

# Consumer *InterAction*

ISSUE 5 OF 2012

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Over the last two months Consumer Action has welcomed the outcomes of several court cases which have been the culmination of much hard work by the regulators as well as us — the legal weight of the Do Not Knock sticker was clarified by the Federal Court, and debt collector ACM Group was held accountable for a number of poor business practices. The Centre was also buoyed by the Federal Government's announcement of \$10 million for a superannuation advocacy centre—a clear indication that the Government recognises the value of strong, independent consumer advocates.

This month we've also welcomed back Janine Rayner, Senior Policy Officer and all round energy expert, from maternity leave. We're pleased to have her expertise back in the office at a time when energy prices are at the forefront of the political debate.

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## 1. HOT TOPICS

**Landmark Federal Court decision a ringing endorsement of the Do**

## **Not Knock sticker**

As the creator of the Do Not Knock sticker and the organisation behind [www.donotknock.org.au](http://www.donotknock.org.au), Consumer Action welcomed a Federal Court decision which found that salespeople who ignore visible Do Not Knock stickers are breaking the law and that their actions could result in fines of up to \$50,000.

The case, brought by the Australian Competition and Consumer Commission against an energy retailer and its marketing sub-contractor, found that a salesperson that ignores a visible Do Not Knock sticker is breaching the provision of the Australian Consumer Law that requires salespeople to leave when requested to do so. [Read more.](#)

## **Warning to consumers who are desperate to buy or sell a home**

Consumer Action is warning consumers about schemes which link up people who are desperate to sell their homes with people who are looking to buy but are unable to get a loan. These types of transactions are usually 'rent to buy' or 'vendor terms' mortgages and are very different from traditional home loan arrangements. These deals have raised risks for buyers in the past, and it would seem some sellers are also experiencing problems. [Read more.](#)

## **2. Legal Practice News**

### **Consumer guarantees tested in VCAT**

Consumer Action recently helped Mr Martin Schulz issue VCAT proceedings against Smithy's LPG and Automotive Services which had installed an LPG system into his car. Smithy's had made numerous representations regarding the quality of the system and Mr Schulz was assured that he'd be "*amazed with outstanding performance*" of the system. But after the installation his car began showing problems when running on LPG, including frequent and random stalling, ineffective acceleration and shaking when the engine was cold.

Smithy's attempted to repair the car seven times before Mr Schulz unsuccessfully sought to have the LPG system be removed at which time VCAT proceedings were lodged.

Mr Schulz argued that when installing the LPG system, Smithy's had failed to comply with the consumer guarantee that a good be of acceptable quality and the guarantee that a service be provided with due care and skill. He also argued that the failures qualified as 'major failures' or, alternatively, that Smithy's had failed to remedy the failures 'within a reasonable time', and so that removal of the system and a full refund were warranted in this case.

At the initial hearing the VCAT Member refused to make a determination and adjourned the

matter to give Smithy's one more chance to resolve the problem, despite our client's request to have it settled on the day.

At the second hearing the VCAT Member held that the LPG system (and not the services rendered) was defective, basing this finding largely on Smithy's admission about the product rather than the expert report supplied in Mr Schulz's application. The Member ordered that Smithy's refund our client's losses and remove the LPG system from the car. Mr Schulz was satisfied with the result and Consumer Action gained a valuable insight into how VCAT interpreted the Consumer Guarantee provisions in the Australian Consumer Law. In this instance the member declined our request to put his reasons in writing, however, we look forward to future written decisions by the Tribunal in relation to its application of the new Australian Consumer Law guarantee provisions so that consumers and traders gain valuable guidance on how these laws will be applied by the Courts and Tribunals.

### **Federal Court ruling confirms complaints about ACM Group's debt collection practices**

Consumer Action has welcomed a Federal Court ruling, which found debt collection agency ACM Group (and its predecessor Accounts Control Management Services) engaged in misleading and deceptive conduct, and undue harassment and coercion. The ruling confirms what we have long suspected—that some of ACM Group's debt collection tactics breached the consumer laws. [Read more.](#)

## **3. POLICY AND CAMPAIGNS**

### **Energy debate must address the real drivers of the unnecessary electricity price increases**

Consumer Action has welcomed [comments](#) made by Australian Competition and Consumer Commission Chairman Rod Sims warning that the energy reform debate must address the real drivers of the unnecessary electricity price increases in Australia, and not be distracted by side-issues such as regulator governance. [Read more.](#)

### **Consumer groups fear small debts could lead to big problems for Australian consumers**

A coalition of consumer groups is urging the Federal Government to reconsider aspects of its planned credit reporting reform which could see Australians have their credit history tarnished for late payment of amounts as little as \$100. In a recent discussion paper on credit reporting regulations, the Government proposed not to increase the minimum debt that can be listed on a credit report beyond \$100. [Read more.](#)

### **Superannuation Consumer Centre recognises the importance of independent advocacy**

Working Australians will benefit from the Federal Government's \$10 million investment to establish a Superannuation Consumer Centre. Consumer Action believes the plan to establish a consumer advocacy body to work in superannuation showed that the Government recognises the importance of independent advocacy. [Read more.](#)

## 4. STANDARDS

### Why do showers need a standard?

Showers are significant consumers of water. [About 40% of all water consumed](#) in the home is used in the bathroom. Water shortages and the longer-term security of water supply are serious concerns for Australia. The Australian Government [Water Efficiency Labelling and Standards](#) (WELS) Scheme allows consumers to compare the water efficiency of different products using a star rating scheme, helping Australian households to save water and money. By 2021, Australians could save more than one billion dollars through reduced water and energy bills by simply choosing more efficient products.

Showers are essentially a tactile experience for consumers. What may look like a good shower may not be confirmed by use. A new [Standards Australia](#) Technical Committee WS-038 Water efficient showers has been formed to review *AS/NZS 3662:2005 Performance of showers for bathing*. The committee will look at the following factors, among others, which influence the quality of a shower: water flow rates; temperature drop; temperature stability; spray pattern; and comfort and effectiveness. CFA representative Paul Loney has been appointed to the committee.

If you are interested in finding out more about becoming a [CFA Standards Representative](#) please contact the Standards Coordinator [standards@consumeraction.org.au](mailto:standards@consumeraction.org.au)

## 5. MONEYHELP

Our MoneyHelp financial counselling team answered 1,975 telephone calls since the last edition of *Consumer InterAction*—that's around 49 calls per day—and we've been able to assist 1,833 Victorians. Rent arrears, home loans and credit card debt continue to represent a significant proportion of calls to the service.

The team has continued its radio appearances to promote financial counselling & financial counselling issues on Saturday Breakfast with Hilary Harper on ABC774. And we've maintained our outreach work—most recently by attending a 'Bring Your Bills Day' at Church of All Nations in Carlton, organised by North Melbourne Legal Service.

**Remember, if you have clients who have money or debt problems, you can refer them to**

MoneyHelp for phone counselling and referral if needed. Contact MoneyHelp on 1800 007 007 or visit [www.moneyhelp.org.au](http://www.moneyhelp.org.au).

## 6. BULLSEYE ... WHAT'S IN OUR CROSSHAIRS

### Consumer leases

As part of Consumer Action's campaign against exploitative credit practices, Consumer Action has begun looking at consumer leases—commonly referred to as rent to buy agreements. These rental agreements can be expensive, run for years and, from what we've seen, are often sold to consumers who don't fully understand the terms of the agreement.

Adverts which spruik 'rent to own' are also in our sights because they often misrepresent the nature of the product. While advertising may lead consumers to believe they may eventually own the goods, the contracts are structured as a lease, which has particular advantage for the financier/lessor, including lower disclosure standards than required for a credit sale. At the end of a lease the consumer has no right to the goods—they may be offered 'like' goods, or that they can 'keep' the goods, but they cannot own the actual product they've been renting because that would change the nature of the transaction and therefore change the regulation covering the contract. If the consumer was to eventually own the goods they hired, the contract would become a credit purchase agreement (which the financier/lessor is keen to avoid).

Consumer Action is planning a number of projects which will bring the misleading and costly nature of consumer leases to the public's attention and highlight the need for greater consumer protections in the industry.

## 7. CONSUMER ACTION IN THE MEDIA

### [What are ATM fees for?](#)

Weekend Sunrise, Channel 7, 10 November 2012

### [Warning on 'risky' We Buy Houses scheme](#)

The Age, 2 November 2012, Chris Vedelago

### [Water bills to soar to pay for desal plant](#)

Sydney Morning Herald, 2 November 2012, Rachel Wells

### [Victims in false debt claims](#)

The Age, 31 October 2012, Andrea Petrie

### [Consumer law to-do list maps the big picture](#)

Daily Telegraph, 25 October 2012, Rosemarie Lentini

[Shorten's flexible approach gets tick from finance sector](#)

Sydney Morning Herald, 24 October 2012, Stewart Oldfield

[Lender fight wages on – state fumes at federal laws](#)

The Daily Telegraph, 18 October 2012, Rosemarie Lentini

[All work and no pay](#)

Sydney Morning Herald, 13 October 2012, Fenella Souter

[Tradies Busted](#)

A Current Affair, 11 October 2012, Ninemsn staff

[BSB warning](#)

A Current Affair, 24 September 2012, Ninemsn staff

[Electricity prices continue to soar in Victoria, Essential Services Commission report reveals](#)

Herald Sun, 20 September 2012, Anne Wright

[Power shock: bills up 33% in five years](#)

The Age, 20 September 2012, Rachel Wells

[Payday loans: A spiral of debt for the needy](#)

News.com.au, 16 September 2012, Karina Barrymore

[Bank fees may be excessive: court](#)

The Age, 7 September 2012, Lucy Battersby and Chris Zappone

[Australia High Court Backs ANZ's Customers in Class Action Over Fees](#)

Fox Business, 6 September 2012, Dow Jones Newswires