

December 2007, edition 4

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

There is much to be excited about as 2007 draws to a close.

We are delighted that the new Federal Labor Government has taken the important step of combining the portfolios of Competition and Consumer Affairs. The appointment of the Honourable Chris Bowen MP as Minister for Competition Policy and Consumer Affairs not only restores consumer affairs to a Ministerial position in Government, it acknowledges the fundamental links between competition and consumer policy. Each is critical to the success of the other and when integrated effectively contributes to longer-term economic benefit by enhancing competitive outcomes and productivity and to the fair distribution of the gains of such economic benefits.

We are also optimistic that with the elevation of the consumer affairs portfolio, the Government will be better able to ensure that the consumer perspective across areas such as energy, telecommunications and financial services receives appropriate consideration and prominence.

Last week also saw the release of the draft Productivity Commission Report on its Review of Australia's Consumer Policy Framework. At over 450 pages we are yet to digest the detail underpinning the draft recommendations contained in the report. However, it is clear that it contains much of importance to Australian consumers, including:

- Support for a single national consumer law. Proposals for national regulation of finance brokers & credit;
- Improve access and coverage for industry based external dispute resolution, including extending the jurisdiction of the TIO to all telecommunication; a national energy and water ombudsman; encouragement for integration of financial services ADR and closing gaps in ADR coverage relating to credit;
- Support for funding of basic operating costs of a national peak body for consumer organisations; and
- Increased resourcing of legal aid and financial counselling.

The consumer movement has more work to do in making the case to the Commission for an effective mechanism to regulate the use of unfair contract terms and the need for an independent consumer research body amongst other issues.

Consumer Action will continue to devote significant resources to engaging in this review, providing as it does a unique opportunity to set in place a comprehensive and coherent framework for consumer policy going forward.

As our first full year of operation draws to a close we take the opportunity to thank you, our readers, stakeholders and friends for the enormous support you have given Consumer Action. We could not have done it without you. We wish you a festive season filled with peace and joy, and hopefully a well earned rest and re-charge for the important year ahead.

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 with 'consumer interaction' in the subject line. Past editions of our ebulletins can also be found on our [website](#).

CONTENTS

[2007 Annual Report](#)

[Casework Outcomes](#)

[Current Cases](#)

[Fairness in the Motor Vehicle Industry](#)

[Energy Market Reforms and Activity](#)

[Do Not Knock campaign](#)

[Consumer Representatives on Standards Australia Committees](#)

2007 Annual Report

Consumer Action has released its inaugural [Annual Report](#), detailing the activities of the Centre for its first year of operation. The Report outlines how, during its first year, the Centre has built on the strengths of the Consumer Law Centre of Victoria and the Consumer Credit Legal Service, whilst clearly establishing its own identity and approach.

The Report includes a feature – “Working for change: casework and campaigning in action”. The feature highlights the integration between the casework and policy work undertaken by the Centre, and outlines the work we have undertaken in the areas of reckless lending, bank penalty fees, energy market reform, motor car trading, high pressure sales, vendor terms mortgages, sustainable and affordable water supply and debt collection.

The Report also highlights that Consumer Action has:

- Provided over 1,400 advices to consumers

- Provided over 500 advices to community workers
- Provided ongoing legal assistance to over 330 consumers
- Provided ongoing legal assistance to over 2850 community workers
- Opened 132 litigation files
- Provided over 25 submissions to Government and other consultations
- Appeared in print, radio or television media over 200 times

A copy of the Annual Report can be downloaded from our website, www.consumeraction.org.au. Should you like a hard copy, please email info@consumeraction.org.au.

[-back to top-](#)

Casework outcomes

Gym membership and unfair contract terms

An advice line client felt pressured to renew her gym membership. The client reconsidered her entry into the contract after leaving the gym and having time to think about it at home. She returned to the gym only an hour and a half after her entry into the contract and advised them of her decision not to proceed with the contract, only to be told that it was too late to cancel as she had already signed the contract.

We drafted a letter for the client to send to the gym putting it on notice that media was a possible avenue of redress. Within a very short period of time, the client advised us of the decision by the gym to cancel her contract with no penalty.

In-home sales of maths software and related credit

This was a maths case where the seller had used contract documentation which we allege does not comply with section 61 of the *Fair Trading Act*.

There was some urgency in that the credit provider had issued proceedings in New South Wales for non-payment. After one conversation with us, the seller agreed to pay the credit provider what was owed and the proceedings were withdrawn. This has resulted in a saving to our clients of \$5,676.

Gym membership and direct debit agreement with minor (DebitSuccess)

S entered into a direct debit agreement with DebitSuccess for a gym membership. The client was 17 years old at the time. She sought to be released as she could not afford it. DebitSuccess refused and attempted on several occasions to debit her account. Consumer Action pointed out that because S was a minor at the time she signed the

contract, it was not enforceable against her. The client was subsequently released from all liability.

Motor car trading – R & P v A car trader and related credit provider

Rodney and Patricia (not their real names) both suffer from a mental illness. Rodney decided he wished to purchase a particular vehicle and made a number of contacts with a car dealer. The details of what happened are unclear owing to the difficulties both clients had with recollection. However, it is clear that Rodney purchased a \$15,000.00 vehicle, which was financed by a tied credit contract arranged by the car dealer. Patricia became a party to the loan contract, apparently because of Rodney's incapacity to service the loan and the fact she owned her home. Neither Rodney nor Patricia fully understood the consequences of the transaction.

Shortly after obtaining the car, Rodney decided that he could not afford the loan and voluntarily surrendered the vehicle. The lender demanded a shortfall of \$12,000. Had enforcement action been taken, Patricia's home would have been at risk. Negotiations with car dealer and lender were unsuccessful, and Consumer Action issued proceedings in VCAT against both the car dealer and lender, essentially relying on unconscionable conduct and the linked credit provisions in the Consumer Credit (Victoria) Code.

Shortly after issuing proceedings, the lender agreed to release Rodney and Patricia from all further obligations in relation to the transaction. This resolution saved their home.

[-back to top-](#)

Current cases

Insurance – S & S and Thrifty Car Rental Dandenong, VCAT Civil Claims List

We have issued proceedings on behalf of our clients against Thrifty in the Victorian Civil & Administrative Tribunal. Their claim alleges that terms of Thrifty's rental contract are unfair and unjust in so far as they impose liability on the renter of the vehicle for any and all damage caused by damage to the overhead of the vehicle, irrespective of whether or not the damage was caused by the renter's negligence.

The matter will be set down for a Compulsory Conference on or after 12 March 2007.

Bankruptcy – Robertson and Maxim Security, Federal Magistrates Court

Our client's sole source of income is the disability support pension. She bought a security system for her home which she alleges broke down and, that despite numerous requests, Maxim failed to attend her property to repair it, whereupon she refused to maintain payments. Maxim obtained judgment in default for \$1716 plus legal costs for non-payment. Our client and her sister own their home.

Maxim chose to issue a bankruptcy notice rather than pursue cheaper debt recovery methods. A private trustee was appointed which has resulted in a claim for in excess of \$26,000 in fees.

Our arguments are that:

- it is fundamental that a person who is solvent should not be made bankrupt. Both Maxim and the private trustee were aware that client owned half share of real property and that she disputed the debt;
- Maxim acted improperly in seeking to make a solvent debtor bankrupt and should have taken other recovery action; and
- the trustee has a discretion to refuse to act and should have exercised that discretion in circumstances where the client was apparently solvent.

However, before these arguments can be made, we must succeed in our application for leave to bring our claim out of time. This application was heard on 3 December, with the Magistrate reserving his decision.

[-back to top-](#)

Fairness in the motor vehicle industry

In November, Consumer Action made a [submission](#) to [Consumer Affairs Victoria's consultation regarding motor vehicle lemon laws](#). Lemon laws would give Victorian consumers the right to have a lemon vehicle replaced or returned for a refund. We argued strongly in favour of lemon laws in our submission.

A 'lemon' is defined based on the number of repair attempts made on a vehicle, or its time out of service. For example, a vehicle may be defined as a lemon if it has been subject to three repair attempts and defects persist (for problems that are dangerous, one or two repair attempts may be sufficient for the vehicle to be classed as a lemon). A vehicle may also be defined as a lemon if it is out-of-service for a cumulative period of 20 days within one year of purchase.

In preparation for our submission, we examined our casework database to find examples of lemon vehicles. For the three years from 2004-2007, we had records of more than 50 consumers contacting us regarding lemon vehicles. Amongst the lemons were a new car that had electrical failure as soon as driven out of the car yard, a faulty motor home, a new motorcycle that had clutch failure on a freeway, and a used car sold by a dealer that, despite being under mandatory warranty, had 17 defects including a persistent oil leak and cracked sump. If our database is a small example of the problems Victorian consumers faced with lemon vehicles, there is clearly a strong need for legal protection.

In our submission we argued for lemon law protection to cover a broad range of vehicles, and not just new cars. We thought the laws should cover all road vehicles ordinarily

purchased for domestic, household or personal use. Such a definition would include vehicles such as motorcycles and motor homes, as well as used cars.

The need for lemon laws flows from the inadequacy of current remedies. Although under Trade Practices Legislation merchantable quality is an implied condition (thereby giving the consumer the right to avoid the contract and recover the purchase price if the term is breached), the vehicle need only be merchantable at the time of sale or delivery. In practice, where a defect in a vehicle only becomes apparent after purchase and use, it may be difficult to prove the defect existed at the time of sale. In addition, the manufacturer may limit liability so that only repair is required, or the consumer may lose the right to reject the good if the consumer accepts the good (ie. by driving the car). In these circumstances the consumer will then only be able to rely on the manufacturer's warranty, which will provide for the vehicle to be repaired, not replaced. Hence, consumers can fit into a legal 'hole' where their vehicle becomes defective after purchase and some use, and remains persistently defective despite repair attempts. After the manufacturer's warranty period has elapsed, the consumer has no protection at all, and will bear the costs of the vehicle's defects.

It is for this reason that we at Consumer Action are very glad the Victorian Government is honouring its election commitment by introducing lemon laws.

Consumer Action hopes that the Victorian Government will make the most of its opportunity and extend lemon law protection beyond new cars to all road vehicles, including used cars.

[-back to top-](#)

Energy Market Reforms and Activity

The [Australian Energy Market Commission](#) (**AEMC**) is currently reviewing the effectiveness of competition in the retail gas and electricity markets in Victoria. The AEMC has very recently released its [First Final Report](#), which concluded that retail competition for both electricity and gas in Victoria is effective. This finding is significant for Victorian consumers – where competition is found to be effective, the Victorian Government has committed to phasing out price regulation.

The Report found that there is evidence that effective retail competition can deliver 'efficiently priced, reliable and secure energy supply required by households and small business', citing figures from the AEMC's commissioned consumer and retailer surveys that indicate that 79 per cent of domestic consumers believe that the introduction of retail competition has been a positive development and that more than 70 per cent of households who have switched to market contracts had met their expectations.

Consumer Action is concerned about the level of analysis undertaken by the AEMC. In particular, we believe that the AEMC has selectively used data from the commissioned

surveys. Survey results also clearly demonstrated that consumers were not informed at the time of switching:

- Around half of domestic customers who received offers didn't understand them;
- 89 per cent of customers who switched used one (most often the retailer they switched to) or no sources of information when making the decision;
- Only 5 per cent of customers compared a new offer with their existing contract; and
- 90 per cent of domestic customers have not approached an energy retailer (ninety-six per cent for gas) in the last five years.

The Report also relied on high levels of direct marketing activity by retailers as an indicator of effective competition. In response to continuing consumer complaints about the activities of direct marketers, and to inform the AEMC about those activities, Consumer Action and the Financial & Consumer Rights Council prepared a case study report, [Coercion and Harassment at the Door: Consumer Experiences with Energy Direct Marketing](#).

The case study report identified numerous breaches of the Energy Retail Code and the Energy Marketing Code of Conduct and included cases of:

- Misleading conduct, for example, telling consumers that the retailer "is taking over the area";
- Retailers switching customers without consent;
- Unconscionable conduct, particularly taking advantage of the lack of knowledge of elderly or non-English speaking consumers;
- Marketing to non-account holders; and
- Harassment, including refusal to leave when asked.

Instances of consumers signing multiple contracts and signing due to retailer inducements (such as free magazine subscriptions) also indicates that consumers are not always making choices that are in their best interests, which is important if the competitive market is to deliver efficient and appropriate outcomes.

The case study report also noted that consumer complaints reported to regulators or dispute handling bodies are only a small percentage of the actual incidence of marketing misconduct. The report has been provided to the AEMC and other energy regulators. A copy of Consumer Action's [submission](#) to the AEMC's Report can also be found on our website, www.consumeraction.org.au.

The AEMC has also released its [Second Draft Report](#), which provides policy advice to the Victorian Government about the phasing out of pricing regulation. Consumer Action will review this Report more closely over the coming weeks.

For more information about Consumer Action's energy policy work, contact Janine Rayner, Senior Policy Officer, at janine@consumeraction.org.au.

[-back to top-](#)

Do Not Knock sticker campaign

To coincide with the release of [Coercion and Harassment at the Door](#), Consumer Action has launched a Do Not Knock sticker campaign.



The sticker can be placed in front of a consumer's residence and warns sales representatives that they are in breach of the law if they knock on a door to which the sticker is affixed. Door-to-door marketing continues to be a common complaint for Victorian consumers in a number of industries, including energy, education and telecommunications.

The sticker is available for download on our website or by sending a stamped self-addressed envelope to Consumer Action Law Centre. It is also available from a range of community organisations around Victoria which are listed on our website at <http://www.consumeraction.org.au/get-involved-in-our-campaigns/>.

We have also made available template letters that consumers can use to make a complaint should a salesperson knock on a door where the sticker is clearly displayed.

[-back to top-](#)

Consumer Representatives on Standards Australia Committees

The Consumer Action Law Centre is funded to recruit and support [Consumers' Federation of Australia \(CFA\)](#) representatives on Standards Australia technical committees. These committees develop and review a wide range of product and process related standards.

During the past two months representatives have attended meetings addressing a range of issues, including: the international social responsibility standard; health informatics; electrical safety and wiring rules; automotive child restraints; containers for needles and syringes; quality and stamping of precious metals used in jewellery; access for people with disabilities with a focus on the needs of Deaf and hearing impaired people and developing international standards for testing sunscreens.

We have engaged with Standards over proposed new consultation and governance arrangements, which include disbanding Standards Sector Boards. The CFA is currently represented on two Sector Boards (the Food Sector Board and the Environment, Safety and Materials Sector Board, which oversees many consumer goods and services standards). We have argued that whilst some aspects of the new consultation structures are positive, providing opportunities for information and advice across a range of standards activity – both within and beyond Standards Australia – our involvement in oversight and dispute resolution will be significantly reduced by disbanding the Sector Boards. We have advocated for forums and mechanisms that ensure our continuing involvement in these higher level standards development functions.

In other news, two CFA Standards representatives, along with some of the members of the CFA executive, participated in the Consumers International Congress, which was held in Sydney at the end of October. This was great opportunity to meet international consumer advocates and gain insights into overseas and global consumer issues. Globalisation of the marketplace has inevitably meant that most Australian Standards work now involves some sort of interface with overseas and international standards.

Alan Bryden, the Secretary General of the International Organisation for Standardisation (**ISO**) was one of the Congress speakers, under the Sustainable Consumption theme and **COPOLCO**, the ISO's Consumer Policy Committee hosted a fringe session, focusing on the role of standards as a tool for promoting cross border and global consumer protection and interests. The support of Standards Australia in enabling our representatives to attend is very much appreciated.

Strengthening our participation in global consumer initiatives and networks is an important way of resourcing CFA Standards representatives to consider and participate in the international aspects of their standards work. This can include Committee consideration of draft ISO standards and review of international ISO and other standards for adoption with Australia and New Zealand. Currently the CFA representatives directly participate in ISO committees charged with developing an International Social Responsibility Standard and international standards for testing sunscreens. The CFA also participates in

COPOLCO – the ISO’s Consumer Policy Committee and has now been become a member of Consumers International.

Representatives needed:

Representatives are currently needed for the following standards committees:

Standards Australia CS-091 Domestic Furniture – the Committee is currently involved in developing Australian Standards for beds and mattresses.

Australian Fishnames Committee – Seafood Services Australia (**SSA**) is accredited by Standards Australia as a Standards Development Organisation. The Fish Names Committee (**FNC**) is currently seeking a consumer representative. The roles of the FNC include assigning Standard Fish Names and Common Fish Names for use in Australia and advising SSA on implementation of Common Fishnames including technical issues arising from company audits involving and sanctions for non-compliance with Common Fish Names.

If you are interested in representing the Consumers’ Federation of Australia on a Standards technical committee or would like more details about CFA’s Standards Project please contact Jo Higginson, Standards Coordinator on (03) 9670 5088 (Mon, Wed, Fri) or jo@consumeraction.org.au. CFA representatives attending Standards Australia committee meetings act in a voluntary capacity and are reimbursed for their travel expenses.

[-back to top-](#)

consumer interaction is © Consumer Action Law Centre, 2007.