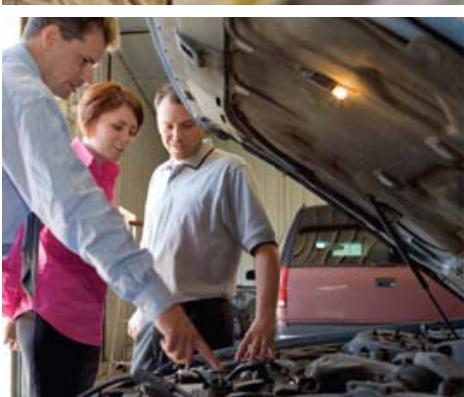




A year in review 2007 - 2008



Fair Trading: serving consumers
and traders in New South Wales





At a glance ...as at 30 June 2008

The Office of Fair Trading is one of five offices established within the NSW Department of Commerce. The Department produces a single annual report to the Minister for Commerce for tabling in the NSW Parliament. However, the Office of Fair Trading measurably reaches a significant proportion of the almost 7 million people living in NSW. For this reason and the significant formal role of the Commissioner for Fair Trading, this additional report focuses exclusively on activities in the New South Wales fair trading arena.

Policy development & regulatory review

• Legislation administered:	42 Acts
• Bills assented to in Parliament:	6
• Acts and regulations amended:	10
• Current projects:	81

Services to the public

• Requests for service:	6,973,400
• Website visitor sessions:	2,726,400
• REVS checks:	1,918,400
• Phone calls from general public:	1,236,500
• Counter enquiries:	197,800
• Rental bond transactions:	525,600
• Total occupational licences on register:	221,400
• Total business names on register:	499,300
• Total associations on register:	39,801
• Total co-operatives on register:	728
• Consumer complaints addressed:	34,830
• Publications:	Over 182 titles - 27 translated in up to 28 languages
• Public seminars and information sessions:	966
• Seminar audiences:	29,986

Compliance

• Compliance related activities:*	39,383
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Agency

• Staff:	1,181
• Budget:	\$158.9 million
• Fair Trading Centres throughout NSW:	24
• Other service outlets:**	68

* Compliance related activities can vary significantly year-to-year depending on the mix between long, complex investigations and shorter, less complex ones which reflect changing marketplace issues.

** Selected services are also provided through Government Access Centres and other agency arrangements in rural and isolated areas throughout NSW.

Contents

Executive Summary	2	Community awareness and access	19
Program allocation	3	Compliance	38
Highlights	4	Organisation and people	54
Our Structure	5	Online services and publications	55
Planning Framework	6	Office locations	56
Legislation and regulation	8	Index	57



The Office of Fair Trading

What we do, objectives, our values

The Office of Fair Trading within the Department of Commerce serves the consumers and traders of NSW. We aim to achieve fairness for all in the marketplace by safeguarding consumer rights and advising business and traders on fair and ethical practice.

As a service provider and regulator we are dedicated to delivering better services to clients, customers and the community and contributing to a prosperous NSW. We contribute to the NSW Government priorities by making 'doing business' in NSW simple and fair and obtaining the best value for the NSW Government by delivering priority results: a fair marketplace for consumers and traders; maximised value for government agencies in delivering services to clients, customers and the community; and simplifying the processes for dealing with government.

Fair Trading objectives

Fair Trading has a set of robust objectives embedded in legislation and in our role as both a regulator and a consumer protection agency. The Office of Fair Trading strategic objectives for 2007-2010 are to:

- simplify service provision for consumers and traders
- achieve fair marketplace regulation with minimal red tape
- deliver accessible information and services to the community
- enforce Fair Trading laws
- win and maintain respect as a credible, efficient and effective organisation.

Our values

- We are commercially astute and deliver value for money
- We serve the community, our customers and clients with energy and respect
- We behave ethically
- We embrace new ideas
- We collaborate to get results
- We strive to be experts in our fields
- We get things done.

What we do

We safeguard consumer rights and advise traders on fair and ethical business practice. Our

customers include people renting homes and those building or renovating. There are strata scheme owners, people buying or repairing cars or looking for consumer information. A large number are builders and people working in other trades or running a business. But our services go beyond those delivered to individuals. The legislative framework we administer sets the scene and the rules for fairness in the countless daily transactions between consumers and traders. Often, unfair practices are investigated and prevented behind the scenes. A system of licensing and the investigation of complaints help ensure unqualified or inappropriate people do not operate in NSW. Our licensing and investigations cover a range of commercial activities including business and retail, residential home building, motor trade, real estate, retirement villages and residential parks, product safety, trade measurement and many co-operatives. This encourages integrity by business and traders and provides protection for consumers.

Consumer help

Providing information is core business for Fair Trading. Consumers of everyday goods and services can use our website, contact our Fair Trading Centres or phone the Fair Trading Information Centre on 13 32 20 to obtain information on their rights and responsibilities or seek assistance with resolving disputes. People renting homes, buying or selling property or living in strata scheme property can turn to us for information and assistance.

Trade and business services

We register business names and issue licences and certificates that traders need to operate in New South Wales. Builders and contractors, people in the accommodation and property services industries and others engaged in selling goods or providing services can receive information on their rights and obligations under fair trading laws.

Co-operatives and incorporated associations

We actively encourage the formation and development of co-operatives and we help community groups establish themselves as incorporated associations.

...Fair Trading measurably reaches a significant proportion of the almost 7 million people living in NSW.



The Office of Fair Trading

Fair Trading Centres

We operate Fair Trading Centres at the 24 locations below. These Centres provide information and assistance on consumer issues, motor vehicles, home building and renovation, credit, property and tenancy issues, plus co-operatives and business name registration.

Call 13 32 20

to reach your nearest Fair Trading Centre

Monday to Friday between 8:30 am and 5:00 pm.



Other locations

Selected Fair Trading services are also available via Government Access Centres (GACs) and other agency arrangements throughout regional New South Wales.

Call 13 32 20 for information on the services available in these towns:

Ashford, Balranald, Barham, Bega, Boggabilla, Bombala, Bourke, Brewarrina, Cobar, Condobolin, Cooma, Coonabarabran, Coonamble, Crookwell, Culcairn, Deniliquin, Dorrigo, Dunedoo, Eden, Finley, Forbes, Forster, Gilgandra, Glen Innes, Grenfell, Griffith, Gundagai, Hay, Hillston, Holbrook, Inverell, Kyogle, Lake Cargelligo, Leeton, Lightning Ridge, Lockhart, Maclean, Moama, Moree, Moruya, Moulamein, Mt Druitt (urban GAC), Mudgee, Mungindi, Murrurundi, Nambucca Heads, Narooma, Narrabri, Narrandera, Nowra, Nyngan, Oberon, Peak Hill, Quirindi, Rylstone, Scone, Temora, Tenterfield, Tumbarumba, Ulladulla, Walcha, Walgett, Wialda, Warren, Wentworth, West Wyalong, Wilcannia, Woodenbong.

Executive summary



This year Fair Trading has made significant progress in delivering better services to the people and businesses of NSW and worked at a national level to harmonise a range of fair trading laws across Australia. We have continued to work within the framework of our Strategic Plan that sets our goals to 2010. These goals, objectives, marketplace indicators and performance measures structure this report and are explained in more detail on page 7.

Legislation and regulation

At any given time, Fair Trading is working on approximately 80 different legislative review and policy development projects. We have gone to greater lengths to involve the community in all our consultation processes - particularly with tenancy law reform where people attended face-to-face sessions conducted across the State and participated in online surveys and blogs. In the evolutionary development of NSW's regulatory framework we are constantly reviewing laws to keep them relevant to the people of NSW. This year review activity has been focussed on property, stock and business agents, incorporated associations, public registers, funeral industry services, holiday parks, and community schemes.

During 2007-2008, regulatory changes brought significant improvements for the NSW community in the areas of strata schemes management, demolition work, consumer credit, consumer claims, product safety standards and motor dealer reforms. For builders, 3 year home building licences became available with a saving of 20% over renewing annually. Also, for the first time builders can renew their licence online using the Government Licensing System.

We have been working to implement regulatory reforms initiated by the Council of Australian Governments to reduce red tape for business and enhance consumer protection that is consistent across Australia. There will be a seamless, single online registration system for Australian Business Numbers and business names. Nationally consistent regulations will apply for consumer protection laws (including product safety) and co-operatives. Current State responsibility for consumer credit, personal property security systems and trade measurement will be transferred to Commonwealth administration.

Community awareness and access

Fair Trading continued to respond to a vast number of requests for our services - nearly 7 million in 2007-2008. These were handled through phone, counter and electronic channels. More than 34,500 disputes between consumers and traders were handled and 87% of these were successfully resolved by informal negotiations. Over 960 community information sessions were presented to nearly 30,000 people around the State.

Connecting NSW, the new single phone number for the public to call to find out about government services in NSW, is located with our own Fair Trading Information Centre (FTIC). It enables people across the State to call for general information or find out which agency they need for their particular issue.

Electronic services are increasingly important components of our overall service provision. During the year we introduced a range of new electronic services that include two quarterly online newsletters, email alerts and a weekly What's new email service. Our website, which contains more than 1,900 pages of information, was completely redesigned in consultation with consumers, traders and community groups. With an average of over 226,000 visits to the site each month, the most popular areas were those for businesses and tenants, as well as the online home building licence check and business name details check. We now offer online services for the renewal of business name registrations and motor dealer, travel agent, second-hand dealer/pawnbroker and home building licences.

Through our community and industry grants program we provide funding to not-for-profit organisations for the provision of community education, advice and advocacy services for tenants, retirement village residents and consumers who need assistance to deal with personal financial difficulties. To assist in meeting the increased demands for consumers experiencing financial distress we are increasing the funding for financial counselling services by 85% from 1 July 2008. In addition, we will be administering the No Interest Loan Scheme (NILS) to allow struggling families in New South Wales to buy essential goods and services.

Compliance

To increase the effectiveness of a range of programs we expanded our Regional Access Program. Fair Trading business areas combined forces to focus on a single location at the same time. Checks were made on real estate transactions, measuring and weighing equipment, product safety, electrical safety, home building, pawnbrokers, second-hand dealers and motor dealers to ensure compliance with relevant legislation.

In other state-wide programs Fair Trading inspectors carried out 29,140 inspections. Some of the larger programs involved 2,492 general product and electrical appliance safety inspections, 1,446 building industry inspections and 6,719 trade measurement inspections. In the home building area, operations Hard-hat, Wedge, AirCon, Phoenix and Owner Builder targeted over 2,000 sites and involved interviews with 1,971 traders. Resulting fines for a range of offences totalled more than \$903,000.

Offences against fair trading legislation are detected through inspections, intelligence gathering and as a consequence of formal complaint investigations. During the year, more than 641 defendants were issued with penalty notices in relation to 948 offences - resulting in financial penalties of more than \$796,800. Formal prosecutions, where 92 per cent of cases were successful, resulted in \$1.26 million in fines and penalties involving 107 defendants.

To achieve the best compliance outcomes through cost effective use of our inspection, investigation and legal resources we conducted a review of management structure based on principles recommended by the Better Regulation Office. We now have improved compliance policies and procedures that deliver timely, targeted and responsive compliance and enforcement actions.

Organisation and people

Throughout the year all of our services met their published guarantee of service targets and we successfully operated within budget. This could not occur without the dedicated and highly professional people that make it all happen. I sincerely thank them for their collective and individual efforts - our output and performance results plainly show they are needed and appreciated in the community.

To help our Fair Trading counter staff achieve global best-practice standards we commenced a pilot program of Certificate IV training in Customer Contact. This program is a nationally recognised and fully accredited qualification that has been specifically customised to reflect our own working environment. The program will be offered to all staff to assist them provide excellent customer service.

As a new initiative this year we commenced a pilot volunteering program to allow staff to volunteer one day's service to community based not-for-profit organisations. The program encourages staff to be involved in the community and it helps foster closer links between government and the community.

It was a great pleasure working with the Hon. Linda Burney MP and her staff from April 2007 to September 2008. I know Minister Burney greatly appreciated the hard work and dedication of our staff and really understood the significant role the Office of Fair Trading plays in New South Wales.

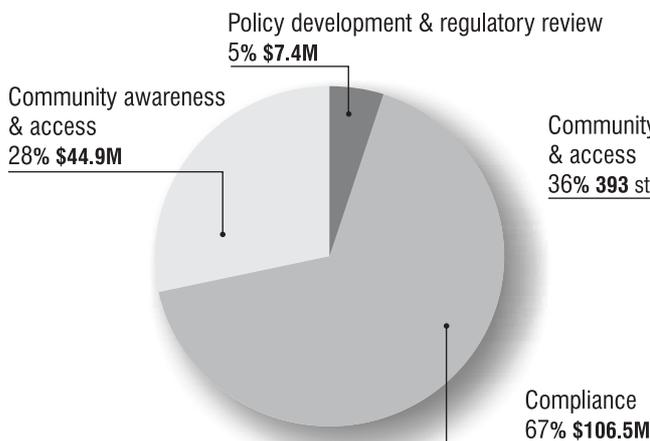
We welcome the Hon. Virginia Judge MP as Minister and we look forward to supporting her as well as the Hon Carmel Tebbutt MP, the Minister for Commerce, in the important and valuable work that we do.



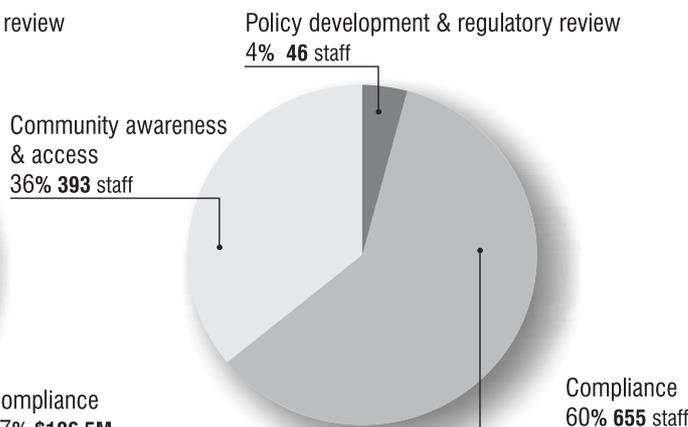
Lyn Baker
Commissioner for Fair Trading

Program Allocations

Expenses 2007-2008

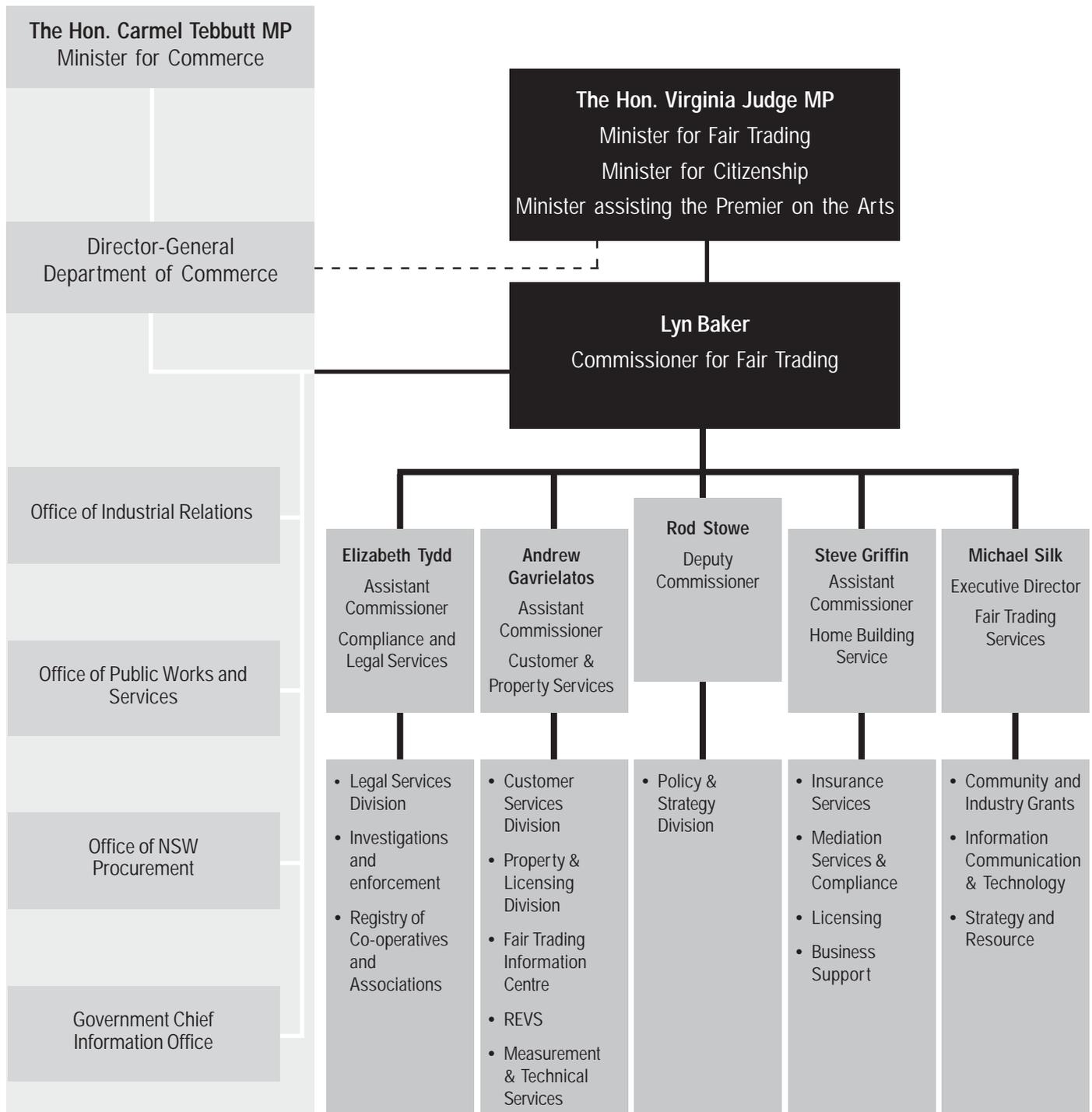


Average staff 2007-2008



* Resources for Objective 5 are proportioned across all areas of Fair Trading.

Our structure





Highlights

Legislation and regulation

Objective 1 – Fair Trading legislation simplifies service provision for consumers and traders

- Introduction of three year home building licences and licence renewals available online
- Consumer claims - general jurisdiction claim limit increased to \$30,000, jurisdiction clarified and procedures improved
- Agreement for national systems of regulation for personal property securities and consumer policy

The Future

- Involvement in developing a combined online Australian Business Number and business name registration process
- Streamlined arrangements for small incorporated associations

Objective 2 – Fair Marketplace regulation with minimal red tape

- Removal of duplicate licensing requirements for demolition work and ongoing home building review
- Agreement for national licensing system
- Strata schemes - improved rights for owners corporations and individual lot owners
- Decision to introduce funeral goods and services information standard
- Consumer credit - improved protection for disadvantaged consumers from excessive fees and interest charged by short term lenders

The Future

- National regulation of consumer credit and finance brokers; national consumer policy framework
- Residential tenancy reforms that take into consideration community preferences and the diverse views of stakeholders
- Retirement villages - changes to resident input into management, capital maintenance and budgets, and disclosure of information

Community awareness and access

Objective 3 – Community aware of and able to access information and services

- Improved website that includes case studies, e-newsletters, surveys & blogs - continuing growth in visitor sessions
- Home building licensing renewals now available online
- Motor vehicle repairers' licensing, compliance and dispute resolution service integrated into Fair Trading's services

The Future

- Development of an online interactive shopping mall game for young people to improve their consumer and financial literacy
- New online services to include renewals for valuers, motor repairer licences and motor repairer trade certificates
- 85% increase in funding to Financial Counselling Services program

Compliance

Objective 4 – Compliance with Fair Trading laws

- Over 39,000 compliance related activities including more than 29,000 inspections
- 109 people prosecuted with \$1.2 million in penalties issued and 641 people issued with penalty notices amounting to \$796,000
- Fair Trading led the ban and national recall of Bindeez bead toys that left four Australian children hospitalised after ingesting them
- Builder sentenced for unlicensed building work

- and forged home warranty insurance certificates
- New Fair Trading Compliance Strategy Model implemented to deliver targeted compliance programs and best practice outcomes

The Future

- Planned program of investigations and audits into areas such as mobile phones, used car sales, retirement villages, fuel saving devices, real estate agents and children's toys

Organisation and people

Objective 5 – The Office of Fair Trading is a credible, efficient and effective organisation

- Introduced customised training to ensure excellence in customer service
- New Volunteering pilot program launched

- Major restructure of Compliance and Legal Services

The Future

- Review of service delivery priorities

Planning framework



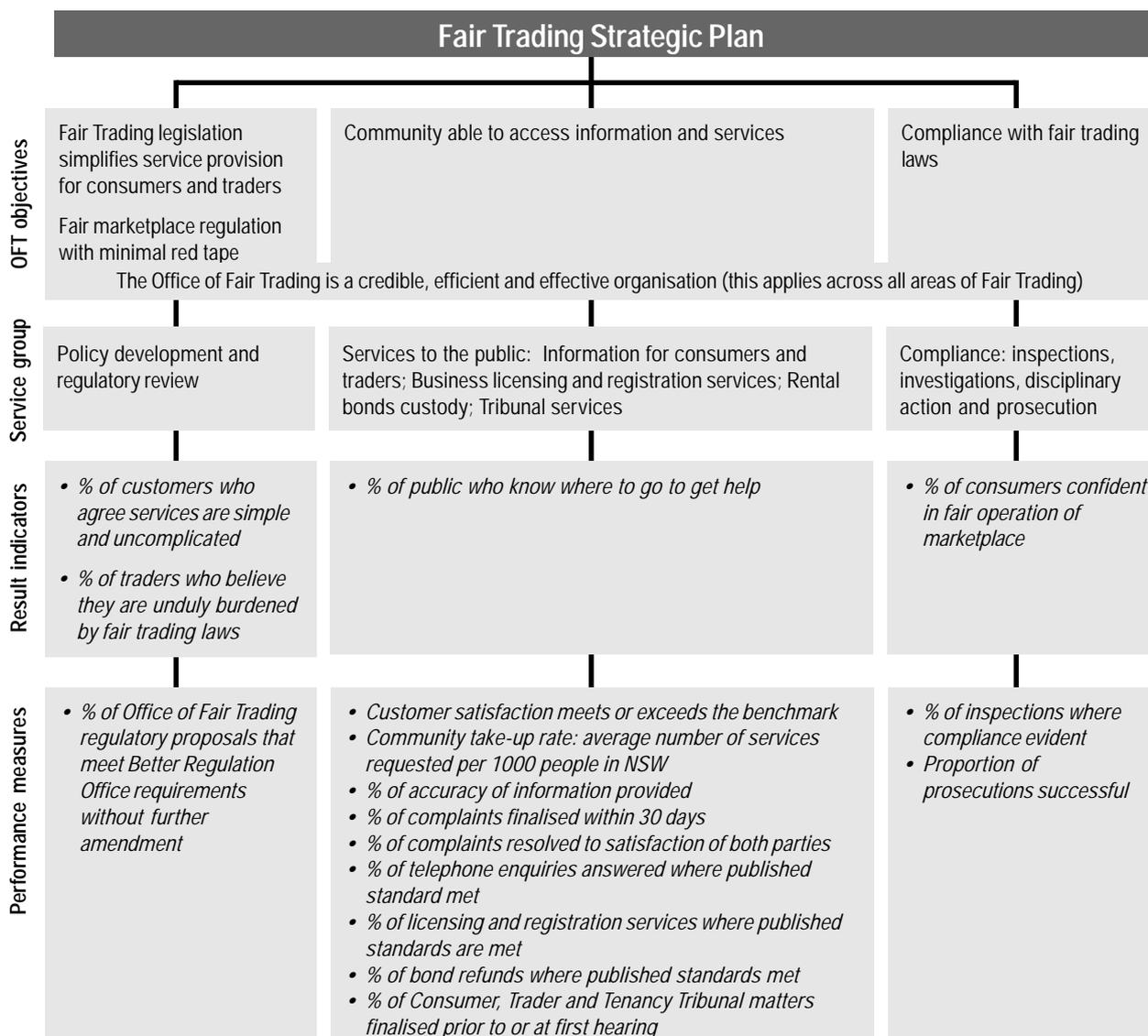
As part of the NSW Department of Commerce, The Office of Fair Trading serves the consumers and traders of NSW. We aim to achieve fairness for all in the marketplace by safeguarding consumer rights and advising business and traders on fair and ethical practice. Our robust set of objectives is embedded in legislation and our role is both as a regulator and as a consumer protection agency.

- achieve fair marketplace regulation with minimal red tape
- deliver accessible information and services to the community
- enforce Fair Trading laws
- win and maintain respect as a credible, efficient and effective organisation.

The Fair Trading strategic objectives for 2007-2010 are to:

- simplify service provision for consumers and traders

Through the objectives and services set out below, Fair Trading supports the Government's activities of Delivering Better Services and Growing Prosperity across NSW. Results for each of the indicators and performance measures are shown on pages 8, 19, 38 and 54.





Legislation and regulation

Objective 1: Fair Trading legislation simplifies service provision for consumers and traders

Objective 2: Fair Marketplace regulation with minimal red tape

Strategy: *Strive for best practice regulation*

Simplifying the processes for dealing with government and promoting a fair marketplace for consumers and traders begins with having the appropriate regulation. Fair Trading reviews and develops the regulatory framework in New South Wales in the areas of consumer goods and services, accommodation and property services, and home building. It co-ordinates community consultation and prepares options for Government decision making. It leads NSW's position and negotiation with other jurisdictions in the quest for nationally consistent fair trading regulation. The foremost priority is that NSW marketplace regulation, currently involving 42 different pieces of legislation, provides for simple, uncomplicated services for customers and that traders are not unduly burdened by compliance requirements.

Snapshot: service-level statistics	2007-2008
Number of pieces of principal legislation in force	42
Bills assented to in Parliament	6
Acts amended under Statute Law Revision Program	6
Regulations remade under Subordinate Legislation Review Program	4
Regulations in preparation to be remade under Subordinate Legislation Review Program	1

Highlights 2007-2008

- Introduction of three year home building licences and licence renewals available online
- Consumer claims - general jurisdiction claim limit increased to \$30,000, jurisdiction clarified and procedures improved
- Agreement for national systems of regulation for personal property securities and consumer policy
- Removal of duplicate licensing requirements for demolition work and ongoing home building review
- Agreement for national licensing system
- Strata schemes - improved rights for owners corporations and individual lot owners
- Decision to introduce funeral goods and services information standard
- Consumer credit - improved protection for disadvantaged consumers from excessive fees and interest charged by short term lenders
- Agreement for national systems of regulation for product safety and trade measurement

Marketplace indicators	03-04	04-05	05-06	06-07	07-08	Target
Percentage of customers who agree Fair Trading services are simple and uncomplicated	-	-	-	87%*	82%	85%**
Percentage of traders who believe they are unduly burdened by fair trading laws	-	-	-	34%*	29%	35%**

* Survey results valid to $\pm 5\%$ @ 95% level of confidence

** Until at least three years of data are available it is not technically feasible to set a firmer target

Comment/interpretation

The new marketplace indicators shown above are measured through annual surveys conducted by independent contractors. The first involves interviews with a mix of recent customers who proportionately represent the make-up of typical consumer and trader customers. The second derives from interviews with a random sample of traders from across NSW and in the relevant proportions for industry sectors regularly dealing with the Office of Fair Trading.

The percentage of customers who agree that our services are simple and uncomplicated is not an indicator of how services are delivered - but the contribution that regulatory requirements make to the complexity or otherwise of services provided to consumer and traders. A high level of agreement would indicate customers are generally not troubled by what they may need to do to obtain the service and that regulatory requirements are reasonable and appropriate. A low level of agreement would suggest a need for increased reform efforts - within the context of the regulatory objectives. The sample size does allow for some

separation of results for consumers and traders - but not to the degree where conclusive results may point to reform in specific areas. Its value therefore is as a general indicator that in combination with customer satisfaction and information accuracy survey results allows Fair Trading to gauge its response to the goal of customer friendly services while improving customer satisfaction.

There is no universally agreed measure of red tape. However, a cross-section of traders unaligned to industry peak bodies are now able to consider whether NSW's fair trading laws impose undue burdens on those trading in this State. A high level of agreement would support industry calls for further easing or modification of regulatory requirements. The reverse, as shown in the table above, suggests marketplace regulation, in general, may be closer to an appropriate level. As an unbiased pointer to the broader marketplace view, this indicator (although not reflecting on individual laws) will contribute to Government red-tape deliberations and assist Fair Trading's regulatory review and development processes.

Policy development and regulatory review

Home building

Stemming from a recommendation of the home building licensing review conducted in 2005, the NSW Government is rewriting the *Home Building Act 1989*. The rewrite of the Act will pay particular attention to the following matters:

- clarifying the objectives of the Act
- clarifying the structure of the Act and Regulation to make requirements easier to understand
- placing relevant provisions together and
- removing inconsistencies.

Further consideration of the recommendations is also being incorporated into this project. Initial consultation meetings were held with key stakeholders in late 2007 and early 2008. There will be further consultation following the preparation of an exposure draft Bill.

Residential tenancy

A strategic review of legislation covering residential tenancies has been carried out. On 22 September 2007 a report on proposed changes titled Residential Tenancy Law Reform - A New Direction was released. This report explained over 100 proposed changes to the law and enabled people to provide feedback about them.

Some 1,500 responses were received from individuals and groups, including tenants, landlords and real estate agents. Responses took the form of written submissions, responses to an online survey, and comments via an online blog. In addition, 915 people attended face-to-face sessions conducted in regional and metropolitan areas, which were an important way of gathering feedback directly from the community.

As a result of that feedback, we are better able to understand community preferences and the

Traders will be able to register a national business name in future.

It regulates transactions between the broker and consumer to ensure that consumers are offered only appropriate credit products they can afford.

diverse views of stakeholders. All submissions were assessed and analysed and a reform package is being developed for introduction to Parliament.

Property, stock and business agents

The *Property, Stock and Business Agents Act 2002* provides for the licensing and certification of people who carry out the work of real estate agents, stock and station agents, strata managers, business agents and on site property managers. It commenced on 1 September 2003, replacing the 1941 Act which had been the subject of a National Competition Policy review. Major changes to the 2002 Act included the introduction of bidder registration at auctions and greater requirements for agents to disclose conflicts of interest.

We have now undertaken a statutory review of the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. A review report was released in July 2008.

ABN business names project

We have been participating in a project initiated by the Council of Australian Governments to develop a seamless, single online registration system for both Australian business numbers and business names, which will also include trademark searching.

The project began in 2006 but the terms of reference were subsequently expanded in April 2007 by the Council of Australian Governments to capitalise on relevant initiatives at all levels of government and make recommendations on effective coordination of all forms of business registration.

In March 2008, the Council of Australian Governments asked the Small Business Ministerial Council to accelerate the project. A business case was considered by the Project Steering Committee in April 2008. The business case consisted of the following elements:

- a single national business licence information service
- a combined online Australian Business Number and business name registration process
- an ongoing client account, which stores information about registrations and licences, pre-fills forms, stores records of transactions and allows subscriptions for information on regulatory change from all levels of government.

These elements were agreed to by the Council of Australian Governments on 3 July 2008 along with the transfer of the administration of business names to the Commonwealth. This will allow businesses to register a national business name in future. A date for the transfer is still to be determined.

Incorporated associations

The *Associations Incorporation Act 1984* allows small, not-for-profit organisations to become incorporated without the complex regulatory requirements of other forms of incorporation. There are over 39,000 incorporated associations registered in NSW.

The Act was reviewed to ensure that it is meeting its objectives as effectively and efficiently as possible. As a result of this review several recommendations were made for legislative amendment. Consequently, in March 2008, the Minister released the Exposure Draft Associations Incorporation Bill 2008 to provide interested parties an opportunity to comment on the proposed amendments.

The consultation process involved focus meetings with umbrella sporting and community associations as well as presentations to ethnically diverse groups. An invitation to comment on the Exposure Draft was mailed to 230 organisations and information about the Bill was included in at least 11 community publications. Consequently, the consultation has been highly successful, with 58 written submissions received. The ideas and comments received are being used to assist the development of the final Bill. It is anticipated that an amended draft Bill will go before Parliament early next year.

National finance brokers legislation

A further important milestone in this project was achieved this year with the public release of an exposure Bill in November 2007. The Bill outlines a comprehensive scheme for regulating the broking industry, including licensing with mandatory membership of an external dispute resolution scheme. The Bill also regulates transactions between the broker and consumer to ensure that consumers are offered only appropriate credit products they can afford. New South Wales drafted the Bill in consultation with all States and Territories as well as the Commonwealth. After a significant period of consultation, more than one hundred submissions were received and analysed.

Fair Trading Legislation

- *Associations Incorporation Act 1984*
- *Business Names Act 2002*
- *Community Land Management Act 1989*
- *Consumer Claims Act 1998*
- *Consumer Credit Administration Act 1995*
- *Consumer Credit (New South Wales) Act 1995*
- *Consumer, Trader and Tenancy Tribunal Act 2001*
- *Contracts Review Act 1980*
- *Conveyancers Licensing Act 2003*
- *Co-operative Housing and Starr-Bowkett Societies Act 1998*
- *Co-operatives Act 1992*
- *Credit Act 1984*
- *Credit (Home Finance Contracts) Act 1984*
- *Electricity (Consumer Safety) Act 2004*
- *Fair Trading Act 1987*
- *Fitness Services (Pre-paid Fees) Act 2000*
- *Funeral Funds Act 1979*
- *Gas Supply Act 1996 (Section 83A)*
- *Holiday Parks (Long-term Casual Occupation) Act 2002*
- *Home Building Act 1989*
- *HomeFund Commissioner Act 1993*
- *HomeFund Restructuring Act 1993 ss 14, 15, 16 and Schedule 2 (remainder Minister for Housing)*
- *Landlord and Tenant Act 1899*
- *Landlord and Tenant (Amendment) Act 1948*
- *Landlord and Tenant (Rental Bonds) Act 1977*
- *Motor Dealers Act 1974*
- *Motor Vehicle Repairs Act 1980*
- *Partnership Act 1892 (administration of Partnership register provisions)*
- *Pawnbrokers and Second-hand Dealers Act 1996*
- *Prices Exploitation Code (New South Wales) Act 1999*
- *Prices Regulation Act 1948*
- *Property, Stock and Business Agents Act 2002*
- *Registration of Interests in Goods Act 1986*
- *Residential Parks Act 1998*
- *Residential Tenancies Act 1987*
- *Retirement Villages Act 1999*
- *Strata Schemes Management Act 1996*
- *Trade Measurement Act 1989*
- *Trade Measurement Administration Act 1989*
- *Travel Agents Act 1986*
- *Valuers Act 2003*
- *Warehousemen's Liens Act 1935*

Our legislative and policy development program ensures New South Wales' 42 pieces of fair trading legislation remain up-to-date and balance the rights of consumers and traders.

Work is continuing on this project following the review of submissions in order to refine the proposed national framework. In July 2008 the Council of Australian Governments agreed that the regulation of mortgage broking will be transferred to the Commonwealth in order to reduce costs to business and to acknowledge the essentially national nature of the broking industry. The extent and timing of this transfer of responsibilities will be discussed by all jurisdictions and will assist in refining proposals for consideration by the Commonwealth.

Responsible lending practices

We made significant gains in advancing the responsible lending practices project during the year. The Commonwealth Office of Best Practice Regulation agreed that the Consultation Regulatory Impact Statement developed by New South Wales on behalf of the Ministerial Council on Consumer

Affairs met the standard of analysis required. The consultation document was released publicly by the Ministerial Council.

The consultation document noted the rising consumer credit card debt even as spending slows, and drew attention to both the personal and social damage that can occur as a result of unmanageable debt. A number of options were considered, ranging from education to regulation. Industry will be asked to provide financial information to assist in developing the most cost-effective option.

In July 2008 the Council of Australian Governments agreed to measures that will result in better protections for financial consumers across Australia, with the Commonwealth to take over responsibility for consumer credit. The extent and timing of this transfer of responsibilities will be

Responsible Lending Practices consultation noted the personal and social damage that can occur as a result of unmanageable debt.

Work is being undertaken to identify possible improvements that enhance consumer protection and also protect the rights of individuals and organisations listed in public registers.

discussed by all jurisdictions and will assist in refining proposals for consideration by the Commonwealth.

Information in public registers

A review of the current law and administrative arrangements for disclosure of information in public registers is being conducted. It is being undertaken to identify possible improvements that enhance consumer protection and also protect the rights of individuals and organisations listed in public registers. A discussion paper about the public registers and some options for change was released for public comment in July 2007.

Submissions made in response to the paper will be taken into consideration in this review.

Funeral directors

The *Fair Trading Act 1987* was amended in June 2007 to allow for an information standard for funeral directors to be prescribed in the regulations. The draft Fair Trading Amendment (Funeral Goods and Services) Regulation 2008 was developed by the Office of Fair Trading and released for public consultation in April 2008.

Under the proposals, funeral directors who provide the option of a 'basic funeral service' will have to inform consumers of this option and give them a notice listing all goods and services included in the basic service with itemised costs.

Before any funeral arrangements are entered into, whether for a basic funeral or otherwise, consumers will have to be given fully itemised information about the anticipated cost of each component of the funeral. Once a funeral is completed, funeral directors will be required to give the customer a final statement or invoice detailing the actual costs incurred for each item.

Fair Trading received 10 submissions in response to the draft information standard and met with a range of industry and consumer groups to discuss their views in detail. Some minor changes will be made to the draft standard to address issues raised in the consultation process.

An industry and consumer awareness campaign will be conducted as part of the implementation of the information standard.

National co-operatives law

We are the lead agency for a national project to establish uniform laws for co-operatives across Australia. On behalf of the Ministerial Council on Consumer Affairs, we are developing template co-operatives legislation in consultation with other States and Territories. The aim is to have the same law apply in all participating jurisdictions, improve consistency with the *Corporations Act*, update

corporate governance requirements, simplify requirements for co-operatives operating across borders, and introduce new options for co-operatives to raise capital. It is anticipated that the proposed template legislation will be enacted by New South Wales. Other jurisdictions would then apply the New South Wales legislation or enact laws that are consistent with it.

Co-operative housing & Starr-Bowkett societies

A statutory review of the *Co-operative Housing and Starr-Bowkett Societies Act* was originally completed in 2004. That review's final report concluded that a proper assessment of the Act was not possible at the time because the Act had not been in operation for long enough to be adequately tested. Consequently the report recommended that the Act be reviewed again after a further 2 years and that an independent report on the state of the sector be undertaken prior to that review. Accordingly, after a competitive tender process, Hawkless Consulting Pty Ltd was engaged to undertake an analysis of the sector and provide a forecast on its future direction. In August 2007, Hawkless Consulting completed this project and filed its report.

The Act is now being reviewed to ensure that the objectives of the Act remain valid in today's marketplace and that the terms of the Act allow it to meet its objectives as efficiently and effectively as possible. In order to assist interested parties when making a submission, the Steering Committee for the review prepared a discussion paper which the Minister released for consultation in June 2008. The Hawkless Consulting report was attached to the discussion paper. All registered societies were sent an invitation to comment on the issues.

Personal property securities national system

The Commonwealth, in consultation with the States, Territories and external stakeholders, is developing a legislative and architectural framework to reform the laws relating to personal property securities. On 13 April 2007 the Council of Australian Governments gave in-principle approval to the establishment of a single national system for regulation and registration of personal property securities, administered by the Commonwealth, subject to further consideration of financial arrangements. This project will eventually see the functions of the Register of Encumbered Vehicles (REVS) and similar State encumbrances registers transferred to the Commonwealth in mid 2010.

An intergovernmental agreement between the Commonwealth and other jurisdictions will underpin the legislative referral of power to enact

the Personal Property Securities Bill. Legislative policy is being developed through a joint Standing Committee of Attorneys General and Consumer Affairs officers working group. In addition, Fair Trading officers from NSW and Victoria represent the Ministerial Council on Consumer Affairs on the Personal Property Security Stakeholder Consultative Group established by the Commonwealth Attorney General.

The Commonwealth released its draft Personal Property Securities Bill for public consultation in May 2008 and Fair Trading provided comments through the NSW Attorney General. We have been keen to ensure that the personal property securities scheme does not result in any reduction of consumer protection or operational functionality in comparison to the current vehicle securities registers in the various jurisdictions.

Holiday parks

The *Holiday Parks (Long-term Casual Occupation) Act 2002* sets out the rights and obligations of long-term casual occupants of holiday parks and park owners. The Act covers situations where people leave their vans on a rented site in a caravan park for occasional recreational use during the year.

We have commenced a statutory review of the Act to consider a number of issues including provisions surrounding security of tenure and an occupant's rights when an occupancy agreement is to be terminated. A discussion paper will give the community an opportunity to comment and make submissions as part of the review process. A report on the review will then be tabled in Parliament and the opportunity for further comment will be provided on any proposals to amend the Act.

Community schemes management

The *Community Land Management Act 1989* was reviewed and a report is being finalised that will recommend a number of amendments to the Act. The amendments were developed following extensive stakeholder consultation.

The proposed amendments will update the law and enhance existing provisions. The main purpose of the review is to increase consistency between community schemes management legislation and strata schemes management legislation, as there are many similar and mirror provisions.

Relevant information will be available on our website before the changes commence.

Australia's consumer policy framework

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. During this year the Commission undertook an inquiry into Australia's consumer policy framework and its administration. The Commonwealth, State and Territory Governments share responsibility for consumer policy in Australia. The main legislative provisions are contained in the *Trade Practices Act 1974* and the Fair Trading Acts in each State and Territory.

In its final report, publicly released in May 2008, the Commission found that while the consumer policy framework has considerable strengths, parts of it require an overhaul. This includes a need for institutional arrangements that are more compatible with the increasingly national nature of consumer markets. The Commission recommended that the first step should be the introduction of a single generic consumer law applying across Australia and jointly enforced by the Australian Competition and Consumer Commission and State and Territory fair trading agencies. This proposal was endorsed by the Ministerial Council on Consumer Affairs at its meeting in May 2008 and by the Council of Australian Governments in July 2008.

Australia's consumer product safety system

The Ministerial Council on Consumer Affairs is working on reform options to improve the effectiveness and consistency of product safety regimes in Australian jurisdictions. Product safety is one of the regulatory 'hot spots' identified by the Council of Australian Governments as being in need of cross-jurisdictional regulatory reform to reduce the regulatory burden on business.

The previous Commonwealth Government supported a single law/single regulator model. This is also the model recommended by the Productivity Commission in its 2006 Research Report Review of the Australian Consumer Product Safety System and 2008 Final Report Review of Australia's Consumer Policy Framework.

During 2007 consensus was reached among the States and Territories in favour of an alternative harmonised model, which included the creation of a new independent, national advisory committee.

The first step should be the introduction of a single generic consumer law applying across Australia.

We have been progressing towards a national trade measurement system to be in place from 1 July 2010.

In 2008 the new Commonwealth Minister for Competition Policy and Consumer Affairs proposed a single law/multiple regulators model. On 23 May 2008 the Ministerial Council on Consumer Affairs agreed in-principle to this model, in which the Commonwealth will assume responsibility for the making of permanent product bans and standards under the *Trade Practices Act 1974*, the States and Territories will retain their power to issue interim product bans and the Australian Competition and Consumer Commission and the State and Territory fair trading and consumer affairs offices will share responsibility for enforcement of the product safety law.

The single law/multiple regulators model was endorsed by the Council of Australian Governments in July 2008.

National trade measurement system

Since 1 July 2007, the Australian Government, through the National Measurement Institute, has been progressing towards a national trade measurement system. The Council of Australian Governments agreed to the development of the national system following its consideration of advice from the Ministerial Council of Consumer Affairs and a national review of trade measurement. The Institute will be fully responsible for administering the national system under Commonwealth legislation from 1 July 2010. The process is being coordinated by the Institute through the Council of Australian Governments, the Ministerial Council on Consumer Affairs, a Transition Coordinators' Forum and nine Working Groups, all of which include NSW representation.

Consultation arrangements to date have included meetings between the Institute, private licensees, inspectors and other trade measurement staff in each of the States and Territories.

Anyone can obtain information about the Institute and trade measurement, including the National Trade Measurement System Discussion Paper, from the Institute's website www.measurement.gov.au. The Institute has invited everyone interested in participating in development of the national trade measurement system to register with the Australian Government's website www.consultation.business.gov.au.

Advisory councils

The function of advisory councils is to provide advice to the Minister for Fair Trading on consumer protection issues, particularly those relevant to legislation administered by the Minister. The council members represent diverse interests and expertise to ensure that policy advice reflects the broader interests of the community and industry alike. The five advisory councils are:

- Fair Trading Advisory Council
- Home Building Advisory Council
- Motor Vehicle Industry Advisory Council
- Property Services Advisory Council
- Retirement Villages Advisory Council.

Legislative change

Strata schemes management

Following the release of a discussion paper in late 2007 and an extensive period of public consultation that included the release of draft exposure bills, the *Strata Management Legislation Amendment Act 2008* was passed by Parliament on 18 June 2008.

There were five main areas of change included in the amendments. The existing caretaker provisions in the Act were extended to cover persons who fall within the description of a caretaker, regardless of whether they use a different job title. This will close a potential loophole in the current Act.

Developers will no longer have the right to make exclusive use by-laws about parking on common property during the initial period of a scheme. The owners corporation will instead be responsible for such long-term decisions. Developers and persons connected with developers will be prohibited from using proxy votes and powers of attorney obtained as a condition of a contract for the sale of a lot within the scheme. This will prevent strata lot owners from being involuntarily deprived of their right to vote at meetings of the owners' corporation.

Strata scheme executive committee members and candidates for election to strata scheme executive committees will have to disclose any connections they have with the developer or caretaker. This will enhance the transparency of executive committee elections and their operations. Individual lot owners in strata and community schemes will be able to lodge a dispute notice and invite Fair Trading building inspectors onto common property to investigate building defects or other structural problems. Previously only owners corporations or strata managing agents had this authority.

Relevant information was made available on our website in June ready for the commencement of the changes on 1 August 2008.

Demolition work

From 2 May 2008 demolishing work is no longer regulated under the *Home Building Act* in NSW. It is part of the Government initiative to remove the need for contractors to be licensed by more than one agency for similar work. There are around 350 demolition work licence holders in NSW.

WorkCover NSW is now the sole licensing agency for persons undertaking demolition work. The Occupational Health and Safety Regulation 2001 requires contractors to:

- adhere to the Australian Standards, whether or not they hold a licence
- hold a licence where there is mechanical demolition of a structure above four metres in height - if demolition is by hand, no licence is

required up to a height of 10 metres

- hold workers compensation insurance (including for subcontractors)
- hold public liability insurance
- notify WorkCover when undertaking licensed demolition work
- hold an asbestos licence if removing more than 10 square metres of bonded asbestos and/or friable asbestos.

This initiative resulted from our ongoing review of the regulatory framework for the home building industry.

Incorporated associations

Following the review of the *Associations Incorporation Act 1984*, work has been under way to make extensive amendments to the Act in accordance with the recommendations from the review. It was originally anticipated that this would be one large Amendment Bill. However, it was decided to put through a minor Amendment Bill to improve the cancellation procedures for incorporated associations immediately, whilst continuing work on a redraft of the Act containing the majority of the proposed amendments.

Consequently the *Associations Incorporation Amendment (Cancellation of Incorporation) Act 2007* commenced on 29 October 2007. The amendments streamline the processes involved in the cancellation of inactive associations and introduce a provision which allows the incorporation of associations to be re-instated if they have been cancelled in error.

Consumer credit

For some time, we have been active in protecting disadvantaged consumers from excessive fees and interest charged by some short term lenders. In 2006, changes to the *Consumer Credit (New South Wales) Act 1995* required all fees and charges to be included in the calculation of the maximum rate allowed to be charged in this state. Some lenders sought to avoid this requirement by using bills of exchange - a financial instrument generally used for commercial purposes and exempted from the Consumer Credit Code, which regulates all consumer credit. The Commonwealth regulates aspects of bill facilities but this does not have the same regulatory scope as the Code.

In response to this, the Ministerial Council on Consumer Affairs agreed to bring bills of exchange used for consumer credit under the Consumer Credit Code. Since 30 November 2007 any consumer credit provided by way of a bill of exchange is now subject to regulation by the Code, except in the area of overlap with the Commonwealth, and in New South Wales the maximum rate is inclusive of fees and charges.

We have been active in protecting disadvantaged consumers from excessive fees and interest charged by some short term lenders.

Retirement villages

Following a statutory review of the *Retirement Villages Act 1999*, a significant package of reforms was developed. As the proposed reforms were extensive and complex in their scope, and would have a significant impact on residents and operators alike, the Government decided to make available a consultation draft Bill before formally introducing the legislation into Parliament. The Bill tabled in late 2006 proposed changes in a number of key areas, including disclosure of information, resident input into management, capital maintenance and budgets, deficits and other financial issues.

Feedback on the draft Bill was received from a range of organisations and individuals throughout 2007 and early 2008. All written submissions were analysed and assessed by Fair Trading. Both the Minister and our staff met with resident and operator groups on a number of occasions to discuss their views in detail and a number of refinements were made to Bill in response to the matters raised in consultation. The Bill was introduced into Parliament on 26 June 2008.

Consumer, Trader and Tenancy Tribunal

Over the course of the last eighteen months the Tribunal has undergone a thorough and independent operational review that followed a statutory review of the *Consumer, Trader and Tenancy Tribunal Act 2001*. These two review processes led to a number of changes being proposed to both the administrative and legislative framework for the operation of the Tribunal. Most of the recommendations of the operational review have already been implemented either before or through the *Consumer, Trader and Tenancy Tribunal Amendment Act 2008*, which was passed by Parliament on 24 June 2008.

Under the amendments, the Tribunal's Deputy Chairperson (Determinations) must be legally qualified, and new Tribunal members will need to have ability and/or experience in alternative dispute resolution procedures. The Chairperson will be able to give more extensive procedural directions and authorise the Registrar and Deputy Registrar to exercise certain functions of the Tribunal. New limits to the period for recommencing proceedings will be introduced and a second application for a rehearing will be possible if significant new evidence comes to light after the first application has been refused. More time will be allowed for a written statement of reasons for a decision to be prepared, and sound recordings of all hearings will be made, as far as is reasonably practicable. In acknowledgement of the specific needs and circumstances of social housing clients, there will be a new Social Housing Division.

Motor dealer reforms

As part of its 2006 review of the motor vehicle retailing and services sector, the NSW Government's Small Business Regulation Review Taskforce made a number of recommendations designed to reduce the regulatory burden on motor dealers, especially in relation to prescribed forms and record keeping.

The review, conducted in consultation with the motor vehicle retailing and services sector, made a number of additional reform recommendations. Amendments to the *Motor Dealers Act 1974* were approved by in Parliament in October 2007, and amendments to the Motor Dealers Regulation 2004 were drafted.

From 1 August 2008, the red tape burden on motor dealers will be lessened by treating demonstrator motor vehicles like other second-hand vehicles, reducing the number of forms a motor dealer must keep, and making a number of improvements in the layout of several forms to make them easier to comprehend and use.

Consumer claims

Amendments to the *Consumer Claims Act 1998* commenced on 1 March 2008 following a statutory review. The amendments made a number of changes to the Act to clarify its jurisdiction and improve dispute resolution processes for consumers applying to the Consumer, Trader and Tenancy Tribunal.

The definition of a 'consumer claim' was amended to make it clear that the Tribunal has jurisdiction in matters where there was no direct contract between the parties, such as a claim by a consumer against a manufacturer. It was also made clear that the Tribunal can hear a dispute about goods or services supplied in NSW where the contract was made elsewhere, as well as about contracts made in NSW for supply to another state or country.

The time period for applying to the Tribunal was extended to three years from the date the cause of action accrued. However, action must still be commenced within 10 years of supply of the goods or services. The Tribunal now has jurisdiction to make orders between respondents, and to make orders for a consumer to return goods and a supplier to refund money in cases where the consumer's claim was successful. The Act now makes it clear that the Tribunal cannot make orders against a person who applies to the Tribunal but does not present his or her case - the application can only be adjourned or dismissed.

The general jurisdiction limit of the Consumer, Trader and Tenancy Tribunal increased to \$30,000.

The Consumer Claims Regulation 2007 came into force on 1 September 2007. It increased the general jurisdiction limit of the Tribunal to \$30,000. A further amendment was made on 1 March 2008 so that the \$30,000 limit also applies to orders between respondents.

Trade measurement

The *Trade Measurement Legislation Amendment Act 2007* was assented to on 1 November 2007 and contained the Batch Two amendments. The Act will amend the Uniform Trade Measurement Legislation and identical amendments are progressively being implemented by the other states and territories who are parties to the Uniform Trade Measurement Agreement. The amendments to the Uniform Acts include:

- licensing arrangements for public weighbridge and servicing licensees
- improved consumer protection by specifying how firewood is sold by volume
- amendments to definitions and other technical matters to improve the administration of the legislation.

Work is progressing on the Batch Two amendments to the Uniform Regulations, which include marking requirements for:

- the address of the supplier on pre-packed articles
- the weight (mass) on egg cartons
- pet litter to be sold by weight or volume
- relaxation of certain unit pricing requirements for goods sold in non-rigid containers
- providing for the chief executive of the fair trading agency in each jurisdiction to approve forms for using public weighbridges.

We organised a seminar in December 2007 to advise licensees and staff about progress with the amendments and proposed implementation arrangements. It is anticipated that the Batch Two amendments will commence later in 2008.

Fair Trading Act

Prams and strollers product safety standard

Promoting the safety of prams and strollers is an issue of broad community concern. A mandatory standard was recently introduced under the *Trade Practices Act 1974*, which will apply to all corporations and traders conducting business across jurisdictional borders.

Unincorporated bodies are not covered by the *Trade Practices Act*. In order to ensure full industry coverage, a complementary NSW safety standard for prams and strollers was developed and mandated in the Fair Trading Amendment (Prams and Strollers) Regulation 2008. The objective of the standard is to reduce the risk of serious injury and death to children as a result of accidents arising from the use of prams and strollers. The safety

standard prescribes that prams and strollers must comply with provisions for safety restraints, brakes, tether straps, safety labelling and testing procedures.

The Fair Trading Amendment (Prams and Strollers) Regulation 2008 commenced on 1 July 2008 - the same date as the complementary Commonwealth standard. Both standards make reference to the Australian/New Zealand Standard AS/NZS 2088:2000 Prams and Strollers - Safety Requirements.

Monkey bikes

There have been concerns regarding the safety of scaled-down replica motorised motorcycles commonly known as monkey, mini or pocket bikes. Some models did not have adequate brakes, acceptable steering and/or throttle operation, a supplemental engine stop switch or adequate foot pegs. These unregistrable bikes have become more common in the marketplace.

To prevent or reduce risk of injury the Fair Trading Amendment (Monkey Bikes) Regulation 2007 was introduced on 14 December 2007. It requires these bikes to meet certain safety requirements in relation to their throttle (accelerator), braking systems, foot pegs, steering head system, and supplemental engine stop or cut-out switch. The proposed Regulation is a result of extensive consultation with other State and Territory safety regulators to ensure that a harmonised outcome was achieved Australia-wide.

Children's nightwear and cots

An update of two NSW safety standards was introduced on 1 September 2007 making them complementary with Commonwealth standards. The standards for children's nightwear provide criteria to assess the fire hazard of that nightwear, so that it is labelled correctly or styled to reduce that hazard. The other standard concerns the specification of safety requirements for household cots. In the case of both standards, amendments included the relaxation of requirements in relation to second hand products, on the basis that these products would have met the standard when new. The amendments were subject to industry consultation as part of the Commonwealth's regulation impact statement process.

Making the NSW standards complementary with the Commonwealth standards assists with the enforcement of the standards in NSW. The Commonwealth standards apply to suppliers who are corporations or who trade across jurisdictional borders. The NSW standards apply to suppliers who are not corporations and who trade only within NSW. Advance notice of the proposed changes to these standards was provided by the Commonwealth and NSW. Fair Trading wrote to key industry stakeholders advising them of the amendments to these standards.

The objective is to reduce the risk of serious injury and death to children as a result of accidents...

Bills assented to

- *Associations Amendment (Cancellation of Incorporation) Act 2007*. Assented to 29 October 2007.
- *Consumer Claims Amendment Act 2007*. Assented to 7 December 2007.
- *Fair Trading Amendment (Funeral Goods and Services) Act 2007*. Assented to 4 July 2007.
- *Motor Dealers Amendment Act 2007*. Assented to 29 October 2007.
- *Trade Measurement Legislation Amendment Act 2007*. Assented to 1 November 2007.
- *Strata Management Legislation Amendment Act 2008*. Assented to 25 June 2008.

Statute law revision

Under the Statute Law Revision program, a Bill is introduced in each Session of Parliament to deal with a range of minor and uncontroversial legislative amendments. A number of amendments were made to fair trading legislation under this program during 2007-2008. During the Spring Session of 2007 the following amendments were made:

- *Fair Trading Act 1987* (Section 44A, Schedule 4A)
- *Home Building Act 1989* (Schedule 1)
- *Residential Parks Act 1998* (Section 88)
- *Conveyancers Licensing Act 2003* (Section 95)
- *Property, Stock and Business Agents Act 2002* (Sections 5, 47, 60, 64, 128, 153)
- *Property, Stock and Business Agents Regulation 2003* (Clause 11)

Subordinate legislation review

On 1 September 2007, the following regulations were remade under the staged repeal provisions of the *Subordinate Legislation Act 1989*:

- Community Land Management Regulation 2007
- Consumer Claims Regulation 2007
- Consumer Credit (NSW) Special Provisions Regulation 2007
- Fair Trading Regulation 2007

The Warehousemen's Liens Regulation 2007 was gazetted and commenced on 6 July 2007.

The following regulation is in preparation to be remade by 1 September 2008:

- Pawnbrokers and Second-hand Dealers Regulation 2003