

**ANNUAL REPORT OF
THE COMMISSIONER
OF CONSUMER AFFAIRS
2012/2013**



The Hon John Elferink
Attorney-General and Minister for Justice
Parliament House
DARWIN NT 0800

Dear Minister

Re: ANNUAL REPORT 2012-2013

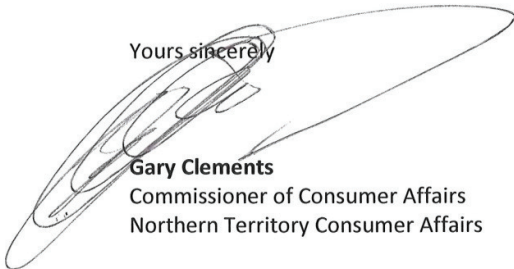
The Department of Attorney General and Justice 2012/13 Annual Report includes performance reporting on Consumer Affairs in conformity with requirements of the *Public Sector Employment and Management Act* and the *Financial Management Act*.

The Commissioner of Consumer Affairs is a statutory officer and is required to report to the Minister annually pursuant to:

- Section 12 of the *Consumer Affairs and Fair Trading Act*;
- Section 15 of the *Residential Tenancies Act*;
- Section 11 of the *Retirement Villages Act*;
- Section 14 of the *Business Tenancies (Fair Dealings) Act*; and
- Section 20 of the *Caravan Parks Act*;
- Part 5A of the *Building Act*.

I have pleasure in submitting to you the Commissioner's report for the year ended 30 June 2013.

Yours sincerely



Gary Clements
Commissioner of Consumer Affairs
Northern Territory Consumer Affairs

28 October 2013

TABLE OF CONTENTS

Pages

Output Statement	1
Legislative Responsibilities	2
Highlights and Matters of Significance	3
National Committees	6
Media	8
Educational Activities	9
Consumer Magazine	11
Indigenous Liaison	12
Indigenous Radio Segments	14
Consumer Affairs Website	15
Fair Trading	17
Complaints Process	20
Trader Visits	24
Residential Tenancies	25
Business Tenancies	27
Compliance	28
Caravan Parks Act	30
Retirement Villages Act	31
Other Statutory Responsibilities	31

CONSUMER AFFAIRS

OUTPUT STATEMENT

Provision of a regulatory framework where the community is informed on consumer rights and responsibilities and responsible business conduct is promoted.

PROGRAMS

Promote and regulate responsible business and industry conduct through administration of a regulatory system that protects community interests.

Inform consumers of their rights whilst assisting conflict situations through dispute resolution processes.

REPORTING STRUCTURE

Northern Territory Consumer Affairs is located within the Department of Attorney General and Justice and reports to the CE in regard to compliance with the *Financial Management Act* and the *Public Sector Employment and Management Act*.

The Commissioner reports directly to the Attorney General and Minister for Justice under statutory appointments pursuant to the following Acts:

- Section 12 of the *Consumer Affairs and Fair Trading Act*;
- Section 15 of the *Residential Tenancies Act*;
- Section 11 of the *Retirement Villages Act*;
- Section 14 of the *Business Tenancies (Fair Dealings) Act*; and
- Section 20 of the *Caravan Parks Act*;
- Section 6 of the *Price Exploitation Prevention Act*

LEGISLATIVE RESPONSIBILITIES



Accommodation Providers Act

Business Tenancies (Fair Dealings) Act

Caravan Parks Act

Consumer Affairs and Fair Trading Act (including the Australian Consumer Law)

Price Exploitation Prevention Act

Residential Tenancies Act

Retirement Villages Act

Sale of Goods Act

Uncollected Goods Act

Warehousemen's Liens Act

Building Act – Residential Building Dispute Function

HIGHLIGHTS AND MATTERS OF SIGNIFICANCE

RESIDENTIAL TENANCY DISPUTES

Northern Territory Consumer Affairs administers the *Residential Tenancies Act* throughout the Northern Territory.

The Northern Territory has the highest percentage of rental properties in Australia, with 49% of all residential properties tenanted. The rental market has been very tight in the reporting year with very low vacancy rates, which has contributed to a rise in the number of residential tenancy related enquiries received by the call centre and an increase in the number of residential tenancy applications received.

Residential Tenancy applications result when disputes arise between a landlord and a tenant where either party requires a decision to be made regarding that dispute. Applications are usually received when negotiations have broken down or one of the parties is in breach of the requirements of the *Residential Tenancies Act* or the lease agreement. A total of 957 applications were received this year which is a 26% increase from the previous year. Once an application has been received by Northern Territory Consumer Affairs, a conciliation process occurs and if this is not successful, the application is heard and determined by the Commissioner of Tenancies office.

RESIDENTIAL BUILDING DISPUTES

On 1 January 2013 changes to the *Building Act* commenced and the *Building (Resolution of Residential Building Work Disputes) Regulations* came into force. As of 1 January 2013, Northern Territory Consumer Affairs commenced administering the dispute resolution function for residential building work under statutory appointment of the Commissioner of Consumer Affairs as the Commissioner of Residential Building Disputes.

This new legislation is a significant milestone for consumers undertaking residential building works. It provides a regulated process to enable disputes between owners and builders to be heard impartially and fairly. The Commissioner of Residential Building Disputes has the ability to make binding and enforceable decisions in relation to residential building work as well as issue compensation orders against builders where appropriate.

The *Building (Resolution of Residential Building Work Disputes) Regulations* sets out three avenues that an owner or builder with a building contract may use to resolve a dispute;

1. **Application for Mediation or Conciliation:** this type of application allows the owner and builder to voluntarily resolve their dispute through a mediated conference. The purpose of the conference is for the parties to come to a mutual agreement regarding the dispute. The Commissioner or Delegate will provide a mediation and conciliation service to ensure a safe, fair and neutral environment for both parties. The Commissioner or Delegate can make a binding decision based on a mutual agreement between the parties.
2. **Application for Consumer Guarantee Dispute:** this type of application allows the owner to lodge a complaint that relates to a consumer guarantee, such as a failure of a product or service provided, as described in the Australian Consumer Law. The Commissioner or Delegate may conduct a hearing and make a binding decision in relation to the dispute.

3. **Application for a Technical Inspection:** an owner or builder may lodge an application to request the Commissioner to engage a suitably qualified expert to conduct a technical inspection to ensure that components of a residential building comply with Northern Territory or relevant building standards. If a fault is found the owner or builder may lodge an application for a Consumer Guarantee Dispute.

Since commencement of the Act, Northern Territory Consumer Affairs has received 55 building related enquiries to the call centre and one formal application for mediation or conciliation has been lodged with the office.

It has recently been reported that there is more than 800 residential buildings under construction within the Northern Territory; Northern Territory Consumer Affairs will continue its focus of educating consumers and builders on their rights and obligations under the *Building (Resolution of Residential Building Work Disputes) Regulations*, the *Building Act* and the Australian Consumer Law. Northern Territory Consumer Affairs is compiling fact sheets and general information for consumers and builders to ensure awareness and understanding of the new legislation. As the information is updated, it will be available on the Consumer Affairs website.

AUSTRALIAN CONSUMER LAW (ACL)

The Australian Consumer Law is a cooperative reform of the Australian Government and States and Territories, developed and implemented through the then Ministerial Council on Consumer Affairs.

The Australian Consumer Law commenced on 1 January 2011 however additional protections under the Act have also been introduced over the past reporting year.

The ACL includes:

- national unfair contract terms law covering standard form contracts;
- national law guaranteeing consumer rights when buying goods and services, which replaces existing laws on conditions and warranties;
- national product safety law and enforcement system;
- national law for unsolicited consumer agreements, which replaces existing State and Territory laws on door-to-door sales and other direct marketing;
- simple national rules for lay-by agreements; and
- new penalties, enforcement powers and consumer redress options, which apply nationally.

The ACL applies nationally, in all States and Territories, and to all Australian businesses. It has successfully brought about harmonisation of consumer protection laws throughout Australia providing similar levels of protection for consumers no matter where they live.

NATIONAL MEETINGS

The Australian Consumer Law is national legislation that relies on all jurisdictions being involved in providing a consistent message to traders and consumers. Consumer Affairs Officers attended a variety of national forums and teleconferences to ensure jurisdictions work together in providing protection for consumers. These meetings and teleconferences included:

- Legislative and Governance forum on Consumer Affairs (CAF). The Commissioner attended with the Minister at each of the meetings held this reporting year, the Ministers previously met under the Ministerial Council on Consumer Affairs which has been superseded by CAF
- Consumer Affairs Australia and New Zealand (CAANZ); which is represented by each of the heads of Consumer Affairs and or Fair Trading Agencies nationally;
- Compliance and Dispute Resolution Advisory Committee (CDRAC); inclusive of a number of working parties;
- Education Information Advisory Committee (EIAC);
- Fair Trading Operations Group (FTOG);
- National Indigenous Consumer Strategy (NICS); and
- Society of Consumer Affairs Professionals (SOCAP) Annual Conference.

NATIONAL COMMITTEES

NATIONAL INDIGENOUS CONSUMER STRATEGY (NICS)

The National Indigenous Consumer Strategy has representatives from all State and Territory jurisdictions and is focused on identifying issues affecting indigenous consumers and reporting of these issues at a national level. During the financial year, Northern Territory Consumer Affairs was one of the architects in the development of a national booklet resource. This resource uses simplified English and a format which depicts Indigenous consumer rights awareness in an easy to understand and read layout. The new resource booklet "Be Smart Buy Smart" utilises the "Talk about shopping" booklet as the foundation, which was developed in South Australia for the people of the Pitjantjatjara lands.

National Indigenous Consumer Strategy



EDUCATION INFORMATION ADVISORY COMMITTEE (EIAC)

The Education Information Advisory Committee has representation from all jurisdictions. The role of the committee is to develop resource material on the Australian Consumer Law for the wider community. The material developed is for use by the consumer and business sectors throughout Australia with the most recently developed publications being industry specific guides which have proven to be an invaluable resource for small businesses.

Northern Territory Consumer Affairs representation on this committee helps to ensure the material developed takes into consideration the demographics of our region and the multicultural aspect of our community.

COMPLIANCE AND DISPUTE RESOLUTION ADVISORY COMMITTEE (CDRAC)

This committee focuses on national cooperation and coordination of Australian Consumer Law compliance, dispute resolution and enforcement matters that have a national or cross jurisdictional perspective.

FAIR TRADING OPERATIONS GROUP (FTOG)

This group supports CDRAC and deals with emerging issues and dispute resolution principles. In 2012/2013 Northern Territory Consumer Affairs, in collaborative participation with other fair trading regulators, contributed to the following CDRAC national compliance projects:

- **National Dispute Resolution Project**

The aim of this project is to facilitate an exchange of information to assist in the resolution of disputes which affect consumers Australia wide. In December 2012 a Northern Territory representative attended a national group meeting which worked to develop processes to coordinate the reporting and resolution of cross jurisdictional complaints. Group efforts focussed on the identification of traders presenting issues in other jurisdictions, improved intelligence sharing and a collaborative, consistent approach to resolution of complaints.

- **National Project On Extended Warranties**

This project targets the conduct of retailers offering extended warranties to consumers of whitegoods, computers and cars. The project aims to address identified issues including non-disclosure of terms and conditions pre-sale, conflicting and confusing messages to consumers about responsibilities with manufacturer's warranty, consumer guarantees and extended warranty product exclusions. This project continues through 2013-2014 to finalise the outcomes of compliance efforts and achieve a consistent national approach to any resultant enforcement action.

- **Travelling Con Men**

This project commenced in 2011-12 with national public awareness campaigns which were maintained during this reporting period. The use of social media via the Northern Territory Consumer Affairs Facebook page has proven to be a fast and effective source to alert the wider community about unlawful trading by itinerant traders ("travelling con men") and an avenue which provides a new source of consumer reports about travelling con men activity. Compliance officers investigated reports of "bitumen bandits" and "white van sales" of home entertainment equipment in the past year. Work on the establishment of operational links with local organisations, Northern Territory Police and other fair trading jurisdictions has resulted in the exchange of valuable intelligence to assist in the eradication of unlawful selling of goods and services by travelling con men.

MEDIA

Northern Territory Consumer Affairs utilises a range of media outlets on both a proactive and reactive basis to ensure Territorians are aware of a wide range of current issues.

Over the reporting year the Commissioner and or Deputy Commissioner undertook 44 media interviews on radio, television and in local newspapers.

The Commissioner participates in a monthly breakfast segment on the ABC radio highlighting recent scams and bringing general consumer awareness messages to Territorians.



EDUCATIONAL ACTIVITIES

PRESENTATIONS

Northern Territory Consumer Affairs' staff attended and undertook a number of presentations to community groups the following are some of those visited this reporting year;

DEFENCE EXPO

Northern Territory Consumer Affairs attended the Defence Day Expo in Palmerston and also at Tindal Air Force Base outside of Katherine. These expo's are designed to highlight the availability of services within the local area for new service personnel and their families recently posted into the region. The expo in Palmerston is open to the general public and is held at the Royal Australian Air Force Base, while the Tindal expo was restricted to service personnel and their families. Both events saw a high level of interest from attendees on consumer and residential tenancy issues, with over 50 service personnel in each location receiving information about their consumer rights.

SENIOR CITIZENS

Consumer Affairs conducted a number of presentations for senior Northern Territorians with an emphasis on scams and warranty rights. The seniors identified themselves as being vulnerable to scammers, as scammers appear to target the elderly and others whose exposure to social media is sometimes lacking.

During these presentations the seniors raised various examples of where they thought they may have, or had been, subjected to a scam or identity theft.

The presentations resulted in these seniors acknowledging they were more aware of the manner in which scammers operated as well as having a greater understanding of their consumer rights.



INDIGENOUS YOUTH

The focus of these presentations are to ensure young Territorians gain an understanding of their consumer rights, this is particularly important for our Indigenous youth.

Northern Territory Consumer Affairs conducted a number of presentations at the Karen Sheldon Catering and Training Centre in Darwin and Katherine. The participants were mainly indigenous youth who were engaged in a job readiness training program. The presentations were designed to empower the participants by increasing their knowledge of their consumer and residential tenancy rights and responsibilities.

At one particular presentation, an attendee advised the Consumer Affairs officer of a situation where she placed her motor vehicle with a mechanic for repair, but prior to agreeing to the work she had asked for and received a written quote. However, when she went to collect the motor vehicle the trader had exceeded the quoted price by \$1,000 and then refused the consumer access to the vehicle until the invoice was paid in full. Utilising the advice given during the presentation, the consumer returned to the mechanic informing him of her consumer rights.

The mechanic acknowledged their actions were wrong and released the consumer's motor vehicle immediately. Even though the consumer was not obligated to, she offered to partially compensate the trader for the extra work carried out.

“THE CONSUMER” MAGAZINE



Northern Territory Consumer Affairs informs the community of current consumer related information through the production of “The Consumer” Magazine.

This year the magazine was released in November and June with content covering a variety of issues including information about the new Residential Building Dispute function, Australian Consumer Law, residential tenancy matters, the Small Business Self-Assessment Checklist and a range of other items of interest.

The magazine is available to download online on the Consumer Affairs Website with a link also posted on our Facebook page. A total of 297 people viewed the magazines on our Facebook page. This year 4,000 copies of each magazine were published. These magazines were mailed out to a range of stakeholders including schools, members of the Legislative Assembly and Community Groups. The magazine is also distributed to all regional centres as part of our outreach program which ensures this information reaches the more remote areas of the Northern Territory.

The positive feedback often received, each time we publish the magazine, evidences the importance of Northern Territory Consumer Affairs information being available throughout the community.

INDIGENOUS LIAISON

COMMUNITY VISITATION PROGRAM

The Northern Territory Consumer Affairs Indigenous Liaison and Education Officer visited 20 communities throughout the Northern Territory during the reporting year. The purpose of these visits is to raise residents' awareness of the legislation administered by Northern Territory Consumer Affairs with a prime focus on the Australian Consumer Law and the *Residential Tenancies Act*.

During these community visits, over 1,000 consumers approached the Indigenous Liaison and Education Officer to ask questions about their consumer rights and to discuss their consumer and residential tenancy concerns. A focus of these visits was also to convey consumer protection messages to the elders of the community. By focussing on educating and informing the elders, messages are passed on to people in the community, as elders are respected members acknowledged as understanding issues and providing guidance to the community. This results in indigenous people better understanding and being more willing to complain about consumer issues when problems arise.

The communities visited during this reporting period included Wadeye, Peppimenarti, Palumpa, Gapuwiak, Ramingining, Barunga, Bulman, Katherine, Timber Creek, Lajamanu, Bulla, Kalkarinji, Borroloola, Elliott, Tenant Creek, Ali-Curung, Daly River, Ti-tree, Yuendumu, Papunya with Alice Springs, Borroloola and Katherine visited on more than one occasion.

Motor vehicle sales and repairs

An industry guide to the Australian Consumer Law



INFORMATION SESSIONS

While in Alice Springs a manned information stall was erected over a weekend at the Yeperenye Shopping Centre and the Alice Plaza. These stalls provided Alice Springs residents with an opportunity to approach Northern Territory Consumer Affairs representative over the weekend for advice on the range of issues managed by Consumer Affairs. A large number of people approached the stall seeking information with a strong focus on residential tenancies and consumer issues with a number of people being referred to the Consumer Affairs Alice Springs Office for further assistance.

COMMUNITY STORES AND CONSUMER ISSUES

While undertaking the community visitation program, the Indigenous Liaison and Education Officer met with local store managers to raise their awareness of their rights and responsibilities under the Australian Consumer Law.

Some of these visits quickly resolved issues including:

- A store that had grocery items with shelf prices that differed from the scanned price at the cash register. This matter was raised with the manager who immediately rectified the pricing difference and made a verbal undertaking to train his staff to ensure this did not reoccur.
- In another community, the store had a photograph of a bed base and mattress advertised for sale but on closer inspection it was noted that the mattress was not part of the package. This was raised with the store manager who immediately removed the misleading advertisement and replaced it with a new advertisement of a bed base only. As a goodwill gesture, the store then offered to supply consumers who had purchased the item while the initial advertisement was displayed, a mattress free of charge.
- A further visit to a store evidenced that the store's printed cash receipt failed to display the items purchased, the description or the unit price of each item. The store manager advised that this was due to the stores computer system awaiting a software upgrade. Following discussions with the store proprietor he agreed to place a sign on the register advising his customers of the problem and offering to supply a handwritten receipt if requested by the customer. This would remain until the upgraded system was in place.
- During a community visit five residents approached Northern Territory Consumer Affairs officer raising an issue they had with their faulty washing machines. Each of the consumers advised that their washing machines had broken down within the warranty period, however when they approached the store they were advised they had to send their washing machines to the manufacturer as it was not the stores responsibility to repair the washing machine after they purchased the item.

The residents considered that the cost of sending the washing machines back to the manufacturer was too expensive so in each case they had decided it was cheaper to discard the faulty washing machines and purchase a new one.

The Indigenous Liaison and Education Officer approached the store manager advising him of his responsibilities under Australian Consumer Law indicating that it was the stores responsibility to honour the consumer guarantees in accordance with the provisions set down in Australian Consumer Law. The manager advised if the consumers returned their washing machines, they would be refunded the cost of the purchase.

Each of the consumers retrieved and returned their washing machines' and received their refunds. The store manager acknowledged his responsibilities under Australian Consumer Law and also advised that he had decided to seek an alternative washing machine supplier to ensure the machines were of a better quality.

VISITATION PROGRAMS PROVIDE REAL BENEFITS

The continuance of the community visitation program has proven an invaluable activity that raises awareness of peoples consumer rights and responsibilities under Australian Consumer Law and the other Northern Territory Legislation administered by Northern Territory Consumer Affairs. These visits provide Northern Territory Consumer Affairs with a conduit to identify and rectify issues for some of our most vulnerable consumers.

INDIGENOUS RADIO SEGMENTS



COMMUNITY RADIO

As part of the Indigenous Liaison and Education Officer's community visitation program, he undertakes appearances at local community radio stations to broadcast segments on air about consumer awareness issues. These segments offer discussion forums which are focussed on a specific region and its people. They also allow the officer to utilise material which has been developed nationally through the Education Information Advisory Committee, targeting the indigenous audience. This is an excellent way to introduce and showcase these new resources to the local communities.

TOP END ABORIGINAL BUSH BROADCASTING ASSOCIATION (TEABBA)

The Indigenous Liaison and Education Officer presents a consumer awareness segment for the Top End Aboriginal Bush Broadcasting Association Radio Station on a fortnightly basis. The radio station broadcasts to 29 communities throughout the Top End of the Northern Territory. Over the past year the topics discussed included consumer shopping, consumer guarantees, receipts, second-hand car purchases and scams.

The Top End Aboriginal Bush Broadcasting Association also broadcasts community announcements advising their listeners of the times when the Indigenous Liaison and Education Officer is undertaking community visits to their region. This has contributed to an increase in the number of people attending the locations to receive information or obtain advice regarding consumer issues.

We wish to thank the Association's continuing support in bringing these important messages throughout these 29 communities.

CONSUMER AFFAIRS WEBSITE

In early August 2012, the new Northern Territory Consumer Affairs website commenced. The website features the new colours of our logo and has been designed for ease of access and use by consumers and traders alike.

The website contains information about a wide variety of subjects which is relevant for both consumers and traders.

The information on the website is regularly updated to ensure traders and consumers are kept up to date with the latest information.

The popularity of the website is evident, as shown by the 50% increase in visits from the previous reporting period. A total of 29,822 individual users visited the website for this reporting period. Northern Territory Consumer Affairs has received many positive comments about the website.



[For Consumers](#)

[For Businesses](#)

FACEBOOK

As social media is becoming more prevalent, Facebook was selected as an appropriate tool to help reach as many Territorians as possible. In early August 2012, Northern Territory Consumer Affairs launched its Facebook page.

Consumer, tenancy and scam information are some of the posts that have proven popular with many of these being 'liked' and 'shared' between people's friends. Warnings are also posted when Northern Territory Consumer Affairs becomes aware of new scams or when a scam is becoming more prevalent.

FACEBOOK CONTINUED

Warnings were also posted when travelling conmen including “white van” salesmen or “bitumen bandits” are found to be in the Northern Territory. One post alerting Territorians about “bitumen bandits” received 1,203 people viewing the post. From this post important information was received from members of the public who had dealings with or had been approached by these conmen. The information was then provided to other jurisdictions in an effort to try and stop these conmen taking advantage of unsuspecting people.

In total almost 5,700 people viewed posts on the Facebook page over the reporting period.



The image displays two screenshots of Facebook posts from the Northern Territory Consumer Affairs page. The left screenshot, dated May 13, features a link to National Cyber Security Awareness Week. The text of the post states: "Next week is National Cyber Security Awareness Week. This is an annual Australian Government initiative to help Australians that use the internet to have more awareness of their security online. To see what is planned next week or become a partner, check out the website." Below the text is a graphic for "Awareness Week | Stay Smart Online" with the dates "20-24 May 2013" and the website "www.staysmartonline.gov.au". The post has 3 likes and 86 people saw it. The right screenshot, dated May 10, contains a warning about online bookings: "Are you thinking about going on holidays? Have you found an internet site that offers cheap deals? Make sure it is a legitimate site and don't get scammed." It includes a photograph of a woman covering her eyes with her hands, suggesting distress or a scam. Below the photo is the headline "Alert as travellers scammed of \$250,000 in online bookings" and the source "www.news.com.au".

FAIR TRADING



Fair Trading Officers at Northern Territory Consumer Affairs provide advice in a variety of ways including at face to face meetings with members of the public who come into our offices in Darwin and Alice Springs, by e-mail, telephone or on Facebook.

While Northern Territory Consumer Affairs administers a number of pieces of legislation, the most common enquiries relate to residential tenancies or consumer enquiries. The enquiries received can relate to a consumer not receiving a full cup of coffee, to a very complex matter such as the construction of a house that has not gone according to plan.

A dedicated database is used to record enquiries received where there is some form of detriment to the caller.

Residential tenancy matters have significantly increased over the reporting period, now being over 50% of all enquires. This is usually a situation where the tenant, landlord or Property Manager requires advice about an issue under the *Residential Tenancy Act*. The Fair Trading Officer provides general advice on tenancy matters and where more complex advice is required the caller is referred to the Consumer Affairs Tenancy Unit.

Consumers will often contact Northern Territory Consumer Affairs when they are in dispute with a trader. At the time of the initial call, most consumers have not formalised the complaint by writing to the trader. The consumer is advised to write to the trader advising of their complaint and the outcome they seek, along with a reasonable time frame in which to receive a reply. This allows the consumer an opportunity to resolve the dispute themselves, formalising the complaint and creating an evidence trail. If the trader does not respond in the time frame requested or the response is not favourable, the consumer can then lodge a formal complaint with Northern Territory Consumer Affairs.

TRADER VISITS

Trader visits were carried out to 436 businesses throughout the reporting year. During these visits information is provided to traders, business' owners and their staff relating to their rights and responsibilities under the Australian Consumer Law. An information pack is also provided which includes a range of information such as the Small Business Checklist, fact sheets and additional information relating to other legislation administered by Consumer Affairs that may be of relevance, for example the *Uncollected Goods Act*.

ENQUIRY SERVICE AND DISPUTE RESOLUTION



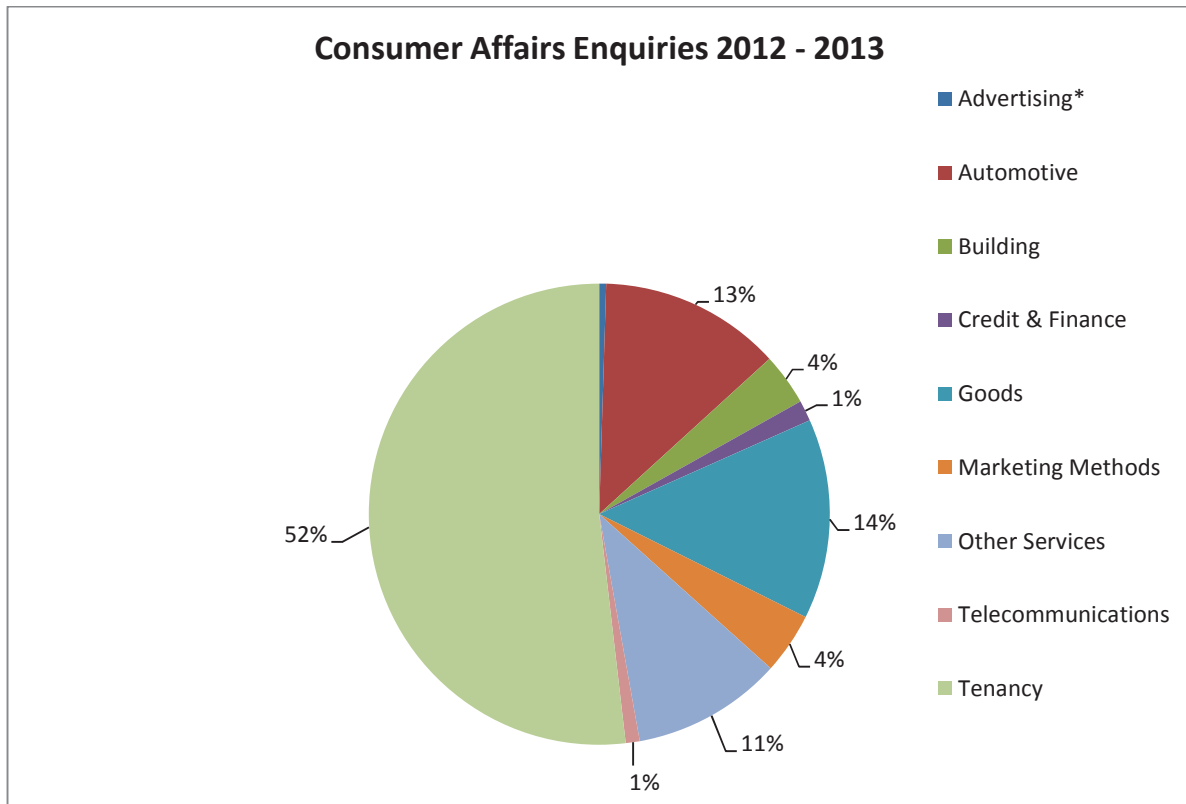
Northern Territory Consumer Affairs continues to receive increasing numbers of contacts from members of the public. This reporting period saw a total of 20,997 enquiries received which is an increase of 18% over the previous reporting period. The enquiries included contact by telephone, walk-ins, email and Facebook.

ENQUIRIES

The Client Enquiry Record System (CERS) is a dedicated database where entries of enquiries are recorded by Fair Trading Officers. The enquiry is recorded if there has been some sort of consumer detriment, the enquiry requires follow up, or it is categorised as a residential tenancy matter. Enquiries that are of a very general nature or do not relate to this office are not recorded. This year saw a total of 4,174 enquiry entries recorded. This is an increase of 38% over the last year. The trend of increasing residential tenancy enquiries continues as in past years, with 52% of all enquiries received being residential tenancy related. Residential tenancy enquiries were followed by enquiries relating to goods (14%) and then automotive complaints (13%).

Enquiries Continued

Consumer Affairs Enquiries 2012 - 13	
Industries	Total
Advertising	20
Automotive	532
Building	152
Credit & Finance	61
Goods	586
Marketing Methods	179
Other Services	439
Telecommunications	41
Tenancy	2164
Total	4174



ENQUIRY TRENDS

Contact by email is gaining popularity and is consistent with the trend of people being more likely to make contact via electronic means. This year saw 5,436 email enquiries to the dedicated consumer@nt.gov.au email address and to the Fair Trading Officers in the Alice Springs office. This is an increase of 31% over the previous year.

Over the reporting year 20,997 enquiries were received, of these 52% were residential tenancy related which is an increase of 27% over the previous year. Residential tenancy related matters increased overall for this period. The rental market in the Northern Territory has been very tight and with more financial pressure on households, tenants are expecting to get value for higher rents and bonds they are paying.

Complaints relating to motor vehicles remain on par with previous years while complaints relating to Marketing Methods (scams) dropped by 4%.

The loss of the Education and Promotions Officer continues to have an impact on the ability to provide educational material to vulnerable consumers. The Northern Territory has the largest indigenous population per capita in Australia. It has been a challenge to provide an appropriate level of consumer related education to the Territories indigenous community.

COMPLAINTS PROCESS



Often consumers call Northern Territory Consumer Affairs to seek advice on a course of action when dealing with a trader.

Unfortunately we cannot always assist callers. In some instances the consumer does not have a right to seek recourse from the trader due to a perceived slight. In other circumstances we cannot help, as

Complaints Process Continued

the complaint may be about the way a trader has spoken to a consumer (behaviour) or a consumer may be complaining because the price of a product is too high. In these situations the consumers are advised that we do not administer legislation regarding these matters or there is no legislation that covers their complaint.

In most cases however, the consumer does have the right to ask the trader for a suitable outcome. In these cases the consumer is advised to formalise the complaint by writing to the trader. If the trader responds and the response is not to the satisfaction of the complainant, or the trader does not respond at all, a formal complaint can then be lodged with Northern Territory Consumer Affairs.

Upon receipt of a formal complaint it is assessed to ensure that there is sufficient evidence to justify the complaint. A Fair Trading Officer who is allocated the complaint will contact the complainant and explain the conciliation/complaint handling process.

The complainant is also informed that our role is that of conciliation, and if we cannot achieve the outcome they require they may then be advised to seek independent legal advice. At this point the Fair Trading Officer may request that more information is submitted to ensure there is sufficient evidence to support the complaint.

The complaints received can range from a complaint about jewellery to a complaint about an engine rebuild. When it is clear that the trader is in the wrong and they are aware of their requirements under the applicable legislation, they will often offer appropriate redress. In some circumstances, to ensure a realistic outcome is reached, one or both parties to the dispute may come to a compromise that is agreeable to both parties.

Despite our best efforts, not all conciliations are successful. In some circumstances the trader can provide evidence to show why a complainant cannot claim redress. In other circumstances, the information provided by the trader and complainant is contradictory, the trader will not respond satisfactorily or the complainant will not accept the offer made by the trader. In these circumstances, the complainant is advised that they will need to seek independent legal advice if they wish to take the matter further.

Where it is clear that the trader is not aware of their responsibilities under the Australian Consumer Law or another applicable piece of legislation administered by Northern Territory Consumer Affairs, a face to face trader visit is carried out. An information pack is provided at these visits, which contains a variety of Fact Sheets, Australian Consumer Law industry specific guides and general guides that deal with a range of matters such as consumer guarantees.

If it is clear that there is considerable consumer detriment and the trader is breaching the requirements of Australian Consumer Law, or there has been a spike in complaints regarding a particular trader, the matter may be referred to the Northern Territory Consumer Affairs Compliance Unit for further investigation. Complaints regarding misleading or potentially deceptive terms in advertising or warranty conditions may also be referred to the Compliance Unit.

Consumer Affairs received a total of 217 formal complaints for this reporting period.

Complaint Form

BEFORE YOU LODGE A COMPLAINT you should try to resolve the problem by talking directly with the trader. Explain the problem and offer solutions that will satisfy you. If you are not successful, put the problem and your solutions in writing to the trader (addressed to the manager) and ask for a written response within a reasonable time limit. Keep a copy of all correspondence. If you are not happy with the response, or there is no response at all, **then you can submit an official complaint.**

In most circumstances, Consumer Affairs can only provide conciliation services if you have made every effort to resolve the problem with the trader, and the trader has refused to provide redress.

When you contact the trader, make sure you advise them what the problem is, and what you require them to do. Remember, always keep calm, as you are more likely to resolve matters if you do not lose your temper.

Complaints Process Outcomes

When dealing with formal complaints the Fair Trading Officers in Darwin and Alice Springs work very hard to conciliate the matter to achieve the best possible outcome for both parties involved. The following are some examples of the types of complaints received and their outcomes.

1. A consumer was unable to source a second hand gearbox locally so they purchased one from a southern supplier and shipped it to Darwin. When a qualified mechanic fitted the gearbox to the vehicle it was found to be faulty. The mechanic was paid as it was no fault of his. The consumer attempted to resolve the dispute with the trader but had no success. This led to the consumer lodging a formal complaint with Northern Territory Consumer Affairs.

Through Northern Territory Consumer Affairs conciliation process, the trader agreed to refund the cost of the gearbox and freight but refused to refund the cost incurred for the installation of the faulty gearbox. Through conciliation by a Fair Trading Officer, the trader agreed to compensate the consumer the amount they paid for the installation. The installation costs were clearly a consequential cost for the consumer because of the faulty part.

2. A consumer purchased a brand new 4WD vehicle with genuine extras which included a snorkel. While driving through a level crossing, that had some water flowing over it, the motor began to make a loud noise and then failed. Although the doors were closed, water also flowed into the vehicles cabin. The vehicle was towed to the motor vehicle dealer who initially advised the damage was due to misuse by the consumer. The motor vehicle dealer's insurer eventually agreed without admission of liability, to replace the vehicle including all the accessories and the extended warranty which was paid for at the time of the original purchase. It was found that the faulty installation of the snorkel created the problem and the resultant damage.

Outcomes Continued

3. An on-line item was purchased inclusive of freight and arrived in a damaged state. The goods appeared used, did not fit together and were marked and bent. The trader offered the consumer half the cost of the item as a resolution. The consumer did not consider this offer reasonable as the goods were damaged and unusable and consequently lodged a formal complaint with Northern Territory Consumer Affairs.

The Fair Trading Officer provided photos of the damaged goods to the trader that clearly showed they were damaged before they were shipped. On reviewing the matter further the trader agreed to refund the cost of the goods and freight. The trader also did not wish to receive the damaged goods back. The goods were clearly not fit for purpose.


4. A Consumer Affairs Regional Officer received a phone complaint from an elderly consumer who advised that a recent installation of door seals to her aging front door was not working as it should and due to this she had refused to pay the trader. The Consumer Affairs Officer rang the trader who was more than willing to meet with the consumer and our Officer at the consumer's home to view the completed work. The trader was keen to explain how the door seal worked as he stood by his work.

The elderly consumer was not satisfied with a tiny screw that appeared to be sticking out in the bottom corner of the door. The trader explained how the bottom seal was released and then sealed against the bottom of the door when it was closed against this small screw. Our Officer could see how the mechanism worked and was satisfied that the work appeared to have been carried out to an acceptable standard.


The Officer helped to explain the door seal system to the consumer who previously had some difficulty understanding all the features of the seals and how they operated.

Once the consumer understood, she was more than willing to pay the outstanding invoice. The trader was understanding and accepted her intentions. In fact, the trader offered her a discount of \$75 off the original invoice of \$375 and said he was just satisfied that Northern Territory Consumer Affairs was able to help and that he was getting paid for his job. The trader also indicated he was pleased that the consumer was now satisfied that the work was acceptable after all.

TRADER VISITS




Australian Government



australian consumer law

THE AUSTRALIAN CONSUMER LAW AND YOUR BUSINESS



Simpler regulation for your business

From 1 January 2011, every Australian business will have the same rights and responsibilities under the Australian Consumer Law.

By knowing your rights and responsibilities, you can look after your business and your customers.

Contact Consumer Affairs **1800 019 319** or consumer@nt.gov.au

Fair Trading Officers carry out face to face trader visits to ensure that traders are aware of their rights and responsibilities under Australian Consumer Law and other legislation administered by Northern Territory Consumer Affairs. Fair Trading Officers from the Darwin Office focused on the Winnellie, Pinelands and Humpty Doo areas this year while Alice Springs retailers also received visits from the regional Northern Territory Consumer Affairs staff. Fair Trading Officers carried out 475 trader visits during the year. Most traders value these visits indicating they were very happy to receive information that will help with their customer interaction.

RESIDENTIAL TENANCIES

The *Residential Tenancies Act* is legislation that defines the rights and responsibilities of residential tenants, landlords and their Agents in the Northern Territory.

The Commissioner of Tenancies office (within Northern Territory Consumer Affairs) provides a free service to tenants, landlords and agents throughout the Northern Territory.

An application under the *Residential Tenancies Act* can be submitted to the Commissioner of Tenancies by either the tenant or the landlord where there is a dispute between the two parties.

There are various provisions of the Act that allows for applications to be submitted, including:

- for the retention of the bond money,
- failure to pay rent, on
- compensation for various matters that may include damage caused by a tenant to a rental property.

Tenants can also apply for compensation where there has been a reduction in the quality of the rented accommodation or where repairs have not been carried out which have negatively impacted on the tenant, for example where a pool pump is broken and the quality of the water is so bad that the pool cannot be used.

The rental market has been very tight over the past year and in some cases the vacancy rate in some Northern Territory suburbs has been less than 1%. This has had the result of increasing rental prices which in turn increases the amount of bond money paid.

Consequently the number of calls relating to residential tenancy matters has increased and is now 52% of all calls received at Northern Territory Consumer Affairs. The number of applications to the Commissioner of Tenancies has also increased, with 957 applications submitted, a 26% increase over the previous year.

When an application is received it is assessed to ensure that the statutory requirements are met. The most common reasons why applications will not be accepted are:

- the calculated amount of rent payable is incorrect, and;
- the date on which the rent was last paid and the date on which the rent will next be paid after a breach is remedied is incorrectly detailed.

After the application is accepted by Consumer Affairs, to ensure that natural justice occurs, the application is forwarded to the other party. At this point, the Tenancy Officer may conciliate between the parties to achieve an outcome that is acceptable to both. If this occurs the application is withdrawn.

If the application is not withdrawn, the matter will go to an Inquiry (Hearing) where the Commissioner of Tenancies, or his Delegate, will make a decision on the basis of the evidence provided by both parties and create an Order. As in a court case, both parties have the opportunity to provide evidence during the Inquiry. Once all the evidence has been presented, court enforceable Orders are issued to ensure a course of action is taken to finalise the matter.

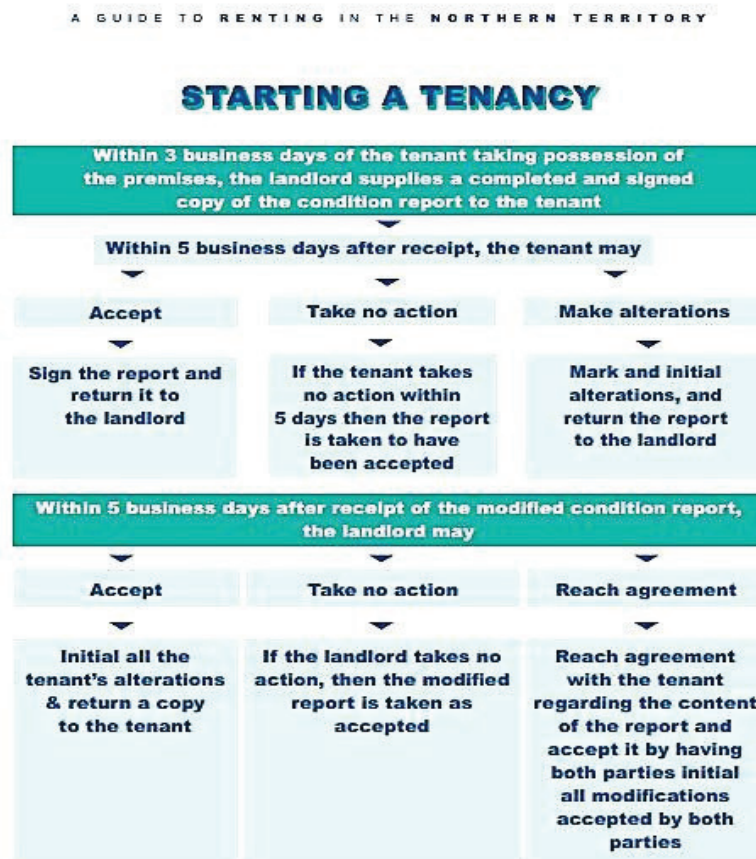
Residential Tenancies Continued

If either party to the tenancy does not agree with the Order, it can be appealed through the local Court within 14 days after receiving a copy of the Order and reasons. The Commissioner of Tenancies has no involvement in the appeal process as the local court will hear the application as a completely new matter (de novo).

'A Guide to Renting in the NT' is a booklet produced by Northern Territory Consumer Affairs and contains comprehensive information for tenants and landlords in the Northern Territory. The booklet is distributed throughout the Territory as well as being available at the offices of Northern Territory Consumer Affairs in Darwin and Alice Springs and at the Real Estate Institute of the Northern Territory (REINT).

14,000 copies were distributed this reporting year.

The following is an example of some of the information contained in the booklet



If a dispute arises between the landlord and tenant over the acceptance of the condition report, either party can apply to the Commissioner of Tenancies to prepare a report.

BUSINESS TENANCIES

The *Business Tenancies (Fair Dealings) Act* is the legislation which certain commercial business leases must abide by. Some of the exemptions include shops with a lettable area greater than 1,000 square meters or a retail shop lease granted under the Darwin International, Alice Springs or Tennant Creek Airports.

A total of four applications were submitted to the Commissioner of Business Tenancies over the reporting year. Of these, one was advised to proceed straight to court, another two were provided with a Certificate of Failure to Resolve Retail Tenancy Claim, the final one fell outside of the Act.

COMPLIANCE

COMPLIANCE UNIT ACTIVITY

The role of the compliance unit incorporates the responsibility to positively influence trader behaviour through education and fair marketplace regulation. In line with the national compliance and enforcement principles and Northern Territory Consumer Affairs policy, the use of a range of escalating measures is adopted to encourage trader behaviour to achieve compliance with the law and to improve operating practices. With a focus to minimise direct material and financial loss to consumers due to non-complaint trader conduct, a risk based approach is applied to make best use of resources and to maximise public benefit.

This summary of some compliance activity demonstrates a broad cross section of businesses dealt with during the 2012/2013 year:

- A local building company came to the attention of the compliance unit for potentially misleading or deceptive conduct. The conduct was in the context of representations made in a range of promotional advertising including:
 - a positive customer testimonial on its website which was misleading when the customer requested its removal after poor workmanship and non-completion issues were experienced;
 - representations in published advertising of the subject builders' professional endorsement and membership affiliations when these had lapsed, and
 - representations about build completion periods, building practice and quality.

Compliance officers took steps towards the removal of the offending material from the website. The website was then shut down by the website provider. The building company became the subject of ASIC (Australian Securities and Investments Commission) initiated proposed deregistration on the grounds of insolvency.

- A local electrical and solar installation company was also put on notice in relation to false and misleading testimonials on its website. Action was taken to have the testimonials removed when it was revealed that the testimonials were not generated by genuine customers of the local company. The trader complied in removing the false information, however remains on notice and is the subject of ongoing compliance monitoring.
- Another solar power system supplier was warned in relation to public claims made about solar power systems performance and benefits. Statutory requirements that advertised performance claims must be accurate and capable of substantiation led to a thorough review of the trader's promotional information.
- Consumer Affairs also issued a media release to alert the community to emerging issues when engaging with solar power industry participants and to warn businesses about fair trading obligations.

Compliance Unit Activity Continued

- A Darwin jewellery business was investigated for potentially false or misleading advertising when a consumer was denied a discount on a particular item although sale signage advertised 'Everything reduced storewide'. Compliance action included an in-store trader visit and subsequent meeting with the business owners to review business practices. The trader's cooperation resulted in:
 - staff training on ACL obligations and consumer complaint handling, and
 - strengthened in-store promotion procedures.
- Following several consumer complaints against a local mobile business owner, compliance education resulted in a change in trader conduct and operational practices with immediate steps taken to address identified issues including:
 - the provision of proof of transaction and itemised bills;
 - rectification of advertising to remove misleading former business affiliations, and
 - the implementation of a consumer complaint handling process.

- A Northern Territory removalist company has been the subject of action in relation to potentially unfair contract terms and general fair trading issues including non-disclosure of terms and conditions and consumer complaint handling.

Work is underway to amend the terms and conditions of their contract in accordance with the ACL and the implementation of improved compliant business practices with a view to reducing the incidence of consumer complaint.

- A commercial charitable fundraising service based in NSW came under scrutiny when consumer concerns were raised about the nature and content of the telemarketing pitch used by the company to entice Northern Territory residents to purchase tickets in a lottery. It was identified that telemarketers misled Northern Territory consumers by representing that funds from the lottery would benefit an NT community organisation when that was untrue. In cooperation with Consumer Affairs the company has undertaken the following steps;
 - issued a public apology prominently published in the Northern Territory News;
 - informed all affected NT residents in writing, explained the conduct, apologised and offered to refund money paid and cancel pledges in the future if the consumer wishes;
 - developed a robust staff training program which incorporates best practice principles, regulator obligations including the ACL and which emphasises the importance of each staff member reading and understanding the nature of fundraising campaigns and adhering to telemarketing scripts, and
 - an improved internal monitoring system of both agents and calls in line with best practice principles.

Compliance Unit Activity Continued

More broadly, compliance operations continue to respond to issues as they emerged. The opportunities for proactive audits were conducted where resources permitted.

During the reporting period 149 trader contacts were undertaken relating to fair trading and the Australian Consumer Law as well as matters arising under other legislation administered by Consumer Affairs such as:

Retirement Villages Act: The assessment and investigation of the actions of a local retirement village in dealings with residents with respect to the sale of property.

Residential Tenancies Act: Compliance contact with landlords and property agents regarding the obligations under the Act for the remittance to Consumer Affairs of unclaimed residential security deposits

STATISTICS

Investigations conducted	36
Investigations concluded	32
Complaints withdrawn, resolved to the satisfaction of the complainant or where no breach was disclosed	5
Complaints referred to other organisations	5
Traders placed on notice	5
Investigations referred for prosecution	0
Trader visits	7
Compliance education provided	142

CARAVAN PARKS ACT



Northern Territory Consumer Affairs administers the *Caravan Parks Act*. This Act provides protections for long term tenants and owners of caravan parks in the Northern Territory. This year saw three calls to the Call Centre with reference to this Act. One of the calls received regarded the process of evicting an abusive tenant, another concerned abandoned goods and the other was general information regarding the Act.

RETIREMENT VILLAGES ACT

Northern Territory Consumer Affairs administers the *Retirement Villages Act* which regulates the operation of retirement villages in the Northern Territory. There are now three providers of retirement villages in the Northern Territory. Consumer Affairs continues to maintain close relationships with these organisations. Senior staff members from the Tiwi Retirement Village have met with the Commissioner several times during the year to discuss current events.

During the year the call centre received two calls regarding retirement villages. One call related to the requirements of registering a retirement village in the Northern Territory and the other was to arrange a meeting between the committee members for the residents of a retirement village and Northern Territory Consumer Affairs. A meeting was subsequently held and resulted in the committee writing to the Commissioner to formally request responses to the concerns held. A further complaint was received from a resident and was forwarded to the Compliance Unit for further assessment.

OTHER STATUTORY RESPONSIBILITIES

The Commissioner of Consumer Affairs is statutory officer responsible for a number of pieces of legislation however the Government has directed, through the Administrative Orders, responsibility for management of these pieces of legislation with the Department of Business.

The Commissioner has also delegated authority for a number of tasks to staff within the Department of Business.

The following are Acts or Regulations of this nature:

Associations Act

Commercial and Private Agents Licensing Act

The Consumer Affairs and Fair Trading Act - Parts 10, 11 and 14

Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice Regulations).