

## May 2008, edition 6

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

Consumer Action's campaigning role was on show this month, when we co-ordinated an activity outside a Motor Finance Wizard outlet (see below for more information). While we often find ways of addressing consumer problems without resorting to "direct action", sometimes this becomes necessary.

Media coverage continues to be high. The recent 4 Corners Program, "Debtland" was one of the highest rating 4 Corners programs. Two staff members appeared on the program, as did an irresponsible lending story that involved some of our clients.

We also continue to build our policy profile in relation to debt and reckless lending issues. We participated in an Australian Securities and Investments Commission convened roundtable on competition in the banking sector, addressed backbenchers on debt and lending standards as part of an event organised by credit reporting agency, Veda Advantage, and we made a substantial contribution to a joint consumer submission on credit code amendments.

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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## Motor Finance Wizard campaign

Consumer Action Law Centre is conducting a public campaign to raise community awareness regarding the business practices of licensed motor trader, Motor Finance Wizard. Motor Finance Wizard trades from two outlets in Melbourne - one in Maidstone and one in Dandenong. We have received numerous consumer complaints about the practices of Motor Finance Wizard including:

- Sales targeting towards low-income and vulnerable consumers;
- Inflated costs of vehicles; and
- Poor quality of vehicles.

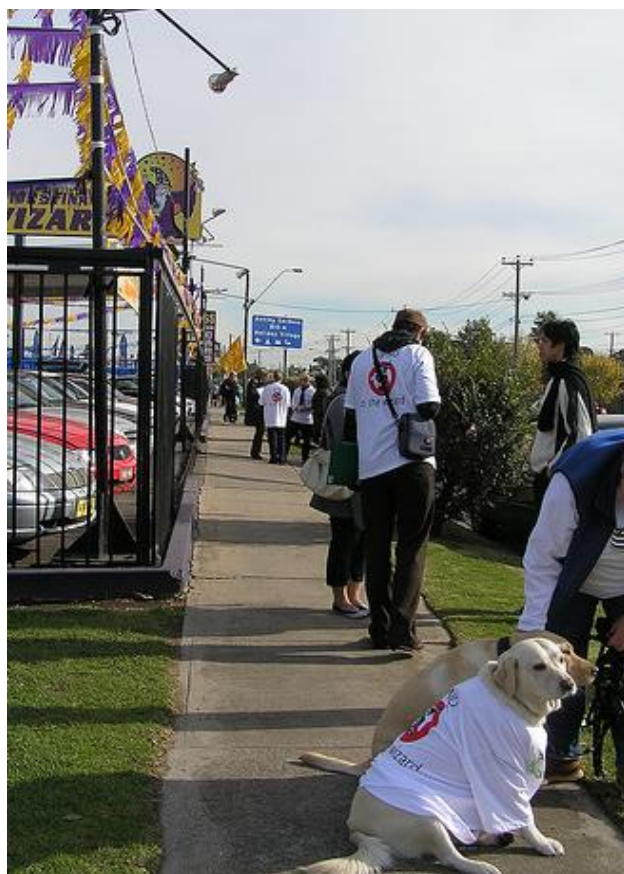


The role of the campaign is to offer potential customers of Motor Finance Wizard free consumer information and legal advice concerning the lending and business practices of the company, and to also offer free RACV mechanical and roadworthy inspections to those who have made a purchase or are considering doing so.



We will be present outside Motor Finance Wizard's dealerships over a period of 4-5 weeks in May/June. Our campaign was launched on Saturday 24 May 2008. We were present outside the Maidstone dealership between 10am and 4pm talking to potential MFW consumers. Our presence was well received by the community – with many Ballarat Road motorists beeping their horns in support.

Consumer Action Law Centre wishes to especially thank financial counsellors, Ken Harris, Amanda Reed, Gary Rothman, Linda Masters, and Liz Fiveash. Their presence at the dealership was key in our success. Also thank you to Hannah Nelthorpe and Frances Wood.



We are currently in the planning stages for a national 'say NO to the wizard' day. MFW dealerships are located across three states in:

- Kedron, QLD
- Slacks Creek, QLD
- St. Marys, NSW
- Dandenong, VIC
- Maidstone, VIC

Please contact us to find out how you can be involved in stopping the unfair business practices of motor finance wizard.

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## Casework outcomes

### Telecommunications disputes

#### *Case study one – quick resolution*

Our client entered into a \$29 cap mobile phone plan with Simplus via a telemarketing agreement. After the consumer complained about the contract, Consumer Action wrote to the provider alleging that the contract was void for a number of reasons including that explicit informed consent had not been obtained pursuant to section 67D of the *Fair Trading Act 1999* (Vic). Negotiations with the provider proved fruitless. A complaint was made to the Telecommunications Industry Ombudsman and within days Simplus agreed to release our client and remove any adverse listing from her credit report.

#### *Case study two – lengthy resolution*

Our client suffers from mental illness and was on a disability support pension. He entered into a mobile phone contract with Telstra in the belief that once the cap was reached the service would cut out. He made prolific use of the phone and was presented with a bill for \$1,519.00. We alleged that Telstra had breached the Communications Alliance Code of Conduct and the *Fair Trading Act 1999* (Vic). The matter was referred to the Telecommunications Industry Ombudsman (TIO) when Telstra did not respond in a timely manner. Telstra in the first instance offered to "waive the charges off their system as if he was not liable for the debt". Consumer Action expressed its concern at the ambiguous

phrase and persistent advocacy was required to encourage the TIO to continue the complaint. Telstra eventually clarified their position and put in writing that they agreed to waive the debt permanently. This matter was with the TIO for nearly one year before resolution.

### **Hardship variation of motor car finance contract**

Our client entered into a car loan with a financier. She was led to believe by her employer that she was entitled to paid maternity leave but this was not so. She applied to the creditor for a variation based on hardship to last for 12 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. The creditor denied the variation and maintained that under no circumstances will it extend the term of a contract. The client, with the assistance of a financial counsellor, lodged an application with the Victorian Civil and Administrative Tribunal (VCAT) for a court ordered variation. Mediation was ordered and failed. The creditor refused to extend the original term and required significantly increased payments once the client returned to full time work – despite the mediator telling the credit provider VCAT would grant a more favourable hardship variation.

Consumer Action negotiated a variation to the contract that was acceptable to all parties. The settlement became an order of VCAT and included an order that any credit default listed with a credit reporting agency be removed.

It is of concern that a credit provider may have hardship criteria that are more stringent than those applied by VCAT. It appears that in some cases consumers should pay scant attention to a refusal by a credit provider to vary a contract and issue in VCAT.

### **Fraudulent brokers targeting recently arrived migrant**

Our client, a recently arrived Sudanese migrant obtained a loan from a bank to finance a house and land package. The application was based on fraudulent information/documentation prepared by his broker which our client could not read. Our client has suffered difficulty in repaying back the loan, including needing to access emergency relief and food vouchers, however he is determined to stay in the home. The bank has agreed to refund interest, fees and charges in relation to our client's credit card and line of credit facility. In addition he will not be charged interest on those facilities for the period of 13 months. At the end of the 13 months, the balance of the line of credit will be incorporated into the home loan at a lower interest rate. Should he default and need to sell, the bank has agreed not to pursue the shortfall (if there is any).

### **Contesting a bankruptcy petition**

Our client was served with a creditor's petition some time ago. Two days before the hearing at the Federal Magistrates' Court, he sought our advice and we assisted him to draft an notice of motion and affidavit contesting the petition on the basis that he was able

to pay his debts within the meaning of section 52(2) of the *Bankruptcy Act 1966* (Cth) (his house was to be auctioned on 10 May 2008) and that the debt stated was incorrect in the petition.

An adjournment was granted until 20 May 2008, which would allow the property to be sold. The Registrar asked for a statement of assets and liabilities to be filed following the sale of the property so that his solvency could be assessed. One of the facts that was influential in having the adjournment granted was that the petitioning creditor served on him affidavits of service 4 days before the hearing, rather than the required 5 days. The Registrar also amended the petition to accurately reflect the debt owing.

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## Current cases

### Warrant for possession stayed at Supreme Court

Our client was due to be removed from her home pursuant to a warrant for possession at noon on Friday by Perpetual Trustees, the mortgagee of the property. On Wednesday, Victoria Legal Aid referred the client to us. On Thursday, we applied for an urgent hearing of an application to stay enforcement pursuant to rule 66.16 of the Supreme Court Rules. Based on our instructions, our submissions were:

- that the property had been sold and was awaiting settlement,
- that Perpetual was consenting to the sale of the property,
- our client may be able to negotiate to rent the property from the new owners,
- that our client had 6 children living with her, and had no alternative accommodation.

Perpetual Trustee raised concerns about the authenticity of the sale. A stay of enforcement was granted for 14 days, with leave to apply for a further stay should our client wish to do so.

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## Energy Market Reforms – the national rollout of ‘smart’ meters

In April 2007 the Council of Australian Governments (**COAG**) committed to the national mandated rollout of ‘smart’ meters, where the benefits outweigh the costs. Smart meters, through providing real time information about a household’s energy demand, can facilitate time of day pricing and allow users to better manage their demand for peak power.

The Ministerial Council on Energy (**MCE**) announced a two-phase cost-benefit analysis, to be managed by the MCE Standing Committee Officials (**SCO**), with Phase 1’s objective to define a national smart meter minimum functionality and Phase 2’s objectives to assess the case for a roll-out of smart meters across jurisdictions. Following this, consultants



engaged stakeholders including distributors, retailers, consumer representatives, government representatives and smart meter vendors, to identify national minimum functionality for smart meters and to understand jurisdictional perspectives on the proposed mandated national smart meter rollout.

The findings of Phase 1 resulted in the MCE agreeing that a national minimum functionality for smart meters is necessary to maximise their benefits and an initial list of functions was approved. The findings of the Phase 2 Cost Benefit Analysis were based upon an aggregation of the benefits and costs across all jurisdictions, resulting in an overall positive business case for the rollout. The analysis considered costs of smart meter infrastructure, avoided metering costs, business efficiencies and demand response.

The findings of the cost benefit analysis suggest there is an overall case of positive net benefits of \$179m - \$3.9bn nationally for a distributor led rollout, whilst other scenarios have a less positive case. Primarily the bulk of costs associated with a rollout are in the meters themselves and in the installation, with the benefits accrued through business efficiencies (predominantly avoided meter reading costs).

Across jurisdictions, the net benefits of a distributor led rollout varied, for example there is a positive case for Victoria and an opportunity to further pursue demand response, while in the ACT, for example, the case is uncertain for there are no real demand response benefits to be captured as there are no capacity issues.

While consumer groups acknowledge there will be business efficiency benefits associated with smart meters, there is concern that there is no guarantee that these benefits, and reduced costs, will be passed onto consumers in a timely manner, particularly as consumers will bear significant cost increases as the result of meter installations and proposed new tariff structures. A further concern is that, with no smart meters currently in the market that meet the specifications as identified by the consultation process, the potential costs of the smart meter rollout could increase significantly.

Another concern is that governments are relying on smart meters as a tool to reduce greenhouse gas emissions – primarily by increasing consumer awareness of their energy use and therefore reducing overall energy use. The consultant reports suggest that energy use will not necessarily be reduced, but that loads will be shifted from peak to off peak (at times even increasing energy use) and certainly, therefore, not contributing to reducing greenhouse gas emissions.

If the rollout is to proceed, in an attempt to counter some of these issues, it must occur with strong consumer protections. Specifically:

- Hardship policies and other consumer protection and assistance programs (to ensure existing protections are not eroded);
- New mechanisms for identifying households facing financial stress (prior to utilising remote disconnection functionalities);
- Education programs introducing smart meters and innovative tariff structures; and

- The ability for consumers to shift between tariff products easily to ensure they are not financially worse off.

Finally, consumer groups have major concerns about the process that has been followed including its speed and that the level of policy commitment that has, to date, not been supported with sufficient evidence that it meets COAG objectives.

Despite these concerns, it appears that the MCE will approve the cost-benefit analysis at its upcoming meeting in early June and make recommendations to rollout the meters. It is essential that consumer protections are reviewed and strengthened as part of this process.

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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.*

## **New Solaria standards and international tests for sunscreen products**

Possibly one of the biggest challenges for any of our consumer representatives is the Solaria Committee, charged with setting standards for the solaria industry. Robyn Easton has a long history of involvement in standards development for products offering sun protection and has a strong knowledge of sun protection and exposure issues. In the case of solaria standards she has had to make the point to industry members of the group that a good consumer representative advocates for consumer and public health interests and is not simply, or even necessarily, an end user of a product.

There has been an urgency to revise the Solaria Standard, as several states are in the midst of legislative review aimed at better consumer protection. This has been prompted by public response to the death of 26 year old Victorian, Claire Oliver, early this year, due to solaria related melanoma and to Claire's own advocacy.

Legislators and regulators often rely on calling up Australian Standards as a means of maintaining currency and relevancy. Standards are developed via a consensus decision making approach in which consumers play an important role amongst industry representatives, regulators and other stakeholders. Standards are periodically and systematically amended and reviewed or withdrawn as products and practices change and new public information emerges. The latest process of revising the Solaria Standard has reflected changes in public expectations and attitudes, including within the solaria industry. The Solaria Committee is almost ready to release a public comment draft, in which several important consumer gains are anticipated, including age and skin-type

based restrictions, limits on exposure and reductions in lamp strength. A revised Australian Standard for Solaria is expected to be published by the end of this year.

Robyn will also be travelling to Jordan next month, to contribute to international standards on tests for sunscreen classifications and claims. Australia is one of the only countries in which sunscreens are regarded as a pharmaceutical or therapeutic good, rather than as a cosmetic – claims and classifications are rigorously monitored by our Therapeutic Goods Administration body. This has attracted attention from consumer groups in other parts of the world, with less rigorous practices, including New Zealand. A series of new International Sunscreen Standards, dealing with testing methods, both in-vivo and in-vitro, are expected to be published during 2009 and 2010.

### **Energy efficiency standards**

Traditionally, the CFA's involvement in standards development was motivated by concerns around product safety and public health.

Our priorities today are:

- Health, safety and welfare of vulnerable consumers and overwhelming public interest;
- Health, safety and welfare of consumers generally;
- Accessibility and fair trading of essential services;
- Information and consumers' right to know;
- The environmental impact of services and products and
- Fair trading of non-essential services and products.

Energy and water efficiency are areas that we have prioritised for involvement. Several of our representatives have environmental management and environmental engineering backgrounds.

The environmental impact of services and products is also an area where the new government, through the Department of Environment, Water, Heritage and the Arts (**DEWHA**), wants swifter and more effective standards – particularly for energy efficiency in specific appliances (such as air conditioners and television sets). We have participated in consultations and have submitted our views in response to a set of options developed by Standards Australia and DEWHA for how this might be achieved. Please watch this space – it is likely that we will be calling for new representatives with skills relevant to energy efficiency and consumer advocacy – particularly for representing the perspectives of low income and vulnerable consumers, to participate in whatever process is decided.

On the environment front, another of our representatives has received endorsement from Standards Australia to participate in an international environmental management meeting where one of the items being considered is better international standards for products or organisations that claim to reduce or offset greenhouse gas emissions. This relates to



issues such as carbon footprint and carbon offset claims where good practice and good marketing often blur rather than concur!

*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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