

LAW ENFORCEMENT BY AUSTRALIAN CONSUMER AFFAIRS AGENCIES[†]

John Braithwaite* and Susan Vale**

Abstract

Consumer affairs agencies in Australia generally rely on conciliation rather than law enforcement. Prosecutions are rare, and when they do occur, penalties are derisory. South Australia is the only jurisdiction with a substantial record of prosecuting consumer affairs offenders. The Commonwealth Trade Practices Act is the only statute under which courts impose significant fines against corporate consumer affairs offenders.

Introduction

Consumer affairs enforcement is a relatively recent phenomenon in Australian history, at least insofar as it is conducted by specialized consumer affairs departments or bureaux. These specialized agencies were created in response to an organized consumer movement which itself only began to become a force to be reckoned with in the 1960s and emerged as a well-organized lobbying presence only in the 1970s. Consumer affairs bureaux or departments were established in every State and Territory between 1969 and 1974, immediately followed by the Whitlam government's establishment of the Trade Practices Commission at a Commonwealth level. Prior to this, there had been for many decades rudimentary weights and measures enforcement in Australia, enforcement of purity standards for food by inspectors located in health and primary industry departments as well as fragmented enforcement of various other consumer rights by disparate agencies. The present study is not concerned with those types of consumer protection enforcement such as meat inspection, therapeutic goods regulation, and pure food control conducted by agencies other than consumer affairs bureaux and departments.

Complaints

The National Consumer Complaint Statistics System reveals that in 1982-83 65,378 written complaints were made to government consumer affairs agencies in Australia. These statistics, of course, understate the problem because there is an unwillingness or inability of many to put their complaints in writing. In 1981-82, the Trade Practices Commission had 932 written complaints, but 22,000 consumer affairs complaints and enquiries overall. While the New South Wales Department of Consumer Affairs had 26,362 written complaints in 1981-82, there were 283,775 telephone calls from concerned consumers and 39,197 personal interviews with consumers. The data to come will show that for every consumer affairs conviction there are more than 200 written complaints which do not lead to a conviction and conservatively over 2000 unwritten complaints. Of course, there is no way of knowing how many of these complaints involve actual violations of the law — a large number of them undoubtedly involve no illegality by the trader.

[†] This project was funded by a grant from the Criminology Research Council.

* Senior Research Fellow, Dept of Sociology, Research School of Social Sciences, A.N.U.

** Assistant Director, Australian Federation of Consumer Organizations.

The National Consumer Complaint Statistics System reveals the breakdown of written complaints by reasons for the complaint in Table 1. A further breakdown of these statistics, according to whether they were directed to State and Territory agencies or the Trade Practices Commission (TPC), reveals that 55% of TPC complaints fell in the categories, "Misleading Advertising" or "Misleading Representations". Most complaints to State agencies fell in the first category, "Unsatisfactory Quality of Product or Service".

TABLE 1
Written Complaints to Australian Consumer Protection Agencies
by Reason, 1982-83

<i>Reason</i>	<i>No</i>	<i>%</i>
Unsatisfactory quality of product or service	29,484	41.6
Unfair or unfulfilled contracts	19,344	27.3
Guarantees and warranties not honoured	4,908	6.9
Misleading advertising	2,523	3.7
Misleading representations	1,561	2.1
Excessive prices/charges	3,996	5.6
Unfair credit practices	3,387	4.8
Unfair sales methods	2,624	3.7
Offers of redress	2,447	3.5
Unsatisfactory packaging, labelling	540	0.8
Total*	<u>70,814</u>	

*Each complaint may be given two reason categories and totals may exceed product/service totals

These statistics do not include complaints to weights and measures inspectorates which are not within consumer affairs agencies. In Tasmania, for example, the Weights and Measures Inspectorate investigated 3200 complaints or enquiries in 1982, checked and verified/adjusted some 15,000 weighing or measuring instruments, and checked or test weighed some 25,000 pre-packed articles. While about 700 of the latter were found to be underweight, there were only three convictions for all types of weights and measures offences in the 1981-82 year.

Methods

The basic source of data for this study was consumer affairs departmental or bureau annual reports. Data on all consumer affairs convictions were sought for all States and Territories and for federal prosecutions under the Trade Practices Act. The starting year for data collection in each jurisdiction was the year of the first consumer affairs department or bureau annual report. This excluded considerable conviction data which pre-dated the establishment of a specialized consumer affairs agency. In New South Wales, data were only available from the 1976-77 financial year despite determined efforts by the Commissioner for Consumer Affairs to extract information on our behalf from the Industrial Registrar of the New South Wales Industrial Commission and the Industrial Magistrate for earlier years. This is a case of a jurisdiction where significant numbers of consumer affairs prosecutions were being undertaken prior to the starting point of our statistics. We doubt in other

jurisdictions whether there was much prosecutorial activity prior to the starting dates of our data.

Some annual reports for some jurisdictions did not include prosecution data and some included very incomplete data (eg, no record of whether a prosecution led to a conviction, no record of the sentence imposed). The gaps in the data were pursued through correspondence, telephone calls, and in the case of Victoria, a research officer spent a week in Melbourne working through files.

A major complication was that weights and measures enforcement tended to be a responsibility which shifted between consumer affairs and other departments; yet this was the largest area of prosecutorial activity. Weights and measures convictions are therefore treated separately from other consumer affairs offences in this report. The tables which follow relate to convictions to the exclusion of unsuccessful proceedings launched.

In circumstances where there were a number of closely related charges that occurred at a similar point in time directed at the same defendant, this was counted as one case. In the classic example, X is charged under the Motor Vehicle Dealers Act both for dealing without a licence and winding back an odometer with intent to enhance the value of the vehicle. X is also charged under the Unfair Advertising Act for advertising a vehicle with incorrect mileage. For the purpose of total figures, X was counted as one case. However, in the subclassification of the case, it will be counted in three separate categories — unlicensed motor vehicle dealer, other motor vehicle offences and false advertising. In circumstances where not only company X, but also Directors A and B and employee C were convicted, these were counted as four separate cases. The average value of fines excludes awards of costs and compensation orders for consumers.

This comparative counting principle was considered to be the most sensible because it avoids artificially inflating the level of conviction of a jurisdiction which lays charges on every technical offence possible, in comparison with a jurisdiction which prosecutes only on the most serious count. However, there is some scope for dispute under the above counting procedures in deciding what constitutes “a number of closely related charges”. The New South Wales Department of Consumer Affairs was critical of our counting only one conviction for 57 findings of guilt against Rena Ware Distributors for Door-to-Door Sales breaches in failing to give prescribed notices to consumers. The charges did relate to 57 different transactions involving different consumers, so there was a fair basis for their criticism. Had they been for different kinds of offences as well, instead of all being for failing to give prescribed notices, we would have counted them as separate convictions even though they had been against the same offender on the same day. This case does illustrate the difficulty of resolving what constitutes “a number of closely related charges”.

Results

Convictions

Table 2 summarizes the consumer affairs convictions (excluding weights and measures offences) for all jurisdictions. South Australia and Victoria are the only jurisdictions which exhibit patterns even remotely resembling a regulatory “life cycle” (Bernstein, 1955) in which new agencies begin with an early flush of prosecutorial action followed by gradual accommodation to industry interests. South Australia and Victoria both exhibit increases in the use of prosecution up to 1975-76, followed by substantial declines in punitiveness. The high level of

prosecutions in Victoria in 1975-76 in fact represented a "blitz" on petrol stations for misleading advertising of prices; the "blitz" was terminated when the practices ceased. For South Australia, the decline was dramatically reversed in 1982-83 under the new Attorney-General and Minister for Consumer Affairs, Mr Chris Sumner. South Australia has outstripped all other States in both per capita and absolute terms in consumer affairs convictions. With 103 convictions, South Australia became the first State to pass the milestone of 100 convictions in a year. The reason, we will see later, is to be found in a crackdown in one particular area in South Australia — residential tenancies.

TABLE 2
Convictions Obtained by Consumer Affairs Agencies, Total Figures
(Excluding Weights and Measures)

<i>Year</i>	<i>Fed Part IV*</i>	<i>Fed Part V**</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74			—	—	2	24	—	6	2	—
74/75	1	4	—	35	8	31	—	21	1	—
75/76	0	1	—	74	8	56	—	32	2	—
76/77	0	16	97	19	21	31	9	16	1	—
77/78	11	9	76	28	16	40	38	7	0	—
78/79	2	2	64	16	30	***	63	24	0	—
79/80	6	9	55	35	23	33	80	9	3	0
80/81	6	10	49	19	20	20	35	21	0	0
81/82	2	7	34	25	27	20	64	11	2	5
82/83	3	3	54	24	29	103	82	23	2	2
83/84	7	8	—	12	30	—	32	—	—	3

— A dash means data not available

* Refers to convictions under the restrictive trade practices provisions of Part IV of the Trade Practices Act

** Refers to convictions under the consumer protection provisions of Part V of the Trade Practices Act

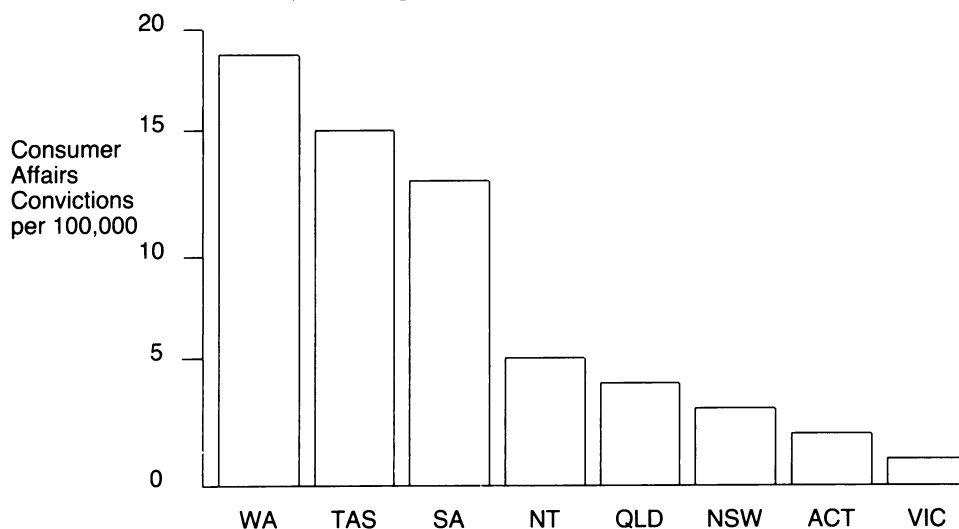
*** SA changed over from calendar year to financial year records

Queensland is the only State which evidences consistent steady increase in its consumer affairs conviction rate. An exactly opposite trend is evident with New South Wales. This is the most startling finding in the trends. New South Wales is the only State which has shown (until 1982-83) a consistent downward slide in the use of prosecution, and the downward slide is dramatic. The number of convictions fell from 97 in 1976-77 to 34 in 1981-82. 1982-83 showed something of a recovery to 54 convictions. It should be noted that the New South Wales data exclude prosecutions by the NSW Council of Auctioneers and Agents and the NSW Rental Bond Board. Both of these authorities, while part of the Department of Consumer Affairs, are semi-autonomous and independently conduct their own prosecutions. In the case of the Council of Auctioneers and Agents, exclusion of their prosecutions has no distortionary effect on inter-State comparisons because the types of cases concerned are not handled by other consumer affairs agencies.

However, a very serious distortion arises from exclusion of the Rental Bond Board cases. The Board ran its first prosecutions in 1979/80 when 46 charges were laid. In 1980/81 there were 12 prosecutions, 20 in 1981/82 and 72 in 1982/83. Unfortunately, we do not know how many of these prosecutions were multiple related charges against the same offender at the same point in time. Therefore, we are not in a position systematically to incorporate these extra cases into our data. It is understood, however, that the overwhelming majority of the prosecutions are for failure of landlords to lodge rental bonds with the Board.

Figure 1 compares the States and Territories on the basis of their conviction rates per 100,000 population during the 1980s. The most recent four years, rather than just the last year, was selected as the basis of comparison to even out idiosyncratic variations from year to year in the smaller jurisdictions. The lowest rates for successful prosecutions are found in both the largest and the smallest jurisdictions. While Victoria has the lowest conviction rate (2.6 convictions from 1979-80 to 82-83 per 100,000 population), the Australian Capital Territory is not far behind with a rate of 3.0, followed by New South Wales (3.6). The three middle-sized jurisdictions, Western Australia (19.5), Tasmania (14.4), and South Australia (13.3) have the highest conviction rates.

FIGURE 1
Consumer Affairs Conviction Rates per 100,000 Population for the Years
1979/80-1982/83
(Excluding Weights and Measures)



The differences are considerable. All three middle-sized jurisdictions (South Australia, Western Australia and Tasmania) have conviction rates at least three times as high as the rates for all large jurisdictions (New South Wales, Victoria and Queensland) and the small jurisdiction of the Australian Capital Territory.

The hypothesis which suggests itself is that there is an optimum size for a jurisdiction with responsibilities for consumer protection enforcement. A jurisdiction which is too small lacks the staff resources to mount any sort of credible programme of prosecution. A tiny agency with a handful of personnel cannot afford, for example, to have some of its inspectors taken off their routine duties to attend a criminal investigation course.

A very large jurisdiction, on the other hand, may be at greater risk of retreating into a head office mentality which leaves consumer affairs personnel too remote from many sectors of a huge populace. In some cases, Table 3 creates an exaggerated impression of the size of Australian consumer affairs agencies. Most notably, the Tasmanian Consumer Affairs Bureau has only 22 officers, there being an additional 15 weights and measures officers in the Department of Labour and Industry.

TABLE 3
Staffing Levels of Australian Consumer Affairs Agencies 1984
(Including Weights and Measures)

Trade Practices Commission	171
NSW	427
VIC	170
QLD	62
SA	115
WA	89
TAS	37
ACT	16
NT	17

If further research supports this optimum size of jurisdiction hypothesis, the policy implication would seem to be greater regionalization of the operations of the large jurisdictions of New South Wales, Victoria and Queensland, and incorporating consumer affairs inspectorates in the small jurisdictions of the Northern Territory and the Australian Capital Territory into larger inspectorates. This could be achieved either through a federal takeover of their consumer affairs operations, using the Trade Practices Commission for prosecutions, or making consumer affairs a subunit of a larger business regulation inspectorate (eg, combination with health inspectors). The latter solution has in a sense already been adopted with the Tasmanian Weights and Measures inspectorate, which is part of the Department of Labour and Industry with its substantial industrial safety and health inspectorate.

Jurisdictional Variations in Sanctions

The sanction used almost universally in consumer affairs sentencing in Australia is the cash fine. In none of the diverse State and Territory consumer affairs legislation are fines of over \$10,000 provided for, and maximum penalties of \$200 are common. The Trade Practices Act, in contrast, provides for pecuniary penalties of \$250,000 under Part IV and fines of \$50,000 under Part V. A daily fine for continuing the offence is provided for in s 40 of the South Australian Second Hand Motor Vehicle Act and in perhaps some other isolated areas. Occasionally offenders are placed on a good behaviour bond. In some jurisdictions, the courts can order payment of compensation to aggrieved consumers in addition to a fine. Orders of costs against defendants are also common. In our calculation of average fines, costs and compensation orders are not included.

The only genuinely innovative sanctions are to be found in Victoria where, under the provisions of the Market Court Act, the Director of Consumer Affairs may attempt to obtain from a trader, if that trader is repeatedly engaged in conduct that is unfair to consumers, a Deed of Assurance that the trader will refrain from such conduct. Alternatively, the Director may apply to the Market Court for an Order of Prohibition against a trader engaged in unfair conduct. To date there are in existence two Orders of Prohibition and two Deeds of Assurance.

In short, cash payment, largely to the State in the form of a fine, is the almost universal sanction for consumer protection offences. There is no case in the annual report of a consumer affairs department or bureau where an offender has been imprisoned.

Sanctions are generally directed against corporations or partnerships rather than against individuals, except where an individual owns the company. State prosecutions of individuals held accountable for the offending of large companies of which they are employees are very rare indeed.

Figure 2 compares the average fines for the same four years of the 1980s for all jurisdictions except Western Australia. Unfortunately, data on sanctions were not available for this jurisdiction. Total fines imposed and year by year average fine data for each jurisdiction are provided in Tables 4 and 5. It should be remembered here that the average fine often relates to the combined fines from several closely related charges laid against the same defendant at a similar point in time.

FIGURE 2
Average Fines Imposed for Consumer Affairs Convictions for the Years
1979/80 — 1982/83
(Excluding Weights and Measures)

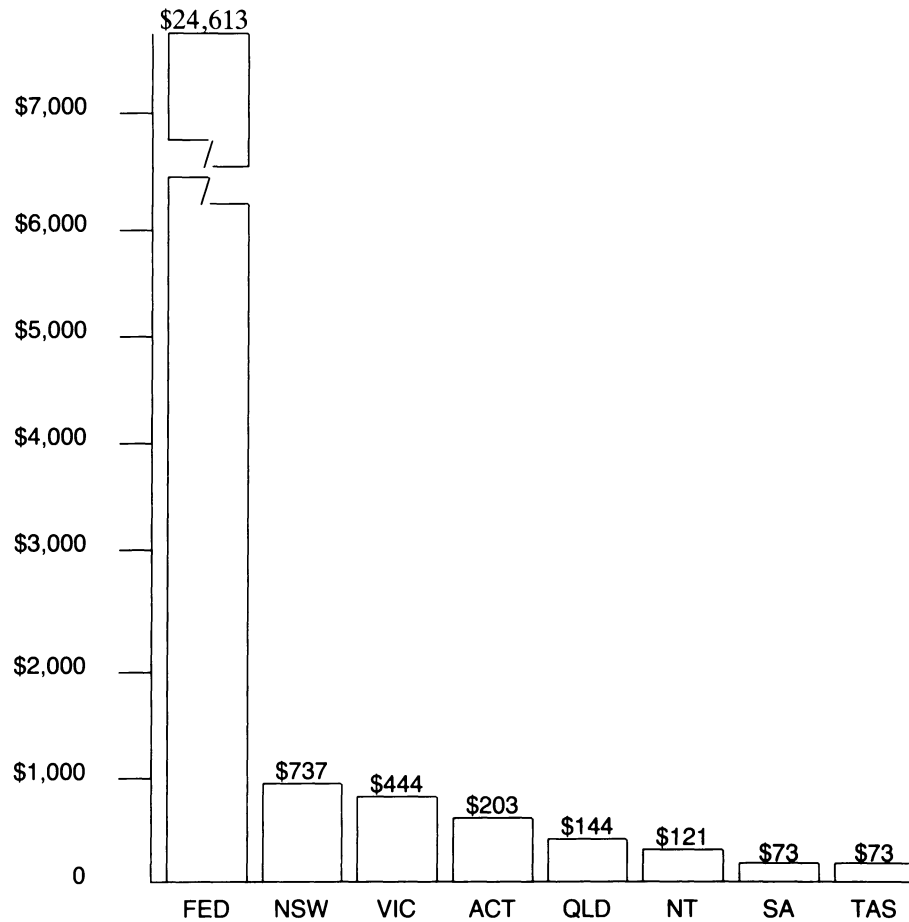


TABLE 4
Total Fines Imposed for Consumer Affairs Convictions
(Excluding Weights and Measures)

<i>Year</i>	<i>Fed Part IV*</i> \$	<i>Fed Part V**</i> \$	<i>NSW</i> \$	<i>VIC</i> \$	<i>QLD</i> \$	<i>SA</i> \$	<i>WA</i> \$	<i>TAS</i> \$	<i>ACT</i> \$	<i>NT</i> \$
1973/74	—	—	—	—	70	2,895	—	90	130	—
74/75	5,000	107,500	—	1,790	530	3,380	—	375	100	—
75/76	—	500	—	5,780	462	7,310	—	675	240	—
76/77	—	85,520	15,768	2,810	1,725	4,790	—	1,020	200	—
77/78	218,000	63,390	31,669	4,515	1,445	5,555	—	640	—	—
78/79	31,000	27,000	23,069	5,740	2,630	—	—	1,870	—	—
79/80	263,000	102,100	26,135	11,340	2,695	3,810	—	575	1,000	—
80/81	320,000	289,400	39,588	10,280	3,845	1,560	—	1,275	—	—
81/82	15,000	19,200	26,315	17,810	4,435	—	—	985	160	450
82/83	70,000	53,500	49,435	6,305	3,275	7,455	—	1,690	260	400
83/84	—	—	—	—	—	—	—	—	—	200

— A dash means data not available

* Refers to convictions under the restrictive trade practices provisions of Part IV of the Trade Practices Act

** Refers to convictions under the consumer protection provisions of Part V of the Trade Practices Act

TABLE 5
Average Fines Imposed for Consumer Affairs Convictions
(Excluding Weights and Measures)

<i>Year</i>	<i>Fed Part IV*</i> \$	<i>Fed Part V**</i> \$	<i>NSW</i> \$	<i>VIC</i> \$	<i>QLD</i> \$	<i>SA</i> \$	<i>WA</i> \$	<i>TAS</i> \$	<i>ACT</i> \$	<i>NT</i> \$
1973/74	—	—	—	—	35	121	—	15	65	—
74/75	5,000	26,875	—	51	66	109	—	18	100	—
75/76	—	500	—	78	57	131	—	21	120	—
76/77	—	5,345	162	148	82	155	—	64	200	—
77/78	19,818	7,043	417	161	90	139	—	91	—	—
78/79	15,500	13,500	360	358	87	—	—	78	—	—
79/80	43,833	11,344	475	324	117	115	—	64	333	—
80/81	53,333	28,940	808	541	192	78	—	61	—	—
81/82	7,500	2,743	773	712	164	—	—	90	80	90
82/83	23,333	17,833	915	263	113	72	—	73	130	200
83/84	7,071	7,469	—	—	—	—	—	—	—	66

— A dash means data not available

* Refers to convictions under the restrictive trade practices provisions of Part IV of the Trade Practices Act

** Refers to convictions under the consumer protection provisions of Part V of the Trade Practices Act

By far the heaviest fines are with federal prosecutions under the Trade Practices Act. Average fines for consumer protection offences under Part V of the Trade Practices Act (to the exclusion of “pecuniary penalties” for restrictive trade practices violations under Part IV) were \$17,852. The average pecuniary penalty for restrictive trade practices defendants was \$39,294. The jurisdictions with the next highest average fines were New South Wales and Victoria, with all the other jurisdictions being a long way behind the two big States in average fines. South Australia and Tasmania, States which along with Western Australia had the highest conviction rates, had the lowest average fines. Thus, we have a classic trade-off between frequency and severity of punishment. New South Wales and Victoria have low frequency of punishment, but when they do punish, they do so more severely. South Australia and Tasmania have relatively high frequency and low severity.

Most restrictive trade practices “pecuniary penalties” are for resale price maintenance (for example, a manufacturer forbids retailers from selling their product below a certain price). While these are not “criminal” offences (proof is only required on the balance of probabilities), it is reasonable to view a court-ordered pecuniary penalty for a resale price maintenance offence as a consumer affairs conviction for the purposes of this study. Cases where the Commission was seeking an injunction rather than a penalty were not counted.

The differences in penalty size are great in the sense that average fines are about 10 times as high in New South Wales as in South Australia and Tasmania and more than a hundred times as high in the federal jurisdiction compared with the average for the smaller States. Such differences must be kept in perspective, however. The fact is that all the average fines are very low in absolute terms. Even the Trade Practices fines are not high when one considers that these are normally directed against large national or international corporations. Total penalties of \$100,000 or more have been imposed under the Trade Practices Act on the Sharp Corporation of Australia (*Hartnell v Sharp Corp* (1975) ATPR 40-003; 5 ALR 493), Menville Pty Limited (*Wilde v Menville Pty Ltd* (1981) 50 FLR 380), Colourshot Pty Limited (*Ducret v Colourshot Pty Ltd* (1981) ATPR 40-196; 35 ALR 503), and Pye Industries Sales Pty Limited (*TPC v Pye Industries Pty Ltd* (1978) ATPR 40-089). For a giant transnational like Sharp, \$100,000 is to its assets less than a parking ticket to the assets of an individual citizen. On the other hand, to the Australian subsidiary viewed in isolation, \$100,000 was a significant financial setback, particularly when added to legal costs for the company of “close to half a million dollars” (Hopkins, 1978: para 6). What Figure 2 fundamentally shows is that the only consumer protection enforcement of real consequence is by the Trade Practices Commission. The fines and “pecuniary penalties” imposed by the Trade Practices Commission since 1974-75 total \$1,350,110—four times as much as all the State fines combined for the same period.

Weights and Measures Convictions

Prosecutions for weights and measures violations have not been included in the foregoing statistics: although in New South Wales and the Australian Capital Territory weights and measures violations are administered alongside other consumer protection enforcement by the one section within the Department and Bureau respectively. In all other States, weights and measures enforcement is handled separately, either by a separate division within the Department or Bureau or, as in Victoria and Tasmania, by another department.

Prosecutions under this category relate to short quantities supplied by traders/retailers (eg, a consumer pays for one tonne of firewood but receives less than one tonne; a faulty measuring device, such as a petrol bowser, incorrectly measures litres dispensed; or a package contains less than the stated quantity).

Data on numbers of weights and measures convictions and average fines for those convictions are to be found in Tables 6 and 7. As with other consumer affairs convictions, the numbers of cases have declined in New South Wales since 1977-78. However, average weights and measures fines in New South Wales in recent years have become dramatically higher than in all other jurisdictions. Victoria is the second highest in average fines, but is a long way behind New South Wales. As with other consumer affairs enforcement, in 1982-83 South Australia became the State with the highest number of weights and measures convictions both in absolute and per capita terms.

TABLE 6
Weights and Measures Convictions

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1969/70	0	—	—	—	1	—	2	0	—
70/71	0	—	—	11	18	—	0	0	—
71/72	0	—	—	1	17	—	0	0	—
72/73	0	—	—	7	7	—	0	2	—
73/74	0	—	—	9	4	—	0	2	—
74/75	0	—	—	8	1	4	0	0	—
75/76	0	—	—	3	14	4	0	0	—
76/77	0	11	—	6	15	2	0	0	—
77/78	0	25	—	3	21	2	0	0	—
78/79	0	12	20	6	44	3	0	0	—
79/80	0	16	23	6	19	5	0	0	—
80/81	0	15	21	9	18	11	0	0	—
81/82	0	6	69	17	21	5	3	0	—
82/83	0	5	39	22	43	1	14	0	—
83/84	0	—	—	21	—	—	—	—	1

— A dash means data not available

TABLE 7
Average Fines Imposed — Weights and Measures Convictions

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
	\$	\$	\$	\$	\$	\$	\$	\$	\$
1969/70	—	—	—	—	20	—	35	—	—
70/71	—	—	—	56	24	—	—	—	—
71/72	—	—	—	40	29	—	—	—	—
72/73	—	—	—	61	21	—	—	15	—
73/74	—	—	—	98	95	—	—	15	—
74/75	—	—	—	62	20	63	—	—	—
75/76	—	—	—	95	127	44	—	—	—
76/77	—	181	—	103	225	35	—	—	—
77/78	—	381	—	37	180	100	—	—	—

TABLE 7—*continued*

78/79	—	306	147	73	214	17	—	—	—
79/80	—	401	182	72	173	100	—	—	—
80/81	—	353	263	231	226	59	—	—	—
81/82	—	890	211	101	207	86	46	—	—
82/83	—	1522	186	128	285	40	21	—	—
83/84	—	—	—	200	—	—	—	—	0

— A dash means data not available

Tables 6 and 7 show that Western Australia has a very thin record of weights and measures enforcement. There has only been one successful weights and measures prosecution in the Northern Territory, and that was conditionally discharged without the imposition of a fine. In the Australian Capital Territory, there has not been a weights and measures prosecution since 1973-74 because of the incredible situation that the maximum fines provided for in the weights and measures legislation (\$20 and \$40) are below the minimum expected sentence before the Deputy Crown Solicitor's office was willing to proceed under their prosecution guidelines.

Offences Related to Motor Vehicle Dealers

An important subset of the consumer affairs convictions of Table 2 relate to motor vehicle dealers. Major offence types include altering the odometer (kilometer) reading and "jacking". Table 8 shows that a large part of the comparatively high conviction rate in Western Australia is due to substantial numbers of convictions of backyard motor vehicle dealers for operating without a licence. This is not a major proportion of the prosecutions in any other jurisdiction. In Queensland, licensing of motor vehicle dealers is a responsibility of the Department of Justice; they have effected 19 successful prosecutions since 1975. Tasmania has no licensing requirements for motor vehicle dealers.

TABLE 8
Convictions of Unlicensed Motor Vehicle Dealers

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74	—	—	—	0	4	—	0	0	—
74/75	0	—	0	0	7	—	0	0	—
75/76	0	—	0	0	21	—	0	0	—
76/77	0	21	0	0	6	2	0	0	—
77/78	0	13	0	0	6	8	0	0	—
78/79	0	19	0	0	—	20	0	0	—
79/80	0	16	6	0	11	31	0	2	0
80/81	0	2	4	0	3	15	0	0	0
81/82	0	7	4	0	3	15	0	1	2
82/83	0	9	8	0	4	39	0	0	1

— A dash means data not available

Other prosecutions relating to motor vehicle dealers are also prominent in New South Wales, South Australia and Western Australia (Table 9). Even in these States, prosecutions principally relate to "technical" offences such as failure to

display the first schedule notice. It is notable that while 17% of complaints to consumer affairs agencies nationally concern new or used motor vehicles (National Consumer Complaints Statistics System), Queensland and the Australian Capital Territory ignore this problem in their prosecution programmes and Tasmania has no legislation upon which it can act against this problem.

TABLE 9
Motor Vehicle Dealers — Convictions for Offences
Other than Operating Without a Licence

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74	—	—	—	—	9	—	0	0	—
74/75	0	—	0	0	9	—	0	0	—
75/76	0	—	0	0	16	—	0	0	—
76/77	1	64	0	0	15	3	0	0	—
77/78	0	48	0	0	24	30	0	0	—
78/79	0	20	4	0	—	35	0	0	—
79/80	0	15	14	0	16	40	0	1	0
80/81	0	22	10	0	0	7	0	0	0
81/82	0	17	17	0	56	26	0	0	0
82/83	0	28	13	0	4	19	0	0	1
83/84	—	—	—	—	—	—	—	—	1

— A dash means data not available

Tenancy Offences

Residential tenancies convictions relate to withholding payments of security bonds, demands for payment of rent in advance and other offences involving rent of housing. In the last three years, 77% of South Australian consumer affairs convictions have related to residential tenancies matters. There were no fewer than 85 such convictions in 1982-83 (see Table 10).

TABLE 10
Residential Tenancies Convictions

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74	—	—	—	0	0	—	0	2	—
74/75	0	—	0	0	0	—	0	1	—
75/76	0	—	0	0	0	—	0	2	—
76/77	0	0	0	0	0	0	0	1	—
77/78	0	1	0	0	0	0	0	0	—
78/79	0	3	0	0	0	0	0	0	—
79/80	0	1*	0	0	0	0	0	0	0
80/81	0	1*	0	0	17	0	0	0	0
81/82	0	2*	0	0	8	0	0	1	0
82/83	0	4*	0	0	85	0	0	1	0

— A dash means data not available

* Excludes convictions by the NSW Rental Bond Board

Enforcement of the Residential Tenancies Act totally explains South Australia's emergence in 1982-83 as the most prosecutorial consumer affairs State. The increase from eight prosecutions in 1981-82 to 85 in South Australia in 1982-83 is indicative of a policy directive plus a consumer awareness campaign. South Australia's Residential Tenancies Act came into effect in December 1978. During the first three years, inspectors primarily issued warnings concerning non-compliance with the Act. A policy directive in 1982-83 ordered vigorous enforcement of the Act. In addition to this, the department had conducted a consumer awareness campaign aimed at informing the public of the rights of tenants. This was principally done by speakers at forums such as the Real Estate Institute of Australia, Senior Citizens Clubs, and Schools, and interviews on local radio.

The South Australian legislation provides for a Residential Tenancies Tribunal for the hearing of disputes between landlords and tenants. The Tribunal has the power to make orders of termination, restraining orders or orders for work to be done and monetary awards up to a maximum of \$2500. Disputes involving larger amounts must be heard in the Local Courts of Summary Jurisdiction.

New South Wales is the second most active State in residential tenancies prosecutions. The greater activity in New South Wales compared with the other States apart from South Australia is understated by Table 10. This is because it excludes the not inconsiderable prosecutorial activity of the NSW Rental Bond Board discussed earlier.

In the Northern Territory, residential tenancy matters are the responsibility of Treasury. To date any prosecution proceedings have been withdrawn on the advice of the Attorney-General before reaching the court. In Queensland, the Residential Tenancies Act is enforced by private actions only. No Queensland department has responsibility for the Act.

Western Australia has no tenancy prosecutions because it has no tenancy law, but a working party has been established to look at the need for legislation. In Tasmania, the Consumer Affairs Council has recommended to government on several occasions since 1978 that legislation governing residential tenancies should be drafted, but so far the government has not been moved to action. Victoria has a Residential Tenancies Tribunal. The Tribunal resolves disputes but does not have the power to impose fines. Against the trend of previous years, in 1983-84 three successful prosecutions have been concluded in Victoria under the Act. A new Residential Tenancies Bill is currently being drafted.

Failure to Provide Information

Consumer affairs officers have powers under various State and Commonwealth Acts to require traders to supply certain types of information concerning complaints by consumers to the officers. Table 11 is interesting in that it shows that federally, in New South Wales, Victoria, South Australia, the Australian Capital Territory and the Northern Territory governments rarely have to resort to prosecution for failure to provide information. In Queensland and Tasmania, however, such prosecutions are common.

TABLE 11
Convictions for Failure to Provide Information to Consumer Affairs Officers

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74	—	—	—	1	0	—	6	0	—
74/75	0	—	0	1	0	—	21	0	—
75/76	0	—	1	4	0	—	32	0	—
76/77	0	3	0	16	0	4	16	0	—
77/78	0	0	5	14	3	0	7	0	—
78/79	0	0	0	28	0	4	20	0	—
79/80	0	0	0	22	4	4	9	0	—
80/81	0	2	0	19	0	2	20	0	—
81/82	0	0	0	25	0	5	11	0	3
82/83	0	0	1	28	0	7	21	0	0
83/84	—	—	—	—	—	—	—	—	1

— A dash means data not available

What is more important about the figures in Table 11, however, is that in Queensland and Tasmania failure to provide information is almost the *only* reason for consumer affairs offenders being prosecuted. In the last 10 years, 163 of the 170 consumer affairs convictions in Tasmania have been for failure to provide information. Thus, we must now overturn our earlier finding that Tasmania is one of the States which uses prosecution frequently.

In Tasmania, prosecution is almost never used to deter substantive consumer affairs offences. It is only used for enforcement of the "technical" offence of failure to provide information. Tasmanian consumer affairs offenders apparently can rest easy in the knowledge that, so long as they do not behave obstreperously to departmental officers, they need have no fear of the law.

The same situation exists in Queensland. Of 145 convictions during the last six years, 136 were for failing to provide information. Four of the seven prosecutions that have been heard under the Northern Territory Consumer Protection Act have been for failure to provide information. In these jurisdictions, prosecutions for substantive consumer affairs offences are virtually a non-event.

Price Control Convictions

State governments in New South Wales, Victoria, South Australia and Western Australia have power to prohibit certain types of price increases. In the Northern Territory, the Prices Regulation Act only covers bread and milk. Bread and milk vendors, however, need not be alarmed as the Department of Treasury which administers the Act has a policy of issuing no more than warnings.

Prosecutions arise from failures to provide information to the price control authorities or for failure to abide by an order prohibiting a price increase. Convictions of this type have been a significant area of consumer affairs enforcement only in New South Wales. Since 1977-78, there have been 26 price control convictions in New South Wales. The only other jurisdiction with any price control convictions is South Australia with four.

False Advertising and Trade Descriptions and Misrepresentation

This area covers the publication of statements that are untrue or misleading to consumers. Examples include a shop advertising a product at a sale price when there are none of the items in current stock or an accountant advertising that he/she is a "chartered accountant" when he/she is not a member of the Institute of Chartered Accountants.

It can be seen from Table 12 that federal enforcement under the Trade Practices Act is concentrated on false advertising, misleading trade descriptions and misrepresentation. Table 11 also shows that this was a very major area of enforcement in Victoria and South Australia in the mid-70s. In recent years, prosecutions have been neglected by State governments in this area — an ironical result as these were years when the Trade Practices Commission was forbidden by the Fraser government from becoming involved in advertising misrepresentations which were contained within the borders of one State.

TABLE 12
Convictions for False Advertisements
and Trade Descriptions and Misrepresentation
(Including Motor Vehicle Dealers)

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74	—	—	—	1	5	—	0	0	—
74/75	3	—	30	7	10	—	0	0	—
75/76	1	—	65	2	17	—	0	0	—
76/77	14	3	10	3	8	0	0	0	—
77/78	7	5	22	1	5	0	0	0	—
78/79	3	9	11	2	0	3	2	0	—
79/80	5	12	10	1	2	8	0	0	0
80/81	10	7	11	1	0	6	1	0	0
81/82	9	5	4	2	2	7	0	0	0
82/83	4	5	0	1	4	8	0	1	0

— A dash means data not available

Hire Purchase, Door to Door and Pyramid Selling

The con man who goes door to door selling doubtful products on extortionate hire purchase terms, the promoter of an illegal pyramid selling scheme which requires each participant to snare a number of friends into a get-rich-quick scheme which will leave someone at the end of the chain very poor, the enforcer of illegal interest rates — these are the targets of convictions under this category. The category relates to misconduct by sales representatives and failure to provide full details of a contract or agreement.

New South Wales, and to a lesser extent South Australia and Western Australia, are the only jurisdictions with any sort of record of pursuing these particularly nasty and parasitic kinds of offenders through the courts. There has also been some legal action in Tasmania. However, the Hire Purchase Act in that State is administered by the Law Department as opposed to the Consumer Affairs Council and it is not possible from the records to determine which actions were either successful or unsuccessful prosecutions or civil actions. Table 13 tells a shocking story of neglect by the criminal justice system of this all-too-common kind of con man.

TABLE 13
Convictions Relating to Hire Purchase, Door to Door Sales and Pyramid Selling

<i>Year</i>	<i>Fed</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>ACT</i>	<i>NT</i>
1973/74	—	—	—	0	7	—	0	0	—
74/75	0	—	0	0	5	—	0	0	—
75/76	0	—	0	1	6	—	0	0	—
76/77	0	3	0	1	4	0	0	0	—
77/78	0	10	0	1	5	0	0	0	—
78/79	0	6	3	0	0	0	0	0	—
79/80	0	6	4	0	0	1	0	0	0
80/81	0	7	0	0	0	5	0	0	0
81/82	0	5	0	0	1	10	0	0	0
82/83	0	6	0	0	2	3	0	0	0

— A dash means data not available

Product Safety Offences

No table is needed to summarize product safety prosecutions. Western Australia is the only jurisdiction with a significant record of prosecuting companies which supply goods in contravention of banning orders or mandatory safety standards. There have been 17 such cases in Western Australia, 11 of them in 1982-83. Tasmania had one conviction in 1978-79 and two in 1982-83. New South Wales had one product safety conviction in 1977-78 for "supply of goods not in accordance with Consumer Protection (Safer Goods) Regulations". None of the other States and Territories have had any product safety convictions.

There have been only three federal cases under the Trade Practices Act in this area. In 1981, New Concept Import Services Pty Ltd was fined \$2000 under the Trade Practices Act for selling banned goods. The goods were balloon making kits which were dangerous to children in that they contained hazardous chemicals likely to be inhaled or swallowed during balloon blowing. In 1984, two companies were convicted for selling flammable nightwear.

The limited product safety prosecution experience seems to confirm the American contention that if you do not have a national Consumer Product Safety Commission, you do not get consumer product safety enforcement. One study has estimated that the US Consumer Product Safety Commission has saved five million disabling injuries or deaths since 1973 (Lower *et al*, 1983). State governments cannot support testing capabilities, information systems on accidents and specialized personnel on a scale to do the job.

Summary

1. For every consumer affairs conviction in Australia, there are more than 200 written complaints which do not lead to a conviction and conservatively over 2000 unwritten complaints. In 1982-83 South Australia was the leading State or Territory jurisdiction in both per capita and absolute numbers of consumer affairs convictions. The reason for this is a very high number of residential tenancies prosecutions.

2. New South Wales showed a consistent and steady drop in consumer affairs convictions from 1976-77 to 1982-83. New South Wales is the only jurisdiction with a dramatic downward trend.

3. South Australia and Victoria both showed substantial increases in convictions until 1975-76 followed by much lower rates for the late 1970s.

4. In Queensland, Tasmania, the Northern Territory and the Australian Capital Territory, prosecutions for substantive consumer affairs offences are virtually non-existent. However, in Queensland and Tasmania there are significant numbers of prosecutions for the "technical" offence of failure to provide information to consumer affairs officers.

5. South Australia, Western Australia and Tasmania are the jurisdictions with the highest conviction rates. The Tasmanian rate is almost totally explained by relatively large numbers of prosecutions for failure to provide information, the Western Australian rate is partly explained by many prosecutions of unlicensed motor dealers, and the South Australian rate by a very high incidence of residential tenancies enforcement.

6. The cash fine, generally directed against a company rather than an individual, is the almost universal consumer affairs sentence. Imprisonment is never used as a sanction.

7. Fines imposed federally under the Trade Practices Act are by far the heaviest. Trade Practices fines in aggregate exceed by a factor of four all consumer affairs fines by States and Territories combined. New South Wales is the jurisdiction with the second highest average fines followed by Victoria. Fines in all jurisdictions are paltry in comparison to the assets of the companies being fined.

8. The Australian Capital Territory and Tasmania are notable for their neglect of weights and measures enforcement.

9. Even though 17% of complaints to consumer affairs agencies in Australia concern the major expenditure item of motor vehicles, the Northern Territory, Tasmania and the Australian Capital Territory never prosecute in this area. New South Wales and Western Australia have the most aggressive prosecution programmes for offences related to motor vehicle dealers.

10. Price control convictions are a significant area of enforcement in New South Wales only.

11. Federal enforcement under the Trade Practices Act leads in the area of false advertising, trade descriptions and misrepresentation. This was also a major area of enforcement in Victoria and South Australia in the mid-70s. In recent years, the States have neglected prosecution in this area.

12. New South Wales, and to a lesser extent South Australia and Western Australia, are the only jurisdictions with any sort of record of prosecuting hire purchase, door-to-door sales and pyramid selling offences.

13. Western Australia is the only jurisdiction with a significant prosecution programme for product safety offences.

REFERENCES

- Bernstein, M H (1955), *Regulating Business by Independent Commission*. N J: Princeton University Press.
- Hopkins, A (1978), *The Impact of Prosecutions under the Trade Practices Act*. Canberra: Australian Institute of Criminology.
- Lower, A K, A Averyt and D Greenberg (1983), *On the Safe Track: Deaths and Injuries Before and After the Consumer Product Safety Commission*. Washington DC: Consumer Federation of America.