

CONSUMER LAW CENTRE VICTORIA

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Editorial

Chris Field to undertake senior regulatory role

After seven years as our Executive Director we farewell Chris Field as he leaves to undertake his appointment as a Member of the Economic Regulation Authority, the independent regulator of the Western Australia gas, electricity, water and rail industries.

Over the past seven years, the Centre has played a leading role in advocating for consumers providing a voice for fair, competitive markets, effective consumer protection frameworks, and a socially just distribution of Australia's economic growth. During this period, the Centre has significantly increased its operating budget and staff numbers, established a large free legal practice for low-income consumers and raised over two million dollars of competitive funds to undertake leading consumer research, policy development, projects and advocacy. The Centre has also played a prominent role as a media commentator in numerous public debates of major consumer issues.

The Chair of the Consumer Law Centre Victoria, Brendan Kissane, paid tribute to Chris. "Chris is one of Australia's leading consumer advocates. He has not just led the development of the Consumer Law Centre Victoria as a highly successful organisation, he has made a large contribution to numerous policies that have improved the lives of Australian consumers" said Mr. Kissane, "While his departure will leave a significant gap in Australian consumer advocacy, we are very pleased that he will continue to serve the interests of consumers in a senior regulatory role."

Chris will continue his roles as a Director of the Energy and Water Ombudsman Victoria, a Director of the Consumer Utilities Advocacy Centre and an Adjunct Professor in the La Trobe University law school.

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1. What are we doing?

1.1 Centre visit to the United Kingdom

In April 2005, Chris Field, Executive Director and Anna Stewart, Deputy Director, visited the United Kingdom as part of the Centre's project titled *The Consumer Protection Provisions (Part V) of the TPA: Is Australia being left behind?*, which is generously funded by the ACCC TPA Consumer Trust. Anna and Chris met with a number of regulators, ombudsman schemes and consumer advocacy organisations, including the Office of Fair Trading, Energywatch and the National Consumer Council (NCC), to gain an understanding of the consumer protection landscape in the United Kingdom, with a view to comparing it with that of Australia. While gaining a considerable amount of valuable information, which will be documented fully in the final project report due towards the end of this year, Anna and Chris returned with two main policy ideas.

1. The value of national unfair contract terms law in Australia

The debate about the need for national unfair contract terms legislation in Australia has been raging for some time now, with Victoria being the first state to enact such legislation in 2003 in the form of Part 2B of the *Fair Trading Act 1999* (Vic). Recently, the Federal Government made it clear that it saw no need for national unfair contract terms legislation, which now leaves the states and territories to decide whether to follow Victoria's lead. By way of contrast, in the United Kingdom, where the *Unfair Contract Terms Act 1977* (UK) and the *Unfair Terms in Consumer Contracts Regulations 1999* (UK) have been in place for more five years, there appears to be no questioning of the value of unfair contract terms legislation. During our meetings with both regulators and consumer advocates, there was absolutely no suggestion that unfair contracts terms legislation had a distorting effect on competition policy or imposed an unnecessary cost on business – the arguments espoused by those in Australia who argue against the need for unfair contract terms legislation.

2. An Australian National Consumer Council

Australia has an effective and robust consumer voice. We are fortunate to have the Australian Consumers' Association, the Consumers' Federation of Australia, the Australian Financial Counselling and Credit Reform Association and various state and territory consumer law and credit legal centres, tirelessly and passionately advocating on behalf of Australian consumers. But a lack of funding is a critical issue for many of these organisations, limiting their ability to participate fully in the political and regulatory debates in which the consumer voice should be heard. Again, there are valuable lessons to be learnt from the United Kingdom, where government funding of consumer advocacy is viewed as necessary to ensure that decision-making processes are informed equally by business and consumer views. The NCC was created in 1975 to safeguard and promote the interests of consumers, particularly low-income and vulnerable consumers. It undertakes research and policy and advises the government, its primary funder, on consumer issues. The Centre is advocating for a similar Australian National Competition Council, funded by both State and Federal Governments, to be established to support the work of existing organisations.

The Centre will work to advance these ideas over the coming months. The attainment of these goals will ensure that competitive markets deliver fair outcomes to all Australians.

For more information about this Project, please contact Anna Stewart at anna@clcv.net.au or on (03) 9629 6934.

1.2 Launch of *Do The Poor Pay More?*

On 8 March 2005, the Centre successfully launched its report, *Do the Poor Pay More?* at Ross House in Flinders Lane, Melbourne. Funded by the Victorian Consumer Credit Fund, *Do the Poor Pay More?* is a collection of essays analysing how low-income and disadvantaged consumers pay more for essential goods and services across a range of markets.

Do the Poor Pay More? examines the consequences of exclusion from mainstream financial services, including basic bank accounts, credit products and insurance, for low-income and disadvantaged consumers. In this context, predatory lenders, such as payday lenders take advantage of the 'gap' in the mainstream market for low-income consumers, offering credit on exploitative terms. The report goes on to show that the use of high cost credit to pay for everyday living expenses and household items significantly adds to the cost of essential goods and services for low-income consumers. It also examines the experiences of low-income and disadvantaged consumers in the telecommunications and utilities markets. In particular, despite the introduction of competition for end-use consumers, low-income and disadvantaged consumers often do not have real choice in the market place. For example, many low-income and disadvantaged consumers are unable to access the cheapest mobile phone deals because of a poor credit history.

The Centre will continue to lobby for the need for robust consumer protection frameworks combined with a sustained commitment by government, industry and the community to address market failures and ensure that future market reforms benefit all consumers, including the most vulnerable and disadvantaged.

If you would like further information about the report, please contact Anoushka Bondar at anoushka@clcv.net.au or (03) 9629 6300.

1.3 Centre welcomes Victorian Credit Review

The consumer movement has long been concerned about consumer detriment arising from the use of credit. In particular, the Centre and others have highlighted the increasingly prevalence of exploitative lending practices such as pay day lending, the problem of unfair contract terms in credit contracts and the lack of affordable credit alternatives for low-income consumers.

For this reason, we welcome the recent launch by the Victorian Minister for Consumer Affairs, Marsha Thomson, of a comprehensive review of Victoria's consumer credit laws.

The review will be led by James Merlino MP and will examine a wide range of issues affecting the efficiency and fairness of the operation of credit markets and the current regulation of credit in Victoria. An Issues Paper will be released for comment shortly.

The Minister made it clear at the launch that the Government was 'determined to protect vulnerable and disadvantaged consumers from predatory, exploitative and irresponsible lending practices by ensuring that the market operated efficiently and fairly, and that low income Victorians could access affordable credit options'.

We welcome this commitment and will keep readers informed about the progress of the review in coming editions of the *e-bulletin*. For more information please contact Anna Stewart, Deputy Director at anna@clcv.net.au or on (03) 9629 6934.

1.4 Water Policy

The Centre has continued to work on water policy, successfully completing a major report with Environment Victoria (EV) and a written submission to the Essential Services Commission (the **Commission**) with the Consumer Utilities Advocacy Centre (CUAC) in recent months.

1. *Launch of Water: Access, Affordability and Sustainability Issues Report*

On 29 April 2005, the Centre and EV launched their joint issues paper on water titled, *Water: Access, Affordability and Sustainability* (the **Issues Paper**). The Issues Paper, which was generously funded by CUAC, considers ways in which to protect consumers' access to water as a human right, while at the same time ensuring water is returned to the environment. The Issues Paper contains recommendations in relation to:

- Water as a human right;
- Access and affordability of water;
- Protecting the environment's access to water; and
- Creating an integrated statutory planning framework for water.

The Issues Paper makes recommendations that complement the policies detailed in the Government's White Paper on water, *Securing Our Water Future Together* (the **White Paper**), released in June 2005 (see e-bulletin number 30, September 2004), taking into account the needs of low-income and vulnerable consumers in addition to the need to conserve water for the environment.

The Issues Paper was launched at a successful discussion forum held at the Green Building in Carlton. Participants included representatives of consumer organisations, environmental organisations, the ESC, the Energy and Water Ombudsman (Victoria) and the water industry.

2. *Submission to the Water Price Review*

On 29 April 2005, the Centre, in collaboration with CUAC, submitted a detailed written response to the Essential Services Commission's (ESC) draft decision (the **Draft Decision**) on regional and urban water and sewerage prices for the period 1 July 2005 to 30 June 2008 (see <http://www.esc.vic.gov.au/water969.html>). The Draft Decision represents the ESC's response to the water businesses' draft Water Plans, which set out proposed standards, expenditure, prices and pricing structures for the regulatory period. In the draft Water Plans, the water businesses proposed real annual price increases of up to 13 per cent. However, in its Draft Decision, the ESC limited annual price increases to 6 per cent above CPI, with the metropolitan businesses expecting real annual price increases of around 1 per cent.

While the submission welcomed the reduction in proposed price increases, we also expressed concern that some areas of the ESC's Draft Decision do not consider environmental and social imperatives adequately, or the need to institute pricing structures and customer service standards that ensure access, affordability and quality of supply. Our submission urges the ESC to promote more consultative decision-making by water businesses and encourage better use of modern technology, especially in relation to water conservation and recycling. The ESC's final decision was released on 15 June 2005. We will provide an update in the next edition of the *e-bulletin*. For further information, or if you would like a copy of the Issues Paper, please contact Gerard Brody, Water Policy Officer, at gerard@clcv.net.au or on (03) 9629 6300.

1.5 National Electricity Market Capacity Building Project

Now in its second year, the National Electricity Market (NEM) Capacity Building Project (**NEM Project**) has proved to be successful in increasing collaboration around community

sector responses to NEM policy and regulatory debates, including via written submissions. Two written submissions have been completed so far this year.

1. Response to the Ministerial Council on Energy's (MCE) Consumer Advocacy Consultation Paper

In March 2005, the MCE released a consultation paper (the **Consultation Paper**) and research report by KPMG asking for submissions on four proposed Options for future consumer advocacy arrangement.

The NEM Project responded with a submission on behalf of a number of organisations participating in the NEM network (the **Joint Submission**). The Joint Submission supported the creation of a new national advocacy body to add to the ongoing work of existing community organisation based advocacy, by carrying out in-house research and advocacy and by providing funding grants. It endorsed Option 4 of the Consultation Paper, which provided for a body with a board, executive director and consultative committee. We considered that this approach would be effective in creating a desired increase in, and more strategic approach to, national consumer advocacy. In addition, the Joint Submission detailed a number of key requirements for the new national advocacy body that had not been canvassed in the Consultation Paper, including, the number, composition and role of the proposed consultative committee, board and staff. The submission also addressed the range and scope of the advocacy, which we said should be based on public interest principles but recognising the special needs of low-income and disadvantaged consumers.

The Joint Submission was planned during a bi-monthly telephone conference hosted by the Centre as part of the NEM Project. The Centre, together with CUAC and PIAC, wrote the Joint Submission and then gathered input and feedback from other NEM Network members.

The Joint Submission can be found at:

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=BED7E519-65BF-4956-B50D63D1D15E85F0>.

For more information about the NEM Project, please contact Natasha Leigh at natasha@clcv.net.au or (03) 9629 6300.

2. Victorian Department of Infrastructure's Cross-ownership Rules for the Energy Sector Issues Paper

The second submission achieved through the NEM Project this year was in relation to the Victorian cross-ownership rules for energy. The cross-ownership rules for electricity are contained in the *Electricity Industry Act 2000* (Vic) and set quantitative limits on the percentage ownership allowed across the transmission, distribution and generation sectors in Victoria.

The Centre prepared a submission in response to the Victorian Government's recent Issues Paper on the cross-ownership rules.

Overall we submitted that energy specific merger rules were appropriate. Primarily, our view was based on the ineffectiveness of the *Trade Practices Act 1975* (Cth) in energy sector merger cases because of its focus on market share.

However, we considered that there were also a number of problems with the current operation of the Victorian cross-ownership rules. Victorian energy specific merger rules have a limited effect because they impact mergers between Victorian licensed operators only and have no impact on mergers between Victorian and non-Victorian energy sector businesses. Further, we considered that the ease with which the cross-ownership rules could be amended made them redundant. This became apparent in the AGL acquisition of Loy Yang A. To enable this merger, the Victorian Government amended the cross-ownership rules by making

regulations which increased the amount of ownership allowable in the case of a distributor acquiring a share of a generator from 20% to 35%, thereby, effectively, making the cross-ownership rules redundant.

Finally, we criticised the way in which the cross-ownership rules limit a court appeal of a regulatory decision. The cross-ownership rules defer to a decision of the ACCC where the ACCC considers the merger is not likely to raise a competition issue. However, if the ACCC considers that the merger raises a competition issue, and the merger would also breach the quantitative limits, the merger is automatically blocked by the rules and essentially the ACCC's decision is then not able to be appealed.

In conclusion, we considered that energy specific merger rules should be applied but that these should ultimately inform a qualitative decision by an independent regulator.

The submission can be found at:

<http://www.doi.vic.gov.au/DOI/Internet/Energy.nsf/AllDocs/78B362E794C6EBB2CA256FAC000F413F?OpenDocument>.

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

The following draft standards are available for public comment:

- Swimming pool safety – Barriers – Parts 1 and 2 (DR 05245 and 05246). Comments close 11 July 2005; and
- Valves primarily for use in heated water systems – Part 2: Control valves (DR 05265). Comments close 30 June 2005.

Draft standards may be viewed at 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;
- Automotive repairs terminology;
- Energy efficiency of buildings;
- Degradability of plastics;
- Food products – Glycemic index; 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 or would like to join a committee please contact the Standards Co-ordinator, Angela Russell, on (03) 9629 6300 Tuesdays and Thursdays, or angela@clcv.net.au.

3. Next Edition: August 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 or (03) 9629 6300.