

# CONSUMER *INTER*ACTION ISSUE 1/2010

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Welcome to the re-launch of the new (and improved) Consumer Action Law Centre's bi-monthly e-bulletin **CONSUMER *INTER*ACTION**.

It's shaping up to be another hectic and exciting year with big changes looming for consumers.

Bankruptcy reforms are firmly on the agenda and a raft of changes to general consumer law are set to happen when the Bill creating the new Australian Consumer Law is debated in the Senate early this year, with a second Australian Consumer Law Bill set to follow later this year. We'll follow developments on both these issues in the March edition of **CONSUMER *INTER*ACTION**.

The legal practice enjoyed a number of solid wins over the last few months before a dramatic end to 2009 saw Consumer Action sued by a money retrieval firm we were acting against on behalf of a consumer.

We hope you enjoy the new look **CONSUMER *INTER*ACTION** and welcome any feedback. If there's anything you'd like to see in upcoming editions or you'd like to contribute to the Your Views section in our 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

**Collection Point:** Late last year, Consumer Action successfully recovered a portion of the money paid by our client to money retrieval agency, Collection Point. What should have been a relatively straightforward case was complicated when Collection Point sued Consumer Action and two of our lawyers personally. To find out what happened read our media releases of [December 2009](#) and [July 2009](#).

**Warranties and Refunds** – Late last year the Ministerial Council on Consumer Affairs [agreed](#) to develop a new national law of consumer guarantees for Australia, which will replace the existing state and territory statutory warranties. Their decision was based on [recommendations](#) of the Commonwealth Consumer

Affairs Advisory Council (CCAAC) and a government study on Statutory Warranties and Refunds, which found that when it came to warranties and refunds, consumers and businesses remain largely unaware of their rights and obligations. [Read the report](#). In response, CHOICE has launched a campaign to raise consumer awareness of these rights. Visit the [CHOICE website](#) to learn more about warranties and refunds and read our [submission](#) to CCAAC.

**Private Car Park “Fines”:** One consumer, acting for himself, has taken the battle with Australian National Car Parks (ANCP) to a new level. After he launched a legal action at VCAT, ANCP desperately tried to settle the matter by “waiving the fine”, but this consumer refused to back down on the basis that the case wasn’t just about this occasion but any future fines that may arise as part of his ongoing use of the Barkly Square car park in Brunswick. He took it all the way to a hearing and we expect a decision any time now. If anyone has received one of these fines you can get more information on your options by reading our [fact sheet](#). Subscribe to [youcantfineme@consumeraction.org.au](mailto:youcantfineme@consumeraction.org.au) to receive updates on future activities against these operators.

## 2. WINS (AND OTHER NEWS)

### Wins:

**TLC** – Late last year Consumer Action scored an important victory against Holly Veall, a former director of defunct introduction agency TLC. She was to refund our client the \$110,000 he had spent on the services and \$10,000 in damages. While a great outcome our client is yet to receive any money. Consumer Action continues to pursue the former directors of TLC on behalf of other clients.

**Kleenmaid/Lombard Victory** – Consumer Action was successful in a claim to recover monies on behalf of our clients who had purchased goods from Kleenmaid using a linked credit contract provided by Lombard Finance. Read our [media release](#). The VCAT judgment is a godsend for many consumers in Victoria and around the country who had purchased goods from the defunct kitchen manufacturer using linked credit contracts – many will now be able to recover thousands of dollars paid to credit providers for goods never received. [Our factsheet](#) explains what steps to take to recover monies in this way.

### Current Cases:

#### **M v GE Money – irresponsible credit card lending**

Our client obtained a Target store card in 1995 with a credit limit of \$1,250. The contract was assigned to GE in 1998, after which the credit limit was increased a number of times to \$6,250. Our client's sister came to us when our client began to have difficulty making minimum monthly repayments.

Our client has spent her entire adult life in a sheltered workshop and was unable to read and write. Her doctor supported our view that she couldn’t understand basic concepts such as interest. GE produced an application form that was completed by someone other than our client, although it appeared to be signed by her, but could not produce a contract.

Consumer Action argued that the contract was voidable given our client's mental incapacity, that GE had acted unconscionably in the circumstances, and that GE were unable to produce a contract evidencing its right to charge interest and fees. After a surprisingly protracted exchange between GE and Consumer Action,

given the circumstances, GE agreed to waive the entire amount owing on the account and release her from all liability.

### 3. POLICY AND CAMPAIGNS

**Bankruptcy reforms:** We strongly support the Government's proposed reforms to the *Bankruptcy Act* that, amongst other proposals, will increase the minimum debt amount over which a creditor can force a person into bankruptcy from the current, woefully low \$2,000 to \$10,000.

The industry bleating over this reform comes from a small but vocal minority who currently use bankruptcy as an expensive and unfair debt collection tool despite the availability of a number of cheaper and viable alternatives, and contrary to what we regard as ethical practice. We have seen several cases in which consumers have been sent bankrupt to collect a small debt because they own their home which can be liquidated to collect the debt. Their trustee then accrues substantial and disproportionate fees, which can be recovered against their estate.

While supportive of the Bill, we have urged the Government to continue reform activity in this area, as there are several areas in which our bankruptcy laws could be further improved. This includes better regulation of debt agreements and their administrators. These agreements are posited as an alternative to bankruptcy but, in our view, continue to be subject to mis-selling and abuse. More details can be found in our [submission](#) to the Senate committee reviewing the current Bill.

**Consumer law reforms:** Many readers will be aware that Australia is currently undergoing a major wave of reforms to its general consumer laws and regulatory frameworks. A Bill to enact the first step in these reforms – a new national unfair contract terms law and new remedies and enforcement powers for the consumer regulators ACCC and ASIC – is currently sitting in the Senate after the debate on the emissions trading legislation held up the passage of various pieces of legislation late last year.

Consumer Action has been one of the lead stakeholders advocating for these reforms for many years. However, we have strong concerns that the Government's last-minute and untested proposed amendments to the unfair contract terms regime will seriously undermine its effectiveness. We remain supportive of the second half of the bill (enforcement and remedies powers for ACCC and ASIC), but will not be pressured into simply giving our support for the Bill when we believe the unfair contract terms law will not deliver what was promised to Australian consumers. Experience has shown that the ability to enforce an unfair contract terms law is critical to its success, but our view is that the change will make enforcement difficult to unworkable, and discourage regulators from acting. In fact, this law could be worse than nothing if it gives the appearance of change while delivering no real benefit in substance - this would give governments for years to come an excuse to take no further action to tackle the problem of unfair terms in consumer contracts across the marketplace.

A plan for the second step in the consumer law reforms – one national, harmonised consumer law adopting the "best" from the varying current state and territory laws as well as a national product safety regime – was agreed by the nation's consumer affairs Ministers at their [December meeting](#). However, the important details on whether Victorians will keep or lose some of their current, and leading, protections were missing from the Ministers' communiqué. We will continue to advocate that the new national consumer law give all Australian consumers the protections from high-pressure selling in their own homes, unclear or illegible contracts, and harassment that the Victorian laws currently provide. Read our [views](#).

**The policy & campaigns team:** With the re-launch of **CONSUMER INTERACTION**, we thought it was an opportune time to reacquaint our readers with our policy & campaigns team.

The team continues to be led by Director-Policy & Campaigns, **Nicole Rich**. **Zac Gillam** is our Senior Policy Officer, working on various policy issues but with a current focus on high-pressure sales, payday lending and other consumer lending issues. **Janine Rayner** is our Senior Policy Officer working specifically on energy and water issues. **Eileen Kerrigan** joined us in late 2009 as our inaugural Media & Communications Officer, helping us to field media inquiries and communicate more effectively with our stakeholders and the public, including fill the role of editor of **CONSUMER INTERACTION**.

Finally, we are **currently recruiting** for new Co-ordinator for the Standards Project we manage on behalf of the Consumers Federation of Australia, sourcing and supporting consumer representatives on standards development committees.

## 4. STANDARDS

**New Representatives:** Consumer representatives are involved in 31 current or recently active Australian standards development committees and 5 international committees, with three new consumer representatives joining the following new committees:

- Gary Sullivan joined the Cricket Australia funded committee to develop a national standard for the manufacture of cricket balls;
- Dr Katina Michael joined the Forensic Analysis committee which will initially look at developing a national standard for examining the use of accelerants in fires; and
- Black Saturday survivor Brian Rebbechi will join the committee to set standards for Buildings in Bushfire Prone Areas.

**Featured Standard:** **ISO 26000**, the International Social Responsibility Standard, was published as a Draft International Standard (DIS) late last year and provides guidance on the underlying principles of social responsibility and ways to integrate socially responsible behaviour into existing organisational strategies.

National member bodies of ISO will be able to vote and comment on the text until February. If the DIS vote is successful, the document, with eventual modifications, will be circulated to the ISO members as a final DIS and, if approved, published as a standard in late 2010.

Those wanting to join a standards committee as a consumer representative, or who would like information about draft standards or new and existing committees, should contact the **[Standards Project Coordinator](#)**.

**Work at Consumer Action:** We are currently recruiting for a new Standards Project Coordinator. Visit our **[website](#)** to download the Position Description and apply.

## 5. MONEYHELP

MoneyHelp is a new service at Consumer Action which provides telephone financial counselling advice and referral by phone to those who have experienced retrenchment or reduced working hours.

MoneyHelp Manager, [Penelope Hill](#), reports that the service continues to gain momentum with an increase of almost 25% in calls last quarter, with the key trends being clients seeking advice on hardship variations and options for dealing with unmanageable debt due to financial over-commitment.

We've had several very successful workplace visits within Melbourne and the regions, where our financial counsellors have been able to provide direct financial counselling to employees of companies that have announced retrenchments or a reduction in hours.

Industry Liaison, [Megan Lewis](#), plans to further expand on this by including regional financial counsellors in future site visits and has a visit scheduled for today (Friday, 29 January) in Geelong.

Megan will also continue to increase the service's exposure throughout regional Victoria – her next regional visit is to Benalla next Friday (5 February).

**Staff news:** Liz Stary completed the Applied Suicide Intervention Training through LifeLine, Anna Tiakanas and Brian Kerr successfully finished their 4 Unit Financial Counsellor Training offered by OGR, and Dianne Dejanovic appeared in a number of media articles as the human face of MoneyHelp.

**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](http://www.moneyhelp.org.au) for more information**

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

**In home sales:** With national consumer laws to be introduced this year, it seems Victoria will lose its current protections for sales made in a person's home. Currently in Victoria, cooling off and other rights apply even if the salesperson has been invited to visit (usually after soliciting an invitation). These protections will soon apply only to unsolicited door to door sales.

Consumer Action is particularly concerned about this disintegration of consumer rights in light of the numerous complaints we receive annually from parents who've signed up for thousands of dollars of educational software, and expensive financing options, sold in this way. Read our [fact sheet](#) to find out how much they really cost.

**Debt collectors:** Consumer Action continues to receive complaint after complaint about unscrupulous practices of debt collection firms and creditors. Consumers continue to complain about the conduct of ACM Group, and we'll continue to refer their complaints to ASIC and the ACCC in addition to taking legal action on behalf of our clients.

## 7. ODD SPOT

**The Lynx Effect:** A luckless Indian is suing Lynx after failing to land a girlfriend in seven years of using its products.

**Consumer Complaints:** A hairdresser in the US (where else) uses a .38 to handle negative customer feedback.

**Personal service:** If you're planning a trip to the UK, you might like to check out the London hotel that's offering human bed warming services to ease the winter chill.

## 8. YOUR VIEWS

**CHOICE** – Registration for the 2010 National Consumer Congress is now open, and will be hosted by CHOICE at Luna Park in Sydney on March 15-16. The Congress theme is 'Consumer Action' and will use creative ways to bring Congress delegates closer to the consumers that they serve or work with.

The second day of the Congress will be in the form of a 'Consumer Summit', to develop possible responses to key challenges facing consumer policy, government consumer agencies, business and consumers in the following three key areas: smart choices, when things go wrong and best practice policy development.

The NCC will also include two special events: the Ruby Hutchison Memorial Address and the inaugural CHOICE Awards, which will celebrate the best from the consumer market place in conjunction with the Congress Dinner.

For further information or to register, see the Congress website <http://www.ncc2010.com.au>.

**We'd like to hear from you** – Give us your views on our e-bulletin, our work or any consumer issue. We will publish a selection of letters to the editor every e-bulletin. Letters should be 250 words or less and can be emailed to [the editor](#).

## 9. CALC IN THE MEDIA

### **A Current Affair Car Park Story**

Channel 9, A Current Affair, 19 January 2010, Sarah Stewart

Consumer Action's Nicole Rich appears in this A Current Affair story on private car park "fines".

### **Counselling in demand**

The Age, 13 January 2010, Lesley Parker

Help is at hand for those whose finances are hanging in the balance — but it's best not to wait that long. Financial counselling, traditionally delivered face-to-face, is now being offered by phone as agencies seek to cope with a surge in demand that they don't expect to abate any time soon - global financial crisis or not.

### One wrong digit could cost net-bankers

ABC Radio PM, 18 December 2009, Meredith Griffiths

Despite the increasing popularity of internet banking, there's no uniform policy for how financial institutions should address problems that arise when net-bankers accidentally enter the wrong account number. The Australian Securities and Investments Commission is looking at the issue, but in the meantime consumer groups are telling people to take care.

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