

# CONSUMER *INTER*ACTION

ISSUE 5/2010

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Welcome to the August/September edition of **CONSUMER INTERACTION**.

It has been an interesting and turbulent couple of months for all Australians interested in or impacted by politics.

After three brief years, consumers are again without a dedicated Minister. It's a disappointing decision, but we do look forward to working constructively with the Hon. David Bradbury, the new Parliamentary Secretary responsible for competition and consumer affairs who we know is well versed in consumer issues, particularly those impacting on vulnerable and disadvantaged groups.

In our own backyard a key focus has been the completion and launch of our substantial report into high-cost short term lending in Australia. You can read more in [Hot Topics](#).

The launch has also helped propel us into the world of social media – with the establishment of a [Save the Cap](#) Facebook page, including photographs of the launch. Consumer Action also now has a [Twitter](#) page where you can follow us to get pithy updates and commentary on what's happening in consumer affairs.

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.

## IN THIS EDITION...

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## 1. HOT TOPICS

**Save the Cap:** Consumer Action Law Centre launched [\*"Payday Loans: Helping hand or quicksand? Examining the growth of high-cost short term lending in Australia, 2002-2008"\*](#) in September.

The report was authored by our Senior Policy officer Zac Gillam and launched by the Rev. Tim Costello, CEO of World Vision Australia and Lisa Gray Group Executive, Retail Banking, National Australia Bank. The launch was well attended by a wide range of stakeholders and the media.



This explosive report revealed the exponential growth of the industry in Australia over the past decade. Since 2002, the number of payday lenders has increased almost tenfold and there are concerns we will experience the same sort of problems seen in the United States where there are now more payday lending storefronts than McDonalds and Starbucks combined.

The report also investigated the cost of this lending to consumers and found that annual percentage rates could be anywhere between 400% and 1500%. Worryingly, the report found that more than half those surveyed were using this hugely expensive form of credit to pay for the basic day to day living expenses.

It's for these reasons we believe the Federal Government needs to introduce an all-inclusive interest rate cap of 48% for all consumer lending in Australia. One of many highlights of the launch was the NAB publicly staking its support for an all-inclusive 48% cap on the cost of credit.

Thanks go to all involved in this event, with particular acknowledgement for Zac's authorship of the report and Eileen Kerrigan's work coordinating the launch itself and media coverage.

Read more about our Save the Cap campaign in the Policy section or sign up to our [Save the Cap](#) Facebook page.

**Credit Card Reforms:** The National Australia Bank has been the first of the Big Four to come out of the blocks and begin implementing Labor's promised credit card reforms by announcing changes to how it will apply repayments and manage its balance transfer accounts.

These are positive steps, and we applaud the NAB for moving ahead of regulation. We hope other institutions will do likewise. Nevertheless we believe there is still a long way to go in making credit cards a fairer product for many consumers and we look forward to seeing the balance of the government reforms being implemented.

One change that will have wide reaching implications for thousands of credit card users in Australia will be changes to clear up the confusion surrounding "interest-free periods". Credit cards are commonly marketed with an interest-free period on purchases, but this can be misleading because this does not mean you always get an interest-free period on all your purchases. The most commonly held perception is that if you pay off a portion of your purchases during the interest-free period, then you will not pay interest on the portion of the debt you have paid. For most Australian credit cards that is incorrect. If you have any balance outstanding on your card at the end of the "interest-free" period (even if it's only a few cents), most cards (including NAB's) will still charge you interest on the entire amount, back-dated to the date of each purchase. To benefit from the "interest-free" period you have to pay off the entire amount of your credit card by the end of each period.

The reforms promise to remove this confusion by introducing a consistent industry-agreed standard on when interest will start to accrue and on what balances.

**Consumer Affairs Ministry forgotten:** It was disappointing to see the new Gillard Labor Government dropped the Consumer Affairs Ministry only three years after they restored it.

In the Government's response to the Australian consumer groups' Election Platform, it had rightly boasted of the appointment of Australia's first Commonwealth Minister for Consumer Affairs and how it had undertaken the biggest reform of Australia's consumer protection laws in a generation by enacting the Australian Consumer Law – reform which we would point out was driven by active federal Consumer Affairs Ministers.

That said, with the Treasurer now responsible for Consumer Affairs, we welcome the Treasurer's commitment to passionately represent that part of the portfolio in cabinet and look forward to working with new Parliamentary Secretary, David Bradbury, who will be assisting the Treasurer on consumer affairs and competition policy. We'll be encouraging the Government to continue to drive consumer policy reform.

## 2. WINS (AND OTHER NEWS)

### Consumer credit law avoidance practices

#### Motor Finance Wizard

Consumer Action's test case legal proceedings against Motor Finance Wizard went to hearing last week, alleging MFW has breached consumer credit laws. The test case claims MFW is attempting to avoid its disclosure requirements by disguising its car finance loans as leases.

The new national laws, like the previous state-based consumer credit laws, cover both consumer loans and consumer leases, but there are rules that apply only to loans (not to leases) including the obligation to disclose the full cost of the credit provided and the interest rate applied.

If Consumer Action is successful in its attempt to prove that the MFW leases are actually loans it will be a significant win for the many MFW customers who have signed up to these agreements since mid-2008 – not to mention having wide ranging implications for a number of consumer finance providers. Phase 2 of the national consumer credit reforms, currently underway, is also looking at further reforms to the laws around leases and avoidance practices more generally.

#### \* **Bob v HRV Banyule Darebin (HRV) and Once Credit Pty Ltd**

Bob has an intellectual disability and receives Centrelink benefits – he was referred to Consumer Action by an outreach support service.

Bob explained that a sales representative from HRV came to his house and signed him up to a contract under which HRV would install a ventilation system which he was told would cool his house. This would cost \$2,791 and financing through Once Credit would be arranged by HRV.

As a result of his intellectual disability, Bob could not recall the details of HRV's visit and it is unlikely he understood much of what would have been said to him. Bob already had air conditioning and fans throughout his house and advised that he didn't want or need the HRV system. He also said he was unable to afford the repayments.

Consumer Action sent letters rescinding and terminating the HRV contract and Once Credit contract on Bob's behalf.

Interestingly, Once Credit had provided Bob with a continuing credit contract, similar to a credit card, rather than a fixed term contract. Minimum payments under the contract were the greater of \$40 or 3% of the balance outstanding and a rough calculation showed that if

Bob only paid this minimum monthly amount it would take him 8 years and 9 months to pay off the \$2,791.00 debt, with interest totalling \$2,438 accumulating over that period.

Continuing credit contracts are treated differently to fixed term credit contracts under national credit laws. For example, continuing credit contracts, like leases, attract less disclosure obligations under consumer credit laws.

Eventually, both HRV and Once Credit accepted that the contracts had cancelled, and Bob was released from all liability. HRV removed the ventilation system from Bob's house.

**Saving to Client:** \$5,229

## **Other Wins**

### **\* Sarah and Millbrook Finance (MF)**

Sarah purchased a vehicle in 2005 with a secured loan from MF for \$17,000, repayable at the rate of approx \$500 per month. As a result of employment difficulties earlier this year, Sarah fell behind in her payments and requested a hardship variation. However, MF eventually issued proceedings for possession in VCAT claiming arrears of \$1,500 and alleging that the amount owing under the contract was nearly \$6,000.

We wrote to MF alleging that their calculations were incorrect and the amount owing was in fact only \$4,600. We also alleged that a commission had been paid to the car yard at the time of signing the loan, which was in breach of consumer credit laws. MF denied this and we filed a complaint with the Credit Ombudsman.

Eventually, the proceedings and the complaint were settled with the debt frozen at \$4,000, payable at the rate of \$100 per fortnight, an amount Sarah could actually afford.

### **\* Madeleine and Commlnsure**

Madeleine entered into an accident protection insurance policy with Commlnsure over the phone during March 2002. She received no policy documents or documentation nor a schedule to sign upon entering into the policy and it appears the representative did not explain the terms and conditions of the insurance or, at least, did not explain them adequately to Madeleine.

Madeleine made a claim with Commlnsure following a car accident on 17 May 2007. Commlnsure advised Madeleine that her claim would not be successful because her condition was not caused by the accident and she was not totally or permanently disabled according to the criteria set out in her insurance policy. Madeleine was unaware of the extent and nature of the conditions that would qualify for cover under her insurance cover.

Madeleine went to the Financial Ombudsman Service's (FOS) general insurance division in August 2009 to dispute Commlnsure's rejection of her claim and they referred the matter to

Consumer Action. Consumer Action then wrote to CommInsure requesting an investigation and reconsideration of Madeleine's claim.

After obtaining doctors' reports, the original policy documents, a recording of the initial telephone call and the police accident report, Consumer Action wrote to FOS and CommInsure supporting Madeleine's claim.

As a result, CommInsure reviewed its original decision and offered Madeleine a payout of \$50,000 plus a refund of premiums paid since the claim was lodged.

**Saving to client:** \$50,000.00 plus premiums paid since May 2007.

*\*Not their real names*

### 3. POLICY AND CAMPAIGNS

**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 play.

The launch of our report "[Payday Loans: Helping hand or quicksand?](#)" was an important milestone in this campaign, demonstrating that support for a realistic cap is not confined to those in the consumer advocacy sector, with Lisa Gray, Group Executive of Personal Services at the National Australia Bank joining the Rev. Tim Costello, CEO of World Vision Australia, to launch the report and support our campaign.

The launch of "Helping hand or quicksand?" is one of the first steps in this campaign and we look forward to joining many of you in advocating to the Labor Government to save the cap as it moves towards finalising Phase 2 of its consumer credit laws.

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!!

**Bank Debt Collection:** September saw the debt collection practices of three of the Big Four featuring heavily in the media.

ANZ and NAB insiders [reveal](#) worrying debt collection tactics.

NAB sells a debt to Professional Collection Services who then [relentlessly pursued the wrong woman](#) over a \$7,000 debt.

[Westpac is reported to ASIC](#) over its treatment of a customer suffering long term hardship.

**Victorian Real Estate Agents:** The Victorian Government recently passed legislative changes that will now allow real estate agents to purchase properties they have been commissioned to sell without having to obtain Consumer Affairs Victoria's approval first.

The purchase of a property from a vendor who is a client of the estate agent raises serious conflict of interest concerns and can be one of the most unfair practices an agent engages in if they take advantage of their position and greater knowledge – with some high profile incidents occurring in Victoria in recent memory.

There was no advance notice that the Government was considering the changes, and the motivation for them remains unclear, but if the Government's comments in the parliament as reported in Hansard are accurate, it does appear to be more about departmental resources than considered policy development or concern for consumers (or even agents!). It currently takes time to consider and process applications from estate agents wishing to purchase a property in these circumstances. Under the new laws, agents and consumers can deal with the issue themselves and simply advise the department.

Of course, this ignores the reality that it is generally more vulnerable clients who are at risk in this circumstance – a situation exacerbated by the fact the agent will inevitably know a great deal more about the market than they do.

There's a real concern that some estate agents will now be in a position to take full advantage of these vulnerable clients - to purchase properties below their market value - without fear of redress, where previously this conduct would have been addressed by the law.

## 4. STANDARDS

### **New Standard Approved**

#### **Social Responsibility**

After five years, ISO 26000, a set of new international standards on social responsibility, has been approved by an overwhelming majority of countries participating in the process. The final standards will be released in November 2010. The process included 400 participants from 99 countries and the Consumers' Federation of Australia (CFA) was actively represented on the working group by Deni Greene, who participated in the drafting group for the standard.

ISO 26000 provides guidance on the fundamental community expectations of the social responsibility of organisations. It provides detailed guidance on societal expectations in the areas of human rights, organisational governance, labour practices, consumer issues, environment, fair operating practices and community development. It applies to all organisations, not just businesses, and provides important background to the issue of social responsibility.

## **Other News**

### **Cosmetics (ISO TC 217 WG7) - Sun Protection Test Methods - Water Resistance**

This committee is developing the first international Standard for testing sun protection products and the verification of the Australian proposal to make testing of Water Resistance a new work item was a major international success.

Australia has the highest incidence of skin cancer in the world and sunscreen preparations are of vital health concerns.

### **Organic and biodynamic products (new AS 6000)**

After a lot of hard work by the committee developing this standard, MP 100: Procedures for certification of organic and biodynamic products, was published in October 2009. Without a standard for certification, it is hard for consumers to be confident that they can trust claims by producers that products marketed as “organic” or biodynamic” do, in fact, meet those claims. Over time, we hope that having this new standard will increase consumer confidence to buy these sorts of products if they wish to do so.

The standard also contains a number of consumer protection requirements not previously covered in the National or Certifiers standards. The committee, with John Furbank as the CFA representative, will continue to meet in order to further work on synthetic amino acids, wine making issues, cosmetics and general maintenance of the standard.

### **Olive Oil (committee FT 034)**

Presently there is no Australian Standard for olive oil. This new committee has met twice this year and a Proposed Standard is now in its third draft, with the objective of the proposed standard to provide a basis in terms of quality and testing to give consumers a clearer view and understanding of the olive oil they are purchasing and to prevent inferior quality olive oil from being sold in Australia.

## **Appointments**

Consumer Action’s Energy Policy Officer, Janine Rayner, has been appointed as a CFA representative to the Standards Australia’s Smart Grid Reference Group.

The Reference Group has been formed to provide Australia’s input into international work on smart grids standards, given the diversity of interests and stakes relating to Smart Grids. It will be a useful way of keeping the Australian community informed about Smart Grid standardisation activities. If you would like to learn more about this reference group, contact [Regina](#) or [Janine](#).



## 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:

**AGL:** Due to restructuring AGL retrenched around 150 permanent staff and 70 fixed term staff from their office in the Melbourne CBD. MoneyHelp's Industry Liaison Officer, Danielle Archer attended a site visit on 23 August 2010 to talk to retrenched AGL staff.

**Nestle:** The Dandenong South site is part of Nestle's pet accessories manufacturing division. The site closed on Friday 3<sup>rd</sup> September due to Nestle moving this particular operation to Sydney. This affected around 14 employees who had an average length of service of more than 18 years.

### On the phones

Meredith\* is a 25 year old sole parent receiving a carer's pension of about \$1,100 a fortnight. She has a five year old son with cerebral palsy who requires speech therapy, occupational therapy and physiotherapy. She has no savings or superannuation, and has been unemployed for five years.

Meredith has a \$20,000 debt to BMW finance for a 2005 Ford Falcon, valued at \$9,800 (red book valuation). She has only had the car for a year and bought it so that she could take her son to medical appointments. Meredith is up to date on payments but is struggling with them and her mother signed as guarantor, putting her at risk too if Meredith defaults. Meredith also has two credit cards with debts she is struggling to repay:

- NAB \$3,500
- CBA \$1,900

MoneyHelp discussed bankruptcy with Meredith and sent details of both debts off to the Victorian bulk debt negotiation project run out of the West Heidelberg Community Legal Service (which seeks to have businesses consider and waive the debts of consumers who are genuinely unable to repay and who are likely to be judgment-proof if the business were to proceed with incurring the cost of suing and obtaining judgment against the consumer in any case). NAB subsequently waived its \$3,500 credit card debt against Meredith. We are yet to hear the results of the CBA negotiation.

**Outcome:** \$3,500 waived

*\*Not her real name.*

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

**Energy marketing:** Door to door sales of energy contracts continue to cause grief to many consumers and you can read some of their stories in this edition's [Your Views](#) section.

The complaints range from aggressive behaviour to misleading and deceptive conduct to ignoring the presence of a "Do Not Knock" sticker – something we believe is a clear breach of the mandatory *Code of Conduct for Marketing Retail Energy in Victoria* which requires energy retailers to respect no canvassing signs.

We'd urge anyone who has experienced this sort of behaviour to report the incident to the regulator and the company involved. A range of pro forma letters and other information can be found on our ["Do Not Knock"](#) webpage.

The Victorian Government continues to argue that the high level of customer switching in the energy market is a sign of healthy competition as a result of deregulating the market. We are not convinced and think more robust indicators of effective competition are needed. Interestingly, a recent article in the Australian Financial Review said that other states don't appear keen to jump on the deregulation bandwagon, reporting that Queensland, Tasmania and WA had all stepped back from the issue for the time being at least.

**Smart Meters and Supply Capacity Control:** The ESC released its [final decision](#) on the Regulatory Review – Smart Meters on 17 September. The Herald Sun [reported](#) on the ESC's decision.

The ESC recommended that the smart meter technology which allows for power rationing, rather than merely turning power on or off (called "supply capacity control"), not be used as a credit control measure (i.e. as a way of managing people who are struggling to pay bills) until after December 2013 ... the question is, [what then?](#)

## 7. ODD SPOT

**Regulator in your Pocket:** Oh Dilbert ... you're a sage for the regulated world ...

**Alternative to the NBN perhaps?:** A pigeon carrying a memory card beat a broadband connection to get a video from Yorkshire to Lancashire. It landed in 80 minutes; the computer was still uploading the video.

**Baked mouse:** Possibly the most disturbing odd spot we've featured to date.

## 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's views were contributed over the last few months by ordinary consumers emailing their experiences of aggressive door to door energy marketing. We will invite the energy marketers to respond in the next edition.

*"Today I have reported recent incidents, with persons bothering me about electricity supply, to the Energy Ombudsman who will handle my concerns but in turn advised me to contact your organisation for a sticker to put on my door ...*

*However I also wanted to let you know of the problems which have prompted all this activity. I have for several months been bothered by representatives from a company who keep insisting they NEED to read my smart meter.*

*As they are neither my supply company nor my billing company I have declined their requests, but they have actually been to inspect my meter box on one occasion. When I found the guy opening it, he tried to tell me it was ok ...*

*The most recent event was this weekend when the chap became less than pleased with me and he told me he knew who I had as a supplier and wanted to know if I had a contract. We had a heated discussion as to why it was not any business of his. This is not the first time my details have appeared to be known to them. He kept insisting he needed to read my meter and would not tell me why. He did eventually leave my property.*

*I also receive phone calls from the same company and they are insistent and rude. I am about the register the Do Not Call.*

*On a past occasion the person suggested I just needed to give my pension number! While I am reasonably able to get rid of these people I am increasingly feeling like this is harassment."*

**Beryl – Bulleen (VIC)**

**Update:** Beryl advised us this week that she had been sent a letter by her existing energy supplier saying they had been notified by another company that she wished to change her contract to their service. Beryl says she told her supplier she did not wish to swap and had never authorised another supplier to do so on her behalf!!

*“Tonight at about 6.15pm (dark), 13th July 2010 a man in a suit and a clipboard came to my door asking to read my electricity meter. Knowing this is way out of normal business hours, and his attire indicating he was not from the council, I questioned him further.*

*He said he was not trying to sell us anything. He walked past a NO DOOR SALES sign (it was dark) at the letterbox and stood looking at two (NO DOOR SALES signs) on the front door while carrying out his spiel.*

*He claimed he was not trying to sell us anything, that he was not from an energy provider but the provider of providers!*

*As we did not want a stranger wandering through our property, reading our meter (invasion of privacy) I refused and enquired as to his company: Simply Energy.*

*I would like to complain about this very sneaky method of sales and believe this company is breaching privacy issues; many people will give permission purely because they have been confused as to who they are really dealing with.”*

**Sarah – Greensborough (VIC)**

*“I just got conned by a door knocker from Energy Australia.*

*The fellow lied and said that Energy Australia supplies power to Tru Energy who then on-sell for a profit.*

*He said there is no contract. There is a 2 year contract. He also lied about the rate. Once I did a bit of digging, I realised how much he lied.*

*When I tried to cancel over the phone, they tried to change my mind and said the door knocker may have mis-explained.*

*I had to be blunt and tell him to stop negotiating and just cancel it.*

*I’ll definitely be printing out a “Do Not Knock” sticker.”*

**Jason – Diamond Creek (VIC)**

## **8. CALC IN THE MEDIA**

### **Who needs a Consumer Affairs Minister? Not Labor**

The Daily Telegraph, 23 September 2010, Rosemarie Lentini

They gave up on Grocery Choice. They gave up on FuelWatch. Now the Federal Government has given up on consumer affairs policy altogether by axing it as a ministerial portfolio.

**Cont’d**

### Bank bullies

Today Tonight, Channel 7, 14 September 2010, Josh Fajzullin

Consumer Action's Director - Policy and Campaigns, Nicole Rich, discusses the debt collection tactics used by some big banks.

### Power cut by remote: companies control appliances

Herald Sun, 20 September 2010, Karen Collier

Households are set to get electricity discounts for letting power companies turn appliances on and off by remote control to avoid blackouts in heatwaves.

### Families turning to loans to cover utility, food bills

Herald Sun, 14 September 2010, Karen Collier

Desperate families are taking out loans to cover soaring gas, electricity, water and food bills. Payday lenders slugging customers repayment charges of up to 900 per cent for small loans are booming as more households struggle to keep pace with living costs.

### Call for action on payday lending

7News, 14 September 2010, AAP

Consumer advocates are calling on the federal government to cap interest rates on short-term lending to prevent the nation's poorest people from becoming stuck in an inescapable cycle of debt.

### Report says pay loans a debt trap

ABC Radio AM, 14 September 2010, Lindy Kerin

The Consumer Action Law Centre has found that more than half a million Australians are accessing short-term loans, some with interest rates as high as 400 per cent, just so they can pay their food and electricity bills.

### Tougher limits on legal loan sharks

Channel 7 Sunrise, 14 September 2010, David Koch

Zac Gillam, author of "Payday Loans: Helping hand or quicksand?" joins David Koch to talk about the growth of the payday lending industry in Australia.

### Happy with the shape of PM's cabinet?

The Age, 14 September 2010, Daniela Miletic and Dan Harrison

Lobby groups representing elderly and disabled people - as well as consumers and the mentally ill - have expressed anger and disappointment at Julia Gillard's ministry.

### Overdraft trap set by banks

Herald Sun, 9 September 2010, Karen Collier

Banks are enticing depositors to take out overdrafts on basic transaction accounts. ANZ home loan borrowers are the latest to be invited to apply for \$1000 "safety net" credit limits - with an interest rate of 18.87 per cent

**Victorians facing soaring bills could have power rationed**

Herald Sun, 10 August 2010, Karen Collier

Victorians hit with soaring electricity bills could have their power rationed under a smart meter plan.