

CONSUMER *INTERACTION*

ISSUE 1 / 2011

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Welcome to the December/January edition of **CONSUMER INTERACTION**.

The new year has already seen a great deal of activity with the new Australian Consumer Law coming into effect on 1 January and, of course, the Queensland and Victorian floods firing up the debate on flood insurance and insurance contract terms more broadly. You can read more about both these issues in our [Hot Topics](#) section below.

We also welcomed two new staff members to the Centre – Senior Campaigner Sarah Wilson and Policy Officer David Leermakers. You can find out more about David and Sarah in our [Policy and Campaigns](#) section.

On a sad note, we're sorry to share with you that John Davies passed away on Tuesday, 25 January. John worked with Consumer Action – and both of its predecessor organisations – for many years and was a much loved member of staff as well as a good friend to many of us. For those of you who knew him, his funeral will be held on Wednesday in Melbourne.

We hope you enjoy this edition of **CONSUMER INTERACTION** and, as always, we welcome any feedback. If there's anything you'd like to see in upcoming editions or you'd like to contribute to upcoming editions of e-bulletin, please email our [editor](#) with suggestions or ideas.

We'd also encourage you to forward the bulletin throughout your networks.

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1. HOT TOPICS

Insurance: If something positive can be salvaged from the devastation of the Queensland and Victorian floods it would have to be a renewal of intense public debate surrounding consumer protections in insurance, particularly in this case the definition of “flood” in flood exclusions under insurance contracts, and [an apparent commitment on the part of the Federal Government](#) to resolving this issue once and for all.

Many flood victims with home building and/or contents insurance won’t know whether they’re covered due to the confusion and inconsistencies surrounding the definition of flood and the differences in cover from insurer to insurer. Consequently, many of those affected will find they’re not covered, while their neighbours may be. Experience tells us that many victims will also find that even with cover, they may be under-insured and unable to afford the cost of rebuilding, while others will not have insurance, especially lower income victims.

Consumer Action believes that immediate steps can be taken to tackle the most obvious problems, including developing a fair standard definition of flood, introducing better disclosure requirements for insurance policies before consumers sign up, and implementing last year’s Senate recommendation to extend national unfair contract terms protections to insurance contracts. We [have also called for a serious Federal inquiry into flood insurance](#) to examine more complex issues such as floodplain mapping, urban planning, building standards and codes, and more extensive insurance coverage, saying it’s the only way to resolve these issues.

The Insurance Council says [it tried to introduce a standard definition](#) of flood a few years ago but was blocked by the ACCC. However, [those involved on the consumer side](#), which included Consumer Action, know that the ACCC [made the correct decision](#) - the ICA’s proposed definition was too broad, too complex and would most likely have left more consumers worse off in terms of cover (given that the point of defining events such as floods is generally to provide an exclusion to standard cover, rather than an inclusion). Additionally, use of the ICA’s definition was only proposed to be voluntary so it would not have solved the existing dilemma that the definition of flood differs between insurers. The ICA did not talk to the community before putting that proposal to the ACCC and walked

away from the ACCC's invitation to re-approach it after working with interested stakeholders to develop a more appropriate and fairer definition.

New Australian Consumer Law: On 1 January the Australian Consumer Law (ACL) came into effect across Australia. The ACL replaces provisions in 20 national, State and Territory Acts (including the door to door sales provisions in the Victorian *Fair Trading Act* that apply in some of our legal wins below).

The Australian Consumer Law [website](#) can provide you with lots of information about your rights as a consumer, but briefly, the key provisions of the new law are:

- a new, national unfair contract terms law covering standard form contracts;
- a new, national law guaranteeing consumer rights when buying goods and services, which replaces existing laws on conditions and warranties;
- a new, national product safety law and enforcement system;
- a new, national law for unsolicited consumer agreements, which replaces existing State and Territory laws on door-to-door sales and other direct marketing;
- simple national rules for lay-by agreements; and
- new penalties, enforcement powers and consumer redress options, which currently apply nationally.

On a related note, iPhone owners might also be interested in a free new app from Consumer Affairs Victoria called [MyShopRights](#), which provides instant advice on refund, warranty and lay-by rights.

It also has some nifty feature that allow users to store photos of receipts and set reminders for your gift-vouchers, lay-bys and warranties.

2. WINS (AND OTHER NEWS)

* **Mr and Mrs Brown against AIM Melb Pty Ltd and EM Finance Corporation Pty Ltd**

In May 2008, Mr and Mrs Brown entered into a sales contract with Australian Institute of Mathematics for the sale of educational software and the rendering of tutoring services. The sale contract was subject to the contact sales provisions of the Victorian *Fair Trading Act* (door-knocking in the late evening). The cost price of the goods and tutoring services amounted to \$7,480.00.

Mr and Mrs Brown are Sudanese refugees with limited English skills and they indicated throughout the sales process that they could not afford the product as they were both Centrelink recipients. The sales representative then offered a tied loan contract with EM Finance without explaining that under the terms of that finance contract Mr and Mrs Brown would have to pay

\$10,546.56, rather than the \$7,480.00 they believed they were signing up for.

We wrote to AIM Melb Pty Ltd cancelling the sales contract and a Notice of Cancellation of the loan contract was addressed to EM Finance Corporation Pty Ltd. EM Finance subsequently agreed to accept the termination of the loan agreement and to close our clients' account.

Saving to client: \$10,546.56

*** Joseph Banks and Protect Aluminium Shutter Blinds**

On 17 November 2008 Joseph signed a contract with Protect Aluminium Shutter Blinds (**Protect**) for the installation of blinds for a price of \$11,350, with a \$200 deposit.

On 18 November Joseph decided to cancel. He telephoned a director of Protect to advise them of this and was told that if he cancelled they would sue him. Joseph subsequently telephoned us for advice. It was clear this was a contact sales (door to door) agreement and that Joseph was well within the cooling off period and should be able to cancel this contract.

We prepared a letter of cancellation for Joseph to send to Protect and this was sent to the company on 19 November. However, Protect would not drop its claim and we again wrote to it on 12 January 2010, cancelling the contract based on the fact that it did not comply with the requirements of the Victorian *Fair Trading Act*.

Joseph heard nothing from Protect for some weeks however, despite this, Protect then issued proceedings against our client in VCAT for the sum of \$7,920.

At the hearing, Protect's representative conceded that the contract was a contact sales agreement, but that because he had started work on the construction of the blinds before cancellation he was entitled to payment. The hearing was adjourned so that he could obtain legal advice and the case was subsequently withdrawn prior to the adjourned date.

Protect then returned the \$200 deposit Joseph had paid in order to avoid further litigation.

Saving to client: \$11,350

**Not their real names*

3. POLICY AND CAMPAIGNS

Banking Competition: In December, Consumer Action made a submission to the Senate inquiry into competition within the Australian banking sector, focusing on measures

that would help Australian consumers themselves to drive competition within the sector. The Centre's Co-CEO, Catriona Lowe, and Director-Policy & Campaigns, Nicole Rich, [appeared](#) before the Senate inquiry in Melbourne earlier last week.

The Centre believes one of the key ways to create genuine competition in the banking industry would be to facilitate account portability between institutions and we welcome the Government's decision, as part of its package of banking reforms announced on 12 December, to appoint former RBA Governor Bernie Fraser to review the feasibility of the various options to achieve portability. We look forward to consultations on this review, as well as on other aspects of the package such as draft legislation to ban mortgage early exit fees, regulate credit cards more fairly and implement a requirement to give consumers a home loan key facts sheet, and a review of ATM fee practices.

Consumer Action has also joined a new coalition seeking reform of Australia's financial system. The Australian Financial Integrity Network (AusFIN) was launched in Melbourne early last month and is a unique and diverse group of Australian organisations including the [ACTU](#), [CHOICE](#), [FSU](#), [Industry Super Network](#), [The Australia Institute](#), the [Council of Small Business of Australia](#), [AFCCRA](#) and others. Read AusFIN's [Charter](#) to see all our members and our key principles for the Australian financial system.

Save the Cap: Consumer Action, in conjunction with many other consumer and community organisations throughout the country, is supporting the campaign to preserve the 48% comprehensive cap on the total cost of consumer loans currently in place in three states, by extending the cap across Australia once the final national consumer credit reforms come into force.

We have been gathering recent case studies to support our calls for a cap and if you come across any compelling examples of payday lending cases, please email our Senior Campaigner, [Sarah Wilson](#) with the details.

You can show your support for [Save the Cap](#) by joining our Facebook page where you can post messages of support, upload resources you think might expand our collective knowledge of the industry or suggest ideas for stepping up the campaign. You can also recommend it to all your Facebook mates!!

New Faces: We are pleased to announce two new staff members to join Consumer Action's Policy & Campaigns team.

Sarah Wilson started mid December in the newly created role of Senior Campaigner. Sarah has previously worked at the Consumers' Telecommunications Network and subsequently its successor [ACCAN](#) and as the Consumer Policy Officer at the Private Health Insurance

Administration Council in Canberra. Sarah is enjoying her move to Melbourne and we're looking forward to using her extensive experience as a campaigner and consumer advocate to achieve big things this year.

David Leermakers commenced with us as a Policy Officer earlier this month. He is originally from Melbourne but he and his wife recently moved back to Melbourne after several years in Canberra where David worked on policy in the Social Inclusion Unit of the Department of Prime Minister and Cabinet. David is a law graduate with a history of volunteering at Moreland Community Legal Centre during his studies.

4. STANDARDS

Committee Updates: The following new representatives have been appointed:

1. [EL-034 Power Quality](#) – Mark Henley
2. [CS-094 Ceramic Tableware](#) (re-constituted committee) – Tom Bellas
3. [FT-032 Organic and Biodynamic Products](#) (re-constituted committee) – John Furbank
4. [Mirror Committee for ISO TC 217 Cosmetics Working Group 4 Terminology](#) – Robyn Easton

New committee: The newly created “E-Waste Committee – Collection, storage, transport and treatment of E-Waste” is currently looking for a new CFA representative.

Expressions of interest can be sent to our Standards Co-ordinator, Regina Godfredson, by email at standards@consumeraction.org.au.

5. MONEYHELP

The MoneyHelp financial counselling service provides financial counselling advice to Victorians experiencing difficulty paying their rent or mortgage or who have lost work as a result of the current economic climate. Advice is available on the phones and via our website.

In addition, Danielle Archer, MoneyHelp's Industry Liaison Officer visits workplaces across the State where workers have lost their jobs or had hours reduced to provide advice about getting help to manage money in this difficult situation.

Workplace Visits:

National Foods: National Foods is a dairy processing plant that is winding down its operations and closing a number of plants. Some operations will be moved to Morwell, while others are being closed down completely.

Approximately nine months ago, MoneyHelp first made a presentation to National Food workers at Cobden and this time we visited their plant in Simpson where 17 workers are to be retrenched. Five ceased employment on 21 January and a further dozen will go on 25 February.

Two of the workers felt their situation was urgent and requested an immediate call back from the service – they were both contacted by MoneyHelp the next business day.

Frigrite: Frigrite is a company specialising in the manufacture of large scale refrigeration and air-conditioning systems for industrial and commercial applications. Their largest contracts were with Coles and Woolworths but, having lost both these contracts, the business became unsustainable and was already in administration when MoneyHelp visited.

Women's Health Goulburn North East: This is a referral service and assistance agency, running various programmes, including a special workshop in financial literacy for women, to be conducted by a local financial counsellor. They have used MoneyHelp printed materials in the past and have just ordered more. They will also be using our materials in their roving outreach van providing health and community service information in their region.

Feedback on the Service

"Thank you so much for all your help with the redundant workers.. I feel what you have been able to bring to the workers is an enormous benefit to them."

Mark Spyker AMWU

"Thank you for allowing me a little space and hope when I needed it most. All the best for you and your team."

Unnamed client

**Remember, if you have clients who fit our criteria,
refer them to MoneyHelp for phone counselling and referral if needed.
Contact MoneyHelp on 1800 149 689 or visit www.moneyhelp.org.au for
more information**

6. BULLSEYE ... WHAT'S IN OUR CROSS HAIRS

Energy door to door marketing: Regular readers will know that we have had poor, and sometimes unlawful, door to door selling practices in our sights for a while, particularly in relation to electricity and gas sales (see, for example, the stories of Victorian consumers in September's [CONSUMER INTERACTION](#)).

The energy retail industry has now got together and [approached the ACCC in late October seeking authorisation](#) for a proposed new industry code on energy door to door sales. The industry has set up a new company, Energy Assured Limited (EAL), to administer the proposed code and an associated complaints process, with EAL's members comprising energy retailers as well as marketing and sales companies and the industry body, the Energy Retailers Association of Australia.

In some disturbing parallels to the Insurance Council's approach to the ACCC a few years ago with a proposal to "fix" concerns about the definition of flood in insurance policies (see [Hot Topics](#)), the energy industry has submitted its proposal to the ACCC to "fix" energy marketing problems without first consulting with any consumer or community stakeholders. The industry also appears to have no real plan for how it will communicate its new code to the community and the proposed code itself contains a myriad of problems that fatally detract from its ability to be effective in addressing undesirable selling practices.

The ACCC is following its process for considering applications for authorisation, seeking submissions on the EAL proposal in November and further information from EAL in December. Several consumer organisations, including [Consumer Action](#), have made submissions on the application and we now await the ACCC's draft decision.

7. ODD SPOT

Read the Label: The US FDA has recalled a brand of confectionery called Toxic Waste Nuclear Sludge Chew Bars. Funnily enough, the Pakistani-made candy turned out to be ... you guessed it ... toxic. Tests showed the cherry flavouring in the bars had very high quantities of lead.



The Fantastic Mr Fox: A wounded fox shot its would-be killer in Belarus by pulling the trigger on the hunter's gun while the man tried to finish the animal off with the butt of the rifle. The hunter is in hospital with a leg wound, the fox is believed to be alive and well, demonstrating the need for product safety standards.

8. YOUR VIEWS

CONSUMER INTERACTION is committed to including commentary from industry and government on issues of concern to the consumer and community sector. If you would like to submit material for the Your Views section, or have any suggestions for organisations you'd like to see appear here, please email the [Editor](#).

This edition, we'd like to share the views of the [147 Victorians](#) who commented on an article in the Herald Sun on moves by the state's energy distributors to charge consumers even more for their electricity by challenging the pricing decision handed down by the Australian Energy Regulator late last year.

8. CALC IN THE MEDIA

Be careful who you invite in

Sydney Morning Herald, 25 January 2011, Lesley Parker

A national law is protecting consumers from unsolicited sales — but companies are aiming at the loopholes.

Call for inquiry into flood insurance as rebuilding costs rise

The Australian, 25 January 2010, Stefanie Balogh

Consumer groups are calling for a Productivity Commission inquiry into flood insurance as the industry warns that any move to impose mandatory cover would reduce competition

and choice.

Fault redress made easier

Sydney Morning Herald, 19 January 2011, Lesley Parker

New consumer protection laws put all Australians under one umbrella with a clearer set of rules.

Battlers take on electricity giants

Herald Sun, 18 January 2011, Karen Collier

Electricity customers are fighting Victoria's billionaire power distributors in a landmark legal bid to protect households from greedy price rises. The Consumer Action Law Centre and the Consumer Utilities Advocacy Centre have asked the Federal Court for permission to intervene on behalf of "average Joes" as power giants push for even higher charges.

Floods: The clean-up

Channel 7 Sunrise, 17 January 2011, David Koch

Consumer Action's Nicole Rich talks to David Koch about flood insurance.

Australians rack up \$49bn card debt

The Sunday Telegraph, 16 January 2011

Australians have racked up a record \$48.8 billion in debt on credit cards while banks wring hard-pressed families with interest rates higher than we have seen for nearly 20 years.

New Year consumer law reforms left out insurance cover

The Australian, 15 January 2011, Siobhain Ryan

The new national consumer law has left flood victims exposed by excluding insurance policies from its crackdown on unfair contract terms.

No GST change to curb online shopping

Herald Sun, 18 December 2010

The federal government says it won't scrap the GST-free threshold for goods purchased from overseas websites, but will crack down on businesses rorting the system.

Banks bring themselves to account, in NZ

Sydney Morning Herald, 7 December 2010, Eric Johnston

Australia's biggest banks have quietly developed a central clearing house designed to make

switching accounts between banks easier. But the facility is only open to their customers in New Zealand.

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