

# CONSUMER INTERACTION

## ISSUE 2 OF 2012

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March saw the consumer movement celebrate World Consumer Rights Day. We were pleased that this year's theme *Our money, our rights: campaigning for real choice in financial services* allowed us to highlight our ongoing campaign to see an interest rate cap introduced into the payday lending industry. Our team, along with friends from the consumer and financial counselling sectors, [rallied out the front of Cash Converters to voice our concern that payday loans are a fundamentally dangerous product.](#)

2012's World Consumer Rights Day was of extra significance as it marked the 50<sup>th</sup> anniversary since the first four consumer rights were announced by then US President John F Kennedy. One of the four rights is the right to safety—a key right that should guide the regulation of payday lending.

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## 1. HOT TOPICS

### **Consumer group says Cash Converters' processes need formal investigation**

Consumer Action has asked the Australian Securities and Investment Commission (ASIC) to undertake a formal investigation into the internal dispute resolution processes of Cash Converters, Australia's biggest payday lender. In its letter of complaint, Consumer Action asks ASIC to investigate whether Cash Converters breached the *National Consumer Credit Protection Act 2009*, saying that, based on the entities it has dealt with, it has grave concerns about Cash Converters' approach to resolving disputes.

Co-CEO of Consumer Action, Catriona Lowe, said her organisation has provided advice to at least 100 consumers in relation to Cash Converters in the last two years, and has raised a number of complaints with Cash Converters entities directly. 'Our concerns are based on cases we've seen, cases we've assisted with and cases we've run over the last two years—clients who've had genuine reasons to lodge a dispute with Cash Converters. Read the full media release [here](#).

### **Ombudsman asked to consider lending practices of payday loan provider**

Consumer Action has lodged dispute against a high profile payday loan provider. The most recent dispute, being lodged on behalf of Ms Jane Bowyer with the Credit Ombudsman Service, alleges The Cash Store engaged in irresponsible lending practices, and asks whether it lent Ms Bowyer money she could not afford to repay.

When she got the loan in November 2011, Ms Bowyer was only receiving \$671 from the Disability Support Pension, an amount that just covered her rent, utilities and other living expenses. Yet The Cash Store provided an amount of credit of approximately \$300, which required her to repay \$476.62 in the space of a fortnight. Repaying such a loan in full would have left Ms Bowyer with income of just \$194.38 for two weeks, reducing her pension by around 71 per cent. Read the full media release [here](#).

### **Consumer Action welcomes clarification of legal position of Do Not Knock sticker**

Consumer Action has welcomed the proceedings initiated by the Australian Competition and Consumer Commission against three energy retailers and their marketing companies in relation to door-to-door selling practices. Among other things, the case will seek clarification on whether a Do Not Knock sticker amounts to a request for salespeople to leave under the Australian Consumer Law.

Many consumers have complained to Consumer Action and regulators about door-to-door sales practices. Gerard Brody, Director of Policy and Campaigns, said that this action by the

ACCC is a demonstration those complaints have been heard.

The legal action will clarify whether a Do Not Knock sticker amounts to a request to leave under the Australian Consumer Law. Under the Australian Consumer Law a salesperson must leave if requested to do so by a consumer. Although we believe that a Do Not Knock sticker constitutes such a request, the law is not clear. While a salesperson who ignores a Do Not Knock sticker may leave themselves open to allegations of trespass, this clarification may mean that ignoring a Do Not Knock sticker will leave salespeople open to fines and other penalties. Read the full media release [here](#).

## 2. WINS & OTHER LEGAL NEWS

### **Credit increases lead to severe case of over commitment**

We recently represented a client who suffers from a range of debilitating health conditions and was reliant on the Disability Support Pension for her income. Due to a number of credit card limit increases, she ended up with an unmanageable debt of \$10,000 on her credit card account.

Our client had initially received the credit card in July 1995 and was granted a limit of \$2,000, before being granted unsolicited limit increases in March 1999 (to \$3,500), May 2002 (to \$5,500), December 2004 (to \$8,500) and September 2010 (to \$10,000). It was alleged that her bank didn't undertake sufficient assessments of our client's ability to repay the credit advanced and that, not surprisingly, her attempts to meet the monthly minimum repayments resulted in financial hardship.

A complaint to the Financial Ombudsman Service resulted in a satisfactory resolution of the dispute.

The case provides a great example of why the Government's [ban on unsolicited credit card limit increases](#) is so important and why we need to monitor the implementation of the new law closely to ensure its effectiveness.

It was pleasing to see ASIC do just that, when it obtained an [enforceable undertaking](#) from the Commonwealth Bank of Australia in relation to misleading internet banking messages that sought customers' consent to receive credit card limit increase invitations.

### **Retirement village contracts confusing for consumers**

A recent case in which we assisted an elderly retirement village resident with her dispute before the Victorian Civil and Administrative Tribunal (VCAT) demonstrated the overly complex nature of some retirement village contracts.

Our client initially lodged her dispute with VCAT because she couldn't identify who was responsible for replacing her hot water system. However, a Deputy Registrar of the VCAT rejected the case stating that it appeared that the dispute did not arise from the supply of goods or services in commerce and trade as defined in the *Fair Trading Act 1999* (Vic). After seeking Consumer Action's help, the elderly resident was successful in having this decision reviewed and the Registrar was ordered to accept the client's application.

Carolyn Bond, co-CEO of Consumer Action said, 'The fact that there is a dispute between a resident and the retirement village operator about who is responsible for an activity as simple as replacing a hot water system illustrates the need for greater clarity in some retirement village contracts.

'We've seen contracts that are far longer than is necessary and language which would confuse the best of us—many lawyers find these contracts confusing. Other industries have been made to simplify their contracts in the past, and it's now time for retirement villages to get their act together,' said Ms Bond.

Consumer Action welcomes the work Consumer Affairs Victoria is doing with community and industry representatives, particularly around best practice in a range of key areas, but believes the industry needs to be more willing to come to the table and work to simplify their contracts.

'It is well known that complex retirement village contracts can cause problems for residents. We shouldn't have to rely on a regulator's intervention, the industry needs to be proactive about simplifying contracts. With the population ageing, these issues will affect more and more Australians over the coming decade so the time to act is now,' said Ms Bond.

### 3. POLICY AND CAMPAIGNS

#### **World Consumer Rights Day sees protest against hazardous loans**

March 15 is a special day in the calendar for consumer advocates—World Consumer Rights Day. This year's theme was *'Our money, our rights: campaigning for real choice in financial services'*, and events on this theme were held around the globe.

In Melbourne, advocates gathered outside the office of one payday lender to protest against the existence of such a harmful financial product being available in the marketplace. Decked out in hazmat suits, we sent a clear message to the Australian government—payday loans are dangerous products, designed to entrap people in a debt cycle, and must be effectively regulated.

That same night, Today Tonight ran a [story](#) covering the protest and the government's apparent back-flip on offering real protection to users of these loans. Usefully, the story also profiled some of the [safe alternatives](#) people have to payday loans.

Thanks to our colleagues from CHOICE, the Australian Communications Consumer Action Network, the Brotherhood of St Laurence, and Financial Counselling Australia who were able to join us on the day. More information about the Deb Trap campaign, including latest developments, can be found at [www.debttrap.org.au](http://www.debttrap.org.au).

### **Do Not Knock campaign**

Our campaign about door-to-door marketing keeps on growing! Here are some recent developments:

- **Bulk complaints to the ACCC**: We have provided the ACCC with further evidence of ongoing unlawful door-to-door sales practices, in a bulk complaint dominated by retail energy providers. Complaints have been sourced from across Australia via the Do Not Knock website [www.donotknock.org.au](http://www.donotknock.org.au). In total we've now referred over 60 cases to the ACCC.
- **Do Not Knock register**: We read with interest [media reports](#) that the Federal Member for Hindmarsh, Steve Georganas, will introduce legislation to create a Do Not Knock register. The proposed register would be similar to the very successful Do Not Call register, which allows people to register not to be contacted by telemarketers. Consumer Action recently found that a whopping 85% of people supported a Do Not Knock register, so we'll be keeping a keen eye on this proposal.
- **Call to cease energy marketing**: Consumer Action has challenged Australia's energy retailers to put an end to door-to-door energy sales. We've written to the CEOs of all energy retailers who are signatories to the Energy Assured Limited Code of Practice, asking that they voluntarily stop selling door-to-door. We're sure that the first company to announce that they'll end the practice will be rewarded with a huge amount of goodwill, and will keep updating our Do Not Knock website with any responses we get. More information is available [here](#).
- **Research on consumer attitudes**: In January, we commissioned research into consumer attitudes toward door to door selling. Key findings were:
  - 77% dislike door-to-door sales
  - Only 3% have a generally positive opinion of door-to-door selling
  - Consumers feel misled by in-home sales
  - 56% of shoppers feel the greatest pressure to purchase when visited at homeThe full report is on our campaign website, [www.donotknock.org.au](http://www.donotknock.org.au).

### **Policy position on water pricing for sustainable household**

## **consumption**

Consumer Action believes that access to an essential water service is a fundamental human right and that the public interest is served by the maintenance of consumers' access to essential services.

There are a range of policy tools that have been used to promote sustainable water consumption, with market based mechanisms such as price increases and alternate tariff structures increasingly being promoted as the most efficient and best options. Other policy tools available include restriction policies, water efficiency measures or the use of alternate water sources such as recycling or rainwater tanks.

We've just released our Policy Position on water pricing for sustainable household consumption which looks at water pricing and tariff structures, the impact of higher water prices and 'sustainable' tariff structures, and outlines Consumer Action proposals for the industry. Our full policy position can be read [here](#).

## **Reforming insurance following disasters**

Consumer Action has made a [joint submission](#) with three other organisations to a Commonwealth Government [consultation paper](#) on flood insurance reform. We have not supported the model proposed by Government in this consultation paper—that insurers would be required to offer flood cover in home and contents insurance policies but could allow consumers to opt out of that cover. We think this will create the result that the consumers who need flood cover the most will be the ones most likely to go without it. Instead, we have argued that the model proposed by the [Natural Disaster Insurance Review](#) in November 2011 is the best option. Under this model, insurers are required to offer flood insurance and consumers cannot opt out, but an affordability mechanism ensures that flood cover is affordable for everyone.

We have also made a [submission](#) to the Commonwealth's recent discussion paper on home building and contents Key Facts Sheets. Essentially, the Key Facts Sheets will be a one page summary of the key points that consumers need to know about an insurance contract before they buy it, including what it does and doesn't cover. We strongly support the introduction of Key Facts Sheets. They will give consumers a much better understanding of the details of their policy and they will also allow consumers to more easily compare two or more competing policies when they are shopping around. This will be a considerable improvement on the current situation, where many consumers struggle to read and understand the details of their cover as set out in Product Disclosure Statements meaning consumers can be unaware of what their policy covers and find it difficult to choose the policy that is best for them.

## 4. STANDARDS

### Composts, soil conditioners & mulches

If you have ever purchased a bag of mulch for your garden, you may not be aware of the specific requirements that are involved in its production. The Standards Australia Technical Committee CS-037 Garden Soils and Potting Mixes has been working over the past few years revising the standard recently published in its 4<sup>th</sup> edition as *AS 4454-2012 Composts, soil conditioners and mulches*. CFA representative Tracey Colley has been active in representing consumer interests on this committee which made a number of changes including a definition of raw mulch and mature compost; and a requirement to test for pathogen indicators when high risk materials are used.

The standard is intended to provide clarity for consumers, those who manufacture or supply compost, mulches and soil conditioners, and those involved in providing compostable organic materials as feedstocks to manufacturers. Where there currently are no regulations covering compost or mulch, this standard will provide protection for consumers.

*For more information [about the Standards Project](#) or CFA's [Standards Representatives](#) (including how to get involved) please contact the CFA's Standards Coordinator [standards@consumeraction.org.au](mailto:standards@consumeraction.org.au).*

## 5. MONEYHELP

The MoneyHelp team answered 972 telephone calls in February and 1010 calls in March 2012. The MoneyHelp website received about 21,194 visits in February.

We recently had a caller who had \$20,000 of credit card debt over three cards with various creditors. The 60 year old debtor's only income was the disability support pension and although she was meeting the minimum repayments, she was struggling to keep up and didn't want to fall into arrears. The client had already sold her car to repay some of the debt. The client was renting and said all her other expenses were under control, but she was considering bankruptcy. The financial counsellor who spoke to the client explained the bankruptcy process to her, advised that bankruptcy was a viable option, referred her for bankruptcy papers and to her local agency if she needed help understanding or filling out the documents. This advice was fairly straightforward, however, it was obviously significant for the client as she took the trouble to ring back later and say she was very pleased with the efficient service she received and how happy she was with the service overall.

Our strong MoneyHelp team includes: Dianne Dejanovic, Heather Brown, Heather Keen, Anna Tiakanas, Brian Kerr, Garry Rothman, Vanessa Stanton, John Hartnett, Sandra Blake, Felicity Elkiana and Tegan Leeder.

Remember, if you have clients who live in Victoria and need financial counselling advice, refer them to MoneyHelp for phone counselling and/or referral if needed. Contact MoneyHelp on 1800 149 689 or visit [www.moneyhelp.org.au](http://www.moneyhelp.org.au) for more information

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

Consumer Action is welcoming the amendments to the Australian Consumer Law relating to unconscionable conduct that came into effect from 1 January 2012. These amendments follow recommendations from a 2008 Senate Standing Committee on Economics Inquiry as well as an Expert Panel that reported to Government in 2010.

The amendments insert a statement of interpretative principles into the unconscionable conduct provisions to make it clear that:

- the statutory prohibition against unconscionable conduct (section 21) is not limited by the unwritten law relating to unconscionable conduct;
- the prohibition is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour;
- in considering whether conduct to which a contract relates is unconscionable, a court's consideration of the contract may include consideration of:
  - the terms of the contract and
  - the manner in which and the extent to which the contract is carried out;and is not limited to consideration of the circumstances relating to formation of the contract.

Consumer Action believes there is significant potential for these amendments to address systemic unfair business practices. The clarification that the prohibition against unconscionable conduct is capable of applying to a system of conduct or pattern of behaviour addresses a perceived weakness that unconscionable conduct necessarily turns on the individual circumstances of the case. Consumer Action will be working to identify relevant business practices to test these new provisions in the coming months.

## 7. CONSUMER ACTION IN THE MEDIA

[Door-knockers are Australia's most hated, study finds](#)



Herald-Sun, 5 April 2012, Karen Collier

**New lending [laws could fail to ease squeeze](#)**

Herald-Sun Law Blog, 2 April 2012, Gerard Brody

**Baillieu Government backs water finds for late payers**

Herald-Sun, 24 March 2012, Ashley Gardiner

**Charities go to war on lenders**

Sunshine Coast Daily, 17 March 2012, Bill Hoffman

**Phantom fine scandal**

Today Tonight, 16 March 2012, Clare Brady

**Anger at payday lenders**

Today Tonight, 15 March 2012, Jackie Quist

**Up to shoppers to use gift cards in time, say retailers**

Herald Sun, 12 March 2012, Karen Collier

**Love to hate 'em**

Insurance News, 5 March 2012

**Defining words create insurance uncertainty**

The Canberra Times, 4 March 2012, Phillip Thomson

**Victoria braces for another mighty deluge**

Herald Sun, 2 March 2012, Aleks Devic and Angus Thompson

**Flood cover: Insurers are still waiting**

Insurance News, 27 February 2012

**Deal puts AGL in path of competition watchdog**

Herald Sun, 25 February 2012, Jeff Whalley

**Gillard Government doubles the maximum interest rate vulnerable consumers can be slugged**

The Daily Telegraph, 25 February 2012, John Rolfe

**Ombudsman says insurance staff selling policies they don't understand**

AM, ABC Radio, 23 February 2011, Tony Eastley

**ANZ job cuts linked to pressure on banks**

The Australian, 14 February 2012, Scott Murdoch and Annabel Hepworth

**Ban on power cut-offs for bills under \$300**

The Australian, 11 February 2012, Natasha Bitá

**Aussies playing their cards right**

Herald Sun, 10 February 2012, Karina Barrymore

**Bizarre Bills**

A Current Affair, 9 February 2012

**ASIC shadow shop finding "cause for concern": Consumer Action Law Centre**

Wealth Professional, 2 February 2012, Ben Nice