

# CORRECTED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into 2004–05 budget estimates

Melbourne – 15 June 2004

#### Members

Mr W. R. Baxter	Ms D. L. Green
Ms C. M. Campbell	Mr J. Merlino
Mr R. W. Clark	Mr G. K. Rich-Phillips
Mr L. A. Donnellan	Ms G. D. Romanes
Mr B. Forwood	

Chair: Ms C. M. Campbell  
Deputy Chair: Mr B. Forwood

#### Staff

Executive Officer: Ms M. Cornwell

#### Witnesses

Mr J. Lenders, Minister for Consumer Affairs;  
Ms P. Armytage, secretary;  
Dr D. Cousins, director, consumer affairs Victoria; and  
Mr D. Fitzgerald, general manager, corporate resources, consumer affairs Victoria,  
Department of Justice.

**The CHAIR** — Good afternoon. I declare open the Public Accounts and Estimates Committee hearings on the 2004–05 budget estimates for the consumer affairs portfolio and the finance portfolio. I welcome the Honourable John Lenders, the Minister for Consumer Affairs and the Minister for Finance; Ms Penny Armytage, secretary, Department of Justice; Dr David Cousins, director, consumer affairs Victoria; and Dennis Fitzgerald, general manager, corporate resources, consumer affairs Victoria, Department of Justice. Welcome to all departmental officers, members of the public and the media.

In accordance with the guidelines for public hearings, I remind members of the public that they cannot participate in the committee's hearings. Only officers of the PAEC secretariat are to approach PAEC members. Departmental officers, as requested by the minister or his or her chief of staff, can approach the table during the hearing. Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council committee room.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. All evidence given today is being recorded and witnesses will be provided with proof versions of the transcript early next week.

Minister, over to you for a brief presentation, then 50 minutes has been allocated for questions on the consumer affairs portfolio.

**Mr LENDERS** — It is a pleasure to make a presentation on consumer affairs. It is a very exciting and vibrant portfolio, and I will go through about 20 slides.

**Mr FORWOOD** — Do you have hard copies?

**Mr LENDERS** — They will be on screen.

**Mr FORWOOD** — You do not have copies for us?

**Mr LENDERS** — I only have my copy here, but they will be on the screen.

**Mr FORWOOD** — You are the only minister who has not provided the committee with a hard copy of his slides.

**Mr LENDERS** — I am much chastised, Mr Forwood. I thought it desirable to reduce the paper clutter.

**Mr FORWOOD** — No, we like to take them away, and we like to refer to them.

**Mr LENDERS** — There is nothing there that you will not find in the budget papers.

**The CHAIR** — We can get copies of them later.

**Mr LENDERS** — The first slide goes through the objectives of consumer affairs. It is always important, particularly on something like this annual presentation, to actually go through the objectives, because in the end that is what you should be held accountable for and are held accountable for.

There are three objectives. The first one is protecting and promoting the interests of consumers, which should go without saying but is worth restating. A big part of that protecting and promoting is informing, empowering and educating. All of those things together are an important part of the role of consumer affairs, so that consumers actually make the correct choices rather than, after the event, remedial action needing to be taken either by the individual or by government, when they have made bad choices.

The second one is unusual — it is ensuring that markets work in the interests of consumers and the broad community. It is a language that is out of kilter with your normal consumer affairs or social policy language, but logically, whether in the areas of regulation of real estate, motor car traders, liquor licensing, or any areas which involve social policy but also economic regulation, we need to get the markets to work. It involves important things like competition, monitoring, transparency and so on. That economic and social regulation is an important objective and a big part of the portfolio.

The third point is the improved access to consumer protection services, particularly for vulnerable and disadvantaged groups. That is probably the one into which the greatest focus and public energy goes, but all three of them are important in understanding how the portfolio operates.

The next slide goes through our strategic priorities from 2003 to 2006. It addresses current and emerging marketplace issues. There is the obvious one of ensuring existing interventions are efficient and effective, and that is an operational issue so often in terms of where you put your time, energy and resources.

Another priority is the targeting of issues of concern to vulnerable and disadvantaged consumers, providing leadership in alternate dispute resolution, and again, ADR rolls very easily off the tongue as a concept, but the practice or alternate dispute resolution and how it is not only part of consumer affairs but across the whole Department of Justice is very important.

Committee members will be aware of the Attorney-General's statement recently and certainly the Pathways to Justice initiative, which will link in with this. It is a big area of work in the years ahead.

In terms of strengthening compliance enforcement, it rolls off the tongue easily but it is all about prioritising and targeting in the most effective areas. Another priority is strengthening information and education services and modernising consumer affairs with 21st century systems and customer services.

Some of those, even lodging forms online — like business licensing and the way business is done — are important; and I would add an eighth priority there, and that is really forming strategic partnerships with other states and jurisdictions.

A lot of the work we can do and do well is in partnership, and the most notable ones in the last few years have been on telemarketing — a partnership with the state of New South Wales — and also on builders warranty insurance — a partnership also with New South Wales. That is part of the strategic priorities.

Moving on to key legislation, I will not spend much time on this. There are 48 acts of parliament within this portfolio and those fortunate enough to be in the Legislative Council would have heard me waxing lyrically about them on a number of occasions. It is a broad range of areas. The new legislation is general, like the Fair Trading Act and the like, which deal with principles about the form of governance we want and ways of enforcing it, and then there is a lot of sector-specific acts that deal with a whole plethora of areas.

A number of them include estate agents, tenancies, car traders, associations incorporation, liquor control — they affect a lot of people. They do not attract a lot of media but each in their own individual way affect many people's lives so it is an important raft of legislation in the portfolio.

The next is volume of services. Three quarters of a million inquiries are received a year, by Consumer Affairs Victoria. These are far more than product safety, which is often what people think of when they think of consumer affairs. A lot of this is about dispute resolution. It includes issues such as trade measurement, which is one of the silent issues that people do not often associate with consumer affairs, but it is important that the measurement is correct; business names; licensing transactions; residential bonds — there is a whole range of services, and a large volume goes through consumer affairs.

Achievements: we have listed a few for the last year. They are all in legislation, but again it is moving and ongoing in the policy role of being prepared, anticipating and dealing adequately. Having the stakeholder consultation in all these areas is also a big part of the job.

Unfair terms in consumer contracts: huge. It is revolutionary legislation with which the Chair would be very familiar. The concept comes out of the UK, and we are the only jurisdiction in Australia to do it. There is regulation of telemarketing, which we are now harmonising in a lot of areas with the state of New South Wales. The real estate reforms that came into effect on 1 February are ones that we are all fairly familiar with. The establishment of the Victorian property fund is an issue that Mr Forwood and I discussed across the table at this meeting last year and also across the table in the Legislative Council in a committee stage. That is certainly an area that has a lot of attention. Then there is the clarification of the off-the-plan regulation — all emerging areas.

Very quickly, some of the achievements in policy development are listed on the next slide. Reviews are going on particularly of bodies corporate, incorporated associations and retirement villages. Some key work is being done on

defining 'vulnerable' and 'disadvantaged'; there are achievements in compliance and dispute resolution, and hopefully I can deal with some of those in questions as we go through.

The next one lists our achievements in education information. I am very proud of this one. A lot of plain English advice goes out to consumers in a whole range of areas, whether it be in real estate, construction, consumer education in schools, renting a home — there is lots of stakeholder engagement. We are working together with a whole range of people here, particularly the vulnerable and disadvantaged. We have a series of conference and industry seminars where we are establishing best practice, working out how our laws operate, how they can work better, and taking our stakeholders along with us. We have a new consumer affairs community-based services pilot in operation and expanded on-line services. We have some trends here in online access. The maroon section shows areas where things have been done by the web site rather than by the traditional phone or over the counter.

Concluding: protecting consumers is a single output with a cost of \$61.9 million covering a broad range of acts and services. It is a very exciting area in social and economic policy to be part of.

**Mr MERLINO** — You briefly touched on the new consumer service model currently being implemented by CAV. It is of particular interest to me, given that the pilot will be in the eastern suburbs in addition to the changes in provincial Victoria. Can you explain to me how services will be enhanced for consumers, in particular in the outer east, and also how CAV will assess the effectiveness of this new model as it is being implemented?

**Mr LENDERS** — It is a very pertinent question because it has been an area that has taken a very large part of my time in the portfolio — firstly, the development of the model, then the promotion of it and finally the implementation, with David Cousins and the department. Conceptually, at the moment approximately \$4 million per year goes in grant money to consumer agencies to deliver a service. There are 22 of those across Victoria and most, taking out some of the statewide ones, deliver a service for a specific group of LGAs. Part of their job is to deliver consumer and tenancy services, whether it be information, conciliation like when a person comes over the counter or over the phone between them and a trader, or whether it be advocacy where they go to a tribunal and represent.

From my observation, having visited all of the regional agencies during the winter recess last year, people in these areas were dedicated, committed and working hard. However, in the end the times have moved beyond the structure because of the synergies and energies you can have by being a part of a greater consumer affairs portfolio rather than being isolated as part of an agency. The ones that needed some challenge or how we delivered services, particularly to the more vulnerable consumers or consumers who either could not find these services because of their badging or because geographically it was not convenient to go to a place, were the starting points as to how we could better deliver the services with the commitment to no reduction in budget and to trying to enhance it.

So we moved from that stage to looking at a new model, and my parliamentary colleague John Scheffer worked on that in a model called The Way Forward. There was a lot of uncertainty and anxiety among some of the agencies, so we chose to pilot in two areas for the next financial year, that being the north-east and the east, which you, Mr Merlino, represent, the purpose being to try and enhance the service delivery before rolling it out across the whole state. We have been lucky in a sense. Due to the Consumer and Tenancy Advice Service (CATCAS), the agency that covered the north-east, pulling up stumps before the end of their contract, we had to step in a fair bit earlier and start delivering the services ourselves in that area; and then both the Box Hill region and the outer eastern region are still continuing in their services, so we had a bit of a phased one.

What we are seeking to do in both areas is to provide greater access for consumers to the service, and there is a number of ways you can do that. One is to look at the place where people who make appointments can go face-to-face with a consumer affairs employee, worker or public servant who can deal with those complex issues with them. In the north-east we have gone from three towns that have had services to five towns that now have a regular service each day that people can go to, so we have expanded from Shepparton, Wodonga and Wangaratta to include Seymour and Benalla, where there is a regular service and a person can go to have face-to-face service. Plus with the mobile units coming in place, we can go out where there is greater need. I would certainly envisage that in a place like Cobram, which is 12 per cent Arabic speaking, you would have one of our Consumer Affairs Victoria Arabic workers going with a mobile unit when the need arose.

In the east, in your particular area, Mr Merlino, because the services are still existing we are in an intensive planning phase, and I have certainly indicated that we will not diminish the presence. At the moment agencies

present in both Box Hill and Boronia in your own electorate, but we will not diminish the places where people can go for face-to-face service. We are negotiating with a range of agencies, looking at a range of areas where we can have that physical consumer affairs presence, and that will be announced and finalised shortly. We will certainly have more places where people can come for a presence.

Secondly, on the advocacy side we would hope to broaden to a number of agencies in a number of areas who will assist those vulnerable consumers with advocacy, so the transition is proceeding in the outer east. However, the concerns that people have generally raised have been about whether there will be less access for consumers. My answer is there will not be. We will make sure there is the same geographical spread. There is also the capacity for public transport to come into consumer affairs centrally where there is an enormous back-up of people who can assist.

Thirdly, I have also been out with others. I have had the privilege of going out with Thuy, one of our Vietnamese consumer workers, to a tenancy seminar in Nunawading, where she did a presentation — Denis will bring up a slide of this — in Vietnamese on tenancy issues. Sitting through half an hour of that was a quite a struggle for me because I do not understand any Vietnamese but for the 20 or 30 people who were present it was an amazingly empowering experience because they could go through their issues with someone who was fluent in their native tongue. There is also an example on the slide of some of the Arabic literature, so while we are moving from small areas of presence to try and broaden the whole of consumer affairs presence, whether that be with our multilingual workers, with our conciliation staff or consumer affairs centrally or whether it be locally based, we have a greater presence for vulnerable consumers than there may have been in the agency model, which I think we could do better than., That is why we explored it.

**Mr MERLINO** — Sorry, I mean assessing the effectiveness.

**Mr LENDERS** — The evaluation of it: clearly the other 19 agencies that will have the continual rollover and other people in the community sector are interested in this as a model because some see it as an opportunity and some see it as a threat with some of these community agency workers coming into the public service. There has been a lot of interest in evaluation. We have internal evaluation of consumer affairs as we have always done with programs, and I am certainly open to looking at the models of external evaluation. I have asked John Scheffer to report back to me with models for evaluation, but I am keen for it to be evaluated, and I am also keen we do it fairly speedily so we can add certainty to other people who are looking forward to some certainty on 1 July next year.

**Mr FORWOOD** — The last step in the accountability process is the production of the annual report, and you would be aware of course that under section 46 of the Financial Management Act annual reports are required to be tabled by the end of October. Could you advise the committee why Consumer Affairs Victoria's annual report was a month late last year, and do you expect that to happen again this year?

**Mr LENDERS** — I am advised that CAV reports is using two methods. Firstly, under the Department of Justice report, which is Financial Management Act-required reporting and which was delivered on time. The consumer affairs report is one from the director, which is actually reported under the Fair Trading Act, so it does not have that same requirement. Without being pedantic on the times, I acknowledge your key issue — that is, that we need to report and we need to report speedily. I also acknowledge that the Department of Justice report, which is our reporting mechanism under the Financial Management Act, was on time.

**The CHAIR** — One of the CAV output measures is about inspection, compliance and enforcement activities. If we look in 2004–05 we are looking at 7346 items. You also mentioned in your presentation that there were new initiatives in enforcement action taken in 2003–04 at CAV and that these would be extended. Could you outline to the committee what this involves, and how it can be achieved with the same level of resources.

**Mr LENDERS** — There are a number of issues that come out with inspection, compliance and enforcement. One is how you actually go about it. You have to think about what you are setting out to achieve, and part of that obviously is the inspections themselves, compliance monitoring and enforcement. Part of it is also setting a scene and a tone in the community that sets behaviour in place. We have trialled some innovative things in consumer affairs. Among the things that we have trialled was getting in a whole range of people across the portfolio in the one place at the one time to make inspections. We did that in Bendigo earlier this year — at the one time and the one place — to enhance that and to make people aware that CAV was out there. We are also being a bit more strategic in trying to have major cases in VCAT or in the courts for prosecutions rather than chasing

dozens or lots of minor infringements. We are trying to do a few major ones, symbolic ones, and to target resources to those areas. Clearly with enforcement activities we have — whether it be in some of the wrap-lending areas or others — actually gone out and very publicly seized banned goods such as dangerous toys and those types of areas, and publicly put the issue forward. We think it is probably more effective for the public to see that these things are banned and that we are taking action, and putting energies into that.

We need to be putting more energy into publicity, publicising those cases, probably more than we have. We have seized banned goods in some areas. There are other issues, such as dummy bidding. In some of those areas we are having our people fairly clearly and openly positioned at the start of an auction to advertise the fact that we are taking action. These are all ways of making the consumer affairs dollar go further — that is, by communication and giving the public information to encourage people to deal with that. That can also be about matters relating to domestic building, motor car trading, travel agents — all those areas. Through a range of devices we are trying to be more upfront and targeting those areas so that we can do it. Part of that is having an aggressive inspection program, part of that is having a regional presence and part of that is a mixture of all of them. I think it will always be an issue: how do we get information out?

I close by using the illustration of some of the dangerous goods and banned toys. For most traders to go and buy from a travelling rep a small child's toy that is dangerous and banned. Our challenge is how to convince people who are at that level that that is actually something that is dangerous and should not be sold in their shop. Sure, we can urge them to go to our web site and look at the dangerous products. We can do a range of things, but by actually publicising and seizing the goods it helps us get our message out.

**Mr CLARK** — Minister, on one of the slides in your presentation — I cannot tell you which slide because we do not have copies — you had quite a long list of indicators of the volume of transactions that officers in your part of the department handled. That was quite a useful list, from memory. By contrast if you look at page 174 of budget paper 3 for this year, the service delivery statement, you will see a very short list of performance measures. Conversely if you look at pages 345 to 346 in appendix D of budget paper 3 you will find a very long list of measures being discontinued. Can you tell the committee why these measures have been discontinued? Do you not think it sets a bad example for other departments and other ministers that there are so few performance measures at page 174 of budget paper 3, and do you believe that you are complying with the directions of the Minister for Finance and other requirements of the Minister for Finance under section 49 of the Financial Management Act?

**Mr LENDERS** — Mr Clark raises a very pertinent issue about output measures and what their purpose is, and the capacity to report. There are two objectives with output measures. One is to be as open and transparent as you can to provide information so that people can make informed choices, particularly in a linear sequence where you can. This is always a challenge when you change the measures. The second thought is to have meaningful measures that actually report something rather than just volumes and volumes of things that are meaningless.

**Mr CLARK** — Are you saying that what is in your slides is volumes of meaningless information?

**Mr LENDERS** — We are providing information here as an example of what the department does, but it is always a balance without arguing one or the other. Of course Consumer Affairs Victoria has inherited in the last year, with the last administrative changes, responsibility for trade measurement and liquor licensing. A number of the output measures are functional measures — that is, in a sense, customer service transactions over the counter, whether they be for seeking advice on liquor licensing, trade amendment or other consumer affairs issues. In one sense it is people coming over the counter seeking assistance under one of the 48 acts of Parliament that Consumer Affairs Victoria is responsible for administering. You could in one sense have 48 different lines — that is, one for every act of Parliament or subpart — or you can start grouping them by function, like counter transactions, phone transactions or written complaints or written conciliation. As in all areas of government this is an effort to have this as contemporary and current as possible. I think we have a slide that will show some of the links, so all the measures are actually reportable. We know that there is no discontinuity, but I think it is a logical and tight measure to report in a fluent fashion.

**Mr FORWOOD** — So next year we will get that slide again with last year and this year side by side?

**Mr LENDERS** — I am happy to do that, Mr Forwood, if you want for next year. I would be delighted to.

**Mr FORWOOD** — Thank you.

**Mr LENDERS** — In fact I am happy to email you the slides as they stand.

**Mr FORWOOD** — That would be good. Thank you.

**Mr LENDERS** — Without any hesitation..

**Ms GREEN** — In your presentation you mentioned new funding for indigenous consumer protection would be available in 2004–05. Does that mean that Consumer Affairs Victoria will receive additional budget funding under the Aboriginal justice program?

**Mr LENDERS** — Yes, that is correct. There is a modest increase in there to assist with the indigenous consumers unit. It has been one of the real challenges; it goes right to the core of our original three objectives, indigenous consumers, because if you were to actually say who complains, is that the measure you use, then you would not provide any service for indigenous consumers because in my experience there are very limited complaints. It may well be because this is a very empowered and confident community. It may well be that this community deals with issues through ATSIC or somewhere else, but I think what it really means is that this is a group of, generalising, very disadvantaged consumers who do not come forward to Consumer Affairs Victoria, so it has been one of those very important areas for us to actually reach out.

We have a slide of places where our indigenous consumers unit has been in regional Victoria. It is quite illustrative. I have been with them on three occasions. I think Bendigo, Geelong and Warrnambool were the ones. It might have been at Moe as well, but I certainly have certainly been out a few times with the indigenous consumers unit, but the interesting thing is there are all locations where the indigenous consumers unit has actually gone and engaged indigenous consumers. I can really only speak about Warrnambool — where I went — as an example. There was a seminar being run basically on consumer credit and debt. It was quite eye opening. It is not part of my experience to have store charge accounts — I operate a credit card if I purchase something and a store charge account is something I do not use. However, it is an issue with the Aboriginal community in Warrnambool. People enter into contracts and suddenly there are penalty interest provisions and a range of things. There is a whole interface of shops marketing aggressively — as you would expect them to — to get their business but they are marketing aggressively to vulnerable consumers who enter into these charge accounts. In some of these areas alone, having the indigenous consumers unit going out there and engaging in practical help and advice is one of the things that has been a delight to see. This is an example of us getting out to communities rather than waiting for communities to come to us. That sort of funding will assist in keeping this unit going. That is very important.

**The CHAIR** — By way of supplementary, do you have statistics of those who attend and make inquiries? Would they reflect the same proportions you gave on one of those slides where you are looking at 755 000 inquiries, 12 000 complaints and 1000 investigations? Are they the kind of percentages which reflect in the Aboriginal community?

**Mr LENDERS** — I might ask David Cousins to respond.

**The CHAIR** — Or are we more proactive?

**Mr LENDERS** — My observation is debt and tenancy are the issues overwhelmingly.

**The CHAIR** — I am talking about not just the inquiries but complaints lodged and investigated.

**Dr COUSINS** — Because we are still getting so few calls — we are now getting something like up to 40 calls a week from indigenous people, which is quite a large number — we are still getting relatively few complaints. The ratio is probably lower, I would say, than the general population in terms of the ratio of complaints to inquiries. However, it is very encouraging that we are getting such contacts because, as the minister said, really we had no contact at all coming directly to consumer affairs from indigenous communities before. We now have that. It is a matter of building up trust over a long period of time.

**The CHAIR** — If you are talking about Warrnambool and you have identified a problem, has CAV investigated those areas of concern that were raised? The ‘1091 investigated’ would probably be for the last financial year but for this current financial year would we have any investigated in Warrnambool?

**Dr COUSINS** — Yes, we do. One of the big issues which was raised at Warrnambool was a concern about people selling funeral fund insurance to indigenous people. It is an issue we have had a long investigation of, in conjunction with ASIC — —

**Ms GREEN** — ASIC or ATSIIC?

**Dr COUSINS** — The Australian Securities and Investments Commission. I am pleased to say that we have had some success in dealing with that issue.

**Mr BAXTER** — A supplementary on that, how do you know they are indigenous inquiries from the 755 000? Surely we do not ask when someone rings up, 'Are you indigenous?'. How did you make that assessment that you are now getting 40 calls a week and you were not before?

**Mr LENDERS** — Part of that is anecdotal. We also have a designated line for calls to come in which alerts them as a starting point where the calls from. However, part of it is the issue — —

**Ms GREEN** — Sorry, that is a designated line for indigenous consumers?

**Mr LENDERS** — Yes, which is now out there and all the agencies and like people have it. However, it is not just receiving the calls, it is also that education role and being proactive and getting back out there in communities. The thing that amazed me was the constant personal tales of these store accounts — it was something I had not come across. The indigenous consumers unit will then start preparing information in the community. Whether it be in any of the Aboriginal school areas or inserting it into the curriculum or just putting information out in Aboriginal centres or community centres, it is as much anticipating and preventing as it is dealing with the inquiries that come. You really only work out if it is specific once you see it happening.

**Mr RICH-PHILLIPS** — I will start with a supplementary. When did you move the good people of Moe out of the Latrobe Valley?

**Mr LENDERS** — I think that is called technology going bad when doing a slide. I tried to move Moe back between Warragul and Morwell earlier today but it would not work — plate tectonics.

**Mr RICH-PHILLIPS** — Turning to your budget, this year the appropriation for the protecting consumers output group is \$61.9 million, which is \$6.6 million more than was budgeted last year. Some of that is explained by \$1.4 million in initiatives in the departmental response to the committee. Can you explain what the other \$5.2 million is made up of? Some of it may be what Ms Green asked you about, but can you give us a breakdown of that \$5.2 million?

**Mr LENDERS** — The increases of some substance include the VPS EBA at \$600 000; increased funding to the domestic builders fund is \$800 000; and greater activity levels out of the Estate Agents Guarantee Trust Fund, as it was known then, of close to \$4 million. They are the main areas. There are a number of smaller ones but they would be the main ones.

**Ms ROMANES** — In your presentation you were talking about making markets work and you made reference to the new legislation, which commenced in February this year, designed to stamp out unethical estate agent practices like dummy bidding and under and overquoting. Can you tell the committee what activities Consumer Affairs Victoria has carried out to monitor dummy bidding and overquoting and underquoting since the legislation came into effect, whether it has been effective and what activities are planned for the future?

**Mr FORWOOD** — And what effect it has had on the property market.

**Mr LENDERS** — I will take up the interjection first — —

**The CHAIR** — Interjections are disorderly, Minister, as you know — go back to the question.

**Mr LENDERS** — New South Wales does not have this, but we will not go on about what has happened there. Ms Romanes's question was about what we are doing. Firstly, one of the biggest things with compliance is being there at the start of auctions. While as an operational matter consumer affairs will not put out a schedule of when and where its inspectors will be present, suffice it to say at a lot of auctions a consumers affairs inspector will come probably an hour before the auction and start checking that all the material is up and available — the



contracts are clear, available and present as they are meant to be — and making sure the agent communicates correctly the vendor bidding requirements, and then observing. In one sense you might say that is one option out of many, but what does it mean and how does it work? The reality is it sends a message to the industry that government is serious about administering these laws, that in these particular areas we are conscious that we do not want dummy bidding to happen. Similarly, we will look at under and overquoting and what material is in place. There have been a couple of occasions where we have had either warnings or prosecutions when people have not followed the spirit or the law of the new requirements.

It can be quite indicative. I was quite innocently minding my own business and going to an inspection in my electorate a while ago thinking I was anonymous as the Minister for Consumer Affairs and caused great consternation to the estate agent who thought it was part of the inspections when I was, out of curiosity, seeing how they applied the law without realising I had been recognised.

**Mr BAXTER** — Come now, Minister, your picture is everywhere.

**Mr LENDERS** — As an illustration, the junior agent present very quickly got his principal to come in and explain what the laws were on a range of things. People are alert to the fact that there are new laws and while you do not always have ministers or chairs of the Australian Competition and Consumer Commission — I know Mr Graeme Samuel spends a lot of time roaming around auctions in Melbourne; he enjoys it — we do have consumer affairs inspectors out there checking that the law is applied properly, and if needs be, prosecuting. The real estate institute is supportive of this. We had long discussions with it over some of the areas of implementation and timing. We did not reach full agreement, but it is fully supportive of the principle of stamping out the practice. I think the industry is probably comforted by the fact that those who do the right thing have some protection and are not being undermined by unscrupulous competitors.

**Ms ROMANES** — Your story raises the issue of whether or not the inspectors are identifiable generally; are they?

**Mr LENDERS** — The inspectors will actually check the documentation. I can check with Dr Cousins, but I do not think there is that much stealth; it is transparent. I ask David to add to that.

**Dr COUSINS** — It is a bit of a mixture of both. We have had people out at auctions identifying themselves as being consumer affairs inspectors, and we have had others just out there under cover, as they say.

**Mr FORWOOD** — As a supplementary, how many auctions are we talking about?

**Mr LENDERS** — If I could answer that, the potential maximum number of consumer affairs inspectors is nine, but we tend not to talk — it sounds like a police issue; it must be the justice portfolio, Penny — about exact numbers. It is worth saying that the Australian Taxation Office audits 2 per cent of returns a year. So for a small number of returns and for inspectors to be out and checking, the word spreads very quickly that there is inspection going on. It goes through the industry very quickly, and in the ATO's case it finds that sufficient to give a very strong level of compliance when it is actually followed up by teeth and legal action when necessary. So again, with the industry knowing there are inspectors out there, and they are occasionally seen and publicised, I think means that the law is being applied.

**Mr FORWOOD** — Let me rephrase the question. Rather than how many auctions have you attended, how many issues have you dealt with — that is, through prosecutions or warnings — since the process started?

**Dr COUSINS** — We had one well-publicised prosecution which was actually under the existing Fair Trading Act, but we have had, from memory, two formal warnings, and we have still under way a significant investigation, so we have had a reasonable amount of activity. The number of inspections that have been conducted is not insignificant.

**Mr BAXTER** — I want to continue on the real estate questions. I was interested in the first slide and your objective to protect and promote the interests of consumers, to ensure that markets work, and then point two on the next one, which I was not quick enough to write down, also went to that issue. I therefore want to ask in respect of the real estate amendments — bearing in mind the auction system in Melbourne, which has traditionally been the capital of auctions, is collapsing and we are therefore getting Dutch auctions and sealed bids, and we are exposing inexperienced first home buyers to having to negotiate with professional agents and experienced vendors when they

might otherwise be buying at auction — how confident are you that these changes are not in fact having a perverse effect on protecting consumers?

Secondly, bearing in mind that vendors are also consumers, I would be pretty concerned if consumer affairs announced that it was there and there would be a number of people who might otherwise bid but would not lest they be accused of dummy bidding. Can you indicate what is the definition of a dummy bid?

**Mr LENDERS** — The first part on empowering and protecting consumers, yes, you are correct, vendors are also consumers. But I think the point we need to make first is if we are talking about a vulnerable consumer, and if the choices are — and I do not think they are as stark as this — being at an auction or at another form of sale, with most other forms of sales there is actually a cooling-off period and there is far less pressure, so from the point of view of the vulnerable consumer the auction is not necessarily the best place always for them to go and assert themselves. A consumer will still go to an auction. Presumably consumers going to an auction will prepare themselves, be confident, know what their price limits are, and do all the things you would do to prepare yourself for that. If it means that behaviour is changing and if the alternative is a more measured area, then that is something we could have a debate about, but the more significant one is the point that if an auction is in the end clear and transparent, then you know who you are bidding against. That has always been the fundamental underpinning of an auction.

The concern we have as a community, and not just as a government, is that there is not a level playing field about where there is a dummy bidder. The practice of dummy bidding has probably grown over time where that became increasingly a tool that people used at auctions and estate agents, probably because their competitors were doing it, encouraged everyone to do it. So the point came that an auction was becoming a farce. There was a lot of light, colour and movement but in the end you had consumers there — and we hear anecdotal tales of people spending \$30 000 and \$40 000 more than they should have because there was a dummy bidder forcing them up. What we have endeavoured to do is still have the light and colour, the one qualification being that a person says it is a vendor bid rather than a dummy bid.

On the issue of prosecution and related areas, in the end there is an onus on the director to establish a case. So the onus is on the director to establish in these cases that it is a dummy bid, so it is hardly that an innocent bidder is accused of being a dummy bidder and is being exploited. There is a case that has to be made.

**Mr BAXTER** — Just on a supplementary, I am not sure I got the definition that the department is using of a dummy bid, but to use your example, if an auction is in progress and someone feels they have been run \$30 000 or \$40 000, if they had not bid the person who you are alleging is the dummy bidder becomes a buyer. So how can that be a dummy bid? If a person is actually going to buy it, they can scarcely be accused of dummy bidding, can they?

**Mr LENDERS** — Firstly, the definition of a dummy bid — and I might ask the director to assist me with this — is a bid that the person does not intend to carry out and one that is a vendor orchestrated bid to force up the price. There may be a more technical definition than that. For us, in the end we knew there was a problem and a growing problem which was becoming a greater and greater part of industry practice. We could by legislation and action put a stop to it and actually say, one, that it was unacceptable and the Parliament of Victoria and the community of Victoria said it was unacceptable; and two, we would enforce it if were broken. That in itself was a significant area of policy debate. Again anecdotally, it appears to have changed the way that the market is operating, that dummy bids are dropped.

**Mr DONNELLAN** — Having worked in real estate I tend to support you and think you are right. I refer to budget paper 3, page 291, which indicates you have provided additional funding for the regulation of body corporates in 2004–05 and future years. I want you to explain to the committee what you are doing about this significant growing area of the property market, the potential for disputes and those types of things, and how you will deal with that.

**Mr LENDERS** — The first thing is the area of body corporates is not one in which the world as we know it is falling down and governments have to radically take action. The world is getting by, but we know the market is changing considerably. The laws were designed for a few people — and I often use the history of my sister in Ringwood who is a secretary of a body corporate of eight; that is what the laws were designed for — and not towers of 400 on Docklands, let alone the other levels of complexity. We realise that increasingly dispute resolution

in the traditional body corporates is an area in which we can do better and where we need to do more work. That is information, firstly, so people make informed decisions, and secondly, when information alone is not enough to try to streamline dispute resolutions. That is the non-urgent part in which we can do better policy wise.

Then in a policy sense it is only a matter of time, unless we deal with our laws properly, until the existing law design for small units is going to unravel on some of the larger ones at Docklands. Our parliamentary colleague Helen Buckingham started this review. Helen is not well, and I have done some of the consultation in Helen's absence, and Ms Romanes was with me at one of the meetings at Docklands, which was quite illustrative. People have volunteered to be chair of a body corporate, and it might be for a tower of 400 apartments where 70 per cent of them are tenants. The definition of our law is that it is designed as an economic unit, so it is not a neighbourhood dispute resolution service where tenants have rights as well. It is designed as property-holder first, so straight away you have filtered out 70 per cent of your community, and then the remaining 30 per cent are those who are either too busy, do not care, do not know, or whatever. It is quite illustrative and rewarding to meet some of those people who are true community leaders. So it goes to what are we doing and how we deal with those people.

Firstly, the review tried to find commonsense solutions to the current environment, and some of the immediate things are that we need more information that is readily available. So with some of the neighbourhood disputes information needs to be at the fingertips; you do not need to go off to find lawyers to advise you. In a bureaucratic sense in the last year we have moved from simple things like not giving someone a copy of the subdivision regulations to now you give them a kit that explains how they operate in a body corporate.

Secondly, it is what we can do in either a legislative or commonsense way to deal with these disputes. I will conclude with an illustration about some of the towers in Docklands. Anecdotally, people will tell you that half their disputes deal with parking. Again, if you are going to chair a 400-person body corporate you are probably going there to make the world a better place rather than to adjudicate parking disputes. For example, when the gate goes up and 10 people park there to watch the football, and there was commonsense information from some of the Docklands people. For a fee the City of Port Phillip will have their parking inspectors administer the car parking, so you pay a bit more but all the problems go to the council, and the council is happy to do it because it has the infrastructure and it gets the revenue and the body corporate is happy. The City of Melbourne will not do it at this stage. Some of those things are commonsense. In the end is one of the outcomes that we should start persuading all municipalities to offer that service? A lot of it is commonsense. We do not want to set up some huge bureaucracy, but we want information to be available with commonsense solutions and ultimate dispute resolution. Once we have those in place you then touch on the really difficult ones, which include the custody of the trust funds — what sort of requirement, who administers it, what laws are there — and finally the issue of some of the longer-term maintenance areas — is there a sinking fund, do you have a statement of what is going to happen on your section 32? It is those type of areas that we need to work on.

We have a budget provision to enable us to go down a path and do some of those things, but before we even come near accessing that I want to get Helen Buckingham's report back and then we will go through a government process on what we do and do not adopt. There is an enormous amount of work to be done there, but more of it is commonsense and information than legislation, and that is our challenge.

**Mr FORWOOD** — You might want to take this on notice. The output group consumer protection is \$61.9 million. I wonder if you could provide the committee with the following information? What programs and how much on each program goes towards the \$61.9 million? How many staff members and what goes on staff? What is the administration cost apportioned by the Department of Justice to that particular group? Finally, of the \$61.9 million, what are the sources of the funds? Some will be through appropriation, some through annotated receipts, some will come from the estate of the prodigal, whatever it is, some will be carried over from the previous year, whatever. It would be very useful if you could provide that information.

**Mr LENDERS** — There are eight sources of revenue for consumer affairs. There is the annual appropriation, which is about 40 per cent of the budget, and the other 60 per cent comes from the seven trust funds. The most noticeable trust fund is the Victorian Property Fund which is large. The funds are all shown at page 134, appendix 10, of the annual report of the department of consumer affairs. Essentially the main ones are the domestic building fund, from which we draw approximately \$3 million a year; \$16 million from the estate agents fund; \$3 million out of motor car traders; \$1 million from the prostitution control fund; \$11 million out of residential tenancies; and approximately \$1 million out of the consumer credit fund; the balance being the annual appropriation. It is always that mix.

**Mr FORWOOD** — You might have to help me with that because that tallies to \$63.3 million and if you look at the expected outcome last year, it was \$53 million, so there is an extra \$10 million in revenue which is not shown in the output groups.

**Mr LENDERS** — I have \$61.9 million here. I might have to take that bit on notice. The figure of \$54.8 million was the expected outcome. This year's target is \$61.9 million. I think that gap is essentially what Mr Rich-Phillips asked for.

**Mr FORWOOD** — Sorry. The annual report shows the total revenue figure of \$63.3 million for 2002–03 and the budget paper actual is shown as \$53.1 million — I am talking about the previous year, not the year he is talking about. There is a difference of \$10 million. I do not need it now; you can work it all out and let me know.

**Mr LENDERS** — Of course the revenue from these trust funds is significantly more than expenditure from the trust funds as we have seen from the estate agents fund, which, I think, is approximately a \$30 million gap. So the revenue will always be a lot higher than what we draw down on for expenditure for consumer affairs. In fact, the revenue will be higher than both what we draw down and the appropriation.

**Mr FORWOOD** — Right. That goes to the trust funds?

**Mr LENDERS** — Yes, and therefore the trust funds keep on growing. In particular, the Victorian Property Fund alone has revenue in excess of \$30 million, which is more than the entire appropriation for consumer affairs out of the budget. Mr Forwood, I think that would be what the figure is. Also, as you identified, the Department of Justice overheads and a fair bit of VCAT funding also comes out of the funds.

**The CHAIR** — We will move to the next question, which goes to an interest of mine, and that is retirement villages. I have an interest in the fact that many of those residents are gagged. It worries me greatly. If we look at page 291 of budget paper 3, there is additional funding for the regulation of retirement villages, both in the forthcoming financial year and the subsequent financial year. I would be particularly interested if you could outline the work that has been done by consumer affairs to obtain advice and evidence from people in retirement villages, given so many of them are gagged.

**Mr BAXTER** — How do you mean gagged?

**The CHAIR** — They are prohibited from having guests in their retirement villages without the permission of the management. They are not allowed to have public meetings in their common room facilities, and I imagine it would have made life extremely difficult for consumer affairs to identify the key issues in retirement villages when people have great difficulty speaking out.

**Mr LENDERS** — I think there are a number of areas here. Consumer affairs has done work on a review of the Retirement Villages Act, and we have added on to that work further work being done by our parliamentary colleague, Maxine Morand, partly because retirement villages are broader than just the act as it applies to consumer affairs. It also deals clearly with health, aged care and into the federal jurisdiction, so we have had a parliamentary inquiry partly for that reason. A lot of the same principles apply that apply to incorporated associations. Times are changing and a lot of these villages are more than just an economic entity; they are also a community. Things like dispute resolution and a range of those areas need to be addressed. Also, the nature of them is changing. I am guessing but about 10 or 15 years ago almost every retirement village was run by a not-for-profit organisation — they were mainly run by the church or benevolent associations — whereas now a large commercial sector is coming into retirement villages as well. That is just part of the growth in that area, so not only with our community ageing but also the nature of retirement villages changing, there is a time that those issues of contracts — it is quite amazing.

**The CHAIR** — You do not need to convince me. I just want to know how you have managed to obtain advice from people who, by virtue of living in some of the sites they live in, are excluded from providing advice, advice that is crucial if the Retirement Villages Act is going to provide them with some meaning.

**Mr LENDERS** — I would certainly accept your point that in a range of villages it is very hard for people to come in if the owner or the manager of the village is not keen on it, but one of the things about senior Victorians in particular is that generally they will find a way to talk, and they like talking. Some of the dialogue we have had out of retirement villages has been quite extraordinary, and we have had a lot of correspondence. Maxine Morand

and I have had a lot of meetings with a lot of people from the retirement villages. A lot of people come to us and want to talk to us.

There are issues about how to get into some, and there are issues too about how to understand some of the contracts. It is a very unequal relationship when you have a large organisation presenting a contract to an individual consumer and then that consumer is expected to sign without necessarily having equal resources or even having legal advice, without it being very expensive. Some of the deferred costs and the exit arrangements and fee arrangements are very high in these areas. Again, there has been a good dialogue, and one of the things Maxine Morand has sought to do is go out to areas that have not actually approached us to make sure we have the full spread, whether it be non-English-speaking areas or the whole range of the different sectors.

**The CHAIR** — Thank you very much. We will take a short break now before we move into the finance portfolio. I thank departmental officers from the Department of Justice for their attendance. We appreciate the advice you have given. I will also be sending via our executive officer transcripts and follow-up questions — those you have taken on notice and any others provided by the committee. Thank you.

**Witnesses withdrew.**