

# CONSUMER LAW CENTRE VICTORIA

e-bulletin no. 28, March 2004

## EDITORIAL

There is wide agreement that fair, effective competitive markets deliver the best price, quality and access to goods and services for the majority of Australians. Does competition, however, always deliver fair consumer contracts? Unfortunately, lack of consumer bargaining power, an absence of competitive market pressures and significant imbalances of information between businesses and consumers regarding the nature and effect of terms and conditions, lead to the creation of one-sided, "take it or leave it" contracts, regularly in a form that is standard across a market. This market failure, and the avoidable consumer detriment that flows from it, gives rise to a clear case for governments to intervene, to protect consumers, both by creating new remedies for those who have suffered detriment due to an unfair contractual term, as well as providing new tools for regulators to change the contracting behaviour of major consumer markets.

It is, therefore, pleasing to report that the Standing Committee of Officials of Consumer Affairs Unfair Contract Terms Working Party is currently "investigating the need for nationally consistent regulation of unfair terms in contracts and the best model to achieve this if a need should be demonstrated" and has released a discussion paper examining these issues, [Unfair Contract Terms - A Discussion Paper, January 2004](#). This initiative follows recent amendments to the Victorian Fair Trading Act 1999 that prohibit the use of unfair terms in consumer contracts. The discussion paper recommends that five options should be considered by state and territory governments around Australia, namely, no additional regulation (option 1), self-regulation, through mechanisms such as voluntary codes of conduct (option 2), the United Kingdom model and variants (option 3), the Contracts Review Act 1980 (NSW) (option 4) and a composite model (option 5).

Given the extent of market failure in the area of consumer contracts under current arrangements, it is almost axiomatic that option 1, namely no new regulation of unfair contracting, will not succeed in improving contracting practices. Nor is option 2, self-regulation through mechanisms such as voluntary codes of conduct, an acceptable solution. There is very little evidence to suggest that voluntary codes have been successful in Australia in achieving best practice consumer protection and a fair sharing of risk between businesses and consumers. The operation of the market, and voluntary codes developed by the market to date, has not delivered the widespread elimination of unfair contract terms. Similarly, option 4, replicating the New South Wales Contracts Review Act 1980 on a national basis, appears likely to be ineffective, particularly in light of the significant limitations of that Act and its failure to prevent the proliferation of unfair contracts in New South Wales. This leaves options 5 or 3 as acceptable vehicles to provide appropriate regulation of market failure to prevent unfair contract terms. Consumer organisations across the country will now argue the case for appropriate national regulation, more particularly, the merits of those options (5 and 3) that build upon existing Australian and overseas models of contract regulation.

Critically, national unfair contract terms regulation has the potential to create what markets have too often failed to provide Australian consumers - fair contracts that strike a reasonable balance between the rights and responsibilities of businesses and consumers.

**Chris Field**  
**Executive Director**  
[chris@clcv.net.au](mailto:chris@clcv.net.au)

## CONTENTS OF THIS EDITION

### Editorial

#### 1 What are we doing?

1.1 Consumers, Business and Government - A National Consumer Congress, 15-16 March 2004, Park Hyatt, Melbourne

1.2 Creating access to justice for low-income rural and regional and indigenous Victorians

1.3 Capacity building for the community sector in the National Electricity Market

1.4 Harmonisation of electricity retail codes in the National Electricity Market

1.5 Review of the regulation of bodies corporate in Victoria

1.6 Addressing the operation of fringe credit providers

1.7 Health Services Advisory Committee

#### 2. Updated staff contact details

#### 3. Next Edition:

##### **1 What have we been doing?**

##### **1.1 Consumers, Business and Government - A National Consumer Congress, 15-16 March 2004, Park Hyatt, Melbourne**

The Centre is very pleased, in partnership with other leading consumer organisations and Consumer Affairs Victoria, to present this important inaugural National Consumer Congress. The Congress represents an innovative collaboration to promote discussion on current competition and consumer protection issues. Designed to seek answers to challenging questions about the role of consumer affairs in the 21st Century, this two-day event will be the principal consumer affairs conference for 2004. The first day of the Congress, Monday 15 March, has been developed by consumer organisations and will focus on the future of consumer protection in Australia. A formal Congress dinner will be held that evening. The second day of the Congress, hosted by Consumer Affairs Victoria, will shift the focus to state/territory perspectives on consumer protection.

The Congress will be preceded by the reintroduction of the Ruby Hutchison Memorial Address on Sunday 14 March 2004, 5.15pm for 5.30pm. Ruby Hutchison, at 62 years of age, was, in 1954, the first woman to be elected to the Western Australian Legislative Council. Her research and advocacy was instrumental in the founding of the Australia Consumers' Association, publishers of Choice magazine. The Address, Consumerism in the 21st Century - A European view of issues and organisations, will be delivered by Deirdre Hutton CBE, Chair, National Consumers Council, United Kingdom. The Address will be held at the Clemenger Auditorium, National Gallery of Victoria, 180 St Kilda Rd, Melbourne. Entry to the Address is free, however, an RSVP is essential to Rebecca Smith at [cav.communications@justice.vic.gov.au](mailto:cav.communications@justice.vic.gov.au) or 9627 6137. Registrations for the conference can be made at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

If you would like further information about the Congress, please contact Chris Field on (03) 9629 6901 or [chris@clcv.net.au](mailto:chris@clcv.net.au).

## **1.2 Creating access to justice for low-income rural and regional and indigenous Victorians**

The Centre has operated a free consumer legal practice for low-income and vulnerable Victorians since 1 February 2001. Originally funded for a period of two years after securing a competitive grant of money from the Consumer Credit Legal Service, to establish a Consumer Litigation Service, the legal practice received a funding grant from Consumer Affairs Victoria last year to continue its operation.

Recently, the Centre has begun an outreach project expanding the legal practice to create access to justice for low-income rural and regional and indigenous Victorians. This two year trial project employs two lawyers involved in extensive outreach and education activities, including regular visits to rural and regional centres, undertaking capacity building by meeting with community workers and community networks and electronic outreach through the establishment of an on-line, real-time advice service. The Centre is committed to delivering this expanded legal practice in an active partnership with the private, community and government sectors and has established a Project Steering Committee comprised of a range of organisations, including the Financial and Consumer Rights Council, the Federation of Community Legal Centres Rural, Regional and Remote Network, the Victorian Aboriginal Legal Service, Consumer Affairs Victoria, the Public Interest Law Clearing House and Victoria Legal Aid.

The outreach project has been funded by the Collie Foundation and the William Buckland Foundation, both administered by ANZ Trustees' Charitable Services. We are extremely grateful to both the Collie Foundation and the William Buckland Foundation for their generous support.

If you have any questions about our outreach project, please contact Anna Stewart, Principal Solicitor, on [anna@clcv.net.au](mailto:anna@clcv.net.au) or (03) 9629 6934.

## **1.3 Capacity building for the community sector in the National Electricity Market**

The Centre has commenced a national capacity building program to create informed consumer contributions regarding the National Electricity Code (the Code) and the National Electricity Market (the NEM) (the NEM Capacity Building Project). The NEM Capacity Building Project has been funded by the National Electricity Code Administrator Advocacy Panel (the Advocacy Panel) and the Centre is grateful to the Advocacy Panel for its generous support.

The principal objective of the NEM Capacity Building Project is to build knowledge within consumer, environmental and social welfare organisations in order to strengthen their capacity to participate more effectively in NEM and Code processes and debates. Shortly after receiving funding for the NEM Capacity Building Project, the Centre formed a Steering Committee, comprised of a range of advocates involved in utilities advocacy and consumer movement capacity building. The Steering Committee will assist with the ongoing development of the NEM Capacity Building Project.

The Centre has completed the first stage of the NEM Capacity Building Project which has involved identifying appropriate community representatives, discussing with those representatives the value of being involved, how this might best be done, the resources available to assist, the outcomes that can be achieved and the benefits to their constituents. A network of these organisations has been formed for the purpose of the widespread dissemination of information and the first newsletter of the network, On the Wire, has been delivered.

The next stage of the NEM Capacity Building Project will be to undertake identification and analysis of the Code and NEM processes and an assessment of how information on the NEM could best be delivered to the community sector. Information materials will then be developed and distributed to the network. All network participants will be invited to attend information seminars around the country conducted by representatives of the Centre with assistance from

consultants. These seminars will be held in capital cities of all Australian states and territories that participate in the NEM.

If you would like further information about the NEM Capacity Building Project, please contact Natasha Leigh on (03) 9629 6300 or [natasha@clcv.net.au](mailto:natasha@clcv.net.au)

#### **1.4 Harmonisation of electricity retail codes in the National Electricity Market**

The Centre has commenced a project on behalf of the Consumer Consultative Committee (CCC) of the Australian Competition and Consumer Commission (ACCC) to advocate to the National Electricity Code Administrator (NECA) the need for, and proposed principles for the content of, a consolidated electricity retail code to operate in the National Electricity Market (NEM) (the ACCC CCC Code Harmonisation Project). A single harmonised retail electricity code for operation in the NEM will:

- • lead to efficiencies for market participants;
- • create certainty for market participants;
- • facilitate ease of access to information and reduce information asymmetries; and
- • establish national good practice for consumer protection frameworks,

all of which will substantially improve consumer outcomes in the NEM.

The Co-ordinator of the ACCC CCC Harmonisation Project has begun consultation with regulators, ombudsman and industry stakeholders in the NEM and has also commenced a process of identifying all retail codes, subordinate legislation and regulatory instruments operating in the jurisdictions that participate in the NEM. The next stage of the project will be to compare and evaluate the retail provisions and consumer protections offered, and develop a set of principles addressing consumer protection benchmarks to be used to develop a harmonised retail code to operate in the NEM. Finally, the Co-ordinator will consult community organisations in relation to the proposed principles and advocate for NECA and the jurisdictional regulators to develop a harmonized retail code adopting the principles.

If you would like further information about the ACCC CCC Code Harmonisation Project, please contact Natasha Leigh on (03) 9629 6300 or [natasha@clcv.net.au](mailto:natasha@clcv.net.au).

#### **1.5 Review of the regulation of bodies corporate in Victoria**

Late last year, the Minister for Consumer Affairs, John Lenders MLC, announced that Helen Buckingham MLC would lead a review of the regulation of bodies corporate in Victoria. The review is focussing on the effectiveness and efficiency of the Subdivision Act 1988 (Vic) as it relates to bodies corporate, having particular regard to the need for proper management of body corporate funds and appropriate dispute resolution mechanisms.

The Centre will be involved in the review through a consultative process with key stakeholders. As part of this process, the Centre has made a submission to the review, focusing particularly on the issue of appropriate dispute resolution mechanisms for consumers dealing with bodies corporate.

If you would like further information about our work on the review of the regulation of bodies corporate in Victoria, please contact Anoushka Bondar on [anoushka@clcv.net.au](mailto:anoushka@clcv.net.au) or (03) 9629 6300.

#### **1.6 Addressing the operation of fringe credit providers**

Following the release of the Ministerial Council for Consumer Affairs' Fringe Credit Providers Discussion Paper, the Centre, in conjunction with a number of consumer organisations including Care Inc. Financial Counselling Service, Consumer Credit Legal Centre (NSW) Inc., Consumer Credit Legal Service (Vic) Inc. and the Consumer Law Centre of the ACT,

produced a joint submission to the Discussion Paper. The submission asserts that information asymmetry is not the cause of the market failure. The ability of fringe credit consumers to assess the competitiveness of credit products offered is clearly impeded by their lack of financial literacy, the circumstances in which they seek fringe credit (most often in circumstances in which they have a desperate need for short-term cash) and the fact that their choice is limited to equally exploitative credit products. Therefore, while the joint submission supports a regulatory approach that increases the disclosure requirements under the Consumer Credit Code (including disclosure of APRs), the submission strongly argues that simply increasing those requirements without addressing the issue of the cost of credit, will not effectively address the inequity.

The joint submission contends that the current inequities in the fringe credit market can only be addressed through a robust and uniform model of consumer protection across all Australian jurisdictions. The joint submission advocates for a national cap on credit interest rates including all fees and charges, together with stringent anti-avoidance provisions, as the optimum regulatory mechanism to protect consumers from exorbitant credit.

If you would like further information about our work in relation to fringe credit providers, please contact Anoushka Bondar on [anoushka@clcv.net.au](mailto:anoushka@clcv.net.au) or (03) 9629 6300.

### **1.7 Health Services Advisory Committee**

The Health Services Advisory Committee (the HSAC) has been established by the federal government within the framework of the Australian Competition and Consumer Commission (ACCC). The establishment of the HSAC was recommended by the Wilkinson Committee, which reviewed the impact of the application of Part IV of the Trade Practices Act 1974 (Cth) (the Act) on the recruitment and retention of medical practitioners in rural and regional Australia. The HSAC was formed to support the implementation of the government's response to the Wilkinson Committee report. The purpose of the HSAC is to act as a forum for liaison and consultation between the ACCC, doctors, other relevant health professionals and health consumers to achieve a better understanding of, and compliance with the Act by the medical profession. It will perform an advisory role to doctors and other relevant health professionals regarding the application of the Act and provide advice to the ACCC on relevant issues. The Hon. Tim Fischer chairs the HSAC, whose other members comprise representatives from the ACCC, the medical profession and consumers.

If you would like further information about the Health Services Advisory Committee, please contact Chris Field on (03) 9629 6901 or [chris@clcv.net.au](mailto:chris@clcv.net.au).

## **2.2. Updated staff contact details**

We have recently welcomed a number of new staff to the Centre. Eliza Collier, Policy Officer/Lawyer, joins us from Allens Arthur Robinson where she was a second year lawyer. Eliza holds honours Arts and Law degrees from the University of Melbourne. Anoushka Bondar, Policy Officer/Lawyer, joins us from Minter Ellison where she was a third year lawyer. Anoushka holds an honours Law degree from the University of Adelaide. Natasha Leigh, Co-ordinator, NEM Capacity Building Project and ACCC CCC Code Harmonisation Project joins us from Minter Ellison where she was a third year lawyer. Natasha holds Arts and Law degrees from the University of Western Australia. Angela Russell, Standards Co-ordinator, joins us from Glen Eira City Council where she was a Program Development Worker. Angela holds a Bachelor of Legal and Justice Studies from Southern Cross University majoring in social justice. Ebony Gallacher, Legal Secretary/Administrative Assistant, joins us from Deacons Lawyers.

The phone number for all staff is 9629 6300 (unless otherwise indicated).

Chris Field  
Executive Director  
9629 6901 (Direct)  
[chris@clcv.net.au](mailto:chris@clcv.net.au)

Jane Douglas  
Office Administrator/Personal Assistant to the Executive Director  
[jane@clcv.net.au](mailto:jane@clcv.net.au)  
Anna Stewart  
Principal Solicitor/Principal Policy Officer  
9629 6934 (Direct)  
[anna@clcv.net.au](mailto:anna@clcv.net.au)  
Nicole Rich  
Senior Solicitor/Senior Policy Officer  
[nicole@clcv.net.au](mailto:nicole@clcv.net.au)  
Eliza Collier  
Solicitor/Policy Officer  
[eliza@clcv.net.au](mailto:eliza@clcv.net.au)  
Anoushka Bondar  
Solicitor/Policy Officer  
[anoushka@clcv.net.au](mailto:anoushka@clcv.net.au)  
Angela Russell  
Co-ordinator, Consumer Representatives for Standards Australia Project  
[angela@clcv.net.au](mailto:angela@clcv.net.au)  
Ebony Gallacher  
Legal Secretary/Administrative Assistant  
[info@clcv.net.au](mailto:info@clcv.net.au)  
Natasha Leigh  
Co-ordinator, NEM Capacity Building Project and ACCC CCC Code Harmonisation Project  
[natasha@clcv.net.au](mailto:natasha@clcv.net.au)  
John Davies  
Finance Officer  
[john@clcv.net.au](mailto:john@clcv.net.au)

The Centre is a non-profit, non-government and independent consumer organisation governed by a Board of Directors who each give their time on a voluntary basis. The CLCV Board of Directors:

Brendan Kissane (Chair) - Barrister  
Nicola Ballenden - Health Policy Officer, Australian Consumers' Association  
Sam Biondo - Community Development Officer, Fitzroy Legal Service  
Gerard Brown - Head of the Office of the CEO and Corporate Affairs, ANZ Bank  
Genevieve Howse - Director (Programs), Centre for Public Health Law, La Trobe University  
John Mumford - Financial Counsellor, Wonthaggi Hospital  
Andrew Phillips - Wealth Management Specialist, Major Client Group, National Australia Bank

### **3. Next Edition: April 2004**

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](mailto:jane@clcv.net.au) or (03) 9629 6300.