

# CONSUMER LAW CENTRE VICTORIA

e-bulletin no. 26, April 2003

## EDITORIAL

### **Micro-economic reform of the financial services sector: Identifying winners and losers**

The Centre has expressed the view for some time that the deregulation of the Australian financial services market is delivering benefits to many Australians, particularly those with greater means, but notably failing low income Australians. A detailed understanding of this situation is not assisted by the fact that micro-economic reform analysts, particularly the Productivity Commission, assess the outcomes of micro-economic reform in terms of averaged benefits.

The latest Reserve Bank of Australia (**RBA**) report "Banking Fees in Australia", *Reserve Bank of Australia Bulletin*, April 2003 should give us significant reason to pause and reflect upon what measures need to be taken to achieve a fair distribution of the benefits of micro-economic reform of the financial services sector. The RBA's survey of bank fees has revealed that banks' fee income from deposits, loans and transaction services totalled 7.8 billion dollars in 2002 - an increase of 10 per cent on 2001. Disturbingly, fees paid by Australian households outstripped average growth, increasing by 17 per cent. Of most concern, however, is the distribution of fees. The RBA notes that: "Overall, individuals that maintain high balances and make few transactions can avoid many of the fees introduced since the mid-1990s. In contrast, customers with low balances who make frequent transactions using non-electronic channels are paying considerably more in fees than was the case in the mid-1990's [at 4]". The RBA report goes on to note that the reduction in banks' interest rate margins has more than offset the increase in fees. This undoubted benefit, however, only assists those acquiring assets through mortgages and loans.

The RBA report concludes: "Bank customers have not been affected uniformly by these trends in fees and interest margins. Arguably, those who have benefited most are those with a loan secured by a residential mortgage, who use electronic payment channels and who avoid late payment and other similar charges. Such customers have benefited from lower interest rates margins and can avoid many of the banking fees introduced over the past decade. In contrast, those customers without a loan, who have low balances and have a high-volume of transactions would not have benefited from the fall in interest margins and would be paying higher fees [at 6]". Unfortunately, a typical profile of a low and fixed income consumer is one that maintains low balances, has a high-volume of transactions and does not have a loan. Moreover, such a consumer is more likely to incur punitive late payment and other similar charges as the capacity to avoid these charges is mostly determined by having adequate financial means.

It appears to be increasingly true that the deregulation of financial services, where customer loyalty is measured in dollars and cents and not years spent with an institution, has delivered cost savings to the better-off (or those acquiring assets) and had the opposite effect on low-income Australians.

If you would like further information please contact Chris Field on (03) 9629 6300 or [chris@clcv.net.au](mailto:chris@clcv.net.au)

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

## CONTENTS OF THIS EDITION

### Editorial

#### 1 What have we been doing?

1.1 Release of the report of the *Trade Practices Act* Review

1.2 Protection for consumers using 190 premium telecommunications services

1.3 Consumer rights under threat due to the insurance "crisis"

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

#### 3. Next Edition: June 2003

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

###### **1.1 Release of the report of the *Trade Practices Act* Review**

The much anticipated and long delayed report of the *Trade Practices Act* Review was released in late April (we have previously discussed the background to the Review - see 'Editorial', *e-bulletin* No. 24, August 2002). The Centre, which made written and verbal submissions to the Review, broadly welcomes the Review report.

The report's recommendations do not, appropriately and importantly, deliver what many in the big business sector were seeking - a Board governing the ACCC that would have seriously undermined its independence.

Inept, ineffective regulators, captured by industry interests, do not fulfil their mandate -serving the public interest. Unfortunately, a series of corporate collapses and regular reports of business dishonesty and inappropriate corporate practices over the past few years have served to highlight the dangers of weak regulators. The findings of the report, and the recent HIH Royal Commission, will need to be considered by another review examining the role of regulators - the Uhrig Review.

Disappointingly, the report does not recommend changes to s.46 of the *Trade Practices Act* prohibiting the abuse of market power. Many consider the abuse of market power provisions to be close to unworkable and ineffective following the High Court's recent decision in the *Boral* matter (we reviewed the *Boral* matter in our 'Editorial', *e-bulletin* No. 25, February 2003). The reluctance to recommend changes to section 46 is partly based on the view that the *Trade Practices Act* is designed to protect competition, not competitors (for example, small businesses). This view is misconceived. Protecting against the unfair removal of competitors in a market, for example by predatory pricing, does, in the long-term, protect competition. Put simply, without competitors, there is no competition. The removal of competitors, leading to a less competitive market-place, generally benefits big business, but ordinary consumers will face higher-prices, worse services and diminished consumer protection generally.

In a welcome recommendation, criminal sanctions are proposed for hard-core behaviour, a key submission of consumer organisations.

If you would like further information please contact Chris Field on (03) 9629 6300 or [chris@clcv.net.au](mailto:chris@clcv.net.au).

## 1.2 Protection for consumers using 190 premium telecommunications services

The Centre, along with other consumer organisations, has for some time been very concerned about the unexpectedly high telephone bills incurred by consumers, particularly vulnerable consumers, as a result of using 190 premium services. 190 numbers are used to deliver information and entertainment via the telephone, facsimile, SMS and the Internet. Most commonly 190 numbers are associated with competition entries, dating contact services, astrology services and telephone sex services. The costs associated with 190 premium services are charged at a per minute rate or a fixed rate.

On 13 March 2003 Senator Richard Alston, the Commonwealth Minister for Communications, Information Technology and the Arts issued the *Australian Communications Authority (Service Provider Determination) Direction 2003 (No.1) (the Direction)*. The Direction requires the Australian Communications Authority (**ACA**) to:

*(a) ... make a service provider determination setting out a number of rules to be complied with by carriage service providers that will help protect consumers from the potential risks associated with '190 premium services' and, to a lesser extent, services accessed via an international access code; and (b) ... investigate and report to the Minister on whether there is a need for additional regulatory measures for these services.*

The Centre welcomes the Direction and will be making a submission to the ACA with regard to the ACA's draft *Telecommunications Service Provider (Premium Services) Determination 2003*, which includes the following proposals:

- • That access to 190 premium services be limited to \$250 in a calendar month;
- • That a customer be able to waive the call limit; and
- • That service providers inform their customers about the risks associated with 190 premium services and numbers accessed via an international access code, and offer ways in which the potential for unexpected high bills can be lessened.

We are concerned that the proposed monetary limit has been set far too high and that \$100 in a calendar month would be much more appropriate. We will also recommend that if the final Determination allows for a consumer to waive the monetary limit, that such a waiver be treated as an application for credit and subject to the provisions of the *Uniform Consumer Credit Code*.

If you would like further information about the work of the Centre in creating a fairer telecommunications market, please contact Anna Stewart on (03) 9629 6300 or [anna@clcv.net.au](mailto:anna@clcv.net.au).

## 1.3 Consumer rights under threat due to the insurance "crisis"

On 4 April 2003, Commonwealth, State and Territory Ministers met to discuss further reform relating to the availability and affordability of liability insurance (we have previously discussed the insurance crisis and possible solutions, see: "Principles based review of the law of negligence could lead to unprincipled results", *e-bulletin no. 24*, August 2002). The reforms include introducing a national model for proportionate liability and the introduction of uniform national professional standards legislation that would also require professionals to comply with increased standards of risk management and to take out higher levels of compulsory insurance. Threats to consumer rights and protections, including liability caps, reduced limitation periods on the right to sue for negligence and changes to legal tests relating to the standard owed by professionals, are all part of this reform package.

The Centre is deeply concerned about these reform proposals. Caps on liability, for example, appear very unlikely to solve the insurance crisis. Liability caps, designed to encourage the re-entry of insurers to the market-place, will reduce consumers' rights to adequate compensation where they suffer injury or loss as a result of a professional's negligence. The Insurance Council of Australia has already been reported as suggesting that the introduction of liability caps will not see the re-entry of insurers into the market for a number of years:

Morgan Mellish with Chris Merritt, 'Caps no comfort for insurers', *Financial Review*, 8 April 2003. The failure of insurers to re-enter the market will allow them to seek further concessions to solve the crisis, which may lead to a further reduction in rights for consumers.

A purported benefit of introducing liability caps is that they will be tied to improved risk management standards for professions. Senator Helen Coonan has stated: "Although liability would be capped, professional standards legislation has the potential to deliver significant benefits for consumers": Helen Coonan, Minister for Revenue, *Media Release*, 4 April 2003. While the Centre welcomes national legislation that ensures a more robust risk management framework for doctors (and, indeed, all professionals), we do not see why such measures must be tied to liability caps. In our view, the professions should be subject to rigorous risk management standards in any case. Such standards lead to less claims being made on professionals and increased market confidence in the use of professionals and are therefore in the interests of professionals. In addition, the imposition of rigorous risk management standards on professionals is fair, given that they enjoy the privileges of being able to call themselves a profession, are generally much better paid for their work than other Australians and are largely allowed to self-regulate. Most importantly, rigorous risk management standards are, of themselves, good public policy as they lead to reduced consumer detriment - they should not require the quid pro quo of liability caps to be implemented.

In particular, liability caps for the medical profession will potentially cause serious consumer detriment in cases where a person is the subject of proved negligence leading to catastrophic injury. Doctors' groups recently welcomed the reduction of a payout to provide lifetime medical care and assistance to a catastrophically injured person who, but for proved medical negligence, would have led a normal life. Whilst the Federal Government has been reported as stating that the needs of those with catastrophic injuries will be addressed in the future, any such move should be made before removing the rights of consumers to seek adequate compensation for injuries and loss suffered as a result of a professional's negligence.

If you would like further information about the work of the Centre in relation to insurance reforms, please contact Chris Field on (03) 9629 6300 or [chris@clcv.net.au](mailto:chris@clcv.net.au).

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

The following committees require consumer representatives  
First priority/urgent

- • Children's nightclothes
- • Valves for use in warm and hot water systems
- • First aid kits
- • Safe handling of chemicals

Second priority

- • Power quality
- • Safety of electrical equipment for measurement and laboratory use
- • Safety of private swimming pools
- • Spa pools
- • Conformity assessment

Third priority:

- • Locksets and associated hardware

Consumers' Federation of Australia representatives on Standards Australia committees are entitled to have their travel expenses of attending committee meetings, including interstate meetings, reimbursed through the Standards Co-ordinator.

### **The following draft standards have been released for public comment**

- Potting mixes and composts - A guide for the examination of legionellae (by 23 May 2003)
- The storage and handling of gases in cylinders (by 6 May)
- Water supply - Valves for the control of hot water supply temperatures Part 3: Requirements for field testing, maintenance and replacement of tempering valves thermostatic mixing valves and end of line temperature control devices.

### **Committee news**

#### **New Implementation Guide for Health Information Security Management**

This guide, just prepared by Standards Australia, is aimed at making clear to health practitioners what their responsibilities are in the handling of health information through technological mechanisms, and how to meet those responsibilities. It emphasises small to medium-sized health practitioners. Please contact the consumer representative on the Health Informatics committee, Heather Grain, for further information, at [h.grain@latrobe.edu.au](mailto:h.grain@latrobe.edu.au).

#### **Revision of contract for the supply and construction of a swimming pool**

Standards Australia is currently considering the need to revise the Australian Standard for swimming pool contracts. If you wish to give feedback, please contact the Standards Co-ordinator, Fran Macdonald (contact details follow).

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 Fran Macdonald on (03) 9629 6300 or [fran@clcv.net.au](mailto:fran@clcv.net.au).

#### **3 Next Edition: June 2003**

The e-bulletin, produced once every two months, 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.