

CONSUMER LAW CENTRE VICTORIA

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Editorial

Late last year, the Productivity Commission released a seminal report on the past and future of National Competition Policy. The report outlines a number of key benefits of Australia's micro-economic reform program for consumers. The report also sets out an ambitious future reform agenda to ensure past productivity gains are secured and further gains made.

It is important that there is strong consumer support for the competition reform agenda set out in the Commission's report. Further reform will enhance the economically efficient allocation of resources that the discipline of effective competition brings to markets. In turn, this economic efficiency creates greater wealth in our community and maximises the long-term interests of consumers. Of equal importance is the recognition that, despite more than a decade of sustained economic growth documented in the Commission's report, poverty is a relentless reality for far too many in our community. Economic growth exists to serve not just the majority of Australians, but all of them. Our public policy programs must not place such an emphasis on wealth creation that we pay insufficient attention to how we distribute wealth. National Competition Policy must sit alongside of social justice policies that ensure a fair, decent and inclusive Australia.

The other Commission recommendation of major importance to consumers is a call for a review of consumer protection policy. The Commission expressed a view that, 'a national review of consumer protection policy ... would provide the opportunity to examine whether such policies are continuing to meet the needs of consumers in a more competitive environment, as well as look at the complementarities between competition and consumer protection laws and how these might be most appropriately harnessed.' During the past decade there has been no review of the consumer protection provisions of the *Trade Practices Act 1975*, despite considerable reform to consumer protection laws in Victoria as well as overseas. We now need to undertake a national review of Australian consumer protection regulations, particularly in markets that have been deregulated over the past decade. This should include moving beyond the simple rhetoric of "heavy-handed" versus "light-handed" regulation. Regulation is needed where markets fail consumers and is justified when the regulation does not create more costs than the benefits it seeks to achieve. In making an assessment about the costs and benefits of regulation we must consider economic efficiency, promoting positive environmental and social outcomes and the broader public interest. We must also consider the fact that consumer protection is not necessarily anti-competitive – many consumer protection regulations may in fact facilitate and enhance the operation of competitive markets. As former Chair of the US Federal Trade Commission, Timothy Muris, has observed, 'well-conceived competition policy and consumer protection policy take complementary paths to the destination of promoting consumer welfare'.

Chris Field
Executive Director

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1. What are we doing?

1.1 CLCV Water Policy Officer

As noted in previous editions of the e-bulletin, there has been extensive and ongoing reform of the water sector in Victoria over the past 12-18 months (see e-bulletin no. 29, May 2004 and e-bulletin no. 30, September 2004). This has included the release of the Victorian Government's White Paper, *Our Water Our Future* in October 2004 and the extension, since 1 January 2004, of the Essential Services Commission's role, so that it is now the economic regulator of all water businesses in Victoria.

The reform process has focused primarily on the financial viability and environmental sustainability of the water industry. In our view, however, this new regulatory and policy framework also requires a considered response from the perspective of Victorian consumers. In particular, we consider the manner in which the regulation of water, including pricing, restrictions for non-payment and cost-incentives for improved water efficiency, is likely to impact on Victorian consumers, particularly low-income and vulnerable consumers, requires considered contribution.

To ensure that there is a considered response by consumers to the water reform process, we are delighted to announce the appointment of a CLCV policy officer dedicated to water issues. The position of Water Policy Officer has been created, with joint funding from the Department of Sustainability and Environment (**DSE**) and the Consumer Utilities Advocacy Centre (**CUAC**), to provide rigorous and informed advocacy on behalf of Victorian water consumers, particularly low-income and vulnerable consumers, with respect to current and future water policy and regulatory debates. The CLCV thanks the DSE and CUAC for their generous support of the Water Policy Officer position.

We have recently established a Steering Group to ensure that the Water Policy Officer actively collaborates with stakeholders, including representatives from CUAC, St Vincent de Paul, Environment Victoria, Financial and Consumer Rights Council, Kildonan Child and Family Services and Bass Coast Regional Health.

If you would like further information, please contact the Water Policy Officer, Gerard Brody on (03) 9629 6300, or gerard@clcv.net.au.

1.2 Review of National Competition Policy Reforms

In December 2004, the CLCV submitted a written response to the Productivity Commission's (the **Commission**) Discussion Draft on the Review of National Competition Policy Reforms (the **Discussion Draft**).

The Discussion Draft, which was released in October 2004, proposed several priority areas for nationally coordinated reform. As noted in the editorial, the CLCV strongly supports the recommendation of a national review of consumer protection policy and welcomes a review of the *Trade Practices Act 1975*.

There was also recognition by the Commission in the Discussion Draft of the ‘distributional effects’ of markets. Critically, the Commission recognised that ‘there would be value in embedding the need to consider distributional and adjustment issues and the case for adjustment support in the guiding principles underpinning the reform program.’ While strongly supporting the Commission’s recommendation that consideration be given, in effect, to the “winners” and “losers” of micro-economic reforms, the CLCV considers that in the Commission’s final report this point should be further articulated, with a greater emphasis on the need for consumer protection policy and social policy to be considered as part of the competition framework, as opposed to being a consideration outside of the framework. This is not to say that consumer protection and social welfare should not be considered as stand-alone issues within a broader policy context: given their critical importance to consumer welfare, they should. However, it is our view that within the current competition policy framework, consumer protection and social welfare, as well as environmental considerations, should always be considered of equal importance, alongside of economic growth and efficiency. Without doubt, the welfare of consumers will be better served by recognising the social and environmental impacts of proposed competition reforms from the outset.

Obviously the success of this balancing process will depend on the strength of the public interest test within the competition policy framework and the CLCV, therefore, fully agrees with the Commission’s statement that ‘an effective public interest test is fundamental to good outcomes.’ Accordingly, the CLCV invites a thorough examination not only of what factors constitute the public interest, but also whether those factors should be weighted and whether there should be a specific requirement that consumers, on an equitable basis, directly benefit from the reforms in the form of improved quality or service or lower prices.

If you would like more information on the CLCV’s work in relation to national competition policy please contact Anna Stewart at anna@clcv.net.au or on (03) 9629 6394.

1.3 Changes to the regulation of the Victorian energy and gas industries

In late 2004, the Victorian parliament passed the *Energy Legislation (Amendment) Act 2004* (the **Act**). The Act made a number of important changes to the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*, which govern the regulation of the Victorian energy industries. Amongst other matters, the Act inserted new provisions:

- extending the “consumer safety net” provisions for another 3 years (until 31 December 2007);
- prohibiting retailers from charging small retail customers a fee or charge for late payment of a bill;
- giving the Victorian government the power to prohibit or regulate exit or termination fees in contracts; and
- giving the Victorian government the power to prohibit or regulate the implementation of pre-payment meters.

One of the more important changes made by the Act was the insertion of a new section 40B into the *Electricity Industry Act* and section 48A into the *Gas Industry Act*, both of which provide for a new licence condition imposing an obligation on retailers to make “wrongful disconnection payments” to customers in certain circumstances. This new obligation, which came into force on 8 December 2004, makes a payment obligatory if the retailer “wrongly” disconnects the supply of electricity or gas to the premises of a ‘relevant customer’ after failing to comply with the terms and conditions of the contract specifying the circumstances in which the supply of electricity or gas to those premises may be disconnected.

The amount of the payment is currently \$250 for each whole day that supply is disconnected (with a pro rata amount payable for any part of a day disconnected) and must be paid as soon as practicable after reconnection of supply, either directly to the customer or by way of a rebate on the customer's bill. 'Relevant customers' are customers consuming less than a specified, fairly large, amount of electricity or gas, which includes most domestic customers. The new provisions also make clear that the payment does not affect any other rights that customers may have, for example to seek compensation for loss suffered as a result of being wrongfully disconnected. This suggests that the payments are intended not only to compensate consumers who have been wrongfully disconnected but to encourage retailer compliance with their obligations.

If you would like further information about the changes made by the Act, including wrongful disconnection payments, please contact Nicole Rich on (03) 9629 6300 or nicole@clcv.net.au.

1.4 Review of motor car laws and advocating for change

The CLCV welcomes the report prepared by Noel Pullen MLA, with the assistance of Consumer Affairs Victoria, *A Report on the Motor Car Traders Act Consultations* (the **Pullen Report**). The Pullen Report forms part of the review of the *Motor Car Traders Act 1986* (the **Act**) currently being undertaken in Victoria. It makes a series of recommendations for legislative and administrative change, based on consultations undertaken with consumer representatives and industry. Anna Stewart, together with Denis Nelthorpe representing the Consumers' Federation of Australia, met with Mr Pullen MLA in November 2004 to discuss the operation of the Act and our view that there needs to be an independent industry ombudsman to resolve consumer disputes relating to motor car traders and repairers.

In its discussion of dispute resolution in the motor vehicle industry, Part 9 of the Pullen Report noted our calls for an independent industry ombudsman to resolve disputes, and made extensive reference to the findings of the recent report prepared by the CLCV for the Royal Automobile Club of Victoria (**RACV**), *Buying a Car: Pitfalls for Consumers* (the **Car Report**) (see e-bulletin no. 31. December 2004). The Car Report highlighted systemic problems encountered by consumers when buying cars, including misleading and deceptive conduct, unconscionable conduct, high-pressure selling tactics and information asymmetries. Recommendation no. 37 (page 74) of the Pullen Report noted, 'the ways in which consumer and trader disputes are currently resolved should be examined to determine their effectiveness and adequacy, and options for improvement should be considered, including the establishment of an industry-specific dispute resolution scheme'.

The Pullen Report also acknowledged calls for "lemon laws" similar to those in operation throughout the United States of America. "Lemon laws" would give consumers who buy a defective new car - a car which repeatedly experiences mechanical problems or defects - the right to their money back or a replacement car. The Pullen Report, referring to examples given in the Car Report of consumers who had great difficulty resolving disputes with traders in relation to so-called "lemons", recommended that such laws require further investigation, including a broader examination of their possible expansion to other types of products.

The Pullen Report calls for further public comment by 28 February 2005. The CLCV will make a further submission drawing on the experiences of our consumer legal practice and the Car Report.

If you would like further information about our work in relation to motor car traders, please contact Anna Stewart on (03) 9629 6300 or anna@clcv.net.au.

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

The CLCV, on behalf of the Consumers' Federation of Australia, place and support consumer representatives on Standards Australia committees. These representatives contribute to the development of many Australian and International standards, which play a key role in consumer protection.

We are currently seeking consumer representatives for the following committees:

- Continental quilts;
- Biodegradable and renewable automotive fuel;
- Water resistance of watches;
- Car and trolley jacks;
- Spa pools;
- Protective helmets for vehicle users;
- Automotive repairs terminology;
- Receiving antennas for radio and television;
- 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.

The following draft standards are available for public comment.

- Quality management – customer satisfaction – guidelines for complaints handling in organisations (DR 050006). Comments close 18 March 2005.
- Packaging for surface transport of biological material that may cause disease in humans, animals and plants (DR 05023). Comments close 28 March 2005.
- Safety devices for gas cylinders (DR 05025). Comments close 28 March 2005.
- Hospital beds – medical electrical equipment – part 2.38; particular requirements for safety – electrically and manually operated medical beds for adult use (DR 05036). Comments close 5 April 2005.
- Domestic gas refrigerators (DR 05058). Comments close 7 April 2005.

Draft standards may be viewed at www.standards.org.au, via the 'Standards Development' link.

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

3. Next Edition: April 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 Jane Douglas on jane@clcv.net.au or (03) 9629 6300.