

# CONSUMER LAW CENTRE VICTORIA

## e-bulletin no. 34, August 2005

### Editorial

As foreshadowed in our June *e-bulletin*, the CLCV recently prepared a joint submission to the Victorian Consumer Credit Review (the **Review**) in collaboration with the Consumer Credit Legal Service (Vic) (**CCLS**). The Review, led by James Merlino MP, is examining a wide range of issues affecting the efficiency and fairness of the operation of credit markets and current regulation of credit in Victoria. The CLCV/CCLS joint submission, generously funded by the Victorian Consumer Credit Fund, responds to an Issues Paper released by Consumer Affairs Victoria for the Review. In our submission, we make a series of recommendations to facilitate improved consumer protection under Victoria's credit laws and the Uniform Consumer Credit Code (the **Code**), including a recommendation that the Victorian Government implement an effective licensing regime for all credit providers that would, amongst other things, ensure that consumers of credit products and services have access to a free external dispute resolution scheme.

One issue highlighted by the submission is the continuing problem of exploitative fringe lending in Victoria. The CLCV, along with many others in the consumer movement, have long been concerned about the prevalence of exploitative lending practices such as pay day lending. We are also concerned about the increasing use of unethical lending practices used by some fringe lenders, including the use of onerous contract terms and 'blackmail securities'. Although numerous recommendations have been made to amend the Code to eliminate these practices, the State and Territory Governments have been slow to respond. It is now time for the Victorian Government to focus on providing effective protection to consumers against such undesirable practices and products. To this end, we seek a prohibition on the excessive cost of pay day and other fringe loans through a comprehensive cap on credit that includes the calculation of fees and charges within the cap.

We recognise that a comprehensive cap may mean that some fringe credit providers can no longer operate in the market. However, we are strongly of the view that exploitative high cost loans are not valuable or necessary products in the market. Expensive short-term credit provided on unfair terms by pay day lenders does not usually meet the real needs of low-income consumers. Indeed, many borrowers roll-over their pay day loans or borrow repeatedly, suggesting that such loans increase the borrower's problems rather than resolving them.

In April 2005, the New South Wales Government introduced the draft *Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005* (the **Bill**) for public consultation. This Bill provides for an extension of the applicable interest rate cap in New South Wales of 48% to include fees and charges in its calculation. We call on the Victorian Government to introduce similar legislation as an urgent response to exploitative payday lending. Such a regime will effectively eliminate the detriment arising from exorbitant fees and charges imposed on low-income consumers by payday lenders.

The joint submission to the Review can be found on our website at:  
<http://www.clcv.net.au/downloads/Consumer%20Credit%20Review%20CCLSCLCV%20Submission.pdf>.

For more information, please contact Eliza Collier at [eliza@clcv.net.au](mailto:eliza@clcv.net.au) or on (03) 9629 6300.

*Eliza Collier*  
*Editor/Senior Solicitor*

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### 1. What are we doing?

#### 1.1 New CLCV Website

We are pleased to announce that the new CLCV website is now online at [www.clcv.net.au](http://www.clcv.net.au).

The redevelopment of the website was generously funded by the Collie Foundation to facilitate greater access to our consumer legal practice for rural, regional and Indigenous consumers and was launched by the Victorian Minister for Consumer Affairs, Marsha Thomson on 26 August 2005 in Morwell.

We are extremely pleased with the new website and level of information now available, which includes a new online, real-time, legal advice service.

If you have any feedback or comments about the new website, please contact Eliza Collier at [eliza@clcv.net.au](mailto:eliza@clcv.net.au) or on (03) 9629 6300.

#### 1.2 Committee of Inquiry into Financial Hardship of Energy Consumers

On 13 March 2005, the Victorian Minister for Energy and Resources, the Hon. Theo Theophanous, announced the establishment of a Committee of Inquiry into Financial Hardship of Energy Consumers (the **Inquiry**). The terms of reference for the Inquiry can be found at <http://www.doi.vic.gov.au/doi/internet/energy.nsf>.

Three Committee members were appointed by the Minister to undertake the Inquiry, namely, Professor John Nieuwenhuysen AM (Monash University), Ms Cath Scarth (Brotherhood of St Laurence) and Mr John Huitfeldt (Customer Service Benchmarking Australia). A Reference Group comprised of representatives from welfare and consumer organisations (including the CLCV), the energy industry and two State MPs, has been also appointed to assist the Committee.

The CLCV was one of many organisations to make a submission to the Inquiry in June. In summary, our view of the adequacy of the consumer protection measures currently in place in Victoria, particularly the Energy Retail Code and the concessions system, as well as the services offered by the Energy and Water Ombudsman Victoria with respect to complaints handling, is that generally they are able to deliver protection to energy consumers experiencing financial hardship, whatever the cause of that hardship may be. However, there is scope for improving and strengthening existing measures, primarily in relation to more robust enforcement of the Retail Code and through the implementation of an effective and state-wide retrofitting program.

We also submitted that consideration be given to the cost of energy and whether current tariff structures are compounding financial hardship for low-income and disadvantaged consumers. In our view, the Victorian Government should retain reserve powers to monitor retail prices and to intervene on social equity grounds if prices rise to a level that is unaffordable for

households in financial hardship. Beyond 2007, consideration must be given to the development of tariff structures based on social equity and environmental considerations. Obviously any impacts on low-income households as a result of changes to tariff structures will need to be carefully monitored and concessions and other grants used more effectively to ameliorate negative impacts.

Clearly, if we are to tackle the complex problem of financial hardship and energy affordability, all stakeholders, including regulators, government, industry and consumers, have a role to play. Fundamentally, the Victorian Government as a whole needs to take the lead on this issue given that ultimately it is a social issue with serious consequences for the community at large. It is the Victorian Government's responsibility to ensure that legislative and regulatory frameworks are put in place to assist energy consumers in financial hardship and to implement and support concessions systems and energy efficiency programs that are sufficiently and cost-effectively resourced. There also needs to be adequate resourcing of the financial counselling and social welfare sectors, as many of these agencies are currently expected to fill the gaps, despite chronic resource constraints.

The Committee of Inquiry is due to report back to the Minister in the coming month.

If you would like further information about the work of the Centre in relation to utilities policy, please contact Anna Stewart on (03) 9629 6934 or [anna@clcv.net.au](mailto:anna@clcv.net.au).

### **1.3 National Exchange Defence Kit**

National Exchange Pty Ltd is well known to governments, regulators and the media for making unsolicited offers to buy shares in publicly listed companies for prices well below the market value of the shares. Many consumers have unsuspectingly agreed to the offers without realising that the deal they have entered is unfair. In circumstances where consumers have subsequently attempted to cancel or avoid the share transfer, National Exchange, the sole director of which is David Tweed, typically initiates legal proceedings against the consumer in the Magistrates' Court of Victoria.

The Centre recently launched its National Exchange Defence Kit (the **Kit**), the production of which was generously funded by the Victoria Law Foundation. The Kit, which was prepared with the assistance of legal counsel, is intended to operate as a resource for community legal centres in Victoria and across Australia. In this way, it is intended to form part of a collaborative response for dealing with disputes involving National Exchange, in circumstances where most community legal centres do not have the resources to deal with such matters on an individual basis. The Kit is also designed to assist consumers who do not have legal representation.

The Kit includes an overview of the relevant legal issues relating to defending a claim by National Exchange, including a summary of relevant case law. It also highlights relevant aspects of Victorian civil procedure and includes various pro forma court documents.

A reference to and explanation of the Kit is provided on the Centre's new website at [www.clcv.net.au](http://www.clcv.net.au). Lawyers from community legal centres across Australia and consumers should contact the Centre to obtain a copy of the Kit.

If you would like further information about the Kit or would like a copy, please contact Anna Stewart on (03) 9629 6934 or [anna@clcv.net.au](mailto:anna@clcv.net.au).

## 1.4 CLCV submission to Human Rights Consultation Discussion Paper

In August 2005, the CLCV contributed a submission to the Department of Justice Human Rights Consultation Committee in response to its discussion paper, *Have your say about human rights in Victoria: Human rights consultation community discussion paper*.

The submission outlined ways in which the human rights of low-income earners and vulnerable consumers could be fostered and protected. In particular, we advocated that the Victorian Parliament introduce a constitutionally enshrined Human Rights Charter (**Charter**)

The CLCV considers that all human rights recognised by international law should be included in the Charter. These include the civil and political rights enshrined in the International Covenant on Civil and Political Rights, the economic, social and cultural rights contained in the International Covenant on Economic, Social and Cultural Rights and the minimum standards contained in various international treaties.

In addition to these rights, and given their particular concern and relevance to the CLCV and its work, the submission recommended that any Charter guarantee rights relating to access to justice and rights to affordable essential services, including energy and water.

If you would like further information about our submission or would like a copy, please contact Gerard Brody at [gerard@clcv.net.au](mailto:gerard@clcv.net.au) or (03) 9629 6300.

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

The following draft standard is available for public comment:

- Mobile waste containers: Parts 1-7 (DR 05345 – DR 05351). Comments by 28 September 2005.

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

In addition, we are currently seeking consumer representatives for the following committees:

- Motor vehicle lifting systems;
- Protective helmets for vehicle users;
- Automotive repairs terminology;
- Electrical energy networks: Construction and operation;
- Degradability of plastics;
- Food products; and
- Automotive tyres.

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 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: October 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 on [ebony@clcv.net.au](mailto:ebony@clcv.net.au) or (03) 9629 6300.