the website, paid for those goods and did not receive them within the timeframe specified. In June 2006 the Court granted an interim injunction and at the final hearing in August, found that Mr Kalos had contravened s 19 of the FTA by accepting payment without being able to supply the goods advertised. The Court granted a final injunction restraining Mr Kalos from demanding or accepting payment for goods until he actually supplies those goods; ordered that he pay compensation to four Victorian plaintiffs; directed him to pay CAV's costs in the proceedings; and made adverse publicity orders.
		To be determined		Appeal against findings that parties had engaged in misleading or deceptive, and unconscionable conduct, in selling a property to a single mother on a sole parent's pension. Appeal dismissed with costs.
				Application to review a decision of the Director of CAV placing conditions on an application under s 55 of the EAA. Application withdrawn.
	\$430			The Director bought proceedings against Shane Alley (who had been director of a subsequently deregistered company) on behalf of an aggrieved consumer, for compensation for repairs paid for that had never been done. VCAT ordered Mr Alley to refund the consumer the amount she had paid.
	\$25,559	\$3,738		The defendants (registered builders who failed to supply goods and services under a domestic building contract) were restrained from accepting payment for the supply of any goods or services until the goods had been supplied or the services had been provided. The Court also ordered the defendants to publish adverse publicity notices.

Date	Matter	Court	Act	Sec
28/8/06	Haysam Elmir	MMC	MCTA	7
28/8/06	Christopher Kotsopoulos	MMC	MCTA	7
4/9/06	Central Victorian Trading Pty Ltd	VCAT	LCRA	44
4/9/06	Laurinso Pty Ltd	VCAT	LCRA	44
8/9/06	Australian Broadcasting Commission V Snowy Mountains Organic Dairy Products Pty Ltd	VSC	Order 32, Rules of VSC	Rule 7
9/10/06	D Clifton T Langenheim	VCAT	LCRA	3A 44
17/10/06	Mario Caputo	VCAT	LCRA	22
18/10/06	Rick Simmons	VCAT	MCTA	74

	Compensation	Costs	Other	Details
	\$650			Haysam Elmir carried on the business of trading in motor cars without being licensed to do so. The Court ordered Mr Elmir to cease trading in motor cars while unlicensed.
		\$1,704.40		The defendant carried on the business of trading in motor cars while unlicensed by advertising used motor cars for sale in <i>The Age</i> . During the period 24/4/04–25/2/06 CAV detected 39 occasions on which Mr Kotsopoulos placed advertisements for the sale of 11 cars. The Court restrained Mr Kotsopoulos from carrying on the business of trading in motor cars until he becomes the holder of a motor car trader's licence, and made adverse publicity orders. On 6/3/07 Mr Kotsopoulos sought relief from the Court for the costs of the adverse publication orders to which he had consented in March 2006. The Court orders were amended and Mr Kotsopoulos only had to publish the orders once.
				Application to review a decision of the Director of Liquor Licensing refusing a licence application. Application withdrawn.
				Application to review a decision of the Director of Liquor Licensing, refusing an application for a packaged liquor licence. Application struck out; initial decision confirmed. A further condition was placed on the licence by consent of the parties.
				CAV was unsuccessful in its attempts to resist an order for third party discovery based on a general claim of public interest immunity. CAV was ordered to pay the applicant's costs of the day's hearing and the Director of CAV was ordered to give discovery.
				Local residents applied for review of the decision of the Director of Liquor Licensing partially granting an application for variation of a licence. The applicants ultimately withdrew their application after settling on patron numbers and noise reduction works.
				Review of a decision of the Director of Liquor Licensing refusing an application for a packaged liquor licence to a convenience store. Appeal withdrawn.
			\$20,000 payment into Motor Car Traders Guarantee Fund	Application to review a decision of the Motor Car Trader Guarantee Fund Claims Committee admitting a claim against a motor car trader. Application withdrawn; trader agreed to repay \$20,000 to the Fund.

Date	Matter	Court	Act	Sec
19/10/06	Michael Woodhouse	RMC	FTA	19
20/10/06	Simon Lukauskas	VSC	EEA	11
27/10/06	De Maria Motors Pty Ltd Francesco De Maria	MMC	MCTA FTA	52(1) 35(2)(a)
31/10/06	National Haircare Pty Ltd	MMC	FTA BNA	146(4) 5
1/11/06	Mayflower of Melbourne Pty Ltd Denis Boyle	MMC	DBCA FTA	29 31 19(1)(a)
9/11/06	Isabel Turner	VCAT	PCA	48
9/11/06	Ronald John Turner	VCAT	PCA	48
10/11/06	Sumalee Ratanapongbandith	VCAT	PCA	54

	Compensation	Costs	Other	Details
	\$25,559	\$3,738		In proceedings against an unregistered builder who failed to complete building works he was paid and contracted to do, the Court ordered publication of an adverse publicity order and granted an injunction restraining the defendant from engaging in the illegal conduct.
				Appeal to the VSC against a successful inquiry application taken in VCAT against an agent's representative for breach of good agency practice. Appeal dismissed with costs.
		\$950		The Court restrained the defendants from offering motor cars for sale to the public unless they comply with the Motor Car Traders Regulations 1998, regulations 9 and 11. Publication of adverse publicity notices was also ordered.
		\$374		The trader breached the terms of an enforceable undertaking. CAV successfully took action to enforce the terms of the undertaking, including undertakings that the trader would register the business name and implement a staff training program with respect to refund policies.
				The company and its director, while unregistered, entered into major domestic building contracts for the supply and installation of kitchens in domestic dwellings with at least seven consumers. The Court granted injunctions and asset freezing orders.
			\$500 penalty	VCAT disciplinary hearing for contraventions of PCA, primarily the allegation that the brothel was found unsupervised at the time of a CAV compliance monitoring inspection. The defendant was reprimanded, ordered to pay a penalty of \$500 and ordered to undertake to VCAT to comply with relevant regulations.
			\$500 penalty	VCAT disciplinary hearing for contraventions of PCA, primarily the allegation that the brothel was found unsupervised at the time of a CAV compliance monitoring inspection. The defendant was reprimanded, ordered to pay a penalty of \$500 and ordered to undertake to VCAT to comply with relevant regulations.
			\$2,000 penalty	VCAT disciplinary hearing for contraventions of PCA, primarily the allegation that the brothel was unsupervised at the time of a CAV compliance monitoring inspection. The defendant was reprimanded and ordered to pay a penalty of \$2,000.

Date	Matter	Court	Act	Sec
10/11/06	Sut Chuen Kwok	VCAT	PCA	54
16/11/06	Shane Gardener Irene Gardener	VCAT	LCRA	3 11 38 87(1)
21/11/06	CFM Enterprises Pty Ltd Efstratios Maglogiannis	MMC	FTA MTA	9 12(a) 7 38
1/12/06	Averwood Pty Ltd Robert James Swan (sole director) Mauro Di Quinzio (officer in effective control)	MMC	EAA	91
4/12/06	Peter Newton	RMC	MCTA	7
7/12/06	The Seoul Garden	VCAT	LCRA	44



CAV enquiries confirmed that there was a deficiency of approximately \$90,000 from the sales and rental trust accounts of the estate agency business.



	Compensation	Costs	Other	Details
			\$2,000 penalty	VCAT disciplinary hearing for contraventions of PCA, primarily the allegation that the brothel was unsupervised at the time of a CAV compliance monitoring inspection. The defendant was reprimanded and ordered to pay a penalty of \$2,000.
				Application for review of decision by Director of Liquor Licensing granting packaged liquor licence to premises situated on small shopping strip near to where applicants lived. The applicants objected to the decision on the basis of detriment to their amenity, and misuse and abuse of alcohol. Decision confirmed.
		\$951		Final injunctions to restrain defendants from carrying on the business of motor car trading and making false representations. Court also made adverse publicity orders and awarded costs to CAV.
				CAV enquiries confirmed that there was a deficiency of approximately \$90,000 from the sales and rental trust accounts of the estate agency business operated by Averwood Pty Ltd and its sole director; and that the officer in effective control of the corporate licensee had failed to supervise the business. The Court granted an interim injunction restraining the respondents from carrying on business as estate agents unless under the supervision of, and with the consent of, a licensed estate agent.
		\$984		The respondent had advertised 65 cars for sale on 79 occasions from January 2004 to October 2004, while unlicensed as a motor car trader. The Court granted an injunction restraining the respondent from carrying on business as a motor car trader until licensed to do so.
				Application for review of a decision refusing an application for variations to a planning permit. The existing permit allowed the operation of two restaurants with liquor licences to 11pm. The variations sought included trading to 1am with trading in a beer garden area, and increasing patron numbers to 470. In excess of 300 objections were lodged against the application for variation. The proposed variations also raised amenity issues, particularly for people residing within the CBD. The Director of Liquor Licensing was therefore notified by VCAT as an interested party. VCAT affirmed the decision of the responsible authority refusing the variation application.

Date	Matter	Court	Act	Sec
11/12/06	Than T Pham	VCAT	LCRA	15 44
18/12/06	Kim Thatcher	MMC	PCA	22
19/12/06	Peter Hansen	VCAT	LCRA	44
19/12/06	Rosemary Hubbard	VCAT	LCRA	44
19/12/06	Joe Cichello	VCAT	LCRA	44
20/12/06	William Zammit t/a CCB All American Imports	MMC	FTA MCTA	19(1)(b) 7
5/2/07	Ben Atkinson	VCAT	LCRA	44
6/2/07	Saroush Saeedi	MMC	DBCA FTA BNA	29 31(1) 9 19 5

	Compensation	Costs	Other	Details
				Application for review of a decision by the Director of Liquor Licensing refusing an application for a BYO permit on the ground that the premises (an "amusement parlour") did not meet the statutory criteria of being either a restaurant or a club. Application struck out for non appearance.
		\$1,986		CAV instituted proceedings against Kim Thatcher, alleging that she knowingly or recklessly carried on the business of a prostitution service provider without being licensed to do so. The Court restrained the defendant from conducting an unlicensed brothel and made adverse publicity orders.
				Application for review of a decision by the Director of Liquor Licensing granting a packaged liquor licence. Application dismissed.
				Application for review of a decision by the Director of Liquor Licensing granting a packaged liquor licence. Application dismissed.
				Application for review of a decision by the Director of Liquor Licensing granting a packaged liquor licence. Application dismissed.
	\$1,682.50	\$1,022		Mr Zammit was an unlicensed motor car trader trading on eBay and advertising in <i>Just Cars</i> . Between 2005 and 2006 Mr Zammit sold 12 cars. The goods supplied by Mr Zammit were materially different from those described. CAV obtained consent orders declaring that Mr Zammit was in breach of the MCTA and the FTA, and directing that he cease his unlawful conduct and publish a corrective notice on eBay.
				Application for review of a decision of the Director of Liquor Licensing, refusing an application by the proprietor of a clothing shop for a renewable limited licence to supply a limited range of alcohol to customers. Application withdrawn.
	\$67,470	\$1,960		Mr Saeedi was an unregistered builder who entered into a domestic building contract to undertake some painting at an elderly consumer's home. A building surveyor engaged by CAV confirmed that the work performed by Mr Saeedi was valueless. The Court restrained Mr Saeedi from being involved in major building contracts until licensed to do so, and made adverse publicity orders.

Date	Matter	Court	Act	Sec
7/2/07	John Balasopoulos	VCAT	MCTA	35
12/2/07	Andrew Amalfi	MMC	FTA MCTA	19(1)(b) 7
15/2/07	Cosmos Zairis St Damians Junior Football Club Inc	VCAT	LCRA	22(1)
17/2/07	Jerome Borazio	VSC	LCRA	58
19/2/07	B Crowley A Crowley M Crowley E-News Publications Pty Ltd (in liquidation) Australasian Corporate Events (2006) Pty Ltd	MMC	BNA TAA FTA	5 6 9 19 12(b) 12(e) 12(f) 12(n)
19/2/07	Bestconferences Pty Ltd H Crowley L Crowley OHS Worldwide Resources Pty Ltd	MMC	TAA FTA	4 6 9 12

	Compensation	Costs	Other	Details
				Application for review of a decision of the Business Licensing Authority refusing permission for a person to be employed in a motor car trading customer service capacity. Application dismissed.
		\$955		An unregistered motor car trader advertised 31 motor cars for sale to the public on 84 occasions during the period January 2004 to August 2004. The Court granted injunctions restraining the defendant from carrying on business as a motor car trader, and made adverse publicity orders.
				Application to review a decision of the Director of Liquor Licensing, refusing an application for a renewable limited licence, on the ground that the premises were intended by the occupier to be used primarily by people under the age of 18 years. The Tribunal affirmed the decision of the Director, finding that the use of the premises (a junior football club) by adults was secondary to the primary use of the premises by minors.
		\$10,000		The licensee took injunctive action to stop the Director of Liquor Licensing from varying his licence. The applicant wanted the licence to cover an area including a fire escape. The application was withdrawn.
	\$82,582	\$17,600		Final injunctive relief to restrain defendants from conducting unlicensed travel agency, making false and misleading representations, using unregistered business names and taking money prior to delivering services. Court awarded compensation, costs to CAV and adverse publicity orders.
	\$5,416	\$2,675		Final injunctions to restrain defendants from conducting a travel agency, providing travel packages and making false representations. Compensation and costs to CAV were awarded.

Date	Matter	Court	Act	Sec
20/2/07	Busbrand Pty Ltd t/a Guess	MMC	FTA BNA	12(k) 32M 5
20/2/07	Industrie Clothing Pty Ltd	MMC	FTA BNA	12(k) 32M 5
20/2/07	Run Scotty Run Pty Ltd	MMC	FTA	12(k) 32M
20/2/07	Steve Madden (Aust) Pty Ltd	MMC	FTA BNA	12(k) 32M 5
1/3/07	White Bar Pty Ltd	VCAT	LCRA	44
2/3/07	Darren Tregent	MMC	MCTA	7



Licensee of a brothel failed to provide system of health checks for sex workers and employed illegal workers.



	Compensation	Costs	Other	Details
		\$2,422.50		CAV took proceedings which resulted in declarations that Busbrand Pty Ltd contravened ss 12(k) and 32M of the FTA by publishing signs to the effect that consumers had no right to refunds on selected items, and s 5 of the BNA by trading under an unregistered business name. Permanent injunctions were also granted restraining Busbrand Pty Ltd from future similar conduct. In addition the Court made adverse publicity orders.
		\$2,800		CAV took proceedings which resulted in the Court making declarations that Industrie Clothing Pty Ltd contravened ss 12(k) and 32M of the FTA by publishing signs to the effect that consumers had no right to refunds on selected items, and s 5 of the BNA, by trading under an unregistered business name. Permanent injunctions were granted restraining Industrie Clothing Pty Ltd from future similar conduct. The Court also made adverse publicity orders.
		\$1,800		CAV took proceedings, which resulted in the Court making declarations that Run Scotty Run Pty Ltd contravened ss 12(k) and 32M of the FTA by publishing signs to the effect that consumers had no right to refunds on selected items. Permanent injunctions were also granted, restraining Run Scotty Run Pty Ltd from future similar conduct. The Court also made adverse publicity orders.
		\$2,800		CAV took proceedings which resulted in the Court making declarations that Steve Madden (Aust) Pty Ltd contravened ss 12(k) and 32M of the FTA by publishing signs to the effect that consumers had no right to refunds on selected items. Permanent injunctions were also granted restraining Steve Madden (Aust) Pty Ltd from future similar conduct and from carrying on business under the name Steve Madden (Aust) Pty Ltd until the name was registered. The Court also made adverse publicity orders.
				Decision of the Director of Liquor Licensing was varied with conditions placed upon the grant of a 3am licence. Conditions included the construction of an air lock door and increased security in the foyer area.
		\$677		Mr Tregent advertised a total of 19 motor cars in <i>The Age</i> and <i>Things That Go</i> on a total of 38 occasions between 6 May 2004 and 5 August 2006. The Court granted an injunction preventing Mr Tregent from trading in motor cars until licensed, and directing him to place corrective advertising.

Date	Matter	Court	Act	Sec
5/3/07	Cricket Club Hotel South Melbourne Pty Ltd	VCAT	LCRA	44
7/3/07	Frank Hu Li	VCAT	PCA	48
15/3/07	Bruce Fisher Dianne Fisher	SMC	DBCA FTA BNA	11(1)(a) 29 31 19 5
23/3/07	David Hornidge	MMC	MCTA	7
28/3/07	Ley Choon Teo	VCAT	PCA	38
29/3/07	Maximum Gaming Pty Ltd	VCAT	MCTA	76
2/4/07	James Vos	VCAT	MCTA	76
12/4/07	Wei Min Yin	VCAT	PCA	48
12/4/07	Fouy Shine	VCAT	PCA	48A
12/4/07	King Rat Enterprises Pty Ltd	VCAT	LCRA	22(1)(ca)

	Compensation	Costs	Other	Details
				The application was withdrawn.
			\$5,000 penalty	Licensee of a brothel failed to provide system of health checks for sex workers and employed illegal workers.
		\$1,275		Mr and Mrs Fisher were unregistered builders, engaging in major domestic building work, who took an excessive deposit and used a non-compliant contract. The Court granted an injunction restraining the Fishers from engaging in similar conduct, and directed them to publish corrective notices.
		\$677		Mr Hornidge advertised a total of 43 motor cars in <i>The Age</i> and <i>Things That Go</i> on a total of 112 occasions between 4 December 2004 to 12 August 2006. The Court granted an injunction preventing Mr Hornidge from trading in motor cars until licensed, and directed him to publish corrective advertising.
				Application to review a decision of the Business Licensing Authority refusing an application for a prostitution service provider's licence. Decision affirmed.
				Application to review a decision of the Motor Car Traders Guarantee Fund Claims Committee to refuse a claim against the Fund. Application withdrawn.
				Appeal against decision of Motor Car Traders Guarantee Fund Claims Committee to allow a claim against a motor car trader. Decision affirmed.
			\$1,000 penalty	Disciplinary application against an approved brothel manager following a CAV compliance monitoring inspection. VCAT reprimanded the approved manager.
			\$2,000 penalty	Disciplinary application against a prostitution service provider following a CAV compliance monitoring inspection. VCAT reprimanded the licensee.
				Application for review of a decision by the Director of Liquor Licensing refusing a licence application concerning premises primarily used by minors. Application withdrawn.

Date	Matter	Court	Act	Sec
14/4/07	Sage Bar Pty Ltd	VCAT	LCRA	11(3) 44
27/4/07	Troy Egan	VCAT	LCRA	44
30/4/07	Michael Stirton	MMC	MCTA	7
10/5/07	Australian Leisure and Hospitality Group Limited (Mitcham Hotel)	VCAT	LCRA	44
21/5/07	Chief Commissioner of Police	VCAT	LCRA	44
21/5/07	Gallery Club & Bistro Pty Ltd	VCAT	LCRA	44

	Compensation	Costs	Other	Details
				The applicant was a holder of an on-premises licence, and had applied for a packaged liquor licence and renewable limited licence. The Director of Liquor Licensing had refused the application on the grounds of failing to meet the predominant purpose (sale of liquor by retail for consumption off the premises) test in s 11(3) of the LCRA. Application withdrawn.
				Application for review of decision of the Director of Liquor Licensing. Application dismissed.
		\$450		Mr Stirton was an unregistered motor car trader who advertised 19 motor cars for sale to the public on a total of 93 occasions during the period 4 December 2004 to 12 August 2006. The Court granted an injunction restraining Mr Stirton from engaging in similar conduct and directed him to publish a corrective notice.
				Application for review of two decisions by the Director of Liquor Licensing refusing variation of a licence. One of the decisions was varied to allow trading until 5am, on conditions, including construction of 1.6m balustrade, keeping attendance below a set number of patrons, and creation of a management plan for the external area. The applicant withdrew the application regarding the second decision.
				The Police made an application to review a decision of the Director of Liquor Licensing, partially granting an application for variations to a general licence to cover three external areas created in anticipation of smoking bans coming into effect. The Police withdrew their application when patron numbers were set at 450 with additional conditions.
				Application to review a decision of the Director of Liquor Licensing, refusing an application for variations to a general licence to cover three external areas created in anticipation of smoking bans coming into effect. The application was withdrawn after patron numbers were set at 450 and additional conditions were set.

Date	Matter	Court	Act	Sec
24/5/07	Raymond Pascoe Local Home Improvements	MMC	DBCA FTA BNA	29 31 19 5
29/5/07	Australian Leisure and Hospitality Group Ltd (Waltzing Matilda Pty Ltd)	VCAT	LCRA	44
29/5/07	Australian Leisure and Hospitality Group Ltd (Gateway Hotel)	VCAT	LCRA	44
30/5/07	DSG Holdings Pty Ltd	VCAT	LCRA	44
1/6/07	Bruce Fisher Dianne Fisher	SMC	MCA	110
1/6/07	Celebrity Holdings Pty Ltd	VCAT	LCRA	120
13/6/07	Lordgull Nominees Pty Ltd	VCAT	LCRA	44
14/6/07	Trio Bros Trading Pty Ltd	MMC	FTA	44
18/6/07	Alfonso Di Conza	VCAT	PCA	48A(1)(g)

	Compensation	Costs	Other	Details
				The defendants, unregistered as builders under the BA, entered into domestic building contracts, took excessive deposits, did not provide copies of the required contracts and failed to deliver the goods and services agreed. The Court granted injunctions restraining the parties from engaging in similar conduct.
				Application for review of decisions by the Director of Liquor Licensing to refuse variation of a licence varied to allow consumption of liquor in the external smoking area. The application was allowed.
				Application for review of decisions by the Director of Liquor Licensing to refuse variation of a licence varied to allow consumption of liquor in the external smoking area. The application was allowed with conditions.
				The application was withdrawn and settled with conditions placed on the licence.
		\$523		Mr and Mrs Fisher unsuccessfully sought rehearing of proceedings on 15/3/07. Application dismissed, orders confirmed.
				Application for review of a decision by the Director of Liquor Licensing refusing to grant an authority to allow children to be present on premises that combined a hairdresser with a bar. VCAT refused the application.
				Application for review of a decision by the Director of Liquor Licensing, imposing further conditions on a licence in connection with an external smoking area. The licensee agreed to further conditions on the licence to prevent the escape of music noise affecting the amenity of the surrounding area and the application was withdrawn.
		\$1,270		Final injunctions restraining defendant from advertising, distributing, supplying, or exhibiting for sale ice-pipes, and order directing defendant to pay CAV's costs.
			\$1,000 penalty	Mr Di Conza's licence as a prostitution service provider was cancelled by VCAT.

5

Where appropriate in terms of the CAV *Compliance and Enforcement Policy Guidelines*, CAV prosecutes offenders. Prosecutions which were the subject of final orders in 2006-07 (whether or not an appeal is pending) are listed here. They include prosecutions brought under the following Acts:

CC(V)A	<i>Consumer Credit (Victoria) Act 1995</i>
BNA	<i>Business Names Act 1962</i>
DBCA	<i>Domestic Building Contracts Act 1995</i>
EAA	<i>Estate Agents Act 1980</i>
FTA	<i>Fair Trading Act 1999</i>
MCTA	<i>Motor Car Traders Act 1986</i>
SLA	<i>Sale of Land Act 1962</i>

The courts issuing final orders in CAV prosecutions in 2006-07 were:

BMC	Ballarat Magistrate's Court
CCM	County Court Melbourne
FMC	Frankston Magistrate's Court
LVMC	LaTrobe Valley Magistrate's Court
MMC	Melbourne Magistrate's Court

Date	Matter	Court	Act	Section
27/9/06	Chris Murphy	MMC	DBCA FTA	29 12(n)
Unregistered builder who had arranged and carried out building work totalling \$45,000.				
4/10/06	Brett Archer	MMC	DBCA	29
Unregistered builder who had arranged and carried out building and landscaping work totalling \$23,000.				
12/10/06	Michael McCarthy	MMC	DBCA FTA	11(1)(b) 29 19(1)(b)
Unregistered builder who had arranged and carried out building/landscaping work totalling \$18,500.				
25/10/06	Raymond Lees	CCM	DBCA	29 31(1)
Unregistered builder who carried out major domestic building work and used incorrect contract to carry out building work. Mr Lees appealed against a sentence imposed by MMC. CCM confirmed the fine but did not proceed to convict.				
16/11-14/12/06	Darren Leslie Millar	MMC	FTA DBCA	12(n) 19(1)(a)
The vendor sold a unit that was incomplete and failed to complete the building works as promised.				



Unregistered builder who had arranged and carried out building work totalling \$45,000.



	Counts	Conviction	Fines	Compensation	Costs
	2	No	\$2,000		\$1,727.70
	1	No	\$750		\$1,200
	3	Yes	\$8,000	\$4,000	\$1,000
	2	No	\$1,000		\$1,262.70
	2	No	\$3,061.30	\$108,515	\$2,000

Date	Matter	Court	Act	Section
21/11/06	Paul Galea	MMC	DBCA	11(1)(b) 29 31(1)
Unregistered builder who had arranged and carried out building/cabinet work. Defendant released upon giving a six-month undertaking to be of good behaviour and make application to become a registered building practitioner.				
22/11/06	Indytom Installations Pty Ltd	MMC	DBCA FTA	11(1)(b) 29 31(1) 11
Company which carried out building work/cabinet work without having a director who was registered as a building practitioner.				
22/11/06	Murat Akdemir	MMC	DBCA	11(1)(b) 29 31(1)
Unregistered builder (and director of Indytom Installations Pty Ltd) who had arranged and carried out building/cabinet-making work.				
22/11/06	Shane Gary Crimmins	MMC	DBCA FTA	11(1)(b) 29 31(1) 11
Unregistered builder who had arranged and carried out building/cabinet work. Defendant released upon giving a 12-month undertaking to be of good behaviour, make a \$750 donation to CANTEEN VICTORIA and register as a building practitioner with the Builders Practitioner Board.				
23/11/06	Peter Clements	MMC	SLA	38
Dummy bidding at an auction, 12-month good behaviour bond with condition to pay \$5,000 to the Court Fund.				
29/11/06	Graeme Ralph Drew	CCM	EAA	59
An estate agent failing to retain trust monies. Six months' imprisonment to be wholly suspended for two years with an order to undergo a community-based order for 12 months with condition to perform 125 hours' community work and attend counselling as directed.				

	Counts	Conviction	Fines	Compensation	Costs
	3	No			\$1,071
	5	No	\$1,000		\$603.18
	3	No	\$500		\$847.84
	4	No			\$604.50
	1	No			\$12,675.50
	1	Yes			

Date	Matter	Court	Act	Section
19/12/06	David Bailey	MMC	DBCA FTA	19(1)(b) 29(c) 31(1) 19(1)(a) 19(1)(b)
An unregistered builder who took more deposit than permitted, used a contract that did not conform to requirements of the DBCA, failed to complete the building works as promised and completed building work of poor quality. Twelve-month undertaking of good behaviour with the condition that he does not undertake building work.				
20/12/06	Morwell 4 Wheel Drive and Commercial Sales	LVMC	MCTA	38
Odometer tampering.				
20/12/06	Lawrence Robert Bonnici	LVMC	MCTA	38
Odometer tampering. Sentenced to four months' gaol to be wholly suspended.				
16/1/07	Roofing Direct Pty Ltd	MMC	DBCA	29 31(1)
An unregistered building company which arranged and carried out major domestic building/roofing work.				
16/1/07	John James Clarke (director of Roofing Direct Pty Ltd)	MMC	DBCA	29 31(1)
An unregistered builder and sole director of Roofing Direct Pty Ltd which arranged and carried out major domestic building/roofing work. Twelve-month undertaking of good behaviour and \$253.94 donation to the Court Fund.				
5/2/07	Fruits of Nature Pty Ltd Andrew Michlin	BMC	FTA BNA	44 5
CAV had seized 15 pocket bikes, of which six failed to comply with prescribed ban orders. The company also traded under an unregistered business name. Order for destruction of monkey bikes and registration of business.				
7/2/07	Stockbury Pty Ltd	MMC	MCTA	35(1) 52(1)
Inspection and investigation of the defendant's caryard established that from August 2004 to February 2005 the defendant had sold 67 cars without recording details in the dealings book, and had failed to record 13 cars that had been acquired. On a later inspection investigators observed that cars for sale did not have Form 7s displayed.				

	Counts	Conviction	Fines	Compensation	Costs
	5	Yes		\$4,900	
	1	Yes	\$10,000		\$625
	1	Yes			\$625
	2	No	\$253.94		\$496
	2	No			\$496
	2	No	\$3,500		\$2,000
	84	No	\$8,000		\$2,100

Date	Matter	Court	Act	Section
14-20/2/07	Max Aubrey Carter	CCM	CC(V)A	11(2)
Appeal against conviction and sentencing orders of the Magistrate's Court. Appeal allowed.				
26/2/07	CFM Enterprises Pty Ltd Efratios Maglogiannis (director)	MMC	MCTA FTA	7 38(1) 38(4) 12
Unlicensed trading and odometer tampering.				
6/3/07	Daniel Luke Pty Ltd Daniel Luke (director)	MMC	MCTA	52(1) 35A(1)(b) 35(1)(b)
Vehicles were for sale without displaying Form 7. Director had knowingly employed a prohibited person.				
22/3/07	Lucas Alliance Pty Ltd	MMC	DBCA FTA BA	11(1)(a) 29 31(1) 31(2) 19(1)(b) 176(2)
Trading without having a director who was a registered building practitioner, taking excessive deposits, using contracts that did not comply with the DBCA, failing to complete building works to standard. Stay to 21 September 2007.				
22/3/07	Martin Lucas Williams (director of Lucas Alliance Pty Ltd)	MMC	DBCA FTA BA	11(1)(a) 29 31(1) 31(2) 19(1)(b) 176(2)
Entered into and carried out major domestic building works as director of Lucas Alliance Pty Ltd, without being a registered builder. Mr Williams gave the Court an undertaking that he would be of good behaviour for 12 months and would seek registration with the Builders Practitioner Board.				

	Counts	Conviction	Fines	Compensation	Costs
	2	No			
	4	Yes	\$20,000		\$1,000
		No	\$10,000		
	21	Yes	\$3,500		\$1,020
	1		\$500		
	5	No	\$750		
	1				
	1				
	5	No			\$1,218.20
	1				
	1				

Date	Matter	Court	Act	Section
23/3/07	James McDonald (director of Master Roof Pty Ltd (in liq))	MMC	FTA DBCA	12(n) 19(1)(a) 19(1)(b) 11(1)(b)
James McDonald as director of Master Roof Pty Ltd (in liquidation) advertised in local community newspapers as a roof repair business. He would quote for roofing repairs usually involving the elderly, take excessive deposits and not show up to begin the repair work.				
23/3/07	Mary-Anne Costales (co-director of Master Roof Pty Ltd (in liq))	MMC	FTA DBCA	12(n) 19(1)(a) 19(1)(b) 11(1)(b)
Co-director with James McDonald of Master Roof Pty Ltd (in liquidation).				
27/3/07	Karl Thomas Doyle	MMC	DBCA FTA BNA	29 31(1) 12(n) 19(1)(a) 19(1)(b) 5
Concreter carrying out domestic building when unregistered, using non-compliant contract to carry out major domestic building work, taking deposits and money upfront without returning to complete the concreting works.				
29/3/07	James Tsilemanis	MMC	DBCA FTA	11(1)(a) 29 12(n)
Unregistered building practitioner who accepted excessive deposit to carry out building.				
29/3/07	Peter John Aitken	MMC	DBCA BA	19(1)(b) 29(c) 31(1) 176(2A)
As sole director of Greater City Building Services (in liquidation). The company entered into major domestic building contracts without having a director who was a registered building practitioner. Mr Aitken gave an undertaking that he would be of good behaviour for 12 months.				



Unregistered building practitioner who accepted excessive deposit to carry out building.



	Counts	Conviction	Fines	Compensation	Costs
	4	Yes	\$150,000	\$5,520	\$2,000
	4	Yes	\$25,000		
	2 7 1	Yes	\$138,000	\$1,750.30	\$2,860
	2 1	Yes	\$5,000		\$1,400
	3 1	No			\$1,166

Date	Matter	Court	Act	Section
16/4/07	Vasko Josifovski	MMC	DBCA	11(1)(a) 29 31(1)
Unregistered building practitioner who received an excessive deposit to carry out work. Undertaking to be of good behaviour for 12 months.				
18/4/07	Martinus Arnoldus Maria Vink	MMC	DBCA FTA BA	11(1)(a) 29 31(a) 12(n) 176(2A)
Unregistered building practitioner, who received an excessive deposit to carry out building work without returning to commence the building works. Undertaking to be of good behaviour for 12 months and make application to the Building Practitioners Board to be registered as a builder.				
18/4/07	Trevor O'Donnell	MMC	DBCA FTA	11(1)(b) 29 31(1) 32(2) 12(n) 19(1)(a)
Contracted for internal and external building work and received excessive deposit and then did not return to the property to commence the building work.				
19/4/07	Paul Howard	FMC	DBCA FTA	11(1)(b) 29 31(1) 12(n) 19(1)(a)
Concreter carrying out domestic building when unregistered, using non-compliant contract to carry out major domestic building work, taking deposits and money upfront without returning to complete the concreting works.				
23/4/07	Dale Norman Rosengren	CC	EAA	91
Misappropriated monies in trust accounts. Compensation to recover the monies paid out of the Victorian Property Fund.				

	Counts	Conviction	Fines	Compensation	Costs
	3	No	\$3,000		
	3	No		\$5,000	\$1,061.16
	2				
	5	Yes	\$30,000	\$4,100	\$1,350
	2				
	3	Yes	\$1,500	\$2,000	\$1,000
	1	No		\$208,678.21	

Date	Matter	Court	Act	Section
26/4/07	Muneer Bodagh	MMC	DBCA FTA BA	11(1)(b) 31(1) 19(1)(a) 5
An registered building practitioner who received an excessive deposit to carry out building work, used a contract that did not comply with the DBCA and did not return to rectify faulty work.				
30/4/07	Craig Peters	MMC	DBCA FTA	25 19(1)(a)
Registered building practitioner used a contract that did not comply with the DBCA to carry out major domestic building work, did not give consumers copies of signed contracts and after receiving payment did not return to complete the building works. Twelve month good behaviour bond.				
21/5/07	Michael Woodhouse	RMC	DBCA FTA	25 29(a) 31(1) 7(b) 19(1)(a)
Unregistered building practitioner who used contracts that did not comply with the DBCA.				
31/5/07	Ian Digby Rossborough	MMC	DBCA FTA	29 31(1) 12(n) 19(1)(a) 19(1)(b)
Unregistered building practitioner who used a contract that did not comply with the DBCA to carry out major domestic building work, did not supply all the building work, and did not return to rectify the faulty building work.				
1/6/07	Nicholas Karametis	BMC	DBCA	11(1)(b) 29 31(1)
Unregistered building practitioner who received an excessive deposit and used a contract that did not comply with DBCA.				
6/6/07	Adam Visscher	MMC	DBCA FTA	11(1)(b) 19(1)(a)
A concreter who took an excessive deposit and did not return to complete concreting work. Twelve-month good behaviour bond.				

	Counts	Conviction	Fines	Compensation	Costs
	4	Yes	\$1,250	\$3,000	\$500
	2	No		\$4,500	
	5	Yes	\$3,500		\$600
	5	Yes	\$20,000	\$1,000	\$1,200
	3	Yes	\$3,000	\$1,600	\$1,200
	2	No		\$1,600	\$1,200

Date	Matter	Court	Act	Section
7/6/07	Kasim Ahmadzai	MMC	DBCA FTA	11(1)(b) 29 31(1) 19(1)(a)
An unregistered building practitioner who received an excessive deposit, used a contract that did not comply with DBCA and did not return to commence the building work. Gave undertaking to be of good behaviour for 12 months and to pay \$200 to the Court Fund.				
18/6/07	Christopher Gerald Kirby	MMC	DBCA FTA	11(1)(b) 29 31(1) 11
A draftsman who carried out building work when unregistered as a building practitioner, received an excessive deposit and used a contract that did not comply with the DBCA. Mr Kirby also engaged in conduct that was misleading and deceptive.				
22-25/6/07	Snap Appliance Installation Services Pty Ltd	MMC	DBCA	29 31
The company entered into a major domestic building contract without having a director who was a registered building practitioner, and used a contract that did not comply with the DBCA.				
22-25/6/07	James Mark Scown (director of Snap Appliance Installation Services Pty Ltd)	MMC	DBCA	29 31
Sole director of Snap Appliance Installation Services Pty Ltd which entered into and carried out major domestic building without being a registered building practitioner.				
29/6/07	Walid Anniseh	MMC	DBCA FTA	29 21(1) 19(1)(a)
An unregistered building practitioner who used a contract that did not comply with the DBCA.				

	Counts	Conviction	Fines	Compensation	Costs
	4	No		\$5,000	
	4	Yes	\$2,000		\$1,000
	2	No	\$50		\$2,594
	2	Yes	\$200		
	3	No	\$4,000	\$20,000	

6

Date	Title
3/7/06	Consumer protection sweep hits Geelong
5/7/06	Government lifts the roof on shonky builder
5/7/06	New Liquor Council to advise on alcohol problems
6/7/06	Car traders found guilty of odometer tampering
18/7/06	Tough new regulations to secure high-rise living needs
21/7/06	Leading label found to have misled its customers
25/7/06	Costello must protect all Australian motorists
25/7/06	Diamond Valley students become consumer savvy
26/7/06	Chicken Sensations serves up paltry products
27/7/06	Minister directs traffic in Bourke Street Mall
1/8/06	Ararat students become consumer savvy
1/8/06	Stawell students become consumer savvy
2/8/06	Seymour students become consumer savvy
3/8/06	VCAT disconnects unfair mobile phone contracts
4/8/06	Supreme Court finds Cellante deceived single mum
10/8/06	Conveyancers act to protect Victorian homebuyers
12/8/06	Building and renovating advice for Maribyrnong shoppers
16/8/06	Students at Grovedale Secondary get consumer tips
17/8/06	Pocket rockets taken out of orbit
18/8/06	<i>Get Stuff</i> : youth publication launched
20/8/06	Bracks Government protects consumers in the funeral industry
21/8/06	Game's up for tricky computer games wholesaler
23/8/06	One-stop-shop for consumers and small business



Ballarat seniors find out about consumer rights.



Date	Title
25/8/06	Dodgy door-to-door tradies a no-no: Thomson
25/8/06	East Brighton seniors find out about consumer rights
28/8/06	Morwell 4WD dealership guilty of odometer tampering
29/8/06	Ballarat seniors find out about consumer rights
4/9/06	Consumer protection team hits Mornington Peninsula
6/9/06	Court action leaves building company smarting
7/9/06	New chairperson of Estate Agents Council appointed
7/9/06	The top 15 consumer bugbears
12/9/06	Firewood sales no lightweight matter
13/9/06	Inspection blitz shows LPG pumps in working order
14/9/06	New high rise laws pass through Parliament
15/9/06	Product safety heads consumer agenda
15/9/06	States secure product safety outcome
17/9/06	No misleading "unlimited" broadband claims
19/9/06	Baby product safety trial launched in Casey
20/9/06	Unlicensed travel agents tripped up
21/9/06	Baby product safety trial launched in Latrobe
26/9/06	Kilsyth seniors find out about consumer rights
28/9/06	Government acts on consumer credit issues
29/9/06	FOXTEL plays fair as footy channel winds up
4/10/06	Conveyancing reforms pass through Parliament
4/10/06	Victorian consumers protected on loyalty contracts
5/10/06	Funeral legislation to protect the grieving

Date	Title
9/10/06	Court drops the hammer on dodgy builders
11/10/06	Handbrake applied to 12 regional motor car traders
11/10/06	Ivanhoe seniors find out about consumer rights
12/10/06	Late night game show callers lumped with dog of a bill
13/10/06	Funding to local legal centre to assist the vulnerable
15/10/06	Over 2,600 dangerous toys and products seized from traders
16/10/06	Discount holiday company took consumers for a ride
17/10/06	Buy a car, not a lemon, and avoid a bitter experience
18/10/06	New home for consumer shopfront in Geelong
18/10/06	Victoria's new \$3.4M Consumer Law Centre unveiled
19/10/06	Dodgy emergency relief fundraiser relieved Victorian pockets
19/10/06	New community learning centre a hub of activity in West Footscray
20/10/06	Five year injunction for dodgy steel homebuilder
20/10/06	Curtain coming down on unfair contract terms
22/10/06	New guide to address high number of real estate calls
23/10/06	Supreme Court dismisses estate agent appeal
24/10/06	Lilydale High School students rap up the competition
25/10/06	Shoddy mobile phone salespeople shown the door
27/10/06	Budget now or credit card debt may be your most expensive Christmas present
27/10/06	Tenants urged to claim \$1.2M in uncashed bond money
29/10/06	Consumers must be mindful of real cost of broadband plans
29/10/06	\$300,000 granted for credit and debt projects
31/10/06	\$1.67M project for more affordable homes in Footscray

Date	Title
23/11/06	Court dismissal of finance company appeal sends strong message on unfair credit
14/12/06	Don't get scrooged this Christmas
22/12/06	Banned bottle a deadly message for consumers
24/12/06	Consumer reports lead to release of top five scams in '06
26/12/06	Refund rights reminder for bargain hunters
11/1/07	Online shoppers get more than they bargained for
15/1/07	Be smart: work out fine print on gym contracts
18/1/07	Ballarat consumer office provides essential service
19/1/07	Wangaratta office relocation to benefit consumers
23/1/07	Geelong's one-stop consumer shop helps thousands
30/1/07	Consumers take the law into their own hands
1/2/07	Top 10 consumer enquiries for 2006 released
14/2/07	Don't lose your heart and money this Valentine's Day
16/2/07	Victorian Consumer & Business Centre celebrates 30,000 customers
18/2/07	Victorians lose millions to scammers
21/2/07	Door-to-door warning for Maribyrnong residents
21/2/07	Safe products guide brings support for new parents
22/2/07	New students urged to learn their consumer rights
22/2/07	Court sends dodgy travel agents packing
1/3/07	Victoria welcomes Oilcode but tighter monitoring still needed
6/3/07	Scams target you! Protect yourself
10/3/07	Protect your hard earned money from scammers
15/3/07	Victorian consumer champions to be recognised

Date	Title
16/3/07	Free seminars the foundation to fuss free home building
16/3/07	Scams target you! Protect your phone
16/3/07	Brothel licensee fined for employing illegal sex worker
20/3/07	Consumer Affairs Victoria rings warning bell on phoney cards
20/3/07	Consumer education program launched for migrants
20/3/07	Scams target you! Protect your computer
25/3/07	Consumer Affairs Victoria out and about in Bendigo
26/3/07	New guide steers car buyers in right direction
27/3/07	Protect your identity from illegal scams
27/3/07	Warning on LPG cylinder pressure relief valves
3/4/07	Chocolate eggs a weighty issue this Easter
4/4/07	Don't bottle up your views on alcohol sales
4/4/07	Minister issues interim ban on driving anti-sleep alarm
4/4/07	Pilot program delivers better businesses to Gippsland
19/4/07	New fair trading legislation bill to boost consumer protection
19/4/07	Victorian retirement village residents no longer under threat of eviction
22/4/07	925 ice pipes seized following raids in Preston and Springvale
27/4/07	Consumer Affairs Minister visits Stawell
27/4/07	Minister updates cemeteries and crematoria industry
15/5/07	Court dismisses appeal and finds in favour of vulnerable consumer
18/5/07	Victoria leads the way on National Consumer Taskforce
25/5/07	Alcohol-filled tubes to be banned in Victoria
27/5/07	Supermarkets warned to weigh their options

Date	Title
31/5/07	McKinnon Secondary College students get a lesson in consumer affairs from the Minister himself
4/6/07	Guide to better bookings this Queen's Birthday long weekend
9/6/07	Court action for alleged underquoting to commence
12/6/07	New safety standards ensure parents are no dummies
20/6/07	Don't bargain away your refund rights during stocktake sales
29/6/07	Consumer inspectors conduct sweep through Wodonga

7

Consumer Affairs Victoria provides funding to community-based agencies to deliver advocacy and specialist services, and to undertake special projects relating to consumer and tenancy issues. Approved funding for providing the Community Program in 2006-07 was \$1,384,147 (GST exclusive) comprising the following programs.

Advocacy services

The Consumer Affairs Victoria's Advocacy Program provides advocacy, support and tribunal services for vulnerable and disadvantaged consumers and tenants in the Melbourne metropolitan area and five regions across Victoria. Under the current agreements, approved funding for the Program was \$520,655 (GST exclusive).

Funding approved for 2006-07

Service provider	Approved funding*	Region
Advocacy & Rights Centre Ltd	\$46,395	Loddon Mallee
Community Connections (Vic) Ltd	\$15,465	Barwon South
Delatite Community Health Service	\$46,395	Hume
Grampians Housing Network (t/a PACT Community Support)	\$46,395	Grampians
Geelong Ethnic Communities Council (Diversitat)	\$30,930	Barwon South
Quantum Support Services	\$46,395	Gippsland
Tenants Union of Victoria Ltd	\$288,680	Metropolitan
Total	\$520,655	

*Value is reported exclusive of GST as representing the net cost to Government.

Statewide and special projects

Consumer Affairs Victoria provides funding to statewide specialist services for support, education and policy advice. Funding is also provided to undertake specific projects on policy issues, training initiatives, consumer education, and research on a range of consumer and tenancy matters. Approved funding for 2006-07 for all statewide and special projects was \$863,492 (GST exclusive).

Funding approved for 2006-07

Statewide	Value approved*	Project description
Tenants Union of Victoria Ltd	\$74,000	Specialist tenancy services
Consumer Credit Legal Service Inc	\$376,829	Specialist consumer services
Housing for the Aged Action Group Inc	\$96,096	Specialist aged tenancy services
Special projects	Value approved*	Project description
Tenants Union of Victoria Ltd	\$20,887	Tenancy training – community education model
Tenants Union of Victoria Ltd	\$76,800	Legal advice and policy advocacy – private tenancy
Tenants Union of Victoria Ltd	\$100,237	Advocacy for rooming house and caravan park residents
Peninsula Community Legal Centre Inc	\$43,643	Develop and conduct workshops for young renters
Peninsula Community Legal Centre Inc	\$20,000	Training module on buying a used car
Peninsula Community Legal Centre Inc	\$55,000	Self help workbook and workshops to assist consumers, tenants and landlords
Total	\$863,492	

*Value is reported exclusive of GST as representing the net cost to Government.

Payment of the above amounts will extend over more than one year. Expenditure shown in Appendix 13 reflects part payment on these grants plus payments on grants approved in previous years.

8

CAV provides financial counselling to low income families and individuals facing financial difficulty. The Financial Counselling Program is delivered by 44 community-based, not-for-profit agencies. The Program also funds the peak organisation for the financial counselling sector, the Financial and Consumer Rights Council Inc. Approved funding for providing the financial counselling in 2006-07 was \$5,128,512.91 (GST exclusive).

Funding to agencies for 2006-07

Agency name	Total funding*
Anglicare Victoria (Eastern)	\$120,380.06
Anglicare Victoria (Gippsland)	\$235,449.24
Anglicare Victoria (North West)	\$315,820.63
Banyule Community Health Service Inc	\$61,252.21
Bass Coast Regional Health	\$60,190.03
Benalla Rural City Council	\$11,683.95
Berry Street Victoria Inc (Northern)	\$123,920.65
Broadmeadows Uniting Care	\$259,171.19
Camcare Inc	\$77,184.86
Carlton Fitzroy Financial Counselling Service Inc	\$60,544.09
Child & Family Services Ballarat Inc	\$179,507.91
City of Darebin	\$73,290.21
City of Knox	\$78,955.16
Moreland Community & Legal Centre Inc	\$85,682.28
Colac Area Health	\$125,336.89
Community Connections (Victoria) Limited	\$144,102.01
Dignity Financial Counselling Service Inc	\$117,547.59
Djerriwarrh Health Service	\$23,367.89
Eastern Access Community Health Inc	\$176,321.38

Agency name	Total funding*
Financial Counselling (Vic) Inc	\$168,886.14
Frankston City Council	\$72,936.15
Good Shepherd Youth and Family Service Inc	\$317,944.98
Goulburn Valley Community Health Service Inc	\$109,758.29
Inner South Community Health Service Inc	\$45,673.61
Isis Primary Care Inc	\$60,544.09
Diversitat	\$196,856.80
Kildonan Child and Family Services	\$150,829.13
Mallee Family Care Inc	\$97,720.28
Mansfield Shire Council	\$21,243.54
Mitchell Community Health Services Inc	\$67,979.33
MonashLink Community Health Service Inc	\$69,395.56
Port Phillip Community Group Ltd	\$68,333.39
Reach Out for Kids Foundation (ROK) Inc	\$60,898.15
Shepparton & Benalla Debt Counselling Service Inc	\$70,811.80
Southern Health	\$265,190.19
Springvale Community Aid and Advice Bureau Inc	\$76,830.80
St Luke's Anglicare	\$219,870.64
Sunbury Community Health Centre Inc	\$31,157.19
Uniting Church in Australia Kilmany Family Care	\$89,222.87
UnitingCare Connections	\$79,309.22
Upper Murray Family Care Inc	\$103,385.23
Wimmera Uniting Care	\$76,476.74
Wyndham City Council	\$28,678.78
Yarra City Council	\$88,514.75
Financial and Consumer Rights Council Inc	\$160,357.03
Total for 45 contracts	\$5,128,512.91

*Value is reported exclusive of GST as representing the net cost to Government.

A statutory process exists to provide compensation to consumers who are financially disadvantaged from dealings with motor car traders or estate agents licensed to operate within Victoria.

Motor car traders

The *Motor Car Traders Act 1986* provides for compensation to be paid from the Motor Car Traders Guarantee Fund to any person who incurs a loss from dealing with a licensed motor car trader, or someone who appears to be a licensed trader.

Claims relating to licensed motor car traders are considered by the Motor Car Traders Guarantee Fund Claims Committee.

Claims can be made on transactions involving motor cars, motorbikes and commercial vehicles.

The Committee can pay a claim if a motor car trader fails to:

- comply with bans on consignment selling, odometer tampering, or selling a trade-in car before the cooling-off period is over
- comply with the warranty provisions of the Motor Car Traders Act (this applies to motor cars but not to motorbikes or commercial vehicles)
- transfer a good title to a motor car
- pay the purchase price for a motor car sold to the motor car trader
- pass on transfer or registration fees, or stamp duty, to VicRoads
- provide a Certificate of Roadworthiness or other documents necessary for the motor car to be registered
- pass on money for an insurance policy or warranty, and/or
- satisfy an order made by a court or the Victorian Civil and Administrative Tribunal relating to trading in motor cars.

Claims on the Motor Car Traders Guarantee Fund are capped at a maximum of \$40,000 per claim.

Claims approved in 2006-07 are detailed in the following table.

Claims against Motor Car Traders Guarantee Fund admitted 2006-07

Trader	Number of claims	Total amount paid
Auto Group Dandenong Pty Ltd	9	\$102,369.57
Auto Group Melbourne Pty Ltd	3	\$50,188.20
Daniel Luke Pty Ltd	10	\$64,571.74
Diskway Pty Ltd	1	\$11,500.00
G&M Campbell Pty Ltd	1	\$156.00
GK & JH Radford Pty Ltd	1	\$266.75
Graham Ash Pty Ltd	1	\$1,563.00
Hartley, Leonard Ellis	2	\$3,000.00
Hazelwood Auto Wreckers Pty Ltd	1	\$4,300.00
Houli, Haysam	1	\$19,500.00
Hume Prestige Pty Ltd	1	\$2,548.90
Morwell 4 Wheel Drive and Commercial Sales Pty Ltd	12	\$63,271.00

Trader	Number of claims	Total amount paid
Schaefer, RJ	1	\$2,679.40
Six Pack Pty Ltd	5	\$6,779.00
Unlicensed traders	6	\$8,225.80
Totals	55	\$340,919.36

None of these traders now has a licence under which they can trade.

Estate agents

The *Estate Agents Act 1980* provides that payment may be made from the Victorian Property Fund to compensate any person who suffers financial loss through the defalcation of a licensed estate agent or employee of a licensed estate agent.

There is no limit to the amount that may be claimed.

Claims against Victorian Property Fund admitted 2006-07

Agency	Number of claims	Total amount paid
Averwood Pty Ltd	4	\$76,378
Beech Lynch & Co Pty Ltd	2	\$1,050
Champion Group Pty Ltd	1	\$900
Christopher Lucas (Melbourne) Pty Ltd	1	\$2,210
Dorchester Real Estate Pty Ltd	2	\$26,000
Hocking Stuart (Oakleigh) Pty Ltd	1	\$953
Indus Realty Pty Ltd	1	\$45,000
Nicholson Real Estate Pty Ltd	1	\$585
TPA Property Pty Ltd	1	\$693
Wright, David Edward	1	\$10,000
Totals	15	\$163,769

The *Credit (Administration) Act 1984* allows the Minister for Consumer Affairs to make grants from the Consumer Credit Fund. On the recommendation of an Advisory Committee the Minister makes grants for the purposes of providing:

- education services about credit
- education, advice or assistance to persons to whom credit has been, is or may be provided under credit contracts, or
- research about the use of credit.

Approved funding for 2006-07 was \$514,494 (GST exclusive).

Grants approved by the Minister in 2006-07

Grant recipient	Value*	Description of funded program
Goulburn Valley Community Health Service Inc	\$1,804	Loans, phones, homes and automobiles
Public Interest Law Clearing House (Vic) Inc	\$50,000	Advocacy and empowerment workshops
Consumer Action Law Centre Limited	\$20,000	Credit insurance how-to update
Knox City Council	\$8,273	On the money: increasing financial awareness for grade 5 and 6 students
Heatherton Christian Resource Centre	\$3,500	Enhancing life skills – ARC house residential rehabilitation program
Lao Australian Welfare Association Inc	\$15,755	Consumer credit information for the Thai & Lao communities
Consumer Affairs Victoria	\$85,000	The influence of credit advertising practices on consumer behaviour and decision making
Monash University	\$43,819	Applying general contract and consumer protection law to consumer credit disputes outside the Uniform Consumer Credit Code
Aged Concern Albury – Wodonga	\$12,620	Consumer credit workshops for financially vulnerable older adults
Loddon Campaspe Legal Centre	\$19,064	Consumer credit issues for older consumers in rural and regional Victoria
Monash University	\$16,200	Credit card use and debt by undergraduate students in e-retailing in Melbourne, Victoria
Mental Health Legal Centre Inc	\$40,204	Credit and debt education and information sessions and resource development
Victorian Aids Council Inc	\$9,930	Managing money on a health care card/low income for people living with HIV/AIDS
Eastern Access Community Health	\$28,160	Private trustees in bankruptcy: an exploration of current practices

Grant recipient	Value*	Description of funded program
Good Shepherd Youth and Family Service	\$42,020	Critical financial capability for women
Brotherhood of St Laurence	\$38,118	The adequacy and effectiveness of the disclosure and safety net provisions of the Uniform Consumer Credit Code in protecting low income consumers
The Micah Law Centre	\$39,597	Research project to investigate whitegoods consumer rental agreements for non compliance with relevant credit and consumer legislation and common law consumer rights
Young People's Legal Rights Centre (t/a Youthlaw)	\$17,000	Becoming independent: educating young people about responsible credit
Financial and Consumer Rights Council Incorporated	\$15,430	Orientation kit for financial counsellors
Wyndham Connected Inc	\$8,000	Tips and tricks for consumer credit
Total	\$514,494	

*Value is reported exclusive of GST as representing the net cost to the Fund.

Payment of the above amounts will extend over more than one year. Expenditure shown in Appendix 13 reflects payments made in the 2006-07 financial year.

11

The *Estate Agents Act 1980* allows the Minister for Consumer Affairs to make grants from the Victorian Property Fund (VPF) for the purposes specified in section 76(3) of the Act as follows:

- (a) community education, advice or information services regarding—
 - (i) the sale, purchase, lease or transfer of interests in real estate or businesses
 - (ii) the provision of finance or credit for the purpose of the sale, purchase or lease of real estate or businesses
 - (iii) the provision of finance or credit for the acquisition of any right to reside on land
 - (iv) subdivision bodies corporate
 - (v) retirement villages
 - (vi) residential tenancy rights and any other rights to reside on land
 - (vii) other consumer protection matters relating to interests in land
- (b) programs that promote the ownership of real estate
- (c) the training of estate agents and agents' representatives
- (d) dispute resolution and advocacy services in relation to disputes involving—
 - (i) the sale, purchase, lease or transfer of interests in real estate or businesses
 - (ii) the provision of finance or credit for the purpose of sale, purchase or lease of real estate or businesses
 - (iii) a resident, or proposed or former resident, of a retirement village regarding his or her residence right in that retirement village
 - (iv) a subdivision body corporate or a member of a subdivision body corporate or an occupier of a lot arising in relation to the operation of subdivision bodies corporate
 - (v) the provision of estate agency services or subdivision body corporate management services
 - (vi) other consumer protection matters relating to interests in land
- (e) reviewing, reforming or researching the law and procedures or reviewing and researching the markets for real estate regarding—
 - (i) the sale, purchase, lease or transfer of interests in real estate or businesses
 - (ii) the provision of finance or credit for the purpose of sale, purchase or lease of real estate or businesses
 - (iii) subdivision bodies corporate
 - (iv) retirement village
 - (v) other consumer protection matters relating to interests in land
- (f) projects facilitating—
 - (i) the registration of interests in land
 - (ii) the compilation of other information relating to the ownership or use of land
- (g) projects providing or facilitating housing assistance for low income or disadvantaged Victorians
- (h) projects regarding—
 - (i) the development of environmentally sustainable housing
 - (ii) the protection of Victoria's natural and architectural heritage.

The Minister makes his decision on grants after consultation with the Estate Agents Council and Consumer Affairs Victoria and with any industry associations, government departments and other bodies he thinks appropriate.

Grants approved by the Minister in 2006-07

Grant recipient	Value approved*	Description of funded program
Australian Livestock and Property Agents Association	\$141,191	Professional development program 2006-07
Australian Livestock and Property Agents Association	\$138,374	Professional development program 2005-06
Department of Human Services	\$42,000	Minimum standards in private rental properties project
Department of Innovation, Industry and Regional Development	\$3,654,000	Under new management 2007-09
Melbourne Affordable Housing	\$5,400,000	Victoria Harbour affordable housing project
Melbourne Affordable Housing	\$300,000	Gordon Street Footscray community housing project
The Real Estate Institute of Victoria	\$508,709	Professional development program 2006-07
Total	\$10,184,274	

*Value is exclusive of GST, representing the net cost to the VPF.

Payment of the above amounts will extend over more than one year. Expenditure shown in Appendix 13 reflects part payment on these grants plus payments on grants approved in previous years.

Consumer Affairs Victoria manages eight distinct funds established by Acts of Parliament. Two of these funds relate to the Residential Tenancies Bond Authority. The details of these funds are as follows.

Fund	Act of Parliament	Income source	Expenditure purpose
Consumer Credit Fund	<i>Credit (Administration) Act 1984</i> ss 86AA–86AC	<ul style="list-style-type: none"> • Credit provider contributions • Interest income 	<ul style="list-style-type: none"> • Grants relating to consumer credit education and research as permitted by s 86AB of the Act • Secretarial support to the Consumer Credit Fund Advisory Committee
Domestic Builders Fund	<i>Domestic Building Contracts Act 1995</i> s 124	<ul style="list-style-type: none"> • Part share of the Domestic Builder registration fees and the Domestic Building Dispute Levy collected by the Building Commission • Interest income • Fees collected by the Victorian Civil and Administrative Tribunal relating to the Domestic Building List • Fines 	<ul style="list-style-type: none"> • Administration of the Act • Costs relating to the Domestic Building List of the Victorian Civil and Administrative Tribunal
Motor Car Traders Guarantee Fund	<i>Motor Car Traders Act 1986</i> ss 74–75	<ul style="list-style-type: none"> • Interest income • Licensing fees • Fines • Recovery of claims paid 	<ul style="list-style-type: none"> • Administration of the Act • Guarantee claims
Prostitution Control Fund	<i>Prostitution Control Act 1994</i> s 66	<ul style="list-style-type: none"> • Interest income • Licensing fees • Fines 	<ul style="list-style-type: none"> • Administration of the Act
Residential Tenancies Fund	<i>Residential Tenancies Act 1997</i> ss 49–498A	<ul style="list-style-type: none"> • Transfers from Residential Bonds Investment Income Account • Interest income • Fees collected by the Victorian Civil and Administrative Tribunal relating to the Residential Tenancies List 	<ul style="list-style-type: none"> • Administration of the Act • Costs relating to the Residential Tenancies List of the Victorian Civil and Administrative Tribunal
Victorian Property Fund	<i>Estate Agents Act 1980</i> ss 71–91	<ul style="list-style-type: none"> • Interest income received on real estate agent's trust accounts • Interest income • Investment income • Licensing fees • Fines 	<ul style="list-style-type: none"> • Administration of the Act and other real estate related legislation as permitted by s 75 of the Act. • Grants relating to real estate as permitted by s 76(3) of the Act • Operation of the Estate Agents Council • Guarantee claims

Fund	Act of Parliament	Income source	Expenditure purpose
Residential Bonds Account	<i>Residential Tenancies Act 1997</i> s 435	<ul style="list-style-type: none"> Bonds lodged with the Residential Tenancies Bond Authority 	<ul style="list-style-type: none"> Repayment of bonds
Residential Bonds Investment Income Account	<i>Residential Tenancies Act 1997</i> s 436	<ul style="list-style-type: none"> Interest income received from the investment of the Residential Bonds Account and Residential Bonds Investment Income Account. 	<ul style="list-style-type: none"> Administration of the Residential Tenancies Bond Authority Any amount declared as an additional amount to be added to the bond upon repayment Transfers to Residential Tenancies Fund

	Consumer Credit Fund	Domestic Builders Fund	Motor Car Traders Guarantee Fund	Prostitution Control Fund
Consumer Affairs Victoria (CAV) revenue				
Revenue recognition from Estate Agent trust accounts				
Revenue recognition from Residential Tenancy Bonds				
Appropriations and Treasury Trusts				
Interest income	264,024	379,334	52,213	21,317
Recognised fair value increment in investments				
Transferred from Building Commission Victoria (Note 1)		6,568,640		
Fees income			2,472,363	785,963
Penalty income	33,120	950	40,764	14,317
Recoveries related to claims previously paid			70,167	
Other revenue			6,808	
Transfers				250,000
Total CAV revenue	297,144	6,948,924	2,642,315	1,071,597
Consumer Affairs Victoria expenditure				
Audit services				
Claims on guarantee funds			375,871	
Consumer Utilities Advocacy Centre				
Contractors, consultants and professional services	18,358	193,357	68,302	64,529
Departmental governance and support costs (GECS)				
Employee related costs		2,691,802	1,420,744	659,198
Grants paid	399,815			
Information technology		52,720	11,581	10,633
Occupancy costs		225,571	25,894	68,636
Other operating costs		1,214,375	188,899	100,515
Outsourced contracted costs		9,004	17,015	18
Total CAV expenditure	418,173	4,386,829	2,108,306	903,529
Victorian Civil and Administrative Tribunal (VCAT) (Note 3)				
VCAT fees offset		(234,816)		
VCAT employee related costs		1,436,014		
VCAT other operating costs		625,256		
Net VCAT expenditure		1,826,454		
Total CAV + net VCAT expenditure	418,173	6,213,283	2,108,306	903,529
Trust Funds, opening equity 1 July 2006	4,323,731	5,424,844	286,720	127,934
Current year operating surplus/(deficit), CAV + VCAT	(121,029)	735,641	534,009	168,068
Adjustments		(1,653)		
Trust Funds, closing equity 30 June 2007	4,202,702	6,158,832	820,729	296,002

Note 1 – Domestic Building Dispute Levy and Registration Fees

Note 2 – The CAV Total Output for 2006–07 was \$70,137,499 (2005–06 was \$64,408,655)

Note 3 – VCAT activities are partly supported by the CAV trust funds

	Residential Tenancies Fund	Residential Bonds Investment Income Account	Victorian Property Fund	Trust Funds Total 2006-07	Consumer Affairs Victoria Appropriations & Other 2006-07	Consumer Affairs Victoria Total Output 2006-07
			45,644,918	45,644,918		45,644,918
		23,421,705		23,421,705		23,421,705
					37,256,657	37,256,657
1,875,955			13,637,259	16,230,102		16,230,102
			9,347,788	9,347,788		9,347,788
				6,568,640		6,568,640
			1,603,446	4,861,772		4,861,772
300			200	89,651		89,651
				70,167		70,167
(986)			16,261	22,083		26,282
19,300,000	(19,300,000)			250,000	(250,000)	
21,175,269	4,121,705	70,249,872	106,506,826	37,006,657	143,513,483	
		6,500		6,500		6,500
			163,155	539,026		539,026
					500,000	500,000
225,832	235,181	1,230,309	2,035,868	2,021,978	4,057,846	
				4,113,674	4,113,674	
4,135,961	901,274	4,700,446	14,509,425	15,578,480	30,087,905	
413,848		4,592,762	5,406,425	397,206	5,803,631	
131,780	17,726	204,486	428,926	1,158,173	1,587,099	
511,846	84,850	461,956	1,378,753	2,323,373	3,702,126	
1,107,374	615,957	2,862,853	6,089,973	4,361,278	10,451,251	
431,618	2,212,403	3,652	2,673,710	6,614,731	9,288,441	
6,958,259	4,073,891	14,219,619	33,068,606	37,068,893	70,137,499	
					Note 2	
(1,926,802)			(2,161,618)			
6,833,516			8,269,530			
1,746,872			2,372,128			
6,653,586			8,480,040			
13,612,831	4,073,891	14,222,832	41,552,845			
25,571,215	1,003,387	289,714,495	326,452,326			
7,563,424	47,814	56,030,253	64,958,180			
		(5,611)	(7,264)			
33,134,639	1,051,201	345,739,137	391,403,242			

