

# CONSUMER LAW CENTRE VICTORIA

## e-bulletin no. 36, December 2005

### Editorial

It has been a year of change and challenges for the CLCV, but one in which the excellent work of the Centre has continued and been augmented by the addition of new staff and the commencement and completion of a range of projects. Readers of the *e-bulletin* will know we have farewelled some staff members over the course of the last twelve months, and welcomed new members to the team. As we all take a well-deserved break over the holiday season, we look forward to returning refreshed for the challenges of 2006.

In late November, I had the opportunity to return to London briefly for a series of meetings and discussions around a range of policy areas. Foremost among these was a discussion of the UK Better Regulation Agenda, and the proposals for reforming regulation and enforcement activities across Government. With the Australian Government recently announcing a similar review process here, it was an excellent opportunity to discover what has and has not worked in the UK process.

As such, I met with senior policy makers and regulators, including representatives from the Cabinet Office, Department of Trade and Industry, Office of Fair Trading, Ofgem (energy regulator), Postwatch, Energywatch, the National Lottery, the Local Government Better Regulation Executive, Which? and the National Consumer Council.

The information gathered and views formed as part of this consultation has been invaluable in assessing and responding to proposals for regulatory reform here and in framing our approach to a consumer-focussed approach to regulation. Of particular interest has been the apparent shift from the 'one in one out' approach to reducing the quantity of regulation to an approach which focuses more on the use of risk-based enforcement and principles-based regulation to increase the efficiency and effectiveness of regulation and consumer protection.

Other 'hot issues' discussed during these consultations included changes to consumer protection and enforcement structures, moves to increase information-sharing among credit providers, alterations to complaints-handling processes and structures and the new EU Directive on Unfair Commercial Practices. The visit was also an opportunity to reinforce the good contacts the Australian consumer movement has developed with various consumer organisations in the UK and further the valuable information-sharing such contact enables.

Earlier in November, I attended my first ACCC Consumer Consultative Committee as the CLCV representative. This is an important forum for gaining information on the activities and priorities of the ACCC, and providing that regulator with consumer feedback. We appreciate the efforts of ACCC officers in facilitating these discussions and recognising the valuable contribution consumer representatives' make. One of the most significant functions of this forum is to serve as an occasional thorn in the side of the ACCC, to ensure it does not just focus on competitors, rather than consumers, in its activities. As advocates of competition as one of the best mechanisms for protecting consumers, we are keen to see the ACCC enforce that side of its considerable mandate, but will always prod it to match its pro-competition enforcement efforts with equivalent activity on the consumer protection side.

To all our readers, have a safe and restful holiday season, and I look forward to catching up with you all in the New Year.

**Catherine Wolthuisen**  
**Executive Director**

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### 1. What are we doing?

#### 1.1 Submission on Debt Agreements

On 22 August 2005, the Federal Attorney-General announced that the Insolvency Trustees Services Australia (ITSA) and the Attorney-General's Department would be undertaking a review of the operation of debt agreements under Part IX of the *Bankruptcy Act 1966* (Cth). The review will consider whether debt agreements offer a viable alternative to bankruptcy for low-income earners and whether they improve returns available to creditors.

Debt agreements were introduced in 1996 to provide an alternative to bankruptcy for debtors with low incomes and levels of debt. Under a debt agreement, creditors accept a proposal for the debtor to pay off a proportion of the debt over time, helping the debtor to avoid bankruptcy and the creditor to recover a better return on the debt.

The Centre recently made a submission in response to the Issues Paper released in relation to the review. Our submission argued that there are a number of deficiencies in the operation of debt agreements that serve to minimise the benefits for consumers. These include:

- the conduct of some administrators of debt agreements;
- the lack of knowledge of administrators in relation to the alternatives to debt agreements;
- the lack of frank information provided to debtors as to the consequences of entering a debt agreement;
- the payment of excessive fees for the setting up and administration of agreements;
- the drawing up of unsustainable debt agreements by commercial debt agreement administrators; and
- the recording of the agreement on the National Personal Insolvency Index (NPII),

Reform of the current system is required in order to achieve the aims of the legislation, namely the financial rehabilitation of debtors and enabling proper levels of returns to be recovered by creditors. We argued for reform of the current system of debt agreements by means of:

- the regulation and licensing of debt agreement administrators;
- the imposition of positive duties on administrators to provide prescribed information to debtors, to disclose the consequences of debt agreements, to attest to the sustainability of agreements put to ITSA and to make genuine referrals to financial counsellors; and
- the removal of the requirement that debt agreements be recorded on NPII.

If you would like further information about the Centre's work on debt agreements, please contact Lauren Walker on (03) 9629 6300 or [lauren@clcv.net.au](mailto:lauren@clcv.net.au).

## 1.2 National Electricity Market Capacity Building Project

The National Electricity Market (NEM) Capacity Building Project (the **NEM Project**) continues to be successful in increasing collaboration around community sector responses to NEM policy and regulatory debates, including via written submissions, the production of the quarterly newsletter *On the Wire* and through lobbying activities. The NEM Project is funded by the National Consumers Electricity Advocacy Panel (the **Advocacy Panel**).

In May 2005, the Centre, together with the Consumer Utilities Advocacy Centre (CUAC), obtained additional funding from the Advocacy Panel to run a 1-day consumer roundtable (the **Roundtable**) to enable community advocates to develop responses to an Options Paper released by the Ministerial Council on Energy (MCE). The Options Paper, prepared by NERA Economic Consulting and Gilbert + Tobin, set out a proposal for a nationally legislated framework for distribution and retail energy regulation rules made and administered by the Australian Energy Market Commission (AEMC) and enforced by the Australian Energy Regulator (AER).

On 29 November 2005, 22 representatives of community organisations met at the Duxton Hotel in Melbourne to discuss the Options Paper and to develop ongoing collaborative advocacy strategies to ensure the interests of small end-users, particularly low-income and vulnerable consumers, are incorporated in the development of policy and regulation on a national retail and distribution framework. Participants commended the face-to-face meeting format of the Roundtable as an effective means by which to consolidate ideas and plan advocacy approaches on a national level. The Centre is currently preparing a response to the Options Paper as part of the NEM Project that will draw upon the ideas presented by Roundtable participants.

Current funding for the NEM Project concludes in December 2005. As such, the final edition of *On the Wire* will be distributed at the end of December. Current and past editions of *On the Wire* are also available on our website at [www.clcv.net.au](http://www.clcv.net.au).

If you would like further information about the Centre's NEM Project, please contact Eliza Collier on (03) 9629 6934 or at [eliza@clcv.net.au](mailto:eliza@clcv.net.au).

## 1.3 Water Policy Officer Update

As part of the Centre's commitment to ensure a considered consumer response to ongoing reform in the water sector, the Centre, in collaboration with the Consumer Utilities Advocacy Centre and St Vincent de Paul, recently prepared a submission (the **Joint Submission**) to the Rural Water Price Review currently being undertaken by the Essential Services Commission (the **Commission**).

On 1 October 2005, five water businesses provided the Commission with Water Plans that outlined proposed prices, expenditure forecasts and service standards for the period from 1 July 2006 to 30 June 2008. These water businesses primarily provide irrigation services to rural customers but two of them also provide residential water and wastewater services to urban consumers in the Grampians, Mallee and Sunraysia regions.

The Joint Submission urged the Commission to promote more consultative decision-making by water businesses so that Water Plans provide informed and representative input from consumers. In particular, the Joint Submission stated that the Commission should ensure that water businesses remain cognisant of issues raised by customers in relation to price, capacity

to pay and the need for transparency in the development of changes in tariff structures and potential cost impacts on households.

The Commission will now consider the Water Plans submitted by the water businesses, as well as comments provided by consumers, and issue a draft decision in early 2006. After a further consultation period, a final decision is due in May 2006.

If you would like further information about the CLCV's work on water policy and regulation, please contact Gerard Brody, Water Policy Officer, on (03) 9629 6300 or [gerard@clcv.net.au](mailto:gerard@clcv.net.au).

#### **1.4 Cash Converters and Third Line Forcing**

As part of our ongoing work in payday lending, we provided a submission in response to an application by Cash Converters ("CC") to the ACCC for a third-line forcing authorisation. CC sought authorisation to require its franchisees to offer payday lending and for a majority to also offer finance from a finance company, Safrock Pty Ltd.

In our submission opposing this authorisation, we argued that payday lending, by its very nature, incorporates exploitative lending practices, which frequently cause or exacerbate financial hardship among vulnerable consumers. Far from generating a public benefit, it is our strongly held view that an authorisation of this conduct would compound the substantial detriment to low-income and disadvantaged consumers caused by the inherently unsafe practice of payday lending.

In our view, the arguments presented by CC do not demonstrate a net public benefit as a result of authorisation and accordingly, the ACCC should withhold authorisation. We note that in support of its application, CC has asserted it offers an 'ethical product'. We see little evidence in the design and marketing of CC credit products or from our casework to support this contention and little to suggest it offers products which meet any of the public benefit test elements.

CC argues it is an ethical alternative to 'fringe lenders and loan sharks whose practices leave much to be desired'. It claims its loan products are 'designed to avoid consumers getting into a debt spiral'. Unfortunately, the 'safeguards' it cites do little to prevent the financial hardship we and other caseworkers all too regularly observe:

- No more than 15% of a customer's net income will be advanced;
- No security is taken from the customer; and
- No further loan is made until the existing loan is repaid.

A quick consideration of a common payday lending experience demonstrates these 'safeguards' are of scant comfort or protection to low-income borrowers. A consumer on an annual income of \$20,000 who borrows \$300 from CCPL for a 14 day period will pay \$105 in fees. A common practice for financially-stressed borrowers is to 'roll-over' the debt at the end of that 14 day period, paying out the original loan, but then immediately borrowing on similar terms again. They may have technically 'repaid' their existing loan, but they have not reduced their debt, and face another set of fees. The small amount of the loan compared to their annual income and the fact the loan is unsecured will not save them from the fact that if this situation continues they face fortnightly fees of \$105 and will not pay down the principal.

Moreover, we consider that the linked finance provided by Safrock as it appears on that company's website appears to be in breach of recent NSW legislative changes which incorporate fees and charges as well as the nominated interest rate into its 48% interest rate cap. It may also be in breach of the Victorian cap, depending on the proportion of charges comprised by the interest rate (which is not clear from the information on the SFC website). Apart from the consideration of public benefit, our submission advised careful consideration

of whether the applicants are likely to be in breach of current law in at least two states before any authorisation is granted. If SFC is found to be in breach of the NSW 48% cap (interest + fees and charges) or the Victorian cap (interest rate), we would urge appropriate enforcement action by the relevant state regulators.

Payday lending raises broader issues of access to affordable finance among low-income and vulnerable consumers. We have therefore also recommended in our submission that as part of its Campaign to protect disadvantaged and vulnerable consumers, the ACCC work with utilities, telecommunications and financial services providers to develop appropriate sector-specific hardship policies to assist consumers in financial stress.

We also consider it appropriate for the ACCC to follow the lead of the United Kingdom Office of Fair Trading/Consumer Commission (currently examining the home credit market) and work with State Fair Trading and Consumer Affairs authorities to investigate whether the payday lending market is competitive for consumers on low incomes, and the extent to which the features of that market are significantly harming the interests of consumers. In particular, we recommend that the ACCC consider:

- The barriers to consumers switching between different lenders;
- The alternative forms of credit available to low-income consumers;
- How the market for payday lending is shared between participants;
- Barriers to entry for alternative lenders; and
- Whether charges are maintained at an artificially high level.

For copies of the submission, please email Catherine Wolthuizen at [catherine@clcv.net.au](mailto:catherine@clcv.net.au) or call (03) 9629 6901.

## **2. Representing the consumer interest in the development of product and service standards**

The Centre's Consumer Representatives on Standards Australia Committees Project places and supports consumer representatives on Standards Australia technical committees on behalf of the Consumers' Federation of Australia. Through this project consumers can provide direct input to the development of key standards in the interests of Australian consumers.

The following draft standards are available for public comment:

- (ISBN) - International Standard Book Number (DR 05531 CP). Comments by 3 January 2006;
- Intruder alarm systems Part 1: Systems installed in client's premises (DR 05500). Comments by 6 January 2006;
- Protective helmets for vehicle users (DR 05558 CP). Comments by 16 January 2006;
- Implementation of Health Level Seven: Patient administration (DR 05512). Comments by 18 January 2006; and
- Guidelines for safe housing design – Attachment of basketball rings (DR 05545 CP). Comments by 30 January 2006.

*Draft standards may be viewed at [www.standards.org.au](http://www.standards.org.au), via the 'Standards Development' link.*

We are currently seeking consumer representatives for the following committees:

- Motor Vehicle Lifting Systems;
- Protective Helmets for Vehicle Users;
- Power Quality;
- Four Wheel Drive Accessories;

- Furniture; and
- Reduced Fire Risk Cigarettes.

Consumer representatives attending Standards Australia committee meetings are entitled to have their travel expenses reimbursed through this project.

If you would like to make comment on any of the above draft standards, would like to join a committee, or simply require further information, please contact the Standards Co-ordinator, Angela Russell, on (03) 9629 6300 Tuesdays and Thursdays, or [angela@clcv.net.au](mailto:angela@clcv.net.au)

### **3. Next Edition: February 2005**

Our *e-bulletin* is designed to keep our stakeholders up to date on the work of the Centre. We welcome your comments on the *e-bulletin*. If you would like to be added to the Centre *e-bulletin* mailing list, please contact Ebony Gallacher at [ebony@clcv.net.au](mailto:ebony@clcv.net.au) or (03) 9629 6300.