

## February 2008, edition 5

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

It's been a hectic, though exciting, start to the new year. The new Federal Government responded quickly to calls to improve competition in the banking sector, focussing on fees and other barriers to switching accounts. During January, Consumer Action met with the new Federal Minister for Competition Policy and Consumer Affairs Chris Bowen, as well as with Commonwealth Treasury and the Reserve Bank.

Consumer Action was pleased to be able to host a two day training forum for volunteer consumer representatives on Standards Australia committees. We were pleased that Standards Australia was able to fund this forum, as we believe that these representatives benefit significantly from networking, as well as from the training. Further information about the forum can be found in this bulletin.

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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## Casework outcomes

### **Credit contracts and financial hardship**

Our client purchased a car with a loan from a major finance company, but subsequently fell pregnant and discovered that she did not qualify for paid maternity leave. As a result, she fell into arrears on her loan by some \$7,000.

She wrote to the creditor, explaining her circumstances and asking for a reduction in payments for a period of twelve months, until she returned to full time employment. The variation was to halve payments for 12 months and resume normal payments thereafter and extend the term of the loan accordingly.

After the creditor denied the variation, the client, with the assistance of a financial counsellor, lodged an application with the Victorian Civil and Administrative Tribunal (**VCAT**) for an order under section 68 of the Consumer Credit Code court that payments under the contract be reduced as requested.

Consumer Action represented the client in the Tribunal hearing and in negotiations leading up to the hearing, and obtained an order that allows our client to reduce her car loan payments until she returns to work and she is able to continue with normal scheduled payments. The Tribunal also ordered that any defaults listed on our client's credit report be removed.

### **Recent migrants and irresponsible lending**

We assisted 11 recently-arrived African refugees in relation to loans they obtained from a major bank which they clearly could not afford to repay. Our clients, all of whom are Centrelink recipients living in public housing with multiple dependents and very minimal English skills, were granted loans of between \$12,000 and \$25,000. Investigations revealed that bank employees appear to have deliberately underestimated living expenses and number of dependents, in order to improve the clients' apparent financial circumstances.

Consumer Action was successful in obtaining complete release of liability for all affected borrowers, resulting in the bank writing off a total of \$160,000 in debts.

### **Review of bankruptcy and timeliness of application**

Our client lodged an Application for the Review of a Sequestration Order made against her on 23 November 2004 in the Federal Magistrates' Court. She argued that the sequestration order was obtained wrongfully as she was solvent at the time of the order. The Application was heard almost three years out of time.

The Court had to decide whether it would grant an extension of time for the review.

The Magistrate refused the application, despite the costs incurred (approximately \$30,000.00) far exceeding the original default judgment (approximately \$2,000.00). He held that the delay was considerate and that there was no reasonable explanation for it, despite the client having little if any understanding of the process. The Magistrate also concluded that to his satisfaction sufficient evidence was provided that the application had, at least one alternative purpose which may be described as an extraneous purpose, leading to a result that all debts, fees and expenses incurred by the trustees would be defeated should the extension of time be granted. The Respondent argued that indemnity costs should be awarded. This request was strenuously resisted by Counsel for the Bankrupt on various grounds including the alleged invalidity of the underlying debt and the fact that Applicant sought a mediation to prevent unnecessary costs which was refused by the original creditor and the Trustees.

This case was a very disappointing one, but highlights the concerns Consumer Action has over the bankrupting of solvent consumers on small debts which leads, as here, to them losing their home.

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## Current cases

### **Part IX Debt Agreement and the Bankruptcy Act**

Our clients contacted XYZ Co (not its real name) to assist them with their debt problem after they received a flyer in their post box. Our clients were led to believe that a Part IX Debt Agreement would be suitable to their needs. Misrepresentations were made that it would last less time than bankruptcy and that it would have no effect on our clients' credit history. Our clients paid excessive fees to XYZ and its Administrator (who is also the holding company of XYZ).

The clients had to pay their creditors and lost the benefit of bankruptcy in circumstances where they were insolvent and unlikely to suffer any loss from doing so. Proceedings will be issued shortly alleging misleading or deceptive conduct and that services were not rendered with due care and skill.

### **Unconscionable broker and 'low doc' loan**

Our client and her ill elderly husband (74 years old) entered into a brokerage agreement to refinance their home loan. Their sole source of income was their Centrelink pensions. The new loan involved a higher interest rate and was a line of credit. The broker was aware at all times of the age of the client and her husband's age and state of health. The broker arranged a "low-doc" loan that did not require them to disclose their income. The broker knew, or ought to have known, that the only manner in which the clients would be able to pay off the loan would be to sell their home – which is what occurred after the husband's death.

Consumer Action negotiated a settlement with the loan provider and is now seeking counsel's advice on causes of action against the broker pursuant to the *Consumer Credit (Victoria) Act*, *Uniform Consumer Credit Code*, *Fair Trading Act* and common law.

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## Grocery unit pricing

Consumer Action has strongly supported the push for grocery unit pricing spearheaded by Queensland Churchill Trust fellow Ian Jarratt. Unit pricing refers to a system where a price per unit (eg. \$1.00 per kilogram) is displayed on the price label for a product in addition to that product's actual price. Unit pricing exists under a series of compulsory and voluntary systems in the various states of the United States, and in compulsory form in the United Kingdom, Ireland and other European nations.

The introduction of unit pricing is currently being considered in the context of Australia's transition to a national trade measurement system (expected to be completed by 2010) and an inquiry by the Australian Competition and Consumer Commission into grocery prices.

Research has shown that unit pricing makes it easier for consumers to make price comparisons between products, and thereby leads to a switch to lower product variants. This is particularly important in a modern context where quantity measures in products are not uniform (eg. 230 millilitres, 275 grams). While it may be easy to compare the price of product A and product B if product A is 1 kilogram and product B is 2 kilograms, it is much harder to do so when product A is 1.25 kilograms and product B is 785 grams. Unit pricing solves this problem, and makes comparison easier, by stating the price of a product in terms of a commonly understood unit of measure (ie. price per kilogram and price per litre). By making price comparison easier, unit pricing tends to lead consumers to choose lower priced products thus reducing the amount consumers spend – an important outcome in the current inflationary environment. Even where unit pricing is not used by consumers to choose the cheapest items, they can use it to better assess value for money and the likely quality of goods.

A number of key challenges arise in relation to unit pricing. One issue is whether a voluntary or a compulsory system is preferable. A second issue, and one that impacts on the choice between voluntary or compulsory systems, is how (eg. in what format and what font size) the unit price should be displayed. Unit prices are typically displayed on a shelf label adjacent to a product's actual price. However, the way the unit price is displayed (position, size, colour) differs markedly between jurisdictions. While much remains uncertain about what constitutes an optimal display of unit price, research indicates a display in which the unit price is clear, prominent and large is more effective than a display in which the unit price is hard to see. This is somewhat intuitive – if a unit price label is small and hard to read it is not going to be utilised as much as if it is large and prominent.

Clearly, while more research needs to be done, a large and prominent display of unit price is needed.

An interesting result of the need for a large and prominent display of unit price is that this can be best achieved by a compulsory system. Only a compulsory system could make supermarkets display unit prices in a large and prominent way, and only a compulsory system could ensure national uniformity. The alternative, a voluntary system adopted by supermarkets and their trade associations, would result in unit pricing that is optional, non standardised, and not large enough to be readily used. In fact, some supermarkets may not want price competition and might prefer to see an ineffective voluntary unit pricing system be introduced.

For these reasons, we have strongly supported compulsory unit pricing, particularly given that fears about the 'regulatory cost' of this ignore the fact that the technology for unit price implementation (electronic labelling and scanning) is already in place, and studies in the United States show that the cost of unit pricing is negligible for most supermarkets.

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## Energy Market Reforms – competition and its outcome for consumers

The Australian Energy Market Commission (**AEMC**) released its First Final Report in its review of the effectiveness of energy markets in Victoria, in December 2007. It has concluded that the Victorian retail electricity and gas markets are effectively competitive.

Concurrent with the release of the First Final Report, the AEMC released its Second Draft Report, outlining its recommendations to the Victorian Government, based on its finding that the market is competitive.

AEMC's key draft recommendations to the Victorian Government are:

- The removal of regulated prices i.e the current standing offer;
- For retailers to continue to have an obligation to offer to supply energy, but not on a regulated price;
- For each retailer to be obliged to publish a standing offer contract;
- For the Essential Services Commission to develop a guideline for the format of published standing offer prices;
- Implementation of a three year price monitoring regime; and
- A consumer awareness and education campaign.

Consumers, regulators, retailers and additional stakeholders attended a consultation with the Department of Primary Industries on the 15 February regarding the AEMC's recommendations. It is pleasing to see the Victorian Government consult with stakeholders early in the process. However, there were items and issues raised in submissions to the AEMC's Second Draft Report that do not appear to be included in the

Government's agenda, raising concerns that the Victorian Government is drawing only upon the AEMC recommendations in their decision making.

Key issues raised by consumer groups include:

- **Publication of information and tariff design** – Consumer groups are seeking the publication of tariffs across both standing and market offers, including a mandated tariff design (without reducing innovation), to ensure consumers have access to all available offers and are able to compare them easily. As an extension of the current Energy Retail Code, new standards would ensure retailers are deterred from intentionally confusing consumers
- **Obligation to offer and supply energy** – Consumer groups welcomed such an obligation, but questioned whether there would be an incentive for the offer that is required to be given (the standing offer) to be at a higher price than other market contracts. As such, we recommend the regulator approves retailer standing offers to ensure they remain affordable and reflect the true value of the provision of energy as an essential service.
- **Price monitoring** - Consumer groups are concerned about the AEMC's recommendation for price monitoring when no regulatory body has been granted reserve powers to take action should price monitoring determine there to be a problem with competition.

In response to the pending release of the Second Final Report, consumer groups will continue to campaign for affordable and fair delivery of energy. While we accept price regulation as it currently exists may need to change, there needs to be strong protections in place for consumers combined with the ability for re-regulation, if necessary. This is of particular importance at a time when energy needs to remain affordable and when all utility and other living costs are increasing.

The UK experience of competitive market and deregulation of energy prices has not delivered fair outcomes for consumers. The UK energy regulator, Ofgem, is initiating a review in response to consumer concerns regarding competition in its energy market. The Victorian Government should look closely at the UK experience, as it would not want to find itself powerless to intervene should the market not deliver the outcomes that are promised.

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

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## 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.*

Seventeen CFA Standards representatives from across Australia met at the Consumer Action Law Centre on 21 and 22 February for their first collective networking and training session since November 2000. The session was funded by Standards Australia and is a good acknowledgement of the need to resource consumer representatives' roles beyond their attendance at committee meetings.

The first day focused on representatives' experiences of Standards work, the breadth of areas they cover and the identification of areas for improvement. We also heard from representatives on Standards' Australia's Consumer Standing Forum – a twice yearly meeting of consumer representatives and senior staff from Standards Australia and COPOLCO – the consumer policy committee of the international standards organisation ISO.

The following day we discussed our history, the current consumer policy environment and the future challenges that will impact on the world of standards; including environmental sustainability, the impact of new technologies, the speed with which new products are developed and reach markets, environmental sustainability, globalisation and international markets. Adrian O'Connell, one of the senior managers at Standards Australia discussed some of the challenges facing the organisation, including resourcing a sustainable standards development practice. Some of the new business developments proposed by Standards Australia will pose new challenges for consumer representatives including accelerated, project-limited Standards processes (as opposed to a reliance on on-going topic related Committees); the introduction of a layer of semi-autonomous committees operating with reduced project support from Standards and greater accreditation of external standards development organisations.

One of the most interesting and enjoyable parts of the forum was the series of presentations by representatives on aspects of their work. These included consumer issues within indigenous communities; nanotechnology; the Consumers Health Forum; improving responses to unsafe products through better networking between consumer organisations, injury surveillance systems, testing laboratories and the media; unit pricing and running a consumer campaign and the 400 person international, multi-sectoral process of developing the international Social Responsibility Standard. Finally, we looked at linking in with the international consumer movement to work smarter within a global market place.

The forum was a great confirmation of the quality of CFA representatives on Standards Australia committees and their commitment to ensuring the consumer voice is heard.

*Representatives are currently needed for the following standards committees:*

Standards Australia CS-091 Domestic Furniture.

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](mailto:jo@consumeraction.org.au). CFA representatives attending Standards Australia committee meetings act in a voluntary capacity and are reimbursed for their travel expenses.

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