

## April 2007, edition 2

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Welcome to the second edition of Consumer Action Law Centre's ebulletin, *consumer interaction*.

As many readers would be aware, the annual [National Consumer Congress](#) was held in March, with the second day of the Congress coinciding with World Consumer Rights Day, 15 March. This year's Congress was hosted by the [Commonwealth Department of Treasury, Competition and Consumer Policy Division](#), and took place in Melbourne.

The theme of the Congress was 'The Changing Environment of Consumer Policy', a well-chosen theme given that the Productivity Commission is currently conducting an [inquiry](#) into Australia's consumer protection frameworks. The Congress was preceded by the [2007 Consumer Affairs Victoria Lecture](#), this year presented by the Director of Consumer Affairs Victoria, Dr David Cousins, on the topic of 'Past, Present and Future Directions of Consumer Affairs', also an apposite theme as a lead-in to the Congress.

The Productivity Commission inquiry noted above provides an excellent opportunity to reflect on Australia's current consumer policy settings and explore ways to ensure we put into practice consumer policy that is world class. This is a critical question as unfortunately, Australia has fallen behind other countries on consumer affairs, where once we were a world leader. However, there are also risks in the inquiry, with the terms of reference drawn to include an unnecessarily heavy focus on reducing "red tape" for business, without a corresponding focus on how we can ensure that our consumer policy, including regulation, is ultimately effective for consumers and the community as a whole.

In the leading session of the second day of the Congress, an in-depth discussion of the Productivity Commission inquiry, Consumer Action co-CEO Catriona Lowe presented a speech entitled *Empowerment and Protection – updating Australia's consumer policy framework*, available from our [website](#). The speech set out Consumer Action's views on some of the key issues relevant to how consumer policy should move forward in this country. One of the issues raised was the need for more effective enforcement of consumer rights and an improved range of remedies, such as capacity for regulators to obtain compensation for consumers through their enforcement actions. There is also a critical need to update our regulatory framework to respond to new consumer challenges, with national unfair contract terms laws a key example of necessary reform. This issue was also canvassed by Dr Cousins in his lecture, in which he proposed that a general fair trading obligation under our consumer laws would be a positive development. The speech also argued for more and better research on consumer issues, particularly for input into processes assessing regulatory and policy proposals - if we want regulation to be efficient and effective, Australia needs to improve the manner in which it assesses costs and benefits not just to business, but to consumers and to the community.

Later on the second day of the Congress, Consumer Action's other co-CEO, Carolyn Bond, conducted a break-out session specifically on cutting the red tape: effective consumer regulation. This session explored important questions around ensuring that our

consumer protection regulation is not too burdensome, but is sufficient to achieve its aims. Sophisticated debate on this issue is particularly important given the apparent popularity of current simplistic policies such as “one regulation in, one out”, which are transparently arbitrary and cannot possibly be expected to achieve good regulatory outcomes. The discussion primer from the session is also available from our [website](#).

We welcome feedback on the information provided in *consumer interaction* as well as its design and layout. We also encourage you to forward the bulletin throughout your networks. To subscribe to *consumer interaction*, please email us at [info@consumeraction.org.au](mailto:info@consumeraction.org.au) with ‘consumer interaction’ in the subject line. Past editions of our ebulletins can also be found on our [website](#).

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**Review of the Credit Reporting Provisions of the Privacy Act - poor complaint handling by the Office of the Federal Privacy Commissioner**

The Australian Law Reform Commission is currently conducting a [review of the Privacy Act 1988](#). As part of its review, the Commission released Issues Paper 32 specifically on the credit reporting provisions of the *Privacy Act*. Consumer Action commends the Commission for recognising that credit reporting requires a specific focus, as the credit reporting provisions are reasonably complex and a number of issues have been raised by stakeholders in relation to credit reporting.

Consumer Action provided a [submission](#) in response to Issues Paper 32 (together with several attachments). While we highlight several areas in which the credit reporting provisions and regulatory framework could be improved, we consider that the main problems with the current system relate to the way in which it operates and is enforced in practice. In particular, the Federal [Office of the Privacy Commissioner \(OPC\)](#), as the regulator of the credit reporting provisions, appears to lack both sufficient resources and sufficient will to deal with credit reporting complaints and potential enforcement matters in a timely or effective manner.

For example, we note in our submission that we have been waiting almost a year for the OPC to respond to two representative complaints we have made about credit reporting that we believe affect at least half a million Australians. The two complaints are available on our [website](#) and were made on behalf of individuals who have an unpaid debt listed on their credit information file relating to old Telstra debts that were sold to debt collection firm Alliance Factoring between 2002 and 2003. Alliance Factoring listed large numbers of these debts with the credit reporting bureau Veda Advantage (then Baycorp Advantage) shortly after buying them from Telstra.

Our complaints allege that Alliance Factoring listed the debts without properly notifying the consumers affected or making sure it had proof that the debts were correct. Many consumers only found out that they had incorrect defaults listed on their credit files (often relating to very old bills) after they were told their application for a home loan or credit card was rejected because of their credit report. We suspect that many of the people affected may still not be aware that they have one of these debts listed on their credit file.

The complaints were made to the OPC in April and May last year by the Consumer Credit Legal Service (Vic) (now Consumer Action) and the Consumer Credit Legal Centre (NSW) under section 38 of the *Privacy Act*. It is unclear why the OPC is taking so long to deal with the complaints and in the meantime, a huge number of people remain affected. A [media release](#) on our website sets out our concerns in more detail.

For more information about credit reporting, please contact Nicole Rich, Director – Policy & Campaigns, on 03 9670 5088 or at [nicole@consumeraction.org.au](mailto:nicole@consumeraction.org.au).

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## Current Cases

### *Amazing Loans*

As it says on the company's website, 'we guarantee you'll be amazed.'

Consumer Action is representing a number of clients who have entered into credit contracts with Amazing Loans, a company that specialises in providing \$1,000 to \$5,000 loans to low-income borrowers.

The loan agreements we have seen include a 'loan advance and administration fee' in excess of \$4,500 for loans of only \$3,000, while disclosing an interest rate of 7% per annum. Prior to November 2006, the company offered loans at 48% per annum, with a greatly reduced administration fee. These circumstances appear to lend support to an argument that this fee may be an unjustifiably high charge which could fall foul of the *Consumer Credit Code*.

Amazing Loans explicitly stated last year that it would expand its operations into Victoria (and Queensland) following amendments to New South Wales laws that meant fees and charges had to be included in the overall interest rate cap. This raises the question whether similar action by the Victorian Government may have helped to prevent these consumers from needing to seek assistance from our legal practice in the first place.

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## Casework Outcomes

### *Debt collection and bankruptcy*

Our client suffered a stroke in May 2004 which left her with a permanent visual impairment and prevented her from working. She lived with her self-employed husband and two adult children, and despite her illness continued to be the primary income earner in her household. As a result of her stroke, she ceased making payments in relation to her credit card, under which she believed she owed approximately \$3,500.00 to the bank at that

time. Unfortunately, our client did not contact the bank to advise of her hardship and the debt was sold to a debt collector.

The debt collector obtained judgment by default in September 2006 for \$4,406.00 plus costs. A bankruptcy notice was served in November 2006 and a creditor's petition in bankruptcy followed in February 2007. Our client risked being left with significant trustee fees and potentially losing her family home.

Our client retained Consumer Action to act for her two days prior to the hearing of the petition in March. Significantly, our client instructed that she had explained her personal circumstances to the debt collector well before proceedings were issued and offered to pay \$200 a fortnight to satisfy the debt. This offer was rejected.

After negotiations involving Consumer Action, the bank and the debt collector, the debt collector's solicitors agreed to accept the client's offer to pay \$200 a fortnight the day before hearing, but claimed further legal costs. Consumer Action argued that legal proceedings had proved to be unnecessary given that the debt collector had been offered the same instalment plan before legal proceedings were commenced.

The debt collector agreed to waive its costs in relation to the bankruptcy proceedings and withdrew the creditor's petition.

This case illustrates the importance of alerting banks to the actions of debt collectors who are pursuing debts sold to them by the bank. If a bank is aware that a debt collector with whom it has an ongoing commercial relationship is acting improperly, it may be concerned about negative perceptions impacting upon the bank's standing in the community, and may place pressure on the debt collector to modify its practices. Consumer Action has had a number of clients who experienced similar difficulties with the debt collector involved and is raising systemic issues with the bank.

#### *Door to door selling of educational mathematics software*

Our client lives with his wife and school-aged children. He was born in Iran and speaks very little English.

In late 2006 a salesman arrived uninvited at our client's home. The salesman was promoting a computer program which purported to aid maths education in the home, together with telephone tutoring and support from qualified staff employed by the supplier of the goods. As only the client's children were home at the time, the salesman went to the workplace of our client's wife, who asked the salesman to discuss the matter with her husband, our client, who would by this time be home.

When the salesman, upon returning to our client's residence that same day, eventually spoke with our client, our client asked the salesman to come back in an hour when his eldest daughter would be home, in order for her to translate. The salesman insisted that our client's English was excellent and that he would go through the deal slowly with him.

Our client did not realise, however, that, in addition to purchasing the goods and services promoted by the salesman, he was being asked to take out a loan with a finance company. In addition, our client was led to believe that a three month cooling-off period applied to the arrangement.

After it became apparent that the children were not going to use the program, our client sought to exercise his right to cool-off, which was refused by the supplier. When our client closed his bank account to stop directly debited payments being taken by the finance company, the finance company served a notice of demand against him.

Consumer Action wrote to both the supplier and the credit provider rescinding and terminating the agreements that our client had entered into, on the basis that the supplier's representative had falsely represented that a cooling off period applied to the agreements. After exchange of correspondence, the dispute was settled on the basis that our client had all payments made under the agreements refunded, and was released from all further liability by both the credit provider and the supplier.

Consumer Action is interested in hearing of any further instances of sharp practice on the part of promoters of such educational software packages.

For further information about the legal practice, please contact Paul Gillett or Celia Tikotin, Directors – Legal Practice, on 03 9670 5088, [paul@consumeraction.org.au](mailto:paul@consumeraction.org.au) or [celia@consumeraction.org.au](mailto:celia@consumeraction.org.au).

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## National Energy Market Reforms

Consumer Action continues to closely monitor the national energy market reform processes so as to ensure that consumers are not worse off as a result of a harmonised national energy regulatory system. We have become concerned in recent months that the Commonwealth Government is seeking to use this process to promote significant deregulation and diminishing of consumer protections. A number of poorly thought out policy decisions are being made on the run, in response to what appear to be short-term political or ideological expediencies. This is played out in a number of areas.

First, the [Ministerial Council on Energy's \(MCE\) Retail Policy Working Group \(RPWG\)](#) is developing recommendations for the national retail and distribution (non-economic) regulatory framework. Essentially, it is this area of regulation in which most consumer protections are located, including those related to retailers' obligations to offer consumers experiencing hardship affordable payment arrangements and protections from disconnection. The RPWG is also considering energy-specific marketing regulation, an area where we still see numerous consumer complaints about poor door-to-door and telephone marketing practices. The Commonwealth is arguing that much of this regulation is "red-tape" and burdensome to industry. This is contradictory to the Victorian Government's stated opinion that [Victoria's consumer protection framework will not be traded off](#) as part of the move to a national framework. Victorian Minister for Energy and Resources, Peter Batchelor, recently reiterated this, [stating](#) that 'Victorian energy customers [will] continue to be protected regardless of whether a national energy framework is adopted'. Such statements are heartening to Victorian consumers, but they may mean appear to mean that Victoria will have to regulate over the top of the national framework to ensure the protections, ultimately impinging upon the cost-savings achieved from harmonising regulatory systems in the first place. A more appropriate outcome goal would be to ensure all Australian consumers benefit from the consumer protections that exist in the Victorian framework.

Secondly, the Commonwealth Government, through the [Council of Australian Governments \(CoAG\)](#), is pushing ahead with a national rollout of smart meters. Smart

meters, otherwise known as advanced metering infrastructure (**AMI**), aim to help consumers better manage their energy use by providing more detailed information about their consumption and the cost of using electricity at different times. The Commonwealth is also arguing that a rollout will result in significant greenhouse benefits, with climate change becoming an important issue in the lead up to the Federal election.

At the recent meeting on 13 April 2007, CoAG agreed to an implementation strategy to facilitate a national smart meter roll out. A national rollout has been estimated to cost in excess of \$2 billion. Alarming, this decision was made before any cost-benefit assessment of a rollout has been undertaken. Although a cost-benefit analysis has been undertaken in Victoria in relation to a [Victorian AMI rollout](#), the primary benefits identified were reducing meter reading costs, allowing for remote connect/disconnect, and providing a platform for enhanced load management features. There is yet to be any significant evidence that demonstrates consumers can respond and tailor their electricity consumption to when prices are lower. Similarly, there is little evidence to suggest that AMI will result in any, or if any, more than a marginal, overall reduction of electricity use, thereby contributing to a reduction in greenhouse gases. In an ironic twist, any signal to shift electricity use away from peak periods may in fact discourage renewable electricity generation, as renewables are largely generated for peak periods. Wide-scale trials of AMI are required before any conclusions can be reached about their benefits for consumers and the environment.

The Commonwealth's policies in relation to energy reform appear increasingly to be bedded in ideological and political positions. In other forums, the Commonwealth Government argues that there must be comprehensive assessments of costs and benefits before new policies or regulations are created (for example, through the [Office of Best Practice Regulation](#)). In energy reform matters, however, the Commonwealth does not appear to be heeding its own advice.

For more information about Consumer Action's work in relation to national energy market reforms, please contact Gerard Brody, Senior Policy Officer, on 03 9670 5088 or [gerard@consumeraction.org.au](mailto:gerard@consumeraction.org.au).

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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.

Most of the work of committees is concerned with Australian and New Zealand standards. However, in an increasingly globalised market, committees are also called on to assess the appropriateness of international standards for Australian adoption and to contribute to international standards development.

The CFA is currently represented on the International Standards Organisation (**ISO**) Working Group on Social Responsibility. This ISO Working Group is developing a standard that will assist organisations to address, operationalise and report on social responsibility including, but not limited to, health and safety considerations, worker and human rights, consumer protection, environmental standards and community service initiatives. The Working Group is led by the national standards institutes of Brazil and

Sweden and includes the participation of 66 nations, half of which are developing countries.

The consumer dimension to the Working Group's work includes assisting consumers to identify good corporate citizenship and assess organisations' claims and reports – currently a difficult task in the absence of a public, internationally agreed benchmark but important given that our choices as consumers are increasingly influenced by social and environmental considerations.

The ISO draft standard on social responsibility is expected to be completed in 2008.

Draft Standards currently available for public comment include:

- Occupational protective footwear
- Wheelchairs (several drafts, including for user operated stair climbing devices)
- Performance of household electrical appliances – refrigerating appliances – energy consumption and performance and energy labelling and minimum energy performance standard requirements

To access copies of these draft standards and to lodge comments, go to [Standards Australia's website](#).

If you would like more details about this project, please contact Jo Higginson, Standards Coordinator on 03 9670 5088 (Mon, Wed, Fri) or [jo@consumeraction.org.au](mailto:jo@consumeraction.org.au). We also welcome receiving a copy of any comments you make in response to draft standards.

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