

GENERAL PURPOSE STANDING COMMITTEE NO. 3

Wednesday, 15 September 2004

Examination of proposed expenditure for the portfolio area

FAIR TRADING

The Committee met at 5.30 p.m.

MEMBERS

The Hon. A. R. Fazio (Chair)

The Hon. C. J. S. Lynn
The Hon. E. M. Obeid
The Hon. G. S. Pearce

The Hon. J. S. Tingle
The Hon. I. W. West

PRESENT

The Hon. Reba Meagher, *Minister for Fair Trading, and Minister Assisting the Minister for Commerce*

Ministry for Fair Trading

Mr D. O'Connor, *Commissioner of Fair Trading*

Mr M. Silk, *General Manager Commerce Shared Services*

Mr B. Given, *Assistant Commissioner, Operations*

Mr R. Stowe, *Assistant Commissioner, Policy and Strategy*

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

CHAIR: I welcome you to this public hearing of General Purpose Standing Committee No. 3. First, I wish to thank the Minister and departmental officers for attending today. At this meeting the Committee will examine the proposed expenditure for the Fair Trading portfolio. Before questions commence, some procedural matters need to be dealt with. In accordance with the Legislative Council's guidelines for the broadcast of proceedings, which are available from the attendants and the clerks, only members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, you must take responsibility for what you publish or what interpretation is placed on anything that is said before the Committee. There is no provision for Committee members and substitute members to refer directly to their staff while at the table. Members and their staff are advised that any messages should be delivered through the attendant on duty or the Committee clerks. For the benefit of members and Hansard, departmental officials should identify themselves by name, position and department or agency before answering each question.

The Committee has received a letter from the Minister outlining the division of responsibilities between her position as Minister Assisting the Minister for Commerce and the responsibilities of the Minister for Commerce. The Minister for Commerce has responsibility for matters relating to home warranty insurance. That includes matters arising from the HIH Insurance rescue scheme, known as the Building Insurers Guarantee Corporation or BIG Corp, and the closed Building Services Corporation Insurance Scheme, administered by the Fair Trading Administration Corporation. I declare the proposed expenditure open for examination. Minister, do you wish to make a brief opening statement?

Ms REBA MEAGHER: No, thank you.

The Hon. CHARLIE LYNN: I refer to the penalty notices provided for in section 216 of the Property, Stock and Business Agents Act 2002. How many section 216 penalty notices were issued in the year ended 30 June 2004? What was the total of all penalty notices imposed during the year ended 30 June 2004? What is the budgeted projection for penalties imposed in the year ending 30 June 2005?

Ms REBA MEAGHER: The new Property, Stock and Business Agents Act commenced on 1 September 2003. The legislation represented the largest overhaul of the property service industry in more than 60 years. The new legislation has increased transparency in the auction process, raised the level of competence and ethical standards of agents, improved consumers' awareness of their rights when buying, selling or leasing property and introduced new disciplinary provisions. The implementation of the legislation has gone smoothly and is a model for future implementation of legislation of this kind. The Government was careful in setting the commencement date to ensure that a number of compliance initiatives were enacted to aid that transition.

In the months prior to the commencement of the legislation the Office of Fair Trading carried out a comprehensive program to ensure that the Act and its regulations were known and understood by agents. The office received 2,000 telephone calls from consumers and agents during the commencement phase. A series of seminars about the new legislation were conducted throughout the State prior to 1 September 2003. The seminars were very well attended. These, together with mail-outs of background material to licensees, ensured that agents were well prepared for the commencement date. Real estate investigators attended about 400 agents' offices to explain the new legislation. The purpose of these inspections was to ensure that agents were aware of the new legislation and to provide advice and assistance to them during the transition phase.

The major reform that is now most obvious to consumers is the change in the conduct of auctions. Consumers have overwhelmingly accepted these new provisions. Other new provisions were also introduced dealing with agents estimating selling prices, and changes were made to the manner in which disciplinary action is taken. I am happy to address those matters in more detail. For the period 2003-04, the total fine revenue was \$478,830.

The Hon. CHARLIE LYNN: How many section 216 penalty notices were issued?

Ms REBA MEAGHER: Officers imposed a total of 1,054 penalty notices raising \$478,830.

The Hon. CHARLIE LYNN: Do you have a budget estimate for penalties imposed in the year ending 30 June 2005?

Ms REBA MEAGHER: No.

The Hon. CHARLIE LYNN: Do you not have a budgeted figure?

Mr GIVEN: There is no budgeted figure. The number of penalty notices will depend on what our inspectors and investigators find in the field.

Ms REBA MEAGHER: One can only hope that the number will decline as compliance increases.

The Hon. GREG PEARCE: What is the range of penalties under section 216?

Mr GIVEN: I do not have those figures in my head. We could provide them.

Ms REBA MEAGHER: I will take that question on notice.

The Hon. GREG PEARCE: Can someone check it while we are here tonight?

Ms REBA MEAGHER: I will take it on notice.

The Hon. GREG PEARCE: You should have someone here to check it, but if you need to take it on notice, that is fine. Does the money collected in fines go to consolidated revenue?

Mr GIVEN: Yes.

The Hon. CHARLIE LYNN: I refer to the Property Services Compensation Fund and section 165. What were the credit balances of moneys held in the compensation fund for the 12-month periods ended 30 June 2002, 30 June 2003 and 30 June 2004? During each 12-month period, what was the total amount claimed in compensation? What was the total compensation paid to claimants by the fund? What was the total amount recovered by the fund in each year from licensees who failed to account and caused claims to be made for compensation?

Ms REBA MEAGHER: I will have to take that question on notice.

The Hon. GREG PEARCE: Who in the department issues the section 216 notices?

Mr GIVEN: Can I clarify that we are talking about the Property, Stock and Business Agents Act?

The Hon. GREG PEARCE: Yes, the legislation we commenced with.

Mr GIVEN: The figures for penalty notices that I provided to the Minister earlier were the totals for all the Acts that provide for penalty notices to be issued. In relation to the Property, Stock and Business Agents Act, 52 notices were issued in 2003-04 raising a total of \$28,270. In some circumstances penalty notices can be issued on the spot by an inspector who discovers an offence. However, they are often issued on a deferred basis once a report has gone back to the office and a supervisor has examined the circumstances and a decision has been made to issue a notice.

The Hon. GREG PEARCE: How many inspectors are there? Are they employed specifically to administer the Property, Stock and Business Agents Act or do they deal with other legislation?

Mr GIVEN: We have the real estate investigations branch, which deals with legislation other than the Property, Stock and Business Agents Act. Inspectors deal with the real estate and property area, including retirement villages and the like. The branch has 35 officers, 28 of whom are investigators and inspectors who operate in the field.

The Hon. GREG PEARCE: Those 28 officers carried out 400 inspections. Who do they answer to in the organisation?

Mr GIVEN: There is a reporting line through a branch manager, to a divisional director, through me and, of course, to the Commissioner.

The Hon. CHARLIE LYNN: Can you explain the process of an examination from the time a real estate agent is investigated through to a worse-case situation in which the department deems that the agent is not a fit and proper person to practise in the real estate industry?

Mr GIVEN: A report would go to the branch manager, and a recommendation would go up the line and ultimately to whoever has a delegation from the commissioner to deal with that level of matter. However, if we are talking about the issue of a show cause notice to commence a disciplinary action, usually that would go to the divisional director.

The Hon. CHARLIE LYNN: Who signs the document to put an agent out of business or the industry?

Mr GIVEN: If we are talking about a disciplinary proceeding initiated by the issue of a show cause notice, it is usually the issuer of the notice who ultimately determines the matter. Most commonly that is the divisional director.

The Hon. CHARLIE LYNN: I refer to a procedure conducted on 8 January 2002, with which you may or may not be familiar. I am concerned about the process, not the individual. A real estate agent was called into the Department of Fair Trading to show cause. I think the interview with the real estate agent concerned and his solicitor went for three to four hours. The next day the director-general signed a document stating that the agent was not a fit and proper person to practise in the industry. As a result, his business has closed down and he has not practised in the industry since. That document was signed the very next day. What is the process for getting three to four hours of evidence transcribed, tested and then reaching a decision? It appears to me that a 26-hour time frame is a little unrealistic.

Mr GIVEN: I need to clarify a couple of points. You have mentioned a case dealt with in January 2002, which preceded the amendments to the legislation. I have been talking about current practice and the current Act. Those events must have occurred under the previous legislation. That process involved lodging a complaint with the Licensing Court. Therefore, a decision would be made within the Office of Fair Trading that a complaint should be lodged with the Licensing Court.

The Hon. CHARLIE LYNN: Would you find that to be an unusual case, in which evidence could be transcribed, tested and analysed, and a decision made within a 24-hour period?

Mr GIVEN: I think probably you are talking about a couple of processes. There is another process, pursuant to the Fair Trading Act, whereby the Commissioner can, having regard to public interest factors, suspend a licence while other investigations and inquiries are being conducted. So it would not be unusual for action to be taken, on an urgent basis, where a suspension of a licence has occurred, and for there to be ongoing investigation work leading up to the lodging of a complaint in the Licensing Court.

The Hon. CHARLIE LYNN: Perhaps I could direct my question to the director-general, because I understand he signed the document. Director-general, do you recall that particular case?

Mr O'CONNOR: A number of suspensions come to me over the time—

The Hon. CHARLIE LYNN: This one relates to Mr Leach.

Mr O'CONNOR: Yes, I do recall the Mr Leach one. After the interview my officers made a recommendation to me—

The Hon. CHARLIE LYNN: After the three- to four-hour interview?

Mr O'CONNOR: That is correct. Actually, it was about two hours I understand. The recommendation was made to me that the licence should be suspended for a period of 60 days, and based on the information provided by my officers I signed that suspension.

The Hon. CHARLIE LYNN: Can you tell me the process? In that two-hour period I imagine you had a recording taken of the interview?

Mr O'CONNOR: I was not present during the interview. But I do not think it is normal that we have transcription of those sorts of interviews.

Mr GIVEN: They are usually taped.

The Hon. CHARLIE LYNN: If they are taped, I imagine that before you close down the business and put a person out of business, you would ask them fairly detailed questions about their situation?

Mr O'CONNOR: Any of that discussion would have taken place during the time of the interview with the delegated officers.

The Hon. CHARLIE LYNN: Would it be fair to assume that you had already prepared the paperwork before that interview took place?

Mr O'CONNOR: I think that is an outrageous claim, Madam Chair—even to suggest that I would have an idea in my mind prior to receiving the papers. Prior to receiving the papers, I had never heard of Mr Leach, or anybody else relating to that company. Until such time as I receive these papers, I certainly would not sign them.

CHAIR: The purpose of this hearing is to look into budget estimates matters. Going into this level of detail about a particular case probably stretches, to the point of being tenuous, any link between your question and the budget estimates process. I suggest that you continue with your questions but perhaps phrase them more generally. If you are trying to find out how processes within agencies work, perhaps you should focus on generalities rather than on individual cases.

The Hon. CHARLIE LYNN: Thank you, Madam Chair. I am leading on this because this was a fairly costly legal case, I understand. The solicitor representing Mr Leach was Mr Peter Richardson, who I understand was a former prosecutor with Department of Fair Trading. Are you aware of Mr Richardson? Has anyone heard of him?

Mr GIVEN: I am aware of him. He was not a prosecutor with the Department of Fair Trading; he was the solicitor who was used by the predecessor to Fair Trading in real estate matters.

The Hon. CHARLIE LYNN: He was fairly knowledgeable in the industry.

Mr GIVEN: Yes.

The Hon. CHARLIE LYNN: And in the operations of the Department of Fair Trading. He wrote to the investigations branch on 20 November 2001—

The Hon. IAN WEST: Point of order: Once again the Hon. Charlie Lynn is referring to an individual in a particular case and his or her activities. I believe it is out of order to ask the witnesses to entertain answering those questions. If I were a witness, I would not answer them.

The Hon. CHARLIE LYNN: To the point of order: I would have thought that the Hon. Ian West would have been the first person to stand up for a worker who had been a victim of the system.

The Hon. IAN WEST: Yes, I would, in the appropriate tribunal.

The Hon. CHARLIE LYNN: I am talking about process here, Madam Chair.

CHAIR: I will seek advice from the Clerks.

I have now had a look at the *Guide to Budget Estimates*, which deals with the establishment of these processes. The guide clearly states that the budget estimates and related papers for the financial year 2004-05, presenting the amounts to be appropriated into the Consolidated Fund, be referred to this Committee for inquiry and report. You need to link your questions to the budget estimates process. I have also referred to the ruling of the Clerk on 20 June 2001, relating to the questions that may be relevant to other committee inquiries. The ruling, which is set out at page 40, states that it is an accepted principle that questions by Committees should be relevant to the matter that has been referred to them for inquiry and report.

I suggest that the questions refer not to particular instances but, rather, to the way in which these matters are handled within the department as a normal matter of routine. I am sure you can draw your own conclusions from that. Given that it has taken some time to sort out this issue, I will add two minutes to the Opposition's time for questioning. I half uphold the point of order, and the Hon. Charlie Lynn may proceed with his questions.

Ms REBA MEAGHER: If it assists the Committee, I have some information in relation to that case that may be of interest to the honourable member. It should be noted that it was always open to Mr Leach to challenge the suspension by applying to the Administrative Decisions Tribunal, and seek to have the suspension lifted pending the outcome of the Licensing Court proceedings. Although he did make an application to the Administrative Decisions Tribunal, this was withdrawn and no further application was made.

The Licensing Court magistrate found that the majority of the grounds alleged against Mr Leach had been established. He found that Mr Leach had been careless as to his legal position, and as to his supervision of his licence. However, the magistrate ruled that this was not sufficient to establish that Mr Leach was not a fit and proper person to hold a licence. On 21 April 2004 the Licensing Court magistrate who had heard the matter found that Mr Leach had grounds to make an application for the payment of his costs in the matter. The magistrate did not accept three of the four criteria that Mr Leach had argued in support of his application for costs. He found that there was no reason to believe that the investigation had not been conducted in a reasonable and proper manner. He also found that the proceedings were initiated with reasonable cause and in good faith, and were conducted in a proper manner. The magistrate also found there were no exceptional circumstances warranting an award of costs to Mr Leach.

However, the magistrate did find that Fair Trading had failed to fully investigate the question of whether Mr Leach was liable in respect of the trust account deficiencies that arose in respect of the other company which had also operated on the same premises. He said that the case fell short in its investigation of the trust account records by not establishing whether or not Mr Leach was directly responsible for this conduct.

The proper supervision of property agent businesses was identified as an issue of concern when the 1941 Act was reviewed. The new Property Stock and Business Agents Act 2002, which commenced on 1 September 2003, now includes a specific duty for a licensee to properly supervise their business. This duty includes properly supervising employees, establishing procedures to ensure that employees comply with the law and monitoring the business. For the first time, the Act also allows the Commissioner for Fair Trading to issue guidelines as to what constitutes proper supervision. The commissioner's guidelines on supervision, which have been the subject of industry consultation and will commence shortly, specifically cover the establishment of banking procedures for trust money and a review of trust account cash flows. A breach of the supervision requirements now carries a maximum penalty of \$22,000 for a corporation and \$11,000 for an individual.

I am further advised that the court will hand down a final determination of the amount of costs to be awarded to Mr Leach on 1 November 2004. Given that this matter is still before the court, it would probably be inappropriate to comment further at this stage.

The Hon. CHARLIE LYNN: Having sat through the six days of that court case, the magistrate was saying that the investigation was flawed, and Mr Leach was deemed to be innocent.

Ms REBA MEAGHER: I remind you that the magistrate said that the proceedings were initiated with reasonable cause and in good faith, and were conducted in a proper manner.

The Hon. GREG PEARCE: Earlier I think you said it fell short of a proper investigation. What action did you take in relation to that finding that the investigation fell short of a proper investigation?

Ms REBA MEAGHER: That is still a matter to be determined by the court, as well as whether costs will be awarded to Mr Leach. However, I remind the Committee that the Property Stock and Business Agents Act was comprehensively overhauled, and matters in relation to the proper supervision of business, particularly in relation to trust accounts, was dealt with in that legislation.

CHAIR: The Committee will now proceed to crossbench questions.

The Hon. JOHN TINGLE: Minister, the budget estimates tell us that expenses for the Office of Fair Trading are expected to be almost \$10 million down on last year's expenses due, we are told, to the redundancy program. Has the redundancy program in any way reduced the effectiveness of the office?

Ms REBA MEAGHER: I will ask Michael Silk to answer that question.

Mr SILK: The \$3 million reduction in employee-related expenses is a result of the redundancy program. The majority of staff were displaced or excess. There has been no impact on the services of Fair Trading.

The Hon. JOHN TINGLE: Minister, what are the other operating expenses that are mentioned, the funding of which has offset some of the savings?

Ms REBA MEAGHER: I will ask Michael Silk to answer that question.

Mr SILK: In relation to the savings achieved through the redundancy program, there has been no direct impact on service delivery. The operating expenses for the Office of Fair Trading were reduced by \$10 million. That is a net result of the reduction in employee-related expenses of \$3 million and a reduction in subsequent reorganisation of approximately \$8 million. It does not relate to adjustments to other financial expenditure items.

The Hon. JOHN TINGLE: The budget papers provide that these savings are partly offset by an increase in other operating expenses. That is what you are referring to?

Mr SILK: Yes.

The Hon. JOHN TINGLE: Minister, I know that insurance matters have proceeded from your ministry to the Department of Commerce. However, there is one reference in the budget estimates which I believe goes back to the period when insurance matters were under your control. If it is possible for you to answer this, I would be grateful. Can you explain why future liabilities of the statutory insurance scheme for residential building works are expected to decline? I suspect I know the answer, but I would like to have it clarified. I understand that the scheme has closed.

Ms REBA MEAGHER: That is right.

Mr O'CONNOR: That is correct, the scheme finished. It is now seven years, and it had a seven-year tail. So we are really only now paying out the last of the tail that was approved prior to its closure, which was in April. There are a number of claims that we are still looking at. But you are absolutely right. That will decline to zero. We think that by about the tenth year there will be no claims at all, or any payments to be made.

The Hon. JOHN TINGLE: Minister, this question may be on a slight tangent, but I believe it is important with regard to Fair Trading and consumer protection. Has any funding been allocated to a campaign to warn consumers of the pitfalls in buying from overseas traders over the Internet? I am happy to explain the reason for that question if it makes it easier for you to answer.

Ms REBA MEAGHER: As you can see, we do a lot in terms of consumer education and the warnings to consumers when purchasing over the Internet. While the Internet can bring the world to your fingertips, unfortunately it can also allow unscrupulous operators to have direct access to your wallet. The explosion in the popularity of using the Internet to purchase goods and services has also seen a corresponding explosion in sites that are not totally above board. The Internet provides untold opportunities for consumers, but it also allows dubious operators to establish themselves with the knowledge that the existence of international boundaries make law enforcement difficult.

Each year the Office of Fair Trading works with the Australian Competition and Consumer Commission and consumer agencies from more than 30 countries, members of the international consumer protection and enforcement network, scouring the net for suspect scam offers. In fact, this is an issue that I raised in the Parliament not so long ago. In the past, the sweep days have been successful in raising public awareness of Internet scams, with events focusing on a range of activities, including miracle cures and shonky travel deals. By working together, international consumer protection agencies can have an immense impact on these suspect operators. The sweep allows regulators to identify and crack down on shonky sites and expose them worldwide.

The greatest protection for consumers when buying goods or services over the Internet is awareness and vigilance. I have issued a number of warnings for consumers about transacting over the Internet: in November and December last year and January, February, March, April and August of this year. Those warnings relate to the purchase of Olympic Games tickets, highlighting the international sweep of Internet scams, email bank scams, bogus Internet travel packages, shopping pitfalls, particularly around Christmas time and when there are major sporting events. For example, there are always sites that are of concern to Fair Trading that offer bogus tickets to excited and perhaps less than vigilant fans.

So yes, it is something that we do work hard to promote. There is also a number of Office of Fair Trading publications that relate to raising awareness amongst shoppers and consumers that are available through the Fair Trading centres around New South Wales.

The Hon. JOHN TINGLE: That is very reassuring, but I probably should have explained the question a little more because it was not quite what I was talking about. I was not referring to scam sites. I just wonder if you are aware that an increasing number of overseas vendors—legitimate vendors, to my experience, in at least the United States, the United Kingdom and Germany—who are offering goods for sale on the Internet but have started to refuse to accept payment by way of Australian credit cards?

That is their prerogative if they wish to do that, but intending buyers of goods offered on these web sites—specifically, in this case, computer software—are not warned on the web site that their credit cards will not be accepted. This means that credit card numbers and other personal details—name and address, email address and so on—are entered onto the order form in good faith, but the prospective buyer is then told the purchase cannot proceed. So the prospective purchaser has entered a whole mass of detail, which they probably would not want to offer to somebody who is not likely to follow through with the sale.

If it is beyond the Minister's power to require a warning to be displayed on the initial web site, is there any funding available for a campaign to warn people to check overseas web sites as to whether Australian credit cards will be accepted before they reveal their personal details? It is a fairly new development, I have to say.

Ms REBA MEAGHER: At first instance I know that the Office of Fair Trading has been involved in work and consumer protection development around e-commerce. I am unaware of the problem in relation to Australian credit cards.

The Hon. JOHN TINGLE: They have not explained why they will not take them.

Ms REBA MEAGHER: I do understand that Bankcard is not always recognised overseas. I am unaware of there being problems with MasterCard, Visa card, AMEX or Diners Club type cards, which are well in circulation. I know we are also part of a national working group on e-commerce.

Rod Stowe has done some work on that. He might be able to provide further information for the Committee.

Mr STOWE: As the Minister said, this problem affects more than just New South Wales, so all the States and Territories have got together to set up an e-commerce working party which is looking at a whole lot of issues relating to e-commerce—whether we need new laws, whether we need better education—and it has got some proposals which will go before the ministerial council in the next few months. So we are certainly working towards trying to address those sorts of issues. We are unaware of the credit card issue, though; that is a new one.

The Hon. JOHN TINGLE: The credit cards I am aware of that have been involved have been actually MasterCard and Visa—both international cards. What I suppose I am asking is whether it would constitute misleading advertising if the purchaser was not warned in advance that credit cards would not be accepted and the purchaser was allowed to enter all his personal information onto the web site? Is there anything we can do to warn people to ask first?

Mr GIVEN: If I can just add a couple of thoughts on that. Obviously, if the web site is clearly targeting Australian consumers, I think there is some scope to argue that Australian law is applicable. Misleading and deceptive advertising or claims is an issue. And failure to disclose requirements of that sort could arguably be a breach of the Fair Trading Act, perhaps, or the Commonwealth Trade Practices Act. One issue is how do you do something about that. For our part, we are creating stronger links with our Commonwealth counterparts and our counterparts in other jurisdictions to try to address any problems.

So if there is a real problem of misleading advertising through web sites of that sort we can use our connections to try to do something about it. But, as both the Minister and Rod Stowe have said, that issue has not come to our attention, it has not been on the horizon.

The Hon. JOHN TINGLE: Would it be a help outside this Committee if I supplied you with a list of web sites that do this?

Ms REBA MEAGHER: That would be very helpful. To take up the second part of your question, yes, of course, Fair Trading is always keen to embrace campaign opportunities to raise awareness among consumers of the pitfalls of using the Internet. Of concern is the fine line in the examples you cite and the sites that are listed to deliberately solicit personal banking information from consumers to then go on and scam them for funds later on. So we would welcome any information that you could provide that would assist us in building a campaign to raise awareness among consumers to protect them when shopping online.

The Hon. JOHN TINGLE: I will write to you and tell you what it is about. On another matter—just a check question, if you like—is the Pillar administration, the superannuation administration, functioning efficiently? Have there been any complaints about the quality of its work or the information that it provides to clients that you are aware of?

Ms REBA MEAGHER: That would be outside the jurisdiction of my portfolio. I think that is probably a matter best directed to the Treasurer.

The Hon. JOHN TINGLE: Where do we stand now with laws affecting and perhaps protecting people who buy cars that turn out to be so-called lemons? Does the Supreme Court ruling in the Heartland Holden case strengthen the position of people who buy cars that are obviously faulty? This would be of interest, I imagine, to most motorists.

Ms REBA MEAGHER: Thank you, Mr Tingle, for that quite timely question, given today's editorial in the *Sydney Morning Herald*. Defective goods are a problem for any consumer. In the case of new cars, which are the second most expensive product people will buy, consumers are entitled to have a product that is fit for the purpose for which it is bought. New South Wales consumers already have a range of protections available to them when purchasing a car, including statutory warranties under the Motor Dealers Act, where a dealer must repair defects in new vehicles for the first 12 months or 20,000 kilometres after sale, whichever comes first; protections under the Sale of Goods

Act and the Trade Practices Act relating to merchantable quality and fit for purpose; and there is always assistance offered by the Office of Fair Trading in resolving a dispute.

Consumers can also seek redress through the Consumer Trader and Tenancy Tribunal for payment of money, rectification of the defect or the replacement of goods, including motor vehicles. The tribunal is an effective, low-cost forum for the settlement of a wide range of consumer problems. The majority of applications lodged at the tribunal cost \$29, and 74 per cent of all applications are listed for hearing within 28 days of lodgement. To ensure the tribunal has the appropriate powers to protect new car buyers, amendments were made to the Consumer Claims Act, which came into effect in 2002, that now allow the tribunal to hear new car disputes regardless of the value of the vehicle. Prior to this the tribunal's limit was to \$25, 000, which meant making an order for the replacement or full refund of a new motor vehicle was generally outside the tribunal's jurisdiction.

In September this year the ability of the tribunal to protect consumers in dispute about their new car was confirmed by the New South Wales Supreme Court. The court rejected an appeal brought by Holden and Heartland Holden challenging the jurisdiction of the tribunal to order a significant refund of \$66,000 to a consumer. While this case is a win for consumers, there are concerns that some dealers and manufacturers are not willing to do the right thing by consumers. I have therefore asked the Fair Trading Advisory Council to review the appropriateness of existing consumer protection laws, in consultation with consumers and industry groups, and advise me whether additional regulatory protections are required.

From time to time community discussion points to United States style "lemon laws" as a cure-all for consumers who face persistent problems following the purchase of a new car. I have therefore also asked the advisory council to consider the effectiveness of "lemon laws" operating in the United States, with particular reference to the cost to consumers who utilise the laws, and the role of the United States courts in overseeing their operations.

While the issue of "lemon laws" was previously considered in 1999 by the National Ministerial Council on Consumer Affairs, I think it is timely that it is looked at again. However, a preliminary assessment of "lemon laws" by the Office of Fair Trading highlights that they were introduced into the United States nearly 30 years ago in an environment where there were no statutory warranty provisions and only limited statutory protection for consumers. United States "lemon laws", although varying from State to State, require judicial interpretation in litigation and cannot always be utilised without some cost to the consumer. Therefore, further advice has been sought in order to assess the appropriateness of "lemon laws" in the New South Wales consumer protection framework.

More than 900,000 new cars are sold in Australia annually, and last year the New South Wales Office of Fair Trading referred only seven consumers to the tribunal for a hearing relating to refunds for new cars. So while the recent court decision demonstrates that there are mechanisms in place to protect consumers purchasing new cars, the Government remains open to examining approaches that may further improve protection for consumers in New South Wales.

The Hon. JOHN TINGLE: Just to establish the point, the difference in the Heartland Holden case, of course, is that it was a requirement to replace the vehicle, not merely to repair it under warranty. That is groundbreaking, is it not?

Ms REBA MEAGHER: A refund of \$66,000 was given to the consumer, which was in fact what the consumer had applied for. So yes, it was the first case where a refund had been given, and that relates directly to the amendments to the Consumer Claims Act, which came into effect in 2002.

The Hon. JOHN TINGLE: Finally, if we were to introduce legislation to make this sort of thing perhaps more common, would we then have to decide what constitutes a "lemon" We have not had a definition put on it.

Ms REBA MEAGHER: I feel quite confident that the decision by the Supreme Court will certainly embolden the tribunal when considering these matters and that consumers who find themselves in these particularly intransigent situations with manufacturers will get redress of the order they are entitled to. I have referred the issue of "lemon laws" for consideration. My initial concern is that whilst they are referred to in general discussion from time to time, they require judicial

interpretation; a "lemon" is a colloquial term that requires interpretation. But, also, the manufacturers have redress to a court after a determination of that nature anyway.

So it is not a consumer protection regime that is without some cost to the consumer. That is why I have referred it. I think my initial reading of the situation is that the mechanisms in New South Wales are rigorous and offer a good cover of protection for consumers. However, if something can be improved upon, I am happy to hear how.

The Hon. JOHN TINGLE: Would you agree with me that the Supreme Court ruling sets a new precedent that can be built upon?

Ms REBA MEAGHER: Most certainly.

CHAIR: Do Government members have questions?

The Hon. EDDIE OBEID: Minister, what has been the impact of the Property, Stock and Business Agents Act 2002, one year on from its commencement?

The Hon. GREG PEARCE: We have already done that.

The Hon. CHARLIE LYNN: Were you not listening at the start?

Ms REBA MEAGHER: I understand your question directly related to penalties. I think the story is much wider than that, so I am happy to share that with the Committee. The new Property, Stock and Business Agents Act commenced on 1 September 2003 and represents the largest overhaul of the property service industry in more than 60 years. The new laws have increased transparency in the auction process, raised the level of competence in ethical standards of agents, improved consumer awareness of their rights when buying, selling or leasing property, and introduced new disciplinary provisions. A major reform of the new laws is the change to the conduct of auctions. Consumers have overwhelmingly accepted these new provisions.

New provisions were also introduced in relation to agents estimating selling prices, and changes were made to the manner in which disciplinary action is taken. I will address these matters in more detail. The new auction laws increase industry transparency in the auction process, raise the level of competence in ethical standards of agents, and improve consumers' awareness of their rights when buying, selling, or leasing a property. I am advised that real estate investigators for the Office of Fair Trading have attended more than 600 property auctions since the introduction of the new Act, issuing more than 80 formal cautions to agents. These cautions related to required signage at auction sites, the observance of requirements for the registration of bidders, and the use of numbered paddles by bidders.

Members would be aware that on 16 April 2004 Mr Frank Conti, a licensed real estate agent who operated an agency trading as Raine and Horne Warrawong, had his licence cancelled and was disqualified from being a licensee for a period of five years. Mr Conti was also disqualified from being involved in the direction, management, or conduct of the business of a licensee for a period of five years. The corporation licence of his company, Frank Conti Pty Ltd, was also cancelled. Dummy bidding is an unfair practice that cheats genuine buyers, and the action taken by the Office of Fair Trading is a significant step in the fight against such unfair auction practices. Mr Conti is the first real estate agent in New South Wales to be banned for this kind of misconduct. The action against this agent sends an unmistakable warning to the industry as a whole that misconduct will have serious consequences. The Office of Fair Trading is investigating a number of other serious allegations concerning dummy bidding involving agents, and they will be finalised in the near future.

The new Act also specifically addresses the issue of real estate agents deliberately underquoting the selling price of a property to prospective purchasers or overquoting it to prospective vendors. The provisions relating to estimated selling price are designed to ensure that agents act fairly, and to promote an orderly property market by ensuring that purchasers and vendors are properly informed about an agent's true estimate of the selling price of a property. Currently, there is an investigation into a serious allegation of underquoting by an agent. I cannot comment further on that matter at this time.

Where real estate licensees receive money on trust from clients, they are required at the end of each financial year to lodge an audit report of their trust accounts with the Office of Fair Trading. Agents who have not received money must lodge a statutory declaration to that effect. Licensees are given three months from the end of the financial year to lodge these returns. Based on these returns, Fair Trading conducts an annual inspection program. Real estate investigators concentrate their attention on licensees who fail to lodge either their audit return or statutory declaration, lodge it late, or lodge a report which has been qualified by their auditor. This leads me to another important facet of the new legislation. The Act now provides that the commissioner may, in certain prescribed circumstances, appoint a manager to the business of a licensee.

The value of the new provision has been clearly demonstrated in two cases. A manager was appointed to the business of an agent in Kogarah where a trust account deficiency of about \$300,000 was identified. The manager took control of the business and recovered about \$200,000. This quick action protected consumer interests and prevented further harm. The recovery of the money from the agency also reduced the impact on the Property Services Compensation Fund. A manager was appointed to the business of a Tuncurry agent where a deficiency of about \$140,000 was detected after the lodgement of a qualified audit report. Recovery of funds was also effected in this case—again protecting consumers, preventing further losses and reducing the impact on the compensation fund.

The licensee in charge of each of these agencies has had their licence suspended by the Commissioner for Fair Trading. The former licensee-in-charge of the Kogarah agency, Jack Shen, has been disqualified from being involved in the direction, management, or conduct of a licensed business for a period of five years. Disciplinary action is pending against the former licensee-in-charge of the Tuncurry agency. I noted that the Tuncurry agent's audit report had been qualified by the audit. Where concerns are raised by the auditor, they are followed up by real estate investigators with the licensee, and a full inspection is conducted if necessary. Inspections are also conducted where no audit report is received from the licensee. Failure to lodge a report with the Office of Fair Trading is viewed seriously, and it is often an indication that something is wrong in that business.

Agents must also be very mindful that the rules in relation to a failure to lodge an audit report have changed significantly. Over the past two years Fair Trading issued more than 70 penalty notices to agents, amounting to over \$40,000 in fines for failure-to-lodge offences. However, under the new Act, failure to lodge an audit report on time renders the agent a disqualified person who is no longer entitled to hold a licence. Licensees must ensure that they lodge their audit reports on time; the consequences for them will otherwise be very severe. Agents have until 30 September 2004 to lodge their audit returns with the Commissioner for Fair Trading for the 2003-2004 audit year. Those who fail to do so will face disciplinary action.

The disciplinary provisions are one of the cornerstones of the new Act, allowing Fair Trading to quickly and efficiently deal with alleged or suspected misconduct by licensees and to protect consumer interests. Once sufficient evidence has been obtained, the commissioner may issue a notice to a licensee requiring them to show cause why disciplinary action should not be taken against them. A licensee to whom a notice to show cause is issued has a minimum of 14 days to respond. A licensee may make written or oral submissions, and may present evidence in answer to the notice. Where the commissioner is satisfied that there are reasonable grounds for taking disciplinary action, a wide range of responses are available under the Act. They include reprimanding the licensee, imposing conditions on the licence, imposing a pecuniary penalty of up to \$11,000 for an individual or \$22,000 for a corporation, or cancelling the licence and disqualifying the person from being a licensee.

I am pleased to advise that 41 notices to show cause have been issued so far under the new Act; of which 17 have been finalised. In addition to the Conti dummy bidding matter, I can advise that two real estate agents and the licensed corporation connected to one of the agents have had their licences cancelled and have been permanently disqualified from being licensees. These cases relate to the misappropriation or misapplication of trust creditor funds. In one case the investigation identified more than 40 breaches of the laws relating to the appropriate handling of trust money. In the other matter an agent failed to immediately refund a deposit to an unsuccessful purchaser. The agent then applied this money to his own benefit.

Misuse of trust funds is the cardinal sin for real estate licensees, and Fair Trading has taken, and will continue to take, a tough stance on this kind of misconduct. Other notices to show cause have been finalised in relation to the suitability of persons to be licensed under the Act. The new legislation clearly identifies classes of person who by reason of criminal conviction or personal or corporate insolvency are not entitled to hold licences unless they can satisfy the commissioner that they are suitable. In 10 cases, real estate licences have been cancelled because of a person's bankruptcy or involvement in an insolvent corporation.

The decision to permit the Commissioner for Fair Trading to administer the disciplinary action provisions of the new Act has greatly reduced the time it takes to finalise these matters. However, it is important that review mechanisms are available to licensees who are subject to disciplinary action, and they have a right to request an internal review of a decision or to seek review by the Administrative Decisions Tribunal. The disciplinary process introduced by the new Act and the clearer requirements relating to the suitability of persons to be licensed have the effect of improving the quality, competence, and conduct of agents. They are designed to enhance the level of protection provided to consumers and to ensure that the New South Wales property market is orderly and well informed.

The implementation of the new Act has also resulted in a substantial increase in the volume of work handled by Fair Trading's property licensing unit. In August 2003, the month immediately preceding the commencement of the new legislation, the unit received 5,114 telephone calls. This was an increase of 45 per cent over the corresponding month in the previous year. Personal licence applications increased by 160 per cent, and corporate licence applications increased by 40 per cent. Applications for certificates of registration, the base level of entry into the real estate industry, increased by 62 per cent. Fair Trading implemented a range of special measures to handle these sharp increases to ensure that applications were processed quickly and efficiently and to provide a high level of service in relation to inquiries. I am pleased to be able to report that Fair Trading has been able to deal with this added workload.

The Hon. EDDIE OBEID: What is the Government doing to address growing community concern about the blacklisting of tenants on tenant databases?

Ms REBA MEAGHER: In response to community concerns, a set of legally enforceable rules of conduct has been made under the Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004 to regulate the use of tenant databases by real estate agents and their employees. The rules will take effect from today. The rules focus on protecting tenants from unfair exclusion from the private rental market due to being listed, often unwittingly, on tenant databases. To address this, the regulation will require real estate agents and their employees to comply with specific rules with regard to their collection, use, storage, and disclosure of tenant information.

From today, tenants are better protected as agents can now only list someone for specified reasons, including owing rent to the landlord and/or property damage that exceeds the amount of the rental bond; the tenant must be advised prior to being listed; tenants have the right to challenge the proposed listing, and their objection must be recorded on the database; they are given free access to their information, to have it amended if it is inaccurate, out of date or incomplete; agents must notify the database operator within seven days when outstanding debts are paid; debts repaid within three months of being incurred must be entirely deleted from the databases; and individual details for a specific listing must be removed after three years.

Failure to observe a rule will be an offence under the Property, Stock and Business Agents Regulation 2003, for which penalties of up to \$4,400 for corporations and \$2,200 for individuals and partnerships will apply. These measures target the focus of consumer complaints about tenant databases, which is lack of knowledge of a listing, the accuracy of the listed information and the duration of the listing. While landlords and agents require a legitimate information tool to make informed decisions about their properties, this should not be at the expense of a tenant's basic rights. The regulation will help protect tenants from inaccurate or inappropriate decisions that could hinder their ability to rent properties in the future.

The regulation has been welcomed by both the Tenants Union of New South Wales and the Real Estate Institute of New South Wales. I place on record my thanks to both of them for their

contribution to the development of the regulation. The State Government is also involved in a national working party considering options for a nationally consistent framework for tenant databases.

The Hon. GREG PEARCE: Have you read the Independent Commission against Corruption report into building and trade licences using forged qualifications?

Ms REBA MEAGHER: I am aware of the report.

The Hon. GREG PEARCE: So you would be aware that page 38 of the report states:

DFT also conducts other standard checks on 10% of the applications it receives, for example, to ensure an applicant is not bankrupt. DFT is currently ... satisfied ... about its risk management in relation to qualifications.

What have you done to satisfy yourself that the department checking on only 10 per cent of applications will protect the public?

Ms REBA MEAGHER: Last year, as a result of information provided by the Licensing Branch of the Home Building Service, the Independent Commission Against Corruption undertook an investigation into the obtaining of educational qualifications from TAFE establishments. The commission—

The Hon. GREG PEARCE: I do not need you to give us the history. I was asking you to give us—

CHAIR: Order! The Hon. Greg Pearce will allow the Minister to answer the question.

The Hon. GREG PEARCE: I was asking you specifically what you have done to satisfy yourself that the department's checking on 10 per cent of applications—

CHAIR: Order!

The Hon. GREG PEARCE: —is sufficient to protect the public. If that is in your written statement, that is fine, but if it is not, can you address that question?

CHAIR: No. The Hon. Greg Pearce is well aware that he asks the question and the Minister determines her answer to the question in the way she sees fit. He will allow the Minister to answer the question without interruption.

The Hon. GREG PEARCE: If the Minister cannot answer the question—

CHAIR: No. You will be quiet, to allow her—

The Hon. GREG PEARCE: If you cannot answer it, I can move on to the next question, if you do not have an answer.

CHAIR: Order!

Ms REBA MEAGHER: I am happy to go to the heart of the question, Mr Pearce. As part of the Home Building Service review of licensing operations, proposals have been developed to make significant changes in the way licensing transactions take place. The commission is continuing with its investigation and the Home Building Service is providing significant assistance in this process. It is not known at this time when the commission will complete its investigation. However, what does seem clear is that the licensing regime for the residential building industry must continue its move away from being regarded as an industry-based regime predicated upon skills assessment to a regime based on recognised qualifications supported by a corruption-resistant analysis.

The Hon. GREG PEARCE: That is fine. What I was asking you was in regard to your administration of your department and whether you believe that checking on 10 per cent only of applications for licences is adequate to protect the public.

Ms REBA MEAGHER: I would ask the commissioner to provide further details.

The Hon. GREG PEARCE: So you have not done anything—

The Hon. AMANDA FAZIO: I have told the Hon. Greg Pearce repeatedly, and I am at a loss as to why he cannot understand the simple request, to allow the Minister to answer the question without interruption.

The Hon. GREG PEARCE: The Minister was not going to answer.

CHAIR: Do not speak over me when I am talking to you. You will also show some respect to the people who are appearing before you tonight and stop badgering the witnesses.

The Hon. GREG PEARCE: Madam Chair, I am quite happy to get answers to the questions.

CHAIR: I understand that the commissioner is to answer that question. If you were quiet, Mr Pearce, we might be able to get some answers.

Mr O'CONNOR: I think it is fair to say that the department itself, or the office now, brought to the attention of the ICAC on a number of occasions our concerns about what we saw as qualifications that we would have some sort of a question mark about. So the investigation really started with assistance from our office. The office, in consultation with the Minister, has looked at a number of options on how we can resolve this problem. It is not only in relation to building licensing; it is any form of licensing. It is any situation that any regulatory authority would face when it has to face qualifications of people.

We have looked at a number of ways of overcoming this, and certainly through the Government's licensing program, which is a massive multimillion-dollar project going on at the moment through the Department of Commerce, they are looking at how we can look at qualifications and whether this can be done on line, with direct relationship with institutions like universities and TAFE colleges. We have also looked at the possibility of qualifications being checked through the post office system, as we do with the points system required when you get a passport. People have to prove who they are. We are also looking at the possibility of photo licensing. All these things will add a lot more oomph to the work we do in enforcing our policies and seeing that licence holders or applicants are who they say they are, therefore protecting the consumer. We are also awaiting the investigation from the ICAC, and it would be presumptuous of us to anticipate what it may say. No doubt it will come up with some recommendations that will be quite pertinent to the way we operate.

On the question of 10 per cent, I guess in any organisation it is not possible or practical to be able to check every application in detail. After all, we have hundreds of thousands of licences issued under the Home Building Act. So in any procedure like that you take a cross sample, you have an audit of what goes on, and certainly when any of our investigators go into the field they check the qualifications of the persons they are investigating or visiting or assisting with a particular matter. I think the Office of Fair Trading does an excellent job in checking qualifications and continues to do so throughout its regulatory practices on a day-to-day basis.

The Hon. GREG PEARCE: What you are saying is that it is presumptuous to comply with the law, with the Home Building Regulation, which requires that the director-general must be satisfied in relation to every relevant person.

Mr O'CONNOR: That is correct, and the commissioner is satisfied that when the person makes an application we checked the application on the available information. Based on that, if we are satisfied that that person's bona fides are correct, the licence is issued. We check every application for a licence.

The Hon. GREG PEARCE: Then why was the ICAC informed that you checked only 10 per cent?

Mr O'CONNOR: I am not aware what information was given to the ICAC, but when a licence application is made we check those licences.

The Hon. GREG PEARCE: So you are saying the ICAC commissioner got it wrong and that the information given to him was wrong?

Mr O'CONNOR: I think, Madam Chair, the ICAC—

The Hon. GREG PEARCE: A minute ago you said it was impossible—

CHAIR: Order! I have asked the Hon. Greg Pearce repeatedly not to interrupt the witnesses when they are answering his questions.

Mr O'CONNOR: I think I just answered that. It was in relation to qualifications.

The Hon. GREG PEARCE: How do you explain the case of Ray Goody, who had disciplinary action taken against him by the department on 24 June? He was aware of proceedings against him since November 2001 and he was able to obtain a new licence in May 2003, when he had proceedings against him.

Mr O'CONNOR: I do not have sufficient information on that particular case to give a meaningful response to that question.

The Hon. GREG PEARCE: Can you clarify for me whether the department checks 10 per cent of applications or it checks 100 per cent? If you say 100 per cent, what do you check in that 100 per cent?

Mr O'CONNOR: As I said in answer to the question earlier, we check all the information that is provided to us when an applicant makes an application for a licence. In relation to this 10 per cent, as I understand it, that relates to an assessment that has taken place outside of Fair Trading in relation to qualifications.

The Hon. GREG PEARCE: So you are now saying you check 100 per cent?

Mr O'CONNOR: That is what I said, yes.

The Hon. GREG PEARCE: How is that consistent with your earlier comment that it is not possible or practical to check all the applications? I am trying to clear up what you said.

Mr O'CONNOR: We were referring to the qualifications. What I was saying is it is not practical to check. If someone says they have such and such a degree, or such and such a diploma, or so many years of experience, we would generally accept that at face value. Yes, we check every bit of information that they give us in terms of the information, but it is not always possible for us to ring the TAFE college at Bangalore, South India, to see whether that particular person has that qualification. We will take that on face value if the documentation given to us is the qualification required for the issue of that particular licence.

The Hon. GREG PEARCE: So, you do not check it?

Mr O'CONNOR: I just said we did.

The Hon. GREG PEARCE: I might move on. Minister, could you tell me how many people in the Safety and Standards Branch are being relocated to the CSIRO at Lindfield and Parramatta?

Ms REBA MEAGHER: The Office of Fair Trading has for some years been consolidating its office accommodation portfolio. This has involved the relocation of the Home Building Service to Parramatta, releasing rent savings from Sussex Street in the city. The Measurements and Standards Laboratory and Safety and Standards Branch were also recently relocated from Belmore to accommodation at West Lindfield. In the case of the planned relocations of the Safety and Standards Branch, staff were advised of the planned relocations in a memorandum on 9 June 2004. The memorandum invited staff to provide any comments or concerns to the Assistant Commissioner, Customer and Property Services.

The relocation to West Lindfield has been the subject of discussion at meetings of the Office of Fair Trading consultative committee since that time. While remaining sensitive to the needs of individual staff members, Fair Trading operates on the basis that agencies of the New South Wales public sector have been provided with the flexibility to relocate work and to redeploy their staff according to business needs. This is particularly evident by the fact that the Crown Employees (Transferred Employees) Award, clause 1, specifically excludes a metropolitan-to-metropolitan transfer from the provisions of the award.

Further, Fair Trading has reminded the Public Service Association during consultations about staff relocations that negotiations between the Public Employment Office and the association about secured pay increases from 1998 onwards resulted in an understanding that is reflected in the Premier's memorandum 98/24. The memorandum states that provisions have been developed to assist public sector agencies manage organisational change. It was agreed that effective service delivery requires that work be located in areas of community need. Therefore, the employer can require an employee to relocate to another work venue should work cease to be available at the current location. Fair Trading has always managed these relocations with sensitivity, attempting to find transfers for some staff who are particularly affected by the move. Twenty-two are involved.

The Hon. GREG PEARCE: Is it the case that the Assistant Commissioner, Operations, Mr Brian Given, announced the move on 4 May 2004? Is Mr Given here?

Ms REBA MEAGHER: In my answer I advised the Committee that the planned relocation was notified in a memorandum issued on 9 June 2004.

The Hon. GREG PEARCE: I asked about the announcement by Mr Given, which I am told was 4 May 2004.

Mr GIVEN: I did meet with staff—that date could well be right; it was around that time—to let them know what was being proposed in terms of relocation.

The Hon. GREG PEARCE: Did you comply with the Premier's guideline, which requires that you have discussions before making the decision to move them?

Mr GIVEN: Well, the organisation in general complies with the Premier's guidelines and other requirements in terms of staff consultation.

The Hon. GREG PEARCE: Did you on that occasion?

Mr GIVEN: That was part of communication with staff.

The Hon. GREG PEARCE: Yes. Did you comply with the Premier's Department guideline, which says that you have to have discussions with affected staff before the decision to move was made?

Mr O'CONNOR: If I might, I think in the question you mentioned a May date, which Brian said may or may not be correct. I issued a memorandum on 9 June, some month later, to say that that final decision had been taken and that these people would be relocating. So there was more than a month's consultation. The Premier's guidelines have been complied with, with this and with other moves carried out within the Office of Fair Trading.

The Hon. GREG PEARCE: Minister, I know you know Mr Gazal and Mr Bargshoon and Mr Mosca. Have any of them ever made any donation to your campaign, or has anyone associated with them made a donation to your campaign?

Ms REBA MEAGHER: I will have to take that on notice.

CHAIR: I rule that question out of order. It has nothing to do with the budget portfolio for the Office of Fair Trading.

The Hon. CHARLIE LYNN: Minister, I refer to interest derived by Property Services statutory interest accounts, sections 187 to 190. What were the total amounts of interest on moneys in licensees' trust accounts during each 12-month period ending 30 June 2002, 30 June 2003 and 30 June 2004, and what are the budget projections for interest to be earned in the current year ending 30 June 2005?

Ms REBA MEAGHER: The Property Services statutory interest account has been in place for the past 30 years. The Property, Stock and Business Agents Act provides for strong accountability by real estate agents managing their clients' funds. Under the Act agents must establish a trust account with an approved financial institution for the deposit of their clients' money. Under the arrangements, financial institutions are prohibited from charging any fees on that account. Money held in trust accounts are safeguarded under legislation. Purchasers and vendors can agree to opt out of the statutory interest account arrangements. This would require the vendors' agents setting up a separate trust account, which would be subject to normal establishment fees and charges.

The statutory interest account is used to fund the regulatory consumer protection schemes provided for by the Property, Stock and Business Agents Act, the Conveyancers Licensing Act and the Valuers Registration Act. Money from the statutory interest account is also able to be used for several other purposes, including providing grants or loans for education and research programs and funding rental advisory services. The account also partly funds the operation of the Consumer, Trade and Tenancy Tribunal [CTTT], the Renting and Strata Services provided by Fair Trading and the Tenants Advice and Advocacy Program. As at 30 June 2004 \$22.8 million was held in the real estate interest account.

The Hon. CHARLIE LYNN: My question was what were the total amounts of interest earned on money in the licensee trust accounts during each 12-month period ending 30 June 2002, 30 June 2003 and 30 June 2004, and what are the budgeted projections for interest to be earned during the current year ended 30 June 2005?

Ms REBA MEAGHER: I will take that on notice.

The Hon. CHARLIE LYNN: Minister, I refer to rental bonds held by the Office of Fair Trading Rental Bond Board, and the leases of New South Wales residential premises under the Landlord and Tenant (Rental Bonds) Act 1977. What was the total of all rental bonds held by the Office of Fair Trading Rental Bond Board as at 30 June 2004? Would you please provide details of the interest payable when bonds are refunded by the Office of Fair Trading at the end of tenancies, including the rate at which interest is calculated, and all Office of Fair Trading guidelines to staff as to the calculation of interest on bonds being refunded?

Ms REBA MEAGHER: The income earned from investment funds a range of programs designed to support tenants in particular and the residential tenancy market in general. Programs funded or part funded include the operating costs of the rental bond custodial and information services and the Office of Fair Trading tenancy information service. Funding is also provided towards the cost of operating the residential divisions of the Consumer, Trader and Tenancy Tribunal and for the Tenants Advice and Advocacy Program. Section 20 of the Landlord and Tenant (Rental Bonds) Act 1977 enables the Rental Bond Board to make grants or loans from the rental bond interest account for the purpose of a scheme approved by the Minister for the provision of residential accommodation, research approved by the Minister into matters relevant to the relationship of landlord and tenant, and other activities approved by the Minister relevant to matters associated with the relationship of landlord and tenant.

Section 21 of the Act permits the board, with the approval of the Minister, to provide money from the rental bond interest account for the establishment and administration of rental advisory services. Applications are made to the Rental Bond Board for grants to conduct a range of tenancy-related projects. As previously advised, the Rental Bond Board funds the provisions of the tenancy advisory services delivered through the Tenants Advice and Advocacy Program and the Aged-care Rights Service. The Office of Fair Trading has developed guidelines for applications for Rental Bond Board grants, as well as administrative guidelines to ensure accountability and probity in the allocation and management of grants. These guidelines are in line with the Office of Fair Trading grants and funding programs policy, which takes account of government policy, Fair Trading

objectives and best practice principles for the management of grants and funding programs. The Office of Fair Trading has signed a memorandum of understanding with the Department of Housing to facilitate timely and orderly transfers of Rental Bond Board funds.

Sections 11A and 20(2D) of the Landlord and Tenant (Rental Bonds) Act 1977 provided for the accrual of interest on rental bonds held. This is paid to tenants with their bond refund or may be claimed by the landlord or agent if the amount owing at termination of the tenancy exceeds the amount of the bonds held. The payment of the interest complements the Government's provision of an independent custodial service for rental bonds and good landlord and tenant relationships. Since the payment of interest on rental bonds commenced in 1990 the interest rate has been linked to that of bank on-call accounts without fixed terms. Since June 2001 the rate has been that applicable to an on-call deposit of \$1,000 in a Commonwealth Bank Streamline account. Regular actuarial reviews require the board to maintain a surplus between \$15 million and \$20 million in addition to the bonds held in trust to ensure adequate income is generated to meet forward commitments for operational costs and funded programs.

The Hon. CHARLIE LYNN: Minister, I am only asking you about the time. You keep telling me how to build the watch. Can I go back to the question?

CHAIR: The time for Opposition questions in this segment has expired.

The Hon. CHARLIE LYNN: Point of order: The Minister has not answered the questions. I asked very specific questions.

Ms REBA MEAGHER: I am happy for the department to add the information.

The Hon. CHARLIE LYNN: I asked four very specific questions. The Minister has answered none of them.

CHAIR: Does the department wish to add to the answer?

Mr SILK: In relation to the balance of funds at 30 June 2004, the trust account had \$570.9 million held and the interest account \$42 million, a total of \$612.9 million. The trust account represents the bond-holder's moneys, which are public moneys that are held in trust, and the interest account funds of \$42 million are used to meet the operating expenses of the Office of Fair Trading, the Consumer, Trader and Tenancy Tribunal and other grants and funding programs.

The Hon. CHARLIE LYNN: What is the information in regard to the rate at which interest is calculated and all Office of Fair Trading guidelines to staff as to the calculation of interest on bonds being refunded?

Mr SILK: The rate of interest paid to rental bond holders is determined by the current deposits under the \$1,000 rate paid by the Commonwealth Bank.

Mr O'CONNOR: The Minister said that when she referred to sections 11A and 20(2D), which talked about the on call accounts.

The Hon. CHARLIE LYNN: There is a lot of chaff to cut through to get to the answer.

Ms REBA MEAGHER: I would like you to have the big picture, Charlie.

The Hon. CHARLIE LYNN: Thank you, but I only want the time.

Mr O'CONNOR: If I can just repeat what the Minister said, Madam Chair. Since the payment of interest on rental bonds commenced in 1990 the interest rate has been linked to that of bank on-call accounts without fixed terms. Since June 2001 the rate has been that applicable to an on-call deposit of \$1,000 in a Commonwealth Bank Streamline account.

The Hon. GREG PEARCE: Point of clarification: You said \$42 million for the—

Mr SILK: Interest account.

The Hon. GREG PEARCE: You did not give us the breakdown between the operating costs of the board, the tenancy functions and the advisory services, which you have given in the past.

Mr SILK: In relation to the Rental Bond Board, its operating budget for 2004-05—

The Hon. GREG PEARCE: Would you give us the 2003-04 figures, the actual figures?

Mr SILK: For 2003-04 the Rental Bond Board operating budget is \$31.8 million, and that is the expenses incurred. Its projected budget for 2004-05 is \$30.3 million. In relation to the Consumer, Trader and Tenancy Tribunal, its operating budget is approximately \$20 million. However, it has a mix of funding and the Rental Bond Board forms only a part of that funding mix, as does the Office of Fair Trading budget program as well. I cannot split those figures.

The Hon. GREG PEARCE: I understand that part of the interest goes to the operating costs of the board, part to the CTTT functions and part to the advisory service. That is the breakdown we are after.

Mr SILK: And the Office of Fair Trading operating activities as well.

The Hon. GREG PEARCE: That is the breakdown we are after out of the \$42 million in total.

Mr SILK: The \$42 million is the balance of moneys held. The rate of expenditure of that is dependent on the budgets of the operating entities that were mentioned earlier: the Rental Bond Board, the CTTT and the Office of Fair Trading. Interest earned on that \$42 million is actually the funds that are invested. Over the last two years that \$42 million figure has remained somewhat stable in terms of the Rental Bond Board's interest account. It is a working account.

The Hon. GREG PEARCE: It is the interest on the bonds of \$570 million.

Mr SILK: The interest on the \$570 million is then placed in the rental bond interest account, which has now accumulated up to \$42 million. The interest that is earned on that over the coming financial year will be used to meet the operating expenses of the Office of Fair Trading, the CTTT and the Rental Bond Board.

The Hon. GREG PEARCE: That was a lot more than \$42 million.

Mr SILK: As I said earlier, the Office of Fair Trading and the CTTT are subject to a mix of funding arrangements: a combination of consolidated funding, real estate statutory interest, and fees and charges that are collected and retained.

The Hon. GREG PEARCE: We were just trying to get the breakdown. How much of the interest has been allocated to the operations, the actual figure for 2003-04?

Mr SILK: I appreciate that. The \$42 million is not an actual allocation as such. Over the course of the year there will be interest on that investment. It is actually interest earned on that investment of \$42 million that goes to meet the operating expenses.

The Hon. GREG PEARCE: I am trying to get the figure that has been spent in 2003-04. You do not actually have a budget?

Mr SILK: I would have to break down the operating costs of each of those three entities.

The Hon. GREG PEARCE: Would you take that on notice and do that?

Mr SILK: Yes.

CHAIR: Does the Hon. John Tingle have any questions?

The Hon. JOHN TINGLE: No, Madam Chair, I have no further questions.

CHAIR: Do Government members have further questions?

The Hon. IAN WEST: Minister, what does the Fair Trading ministry know about youth debt. What measures have been taken to address this issue?

Ms REBA MEAGHER: Across the country young Australians now represent a growing commercial market estimated at over \$4 billion a year. In the 7-to-14-years category alone there are 1.9 million young people who earn \$1.3 billion a year, of which they spend \$471 million. Young Australians are early adopters of new technologies. They are enthusiastic users of mobile phones. Over 70 per cent of people 14 to 24 years old have a mobile phone. And, of course, buying a car remains high on the agenda for most young people. Young Australians have more money than previous generations and are more likely to work part time than their parents at the same age. They enjoy premature affluence, but without a corresponding increase in money management skills.

Poor money management skills can easily lead to over-commitment and debt. Last year the New South Wales Office of Fair Trading sought to determine the extent of concern about youth debt in New South Wales and to measure, as far as possible, the incidence of problematic debt among young people. What they found was chastening. The survey showed that among young people, debt ranks as a problem behind excessive drinking and drugs but above unemployment and youth suicide. Significant numbers of young people have encountered debt that has caused them grief. Common debt triggers include credit cards, mobile phones and car finances and expenses. Among those young people in the survey under 18 who had experienced debt problems, the average debt was \$3,390. In the over-18 group the figure was almost double that.

Importantly, the survey also found that 97 per cent of parents and 84 per cent of young people believe that the problem of youth debt stems from the aggressive lending practices of banks and other credit providers, who actively target young people. Clearly, the first challenge is to put consumer education back onto the formal school education agenda. Recognising this need some years ago, Fair Trading developed and distributed an innovative educational resource, known as *Money Stuff*, to all New South Wales high schools. *Money Stuff*, produced with the help of the New South Wales Department of Education and Training, was designed to help young people avoid consumer traps, especially in cases such as managing a credit card, renting shared accommodation, buying a mobile phone, buying a second-hand car or purchasing a computer.

The three-part *Money Stuff* resource includes an interactive website, an educational video and three different teacher guides filled with lesson plans and activities linked to the English, mathematics and commerce curriculums for Years 10 and 11. The excellence of *Money Stuff* has been recognised by several national awards, as well as by the other States, and we are now working with them to help to develop *Money Stuff* with a view to it becoming a national education resource adapted to each State's needs. However, the issue of youth debt needs more than an educational response if it is to be properly addressed. For this reason I have sponsored a proposal which I have taken to my counterparts in the other States to develop a wider campaign which will reach out to parents and young people alike to highlight the importance of understanding financial matters now and into the future. This program calls for national research, as well as communication, education and legislative strategies.

As a practical example of the Government's commitment in these matters, the Office of Fair Trading has developed a car-buying information program for students and youth. The program is called Revved Up, and it is a student's guide to buying cars. It is targeted at students in years 10, 11 and 12. The program aims to ensure that high school students become aware of their rights and responsibilities and vehicle safety before purchasing motor vehicles.

The Revved Up Program provides students with an overview of basic consumer rights associated with buying a car from a licensed dealer, or at auction, with emphasis on contractual obligation, warranty entitlements and REV's checks. The program also covers shopping for finance to purchase a vehicle, protection provided by the Consumer Credit Code, and rights, responsibilities and options if encountering financial hardship. Students are given a practical demonstration by a

mechanical inspector covering what students should look for to ensure becoming a national education resource, to ensure that their rights are protected.

The Hon. GREG PEARCE: Finish it there.

CHAIR: Do not badger the Minister.

The Hon. GREG PEARCE: If you cannot find the next page, that will do. Move on to the next question.

The Hon. IAN WEST: It was my question. I am interested in the answer.

CHAIR: I am the parent of two teenagers. I am very interested in the answer.

The Hon. IAN WEST: I have used REVs. It is effective and I was very impressed with it. I bought my car using it.

Ms REBA MEAGHER: I was pleased to be able to launch the REVs program at Bonnyrigg High School earlier this year and it was certainly very well received by the students. It was a hands-on demonstration. The Office of Fair Trading organises a second-hand motor vehicle to be on site. A mechanic visits the site and gives the student a practical demonstration on what to look for when purchasing a second-hand car so they do not run off and pay for inspections without having done some of the basics themselves.

The Hon. GREG PEARCE: I thought we were doing mobile phones.

CHAIR: No, we are dealing with youth debt. Please pay attention.

Ms REBA MEAGHER: That is right. It is also important that they check to see if there is any encumbrance on the vehicle. Information regarding REVs is provided through that mechanism. That is particularly important. It could be quite a disaster for a young person to have a motor vehicle towed away because there was finance owing on it. In addition, the importance of comprehensive insurance is stressed. I have met young people who have been affected by this issue. It can start a dreadful cycle of youth debt when a young person has purchased a vehicle, gone into debt to buy a vehicle, only to find that he or she is unable to meet the repayments after the vehicle has been written off. They had no asset to show for their liability and that is particularly tragic.

The issue of youth debt is certainly high on my ministerial agenda. As I stated earlier, it is an issue I have taken to the national ministerial council and I am working very closely with Victoria on strategies to address the issue. I have highlighted the fact that the problem relates not only to cars but also to mobile phones. In various surveys that have been undertaken young people have identified the aggressive practices of lending institutions inviting them to take advantage of credit. In that respect we have developed strategies. We have worked closely with schools to raise awareness of the issue and to promote money-management skills.

CHAIR: Minister, may I ask a follow-up question on that subject?

Ms REBA MEAGHER: Yes.

CHAIR: I have a 13-year-old and 14-year-old, both of whom have mobile phones. One of the most difficult concepts I encountered when they were getting their phones was the concept of comparison shopping. Have you given any consideration to developing a guide for young people who are looking to purchase a mobile phone, whether to go for the prepaid option or be locked into a plan, in much the same way as the guide you have developed for young people thinking of buying a vehicle?

Ms REBA MEAGHER: At the last meeting of the national ministerial council, which was held in Queensland about two weeks ago, the State Ministers agreed, with the support of the Commonwealth, to refer the actual development of financial literacy skills to the Ministerial Council on Education, Employment, Training and Youth Affairs [MCEETYA]. Part of the problem obviously is that a lot of these matters cross State borders so that the most effective way to develop programs of

protection for young people is to work with national co-ordination. The focus I placed on National Consumer Week was the awareness of young people about getting involved in the mobile phone debt trap, which is increasingly an issue because of the relevance of m-commerce.

It is not only the relative plans and call charges that young people find themselves entering into, but also their lability to make significant purchases with a mobile phone. Information aimed at developing skills in young people is high on the agenda in New South Wales and certainly one that has been embraced by the national ministerial council. One of the brochures that has been developed is *Buying a Mobile Phone*, which is available in English, Arabic, Chinese, Italian and Vietnamese.

The Hon. IAN WEST: I congratulate the Minister and the Office of Fair Trading on the work that has been done in this area. I consider the REVs document to be an excellent document and I do not restrict it merely to youth. Minister, would you elaborate on National Awareness Week and the enhancement of national co-operation in relation to both investigation and, probably even more important, enforcement in fair trading?

Ms REBA MEAGHER: I am sorry, could you repeat that question?

The Hon. GREG PEARCE: I think that was on the missing page 3.

CHAIR: We can do without your interjections, Mr Pearce.

The Hon. IAN WEST: What action are you taking to enhance national co-operation in respect of investigation and enforcement in fair trading?

Ms REBA MEAGHER: On 12 March I convened a meeting of State and Territory fair trading and consumer affairs Ministers. We issued a joint communiqué announcing that we had entered into a joint consumer protection agreement. In that agreement the Ministers committed to two principles—first, the principle of seeking nationally beneficial outcomes in appropriate cases, and, second, the principle of enhanced co-ordination of investigation, compliance and enforcement activities. The agreement also identified four priority areas where agencies should ensure co-operation. The four priority areas were: property investment advice industry, unsafe products, overseas mail scams and m-commerce. I would hasten to add that at the last national ministerial council, all Ministers agreed to add trade measurement as a fifth item.

The Ministers believe that nationally beneficial outcomes should be sought where the trader or traders involved have national operations or operations in more than one jurisdiction, consumers nationally or in more than one jurisdiction are adversely affected by the trader's misconduct, or the trader or supplier is based overseas and appears to be targeting Australian consumers generally. At the 27 August meeting of the national ministerial council, the framework and principles were agreed to by all Ministers, including the Commonwealth Minister. This means that agencies nationally have committed to seeking nationally beneficial outcomes in appropriate cases. This is a very important part of the framework and, when implemented fully and effectively, should provide clear benefits to all Australian—and, in the future, Australasian—consumers.

The advantage of seeking national outcomes means that action by one consumer agency in respect of serious misconduct will address the problem for all potentially affected consumers, wherever they may be. This reduces the duplication and minimises the gaps in regulatory coverage that may otherwise develop. It is already possible for a State-based agency to obtain national outcomes in its compliance enforcement activities. New South Wales has done so on several occasions, both in relation to applications to the Supreme Court for injunctions and when accepting enforceable undertakings from traders. In all of the cases where this has occurred, all Australian consumers have benefited without other consumer agencies having to commence their own action. This greatly improves the efficiency of the enforcement process.

An example where New South Wales has obtained nationally beneficial outcomes is in respect of overseas mail scams. In the past three years, as a result of applications to the Supreme Court or undertakings given by promoters, the Office of Fair Trading has seized and destroyed approximately 250,000 scam letters sent to consumers in all parts of Australia and the Pacific Islands. Those letters emanated from Canada and Austria. The letters were destroyed prior to delivery to

consumers and avoided the risk of consumers, particularly vulnerable or disadvantaged consumers, being victimised by these fraudulent promotions. Orders were obtained from the Supreme Court prohibiting the promoters in two such cases from sending scam mail to any part of Australia. Those orders have been complied with by promoters and those scam mail promotions have ceased. Where scam mail had already been delivered to consumers and some of those consumers had responded, Fair Trading seized the consumer responses before they left Australia and they were returned to the affected consumers.

Fair Trading estimates that approximately \$520,000 has been returned to consumers. This is money that would otherwise have gone into the pockets of fraudsters based outside Australia. The chances of consumers or regulatory agencies being able to recover that money once it had gone offshore is almost non-existent. That example provides an indication of how a single agency can take action that has benefits that flow on to other jurisdictions and, what is more important, to all Australian consumers. In the mail scam matter, no other agency was required to do anything. If all States and Territories carried out similar action in line with their own priorities and subject to availability of resources to pursue such matters, there is the potential for all agencies to contribute to good consumer outcomes. To assist in giving effect to interagency agreements that might arise out of a commitment to greater co-operation, the New South Wales Government amended the Fair Trading Act 1987 to insert section 9A. That section authorises the Commissioner for Fair Trading to enter into arrangements with Fair Trading agencies and law enforcement agencies in relation to sharing or exchanging information.

Providing a clearer statutory basis for the Commissioner to share or exchange information overcomes potential obstacles that may impede the effective flow of information that will assist in protecting consumers' interests. Section 9A commenced on 17 May this year. The agreement at the national ministerial council meeting of 27 August included a commitment to enhance the exchange of information regarding product recalls and bans on unsafe toys and other children's products. It was also decided to release a discussion paper developed by the Commonwealth which seeks public comment on options for reforming the consumer product safety system. The paper is entitled "Review of the Australian Consumer Products Safety System". It identifies the objectives of that system as minimising the physical and financial costs of unsafe products by ensuring that consumers receive adequate information about the safe use of products, unsafe products in the market are readily detected and removed, consumers are able to obtain redress, and governments act to promote efficient markets and efficient use of regulatory resources.

The paper notes that the two most significant challenges facing Australia's consumer products safety regulatory system are the need to deal more swiftly and less reactively with emerging product safety problems. Like the Commonwealth, I welcome efforts to ensure that the operation of the consumer product safety system at a national level ensures that Australians can purchase and safely use a wide range of safe, affordable consumer products. I am heartened by the fact that the Commonwealth recognises the need for a more comprehensive approach to reforming the products safety framework to better identify emerging hazards, in particular, the issue of childhood safety hazards. I support a more comprehensive approach to product safety at the national level and will continue to work co-operatively with the Commonwealth and with other States. I would encourage interested parties to respond to the issues raised in the discussion paper by the deadline of 5 November 2004.

The Hon. IAN WEST: I ask you, Minister, and the Office of Fair Trading, what action the Office has taken to address the problems that consumers are experiencing in using finance and mortgage brokers to obtain credit?

Ms REBA MEAGHER: Last year Parliament passed the Consumer Credit Administration (Finance Brokers) Act. It commenced on 1 August 2004 and addressed those issues that have featured prominently in consumer complaints against the industry as well as those identified in the media. The main feature of the new legislation is to require a finance broking contract to be agreed to and signed by the consumer before any negotiations for credit are commenced. This contract will have two functions. First, it will contain all the relevant disclosures about broker commissions and the broker's panel of lenders and, second, it will record details of the client's credit requirements. Most consumer complaints are about lack of disclosure of the amount of commission they are required to pay. The contract requires this to be disclosed. It also requires brokers to disclose the commissions they will

receive from the lender so that the consumer can be alerted to the fact that a broker's recommendation may be influenced by the commission rather than the consumer's best interests. A common misconception is that brokers have access to all lenders and products and can, therefore, source the best product. This is not so, and the contract will detail the lenders on the broker's panel.

Consumers will be able to take any complaints about broker behaviour to the Consumer, Trader and Tenancy Tribunal. The Office of Fair Trading will ensure that the new consumer protection provisions are well publicised and that brokers are acting according to the requirements of the new law. New South Wales is applying its experience in regulating finance broking to the development of a national proposal for regulation of finance and mortgage broking. The objective of the Ministerial Council on Consumer Affairs is to provide the best and most consistent protection for Australian consumers through its consideration of consumer affairs and fair trading issues of national significance and, where possible, development of consistent approaches to those issues. New South Wales is chairing the working party applying that objective to the broking market. A regulatory impact statement on a national scheme will be released for public discussion shortly.

The Hon. GREG PEARCE: Minister, have you or any member of your departmental officers provided any advice or assistance to Messrs Gazal, Bargshoon or Mosca in relation to the Orange Grove factory retail outlet?

The Hon. EDDIE OBEID: Point of order: The Minister does not have to answer that.

The Hon. GREG PEARCE: Yes she does.

CHAIR: I rule that question out of order.

The Hon. GREG PEARCE: Why? I am asking whether the Minister or the department provided any assistance—

The Hon. EDDIE OBEID: You know it is out of order and you keep acting like a juvenile.

The Hon. GREG PEARCE: It is a perfectly legitimate question.

The Hon. EDDIE OBEID: It is out of order and you know that. It has nothing to do with the Department of Fair Trading.

CHAIR: We have a point of order from the Hon. Eddie Obeid that the question is out of order. For the question to be in order the honourable member would need to be more specific in relation to what sort of advice or services they have been seeking from the Department of Fair Trading.

The Hon. GREG PEARCE: To the point of order: That is in part correct, but I need to establish first whether there has been any advice or assistance—

The Hon. EDDIE OBEID: That is canvassing—

The Hon. GREG PEARCE: —before I raise any specific issue. There is no mention of any specific issue, and that may well be out of order unless I can establish whether any advice or assistance has been provided.

Mr O'CONNOR: I am happy to respond on behalf of the Office of Fair Trading. No assistance or advice has been provided to my knowledge.

The Hon. GREG PEARCE: Has the Minister or any member of the department received any complaint or communication arising from the opening of the centre by Minister Knowles in November 2003?

CHAIR: I rule that question out of order. It is clearly not related to the budget estimates process.

The Hon. GREG PEARCE: Of course it is.

The Hon. EDDIE OBEID: How?

The Hon. GREG PEARCE: We are entitled to ask questions.

CHAIR: I know that the honourable member is trying to raise the Orange Grove factory outlet centre at every budget estimates hearing. He did not manage to raise it last night during the Corrective Services or Justice hearings. However, raising it now is a little much.

The Hon. GREG PEARCE: It is perfectly relevant. It was a question about whether the department has received any complaint. That goes to the administration of the department and expenditure—

CHAIR: Mr O'Connor has already indicated that. The last question was clearly out of order and I have ruled that way.

The Hon. GREG PEARCE: Minister, who is your chief of staff?

Ms REBA MEAGHER: His name is Sam Maresh. I am not sure whether he has a middle name.

The Hon. GREG PEARCE: Is he a member of the Labor Party?

Ms REBA MEAGHER: I am unaware whether he has financial status within the party.

The Hon. GREG PEARCE: What do you mean by "financial status"?

Ms REBA MEAGHER: Whether he is a financial member.

The Hon. GREG PEARCE: Do you know whether he has been a member?

The Hon. EDDIE OBEID: She has answered the question.

Ms REBA MEAGHER: I have answered that. I do not ask my staff whether they belong to a political party.

The Hon. CHARLIE LYNN: What is the total of the legal costs, counsel's fees and other costs involved in the investigation and prosecution of Mr John Leach incurred by the Department of Fair Trading?

Ms REBA MEAGHER: I will take that question on notice.

The Hon. CHARLIE LYNN: On 20 November 2001 the solicitor acting for Mr Leach advised the Department of Fair Trading investigator that Mr Leach had never breached section 36 of the Act and that he had never been appointed as the licensee in charge of the business of Camden Property Marketing. Documentation supporting that advice was provided. The investigator was asked to supply Mr Leach's solicitor with further particulars, but no information was provided in relation to those crucial requests at an early stage in the investigations. Mr Stanley conceded in cross-examination that he had never replied to the request. The key issue as to whether Mr Leach had ever acted in breach of section 36 of the Act by failing to deposit trust moneys paid to him or to Modena Investments, which in turn may have constituted trust account deficiencies in the accounts of Modena Investments, was an essential part of the so-called evidence put by the department. That unfounded allegation was never proven and was a major issue in the complaint finally being dismissed.

In addition, the court also found in dismissing the complaint that Mr Leach was never the licensee in charge of the business of Camden Property Marketing and that he had no personal responsibility for maintaining the trust account records of that company. This important matter was a leading element of the case put by the department against Mr Leach. The department's failure to respond to the requests for further information about the unfounded allegations against Mr Leach was

also entirely consistent with its further ill-advised actions against him in the weeks that followed. Had the departmental officers seen fit to respond to requests for further information, Mr Leach and his solicitor would then have been in a position to provide the department with appropriate replies. By electing not to respond to Mr Leach's initial request for further information, the department acted incorrectly and then steadfastly proceeded down the wrong path, which finally led two years later to the dismissal of the failed section 29 complaint. Is it normal practice for departmental investigators to ignore such requests for information in the course of their investigations? What action have you taken to ensure that honest and innocent real estate agents are not driven out of business and have their careers destroyed by lazy, incompetent investigators?

Ms REBA MEAGHER: I refer to earlier comments and remind the honourable member of information I provided that on 21 April this year the Licensing Court magistrate who heard the matter—

The Hon. CHARLIE LYNN: Dismissed the case.

Ms REBA MEAGHER: —found that there was no reason to believe that the investigation had not been conducted in a reasonable and proper manner.

The Hon. CHARLIE LYNN: But he dismissed the case.

Ms REBA MEAGHER: He also found that the proceedings were initiated with reasonable cause and in good faith and were conducted in a proper manner.

The Hon. CHARLIE LYNN: But he dismissed the case. Why will the investigators not respond in the early stage of an investigation to requests for information from solicitors acting on behalf of real estate agents?

Ms REBA MEAGHER: I do not have the specific information.

The Hon. CHARLIE LYNN: Perhaps the director-general can answer.

Ms REBA MEAGHER: I will take that question on notice.

The Hon. CHARLIE LYNN: I refer to my initial question. I understand that departmental investigators produced a written report to their senior officers recommending that disciplinary action be taken against Mr Leach even though he had not been interviewed about these very serious but unfounded allegations. The report was written by the investigators in early November 2002, before Mr Leach was asked to respond and before he was interviewed.

Ms REBA MEAGHER: Mr Lynn, I remind you of the comments I made earlier. The Licensing Court magistrate found that Mr Leach had in fact been careless as to his legal position and to his supervision of his licence.

The Hon. CHARLIE LYNN: The case against him was dismissed. The section 29 complaint was dismissed.

Ms REBA MEAGHER: They are the magistrate's words.

The Hon. CHARLIE LYNN: Even with its enormous resources, the department failed in its prosecution of Mr Leach. Is it normal practice for departmental investigators to recommend to senior officers that disciplinary action be taken against real estate agents before they have been interviewed?

Mr GIVEN: The practice is to get as much information as we can muster and, if there appears to be sufficient evidence, then to proceed to make recommendations.

The Hon. CHARLIE LYNN: That is before. Would interviewing the real estate concerned not be part of that gathering of information to make a recommendation?

Mr GIVEN: Yes, definitely.

The Hon. CHARLIE LYNN: Why did they make the recommendation before the interview in this case?

Mr GIVEN: I not sure that you are correct in saying that.

The Hon. CHARLIE LYNN: Can you check that and advise the Committee whether I am correct and whether the investigators wrote that report in November 2002, prior to interviewing Mr Leach?

Mr GIVEN: You may mean November 2001.

The Hon. CHARLIE LYNN: Yes.

Mr O'CONNOR: I remind the Committee that the amount we actually paid out from the compensation fund as a result of matters relating to this case was about \$221,000. We are not talking about a small amount of money. In relation to another issue, the magistrate did not accept the Leach submissions on three of the four criteria. The magistrate found that there was no reason to believe that the investigation had not been conducted in a reasonable and proper manner. The magistrate found that the proceedings were initiated with reasonable cause and in good faith and were conducted in proper manner. That must be on the record. The suggestion that the staff of the Office of Fair Trading are lazy or incompetent—

The Hon. EDDIE OBEID: Should be withdrawn.

Mr O'CONNOR: If it is not, I wish to place on the record that that is not the case. I have utmost faith in my staff, their professionalism and their hard work. I do not believe them to be lazy or incompetent in regard in this matter or any other matter.

CHAIR: The time for this block of Opposition questioning has expired.

The Hon. EDDIE OBEID: What is the Registry of Co-operatives and Associations doing to promote co-operatives, and how is it contributing to the New South Wales Government's regional development project?

Ms REBA MEAGHER: As the honourable member may be aware, the Office of Fair Trading, through the Registry of Co-operatives and Associations, is responsible for the regulation and development of more than 800 registered co-operatives in this State employing approximately 8,000 people in regional and rural New South Wales. These co-operatives operate in a diverse range of industries and community activities, often providing products and services that would otherwise not be achievable without the benefit of a collaborative effort. Supported by the Co-operatives Council, the registry is drawing on its knowledge and experience of these co-operatives to develop targeted educational programs. These programs seek to broaden awareness of the benefits derived from self-help and mutual assistance endeavours as well as to extol the values of member control and democratic decision making, which underpin co-operatives.

By generating interest, these programs also seek to identify opportunities, particularly in rural and regional areas of New South Wales where a co-operative approach might help facilitate community development ventures. One major initiative being implemented by the registry is its co-operative and regional development strategy. This program focuses on building networks with key government agencies, such as the Premier's Department and the Department of State and Regional Development, and, increasingly, local councils, to encourage and participate in regional development schemes where the registry's expertise in co-operative formation can assist a whole-of-government approach. A central component of the strategy involves identifying a community in which to conduct a project pilot that will showcase the benefits of local level co-operation in assisting community renewal and capacity-building efforts.

Significant progress has been achieved under the strategy, including the formation of a joint initiative with the Barwon Darling Alliance to develop a co-operative pilot under its Aboriginal enterprise project. The alliance, which comprises shire councils—Bourke, Brewarrina, Central

Darling, Coonamble and Walgett—and the Murdi Paaki Regional Council has been formed to develop and promote sustainable social and economic growth in the Barwon Darling region. The joint initiative seeks to reduce unemployment and improve the quality of life for Aboriginal communities in the region by helping them to establish commercially viable businesses using their co-operative structure as the legal framework for new ventures.

The alliance is also working with a number of other government agencies, including the Department of State and Regional Development, and Tourism NSW, to assist the new ventures. Already one community co-operative has been formed under the co-operative pilot joint initiative. Several projects have initially been identified, including the restoration of the local bowling club to provide a place for community meetings, after-school care, and an information technology facility for the town. The co-operative also proposes to promote local tourism by improving signage and the appearance of the town, as well as reopen the local petrol station, which has not operated for several years.

Other ventures being supported by the joint initiative include Wilcannia, which is considering forming a co-operative to implement its community development plan. This plan includes a proposal to bulk purchase grocery and food items to facilitate cheaper prices for local families. Also, an Aboriginal tourism co-operative is in the process of being registered. The co-operative proposes to develop an Aboriginal tourism trail stretching from Lithgow to Goudooga. Currently, under the joint initiative the Barwon-Darling alliance is pursuing opportunities for new enterprise development in cultivating and marketing bush tucker. A series of workshops are being conducted to identify interested groups, and it is anticipated that co-operatives will play a key role in the business establishment phase.

Other programs being developed by the registry include pursuing opportunities for co-operative formation in the fast-growing organic farming industry on the mid North Coast. The registry is currently establishing networks with industry and government representatives, which include conducting information sessions at industry workshops and seminars so it is strategically placed to identify and encourage opportunities for co-operation.

The registry is also giving a priority focus to the Orana region of New South Wales, and particularly the potential opportunities for co-operative development that may arise from the proposed correctional facility to be built at Wellington. The registry has already had some initial discussions with Wellington Shire Council about the potential for co-operatives to provide a diverse range of services to the correctional facility both during the building phase and when it is fully operational.

A co-operative education program targeting regional law society groups has also recently been implemented. This program recognises that one of the first points of contact by people wishing to establish a new venture is with a member of the legal profession. Lawyers and solicitors therefore represent an important forum to promote and increase awareness of the co-operative form of organisation. The registry proposes to later expand this program to include the accounting profession and the finance industry, both of which have a significant impact on co-operative development.

The Hon. CHARLIE LYNN: I seek clarification. The commissioner has misled the Committee by stating that the \$200,000 he paid from the compensation fund was attributable to the actions of Mr Leach. It was actually attributable to Camden Property Marketing. It was proven in court that Mr Leach had nothing to deal with Camden Property Marketing. The commissioner has misled the Committee.

Mr O'CONNOR: I did not say that.

The Hon. CHARLIE LYNN: Yes, you did. The \$200,000 had nothing to do with Mr Leach.

The Hon. GREG PEARCE: Do you accept what the Hon. Charlie Lynn says, commissioner?

CHAIR: The Hon. Charlie Lynn has sought clarification of a comment made by the commissioner.

Mr O'CONNOR: What I said is that the Office of Fair Trading eventually paid out approximately \$221,000 from the Property Services Compensation Fund, which it administers to claimants in relation to these losses.

The Hon. CHARLIE LYNN: I seek clarification. It was in relation to Camden Property Marketing. You know very well, commissioner, that Camden Property Marketing had nothing to do with Mr Leach.

Mr O'CONNOR: I never mentioned Camden Property Marketing.

The Hon. CHARLIE LYNN: Well, I will mention it. You know the \$200,000 was paid out in regard to Camden Property Marketing—

Mr O'CONNOR: I never—

The Hon. CHARLIE LYNN: You know that, commissioner. You have misled this Committee.

CHAIR: The Hon. Charlie Lynn will come to order. He will stop yelling at the witnesses and behave himself. The time for questioning in this segment has expired. I advise the witnesses that the Committee has resolved to receive the return of answers to questions taken on notice at the hearing within 35 calendar days.

(The witnesses withdrew)

The Committee proceeded to deliberate.
