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Welcome to the inaugural edition of CONSUMER ACTION Law Centre's ebulletin, *consumer interaction*.

As many of you would be aware, Consumer Action was formed by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service in August 2006, with funding by Victoria Legal Aid and Consumer Affairs Victoria.

Consumer Action builds on the significant strengths of these two centres. With both a campaign-focused policy practice and a consumer legal practice, we will continue to represent and advance the consumer and public interest, especially the interests of low-income and vulnerable consumers.

Consumer Action's legal practice has four full-time solicitors and two telephone advice solicitors working under the supervision of the Acting Legal Practice Directors. Practice lawyers are currently assisting over 50 clients with ongoing legal casework, as well as undertaking regular outreach services in Victoria's west and to Indigenous Victorians in conjunction with our partners at the Victorian Aboriginal Health Service. In addition, the practice is currently engaged in regular advocacy empowerment workshops in rural and regional Victoria (in conjunction with the Public Interest Law Clearing House and the Financial and Consumer Rights Council), and in consumer awareness training sessions for new migrants through centres such as Adult Multicultural Education Services (AMES).

The Consumer Action outreach program will resume service to Gippsland in the coming weeks, and staff will soon begin visiting metropolitan CLCs to promote access to the practice's expertise.

Consumer Action's policy and campaign practice will work on the policy priorities set out in our Policy Plan 2007. This edition of *consumer interaction* formally announces our Policy Plan.

More information about us, including contact details for key staff and for our advice line, can be found on our new [website](#).

This edition of *consumer interaction* includes an update on current cases and recent casework outcomes, recent work the Centre has undertaken relating to national energy market reform and the current review of the law on personal property securities, and an update on the Consumer Representatives on Standards Australia Committees project that we manage on behalf of the Consumers Federation of Australia, in addition to formally announcing our policy priorities for 2007.

We welcome feedback on the information provided in *consumer interaction* as well as its design and layout, particularly following this, our first edition. We also encourage you to forward the bulletin throughout your networks. To subscribe to *consumer interaction*, please email info@consumeraction.org.au with 'consumer interaction' in the subject line. Editions of our ebulletins can also be found on our [website](#).

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Policy Plan for 2007

Consumer Action is pleased to publicly release its [Policy Plan for 2007](#). The Policy Plan sets out our policy priorities for the year, including the issues about which we will undertake priority campaigns.

The priority campaigns for Consumer Action in 2007 are:

World Class Consumer Policy for Australia

Australia was once a world leader in consumer affairs. Now we lag behind other countries, particularly the US, UK and EU. Consumer Action wants Australia's consumer policy and consumer protection frameworks comprehensively updated in line with world's best practice, including: the re-establishment of an Australian Minister for Consumer Affairs; introduction of national unfair contract terms laws; facility for super-complaints by consumer groups; stop-now orders; and establishment of a National Consumer Council to lead consumer research and policy.

Reckless Lending

It is time for Australian loan providers to stop their race to the bottom in terms of lending standards in their quest for market share and profits. While lenders may not care if consumers default on loans they have no capacity to repay, so long as the lender can sell a house or other asset to repay the debt, the cost and distress of a loan default to consumers and their families is enormous. The Australian Federal and State Governments also need to use their powers to put a stop to reckless lending.

Penalty Fees

Banks and other financial service providers charge excessive penalty fees when consumers commit a "default", such as overdrawing their account; having a direct debit or cheque bounce; or paying their credit card bill late. Not only are these fees unlawful because they go well above recovering the cost of the default, they also disproportionately hit low-income consumers, the people least able to afford them. If industry won't drop their unlawful penalty fees, it is time for the Federal Government to intervene.

National Energy Market Reform

Australia is moving to a full national energy market with national regulation. While national energy regulation has the potential to bring great benefits to Australia's economy and Australian consumers, Consumer Action wants to ensure that appropriate consumer protections are retained and regulation is targeted at ensuring the best market outcomes for consumers of this essential service.

Motor Car Trading

For many years Consumer Action has received large numbers of complaints about practices in Victoria's motor car trading industry. Consumer Action remains concerned about the lack of access to affordable and efficient dispute resolution; increasing and problematic links between motor car traders and finance providers; misleading and sharp sales practices; and conflicts of interest in the provision of Roadworthy Certificates by mechanics linked to traders to facilitate the sale of vehicles. The Victorian Government's response to the consultations on the Motor Car Traders Act either does not mention or postpones action on these issues. It is time for the Victorian Government and industry bodies to crack down on poor practices in the industry, as well as establish an industry dispute resolution scheme. Given ongoing consumer problems, a comprehensive education campaign for consumers about their rights when dealing with motor car traders is also needed.

There are also a number of key policy issues that we will continue to engage with on a regular basis in the areas of financial services, consumer credit, energy, water, telecommunications, public transport, and access to justice.

Our Policy Plan is now available on our [website](#). Please contact Nicole Rich, Director – Policy & Campaigns, on 03 9670 5088 or at nicole@consumeraction.org.au for more information.

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Current Cases

Alleged unconscionable conduct by an Introduction Agent - TLC Consulting Services

Our client has an acquired brain injury (ABI) and instructs us that, as a result of that ABI, he makes impulsive, unconsidered decisions. He responded to a TLC Valentines advertisement, and initially signed up to \$500 worth of introduction agent services. He disclosed his ABI to TLC during the initial phone call. Over the next few days, TLC contacted our client repeatedly and signed him up to \$10,000 worth of services, from which he has not obtained any benefit.

TLC has been banned from operating in Queensland and now operates from NSW. It is not a registered introduction agent in Victoria as required by the *Introduction Agents Act 1997*. We have written a letter of demand to TLC on behalf of our client and referred the matter to CAV enforcement.

Alleged misleading and deceptive conduct - Mecca Homes

Consumer Action is acting for a number of Sudanese clients who obtained loans for house and land packages with Mecca Homes. All allege misleading and deceptive conduct, over-commitment and fraudulent conduct by the broker involved.

For further information about the legal practice, please contact Xan Colman or Celia Tikotin, Acting Directors – Legal Practice, on 03 9670 5088, xan@consumeraction.org.au or celia@consumeraction.org.au.

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Casework Outcomes

Reckless lending, misuse of business purpose declarations and poor broker conduct Zaparenkov v Perpetual Trustees Vic Ltd

Our clients are in their seventies, have a very limited knowledge of English and are retired factory workers in receipt of Centrelink aged pensions.

Perpetual Trustees had issued proceedings against our clients in the Supreme Court of Victoria to obtain judgment for monies owed pursuant to a loan secured by mortgage and to obtain possession of the secured property (their home).

Consumer Action brought proceedings in VCAT against Perpetual Trustees and against State Securities, the broker involved in three loans made to Mr and Mrs Zaparenkov, to have their loan contract re-opened as unjust under the Consumer Credit Code. There were 'business purpose declarations' signed by the clients for the loans. However, no checks had been done to see if there was any business in existence, nor to reconcile the contradictory evidence of 'self employed/investors' (the description on their loan application forms) with the fact that they were in receipt of Centrelink income only. Consumer Action was able to establish that both the broker and the lender had seen the clients' Centrelink cards.

The matter was settled at mediation to the satisfaction of our clients and the terms are confidential. What is not confidential is the amount of costs incurred by Perpetual Trustees in pursuing our clients in the Supreme Court, and in lodging a strike out application in response to our application in VCAT to have the contract re-opened. According to our clients' loan statements, Perpetual's legal costs were in excess of \$80,000.

The decision of Justice Morris on the strike out application in VCAT is reported – see *Zaparenkov v Perpetual Trustees Vic Ltd (Credit)* [2006] VCAT 2147 (26 October 2006). It provides a useful decision on the reasons why, when there are proceedings in two jurisdictions, the VCAT one should proceed first:

16 I now turn to the question of whether the proceeding before the tribunal should be stayed. As a matter of logic I think that it makes much more sense for a VCAT proceeding to be heard and determined first. The public interest ventilated in the Code is to protect vulnerable consumers in relation to credit matters in certain circumstances. In doing this the Code provides a more generous test to debtors than would be the test applied in the Supreme Court pursuant to equitable principles relating to unconscionability. What follows from this is that if the VCAT proceeding succeeds then it is likely to mean the end of the Supreme Court proceeding. On the other hand if the VCAT proceeding fails it is difficult to see how the Zaparenkovs could have any credible defence based on unconscionability in the Supreme Court proceeding. Further the consequence sought in the Supreme Court proceeding is final in nature, being the possession and probable sale of the Zaparenkovs' home. For these reasons it makes far more sense for the tribunal proceeding to take place first. I might add that there are also reasons concerning the comparative timeliness and the comparative cost of the two systems which would generally make it preferable for the tribunal proceeding to go first. So I am not persuaded that an order should be made staying the tribunal proceeding.

Unconscionable lending and family transmitted debt

Our clients are an elderly couple who sought assistance from Consumer Action in relation to a loan arranged by their son with a Bank. The couple were unable to make payments under the loan and were concerned that their home, which had been used as security, was at risk should their son stop making payments in relation to the loan.

Upon investigation of the matter it became evident that the loan had been used to consolidate the son's debts, including a pre-existing unsecured debt to the Bank. Despite the fact that the couple had received no benefit under the loan, they had contracted as co-borrowers with their son and not as guarantors.

Our clients instructed us that when they signed the loan documents, they did not fully understand the consequences of the transaction. In their limited dealings with the Bank, they had not been advised to seek legal advice nor did they seek legal advice in relation to the loan.

After Consumer Action made complaints to the Bank and the Banking and Financial Services Ombudsman in relation to the Bank's alleged unconscionable conduct, a favourable settlement outcome was obtained by our clients.

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National Energy Market Reforms

Work on Australia's move to a full national energy market (**NEM**) with national regulation is continuing at a rapid pace, and Consumer Action continues to provide input into the process of regulatory development in the interest of consumers.

In late 2006, the Ministerial Council of Energy (**MCE**) established the Retail Policy Working Group (**RPWG**), whose task is to develop recommendations for the national retail and distribution (non-economic) regulatory framework.

Consumer Action is participating in the RPWG's Stakeholder Reference Group and has provided three written [submissions](#) to the process. Of particular importance to consumers are the protections included in the regulation relating to standing offer and market contracts. These include consumer protections relating to contract cooling-off periods, access to supply and hardship arrangements, and dispute resolution.

Consumer Action has also produced a research report, [Consumer Protections in the National Energy Market](#), which concludes that robust energy-specific consumer protections are required to ensure that consumers have continued access to energy supply and that energy markets deliver competitive and efficient outcomes.

Consumer Action has provided [submissions](#) on the MCE's draft legislation relating to the economic regulation of gas and electricity networks, as well as the new model for funding consumer advocacy. Consumer Action is keen to ensure that effective and efficient regulation of energy networks is retained and is not weakened in the move to a national regime. We are concerned about the considerable pushback from industry to weaken monopoly regulation, in the context of the wider debate about "regulatory burden". Regulation of monopoly networks must balance the interests of consumers and industry, so that networks are not able to recover more than efficient prices in the delivery of their services.

Consumer Action will continue to provide input into the regulatory developments of the NEM as a priority during 2007.

For more information about Consumer Action's work in relation to the NEM, please contact Gerard Brody, Senior Policy Officer, on 03 9670 5088 or gerard@consumeraction.org.au.

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Review of the law on Personal Property Securities

The Standing Committee of Attorneys-General (**SCAG**) decided to undertake a review of the law on personal property securities (**PPS**) in April 2006 upon the initiation of the Commonwealth Attorney-General, the Hon Philip Ruddock MP.

PPS are legal interests in property other than land held to secure the repayment of a loan. The most common example of a PPS interest that involves consumers is car finance, where the loan provider holds a security interest in the consumer's vehicle to secure repayment of the loan made to buy the car. However PPS can be created in all sorts of personal property, including jewellery, TVs, whitegoods, boats and electrical appliances.

The Commonwealth is now chairing a working party of Commonwealth, State and Territory officers to report back to SCAG on reform to Australian PPS law and the development of a national register of PPS interests.

It is intended that three discussion papers dealing with key PPS reform policy issues will be released for public consultation. The first paper, on registration and search issues, was [released](#) in November 2006. The second and third discussion papers have not yet been released but will deal with priorities, conflict of laws, insolvency and enforcement issues, and possessory security interests.

Consumer Action provided a [submission](#) in response to the first discussion paper. We generally support the creation of a single PPS register and agree with SCAG that there will be benefits in terms of efficiency, certainty and costs if a PPS register is created.

Consumers purchasing second hand motor vehicles and boats particularly stand to benefit from the availability of a single source to check that the vehicle they are considering purchasing is not encumbered by a security interest. However, we strongly argue that the register should also disclose whether the vehicle has been reported as stolen or written off, a functionality which is under consideration. Currently it is difficult for consumers to undertake a comprehensive check on a second-hand vehicle before buying it, but it is the consumer who bears the loss if it turns out to be encumbered or stolen, often at great financial and emotional stress.

One of the overall goals that SCAG has set out for PPS law reform is to enable all security interests to be registrable on the PPS Register. This goal is commendable in theory, but the reality is that serious and, we believe, insurmountable privacy concerns will require the reforms to exclude the registration of security interests where the debtor is an individual and the secured property is not able to be registered and searched by unique serial number (for example, cars and boats have unique identification numbers).

This is because it would be necessary to register and search interests in property that does not have a unique serial number by debtor name, with other unique pieces of

information (likely to be debtor address and date of birth) shown on the register as well, to ensure that the correct debtor and security interest has been found. The register will be publicly available and searchable, meaning that anyone could obtain access to this information, significantly increasing the risk of identity fraud as well as other privacy problems.

We also fear that if PPS interests could be registered and searched by debtor name, it is likely that some companies would use the PPS register to find individual debtors subject to secured lending, in order to market inappropriate debt consolidation services to them. In addition, it is likely that unscrupulous lenders would seek to register what are known as “blackmail securities” on the register as a tool to put pressure on vulnerable consumers in financial hardship. Blackmail securities are security interests in essential household goods, often of low value, where the creditor generally has no real intention of enforcing the interest but uses it and the threat of repossession to unconscionably pressure consumers into repayment even if they are in financial hardship. Most of the consumers who enter into these sorts of transactions are low-income and/or otherwise disadvantaged, and highly vulnerable to this sort of conduct by unscrupulous lenders.

These and other issues are canvassed in more detail in our [submission](#). Please contact Nicole Rich, Director – Policy & Campaigns, on 03 9670 5088 or nicole@consumeraction.org.au if you would like more information on Consumer Action’s work on PPS law reform.

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Consumer Representatives on Standards Australia Committees

Consumer Action is funded by Standards Australia to recruit and support Consumers’ Federation of Australia (**CFA**) representatives on Standards Australia technical committees. These committees set and review a wide range of product and process related standards.

Work that CFA representatives are currently involved in includes:

- addressing infant and child safety through standards dealing with children’s toys, babies’ dummies, child safety in house design, child resistance in packaging systems and playground equipment;
- disability access through the standards for access and mobility in the built environment, mobility appliances, plus access to information technology and e-commerce for people who are blind or vision impaired;
- management of technology in health informatics, IT governance and management and nanotechnology; and
- water, gas and electricity safety and performance - looking at wiring rules, valves for use in hot water systems, labelling and performance of water efficient appliances, gas installations and remote demand management of electricity.

Whilst most of their work involves Australian and New Zealand standards, CFA representatives are increasingly becoming involved in international standards with local significance. Over the past twelve months representatives have made important contributions to international standards for the testing of sunscreens and for reporting social responsibility.

The CFA is also involved in COPOLCO – the Committee on Consumer Policy of the International Organisation for Standardisation (ISO), whose membership includes a growing number of developing nations. COPOLCO will be meeting in May this year in Brazil.

One of the new committees that the CFA has become involved in this year is FT-032 **Organics and Biodynamic Produce**. The committee was proposed by the Organic Federation of Australia, the peak organisation for the organic sector, as a response to the lack of a domestic standard in this area. There is an export standard managed by the Organic Export Consultative Committee which manages the quality and claims associated with food leaving Australia, however there is no official and consistent standard for domestic consumers, whose current purchases of “organic” produce are estimated at over \$250 million each year.

The new standard is aimed at ensuring consumer protection and confidence in a sector where demand is outstripping domestic production, but where it is difficult for consumers to check the truth of claims made about the characteristics of produce they are buying. It is proposed that the new standard would apply to both locally produced and imported produce and could be called up by State and Federal regulatory agencies as a benchmark to prevent fraud and misrepresentation.

We are currently searching for consumer representatives for the following Standards committees:

- BD-85 Inspection of Buildings – this Committee’s current projects include a revision of the standard for pre-purchase inspections for residential buildings – an issue that Consumer Action has recently [commented on](#)
- CS-10 Pedal Bicycles
- CS-59 Spa Pools (public and private)
- CS-88 Commercial Furniture
- EL-015 Quality and Performance of Household Electrical Appliances
- FP- 3 Fire Extinguishers
- HE-11 Disposal of sharps and clinical waste
- ME-84 Four Wheel Drive accessories and Cargo Restraint Systems
- TE-001 Minimum Energy Performance of TVs and Digital Set Top Boxes

CFA representatives attending Standards Australia committee meetings are reimbursed for their travel expenses.

If you would like to represent the CFA on any of these committees or would like more details, please contact Jo Higginson, Standards Coordinator on 03 9670 5088 (Mon, Wed, Fri) or jo@consumeraction.org.au.

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