

CONSUMER *INTER*ACTION

ISSUE 2/2010

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Welcome to the second edition of the new **CONSUMER *INTER*ACTION**.

It's only March, but there's already been big news for Australian consumers. Following decades of hard work, Australia finally has a national unfair contract terms law and greatly improved powers for the consumer regulators to enforce our consumer protection laws. Particularly notable are the ability for regulators to issue substantiation notices and a fix for problems obtaining refunds for unnamed parties. These important changes flow from the passage of the Australian Consumer Law bill (Stage 1) through the Senate earlier this month.

On the same day, the Government also introduced two new important consumer bills to the House of Representatives – the Australian Consumer Law bill Stage 2 that will harmonise fair trading laws and adopt a new national product safety system and a new national consumer guarantees law, and the Insurance Contracts Amendment Bill 2010 – with the latter containing both good and bad news for consumers.

The legal practice is gearing up for a couple of big cases that could test the business models underpinning two of our biggest issues – Motor Finance Wizard and private car park fines.

We hope you enjoy this edition of **CONSUMER *INTER*ACTION** 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

In-home Sales of Educational Software: Consumer Action and Deakin University launched [“Shutting the Gates: an analysis of the psychology of in-home sales of educational software”](#), in Sydney earlier this month. The report looks at the high pressure sales tactics and emotional manipulations used to peddle educational software via in the home sales.

The release of the report was timely given new Australian Consumer Laws could threaten Victoria’s current protections for so-called “solicited” in-home sales. A short film dramatising the in-home sales experience “Shutting the Gates” was launched at the same time. If you would like to receive a hard copy of the report or a DVD of the film, please email reception@consumeraction.org.au.

Last Minute Changes to Victorian Finance Broker Laws: Following passage of the landmark national consumer credit law reforms late last year, the Victorian Government rightly introduced a Bill to adopt those laws and repeal current state laws. However, the original timeframes in the Victorian Bill would have removed all Victorian finance broker regulation before the new national laws took full effect – leaving a potentially disastrous six month gap for Victorian borrowers.

Consumer Action congratulates the Opposition for raising the issue, the Greens for proposing amendments and the Government for working with the other parties last week to amend the Bill and ensure Victorians have ongoing protections from unfair broker conduct. Read our [media release](#).

Australian Consumer Law Reforms: It’s finally here – an Australian unfair contract terms law! More eagle-eyed readers would notice that some of the oldest documents on our website (from our predecessor organisations) talk about the need for unfair terms protections.

The Bill enacting this law, and giving the ACCC and ASIC better enforcement and remedies powers, was passed by the Federal Parliament on 17 March and we strongly welcome this landmark reform. However, we remain disappointed with the last-minute and untested amendments to the law that the new Minister agreed with the Coalition, and which we fear will discourage regulators from enforcing the new law. We’ll be keeping a close eye on the impact of the new laws over the coming year. For those wanting to find the Bill, its full title is the Trade Practices Amendment (Australian Consumer Law) Bill 2009.

In a case of not raining but pouring, the Government introduced more consumer legislation into parliament on the same day. See the [Policy and Campaigns](#) section below.

2. WINS (AND OTHER NEWS)

Wins:

Hire car insurance case study

Matter settled confidentially Feb 2010

Rob* lives in Victoria. From Victoria, he ordered a hire car online from a major national rental car company to collect at Sydney airport. Upon picking up his hire car at Sydney airport, Rob was sold excess cover and was told that he would be fully insured.

Rob later inadvertently drove through a red light while driving in unfamiliar surrounds, and was involved in a collision.

Despite believing he was 'fully insured', he was subsequently sued by the rental car company for \$12,000 and also by the third party for \$20,000. The rental car company refused cover to Rob because there was a generic and broad clause in the contract stating 'you must not operate the vehicle in breach of any legislation, regulation, rules or by laws relating to road traffic and use....'.

We issued a claim on Rob's behalf in the Victorian Civil and Administrative Tribunal (VCAT) claiming these sums from the rental car company.

We alleged that the rental car company was guilty of misleading, deceptive and unconscionable conduct under the Victorian Fair Trading Act. We also alleged that the contract terms were unfair. In addition, we alleged that the contract as a whole fell within the Commonwealth Insurance Contracts Act even though it was not expressed as an insurance contract but as an 'indemnity' – if covered by the Insurance Contracts Act, the 'standard cover' provisions would apply meaning that the company was required to bring the specific term in question to Rob's attention.

The action was initially hotly contested by the rental car company, which issued a strike out application. However, that application failed and at subsequent mediation a settlement was reached.

Davis v Care Park Pty Ltd

We mightn't have won the war (yet), but there's been a significant victory in one stage of our epic battle over private car park fines.

This is an ongoing matter in which we act for Mr Davis in challenging the fees charged by Care Park for a failure to display a ticket. Mr Davis issued proceedings himself in VCAT against Care Park. Care Park then sought to have the proceedings struck out on the basis that VCAT did not have jurisdiction to determine the matter because Care Park had waived the fee and therefore there was no dispute to determine. Care Park were unsuccessful in their attempt to have Mr Davis' VCAT application struck out. Mr Davis wants VCAT to decide whether the fine Care Park issued in this case (but later waived) was reasonable. The matter should now proceed to

hearing and anyone who has ever been hit with one of these fines should pay close attention. Read the [reasons for the decision](#).

Case to watch:

Wendy* v DTGV1 (Motor Finance Wizard)

Consumer Action is acting on behalf of Wendy in challenging the lease agreements which MFW are currently using. Wendy was forced to seek further discovery from MFW after it failed to provide documents which Consumer Action says must reasonably be in the possession of MFW. MFW also sought discovery of documentation from Wendy over which she had made a claim of privilege.

The parties attended a Directions Hearing to determine the discovery issues. We were successful in getting orders on behalf of Wendy for further discovery from MFW in the form of an Affidavit of Documents (a list of relevant documents held by MFW), which means that we may seek leave to cross-exam the deponent of the Affidavit if documents are not subsequently produced. We were also successful in defending Wendy's claim of privilege over her documents. MFW have until 6 April to produce the further list of documents.

At this stage the matter is due to be set down for a final hearing sometime in July 2010.

**Not the client's real name.*

3. POLICY AND CAMPAIGNS

Australian Consumer Law: The second tranche of the Australian Consumer Law reforms was introduced into Federal Parliament on 17 March. The Bill has been referred to a [Senate inquiry](#) and Consumer Action will be making a submission (due 16 April). We support the ongoing reforms but we are very concerned to see high pressure in-home sales properly dealt with, as well as poor debt collection conduct. Our [Shutting the Gates](#) report demonstrates the need to tackle unfair in-home selling – and in a way that will be effective. The Bill's full title is the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010.

Insurance reforms: The *Insurance Contracts Act*, which is central to governing dealings between insurers and consumers in Australia, was reviewed between 2003 and 2005 and five years on, the Federal Government has introduced a Bill to implement a mixed-bag selection of the [Review's recommendations](#). Consumer Action welcomes a small number of the reforms but many of the more important issues for consumers from the Review have been ignored, while many changes favourable to insurance companies have been included. Given the delays and the selective nature of the Bill's proposals, we believe that public consultation on the Bill would have been more appropriate than immediate introduction.

For consumers, the most urgent insurance law reform priority is to include insurance contracts under the coverage of the new national unfair contract terms law. Insurance is exempted due to a technicality in the *Insurance Contracts Act* and should have been included – the Productivity Commission warned against carve-outs for any specific industry in its [2008 report](#) and the Senate Economics Committee [recommended last year](#) that this insurance loophole be

fixed. Instead of including this reform in the current Bill, however, the Government has released an Options Paper to consider the issue further. We will be making a submission strongly advocating that the Government face down vested insurance interests and act to include insurance under the unfair contract terms law.

Bankruptcy: The Federal Government's proposed reforms to the *Bankruptcy Act* have stalled in the Senate and will not be debated before June at the earliest. Readers will know that Consumer Action strongly supports the proposal to increase the minimum debt for a creditor's petition from \$2,000 to \$10,000 but this is likely to face opposition in the Senate with the Coalition and independent Senators reportedly opposed. We genuinely believe that this reform is a positive and justified one that will not impact on mainstream practices, but will close a loophole that sees a small minority of creditors, debt collectors and bankruptcy trustees abuse bankruptcy proceedings to collect small debts in a harsh and unfair manner. Support for the reform from groups such as the [Council of Small Business of Australia](#) and [Dun & Bradstreet](#) belie claims that the reform will hurt small businesses.

Do Not Knock campaign continues to be popular: Nicola Roxon, Federal Health Minister and Member for Gellibrand, was snapped walking past the Footscray Community Legal Centre stand at the Vietnamese Festival in January. Apparently, the Minister is a big fan of the Do Not Knock stickers designed by CALC, telling one of the Footscray lawyers "I like these - I've got one myself".



Thanks to Footscray CLC for its support and for passing on this story! And for those of you who may have doubted the power of the sticker, check out the [Your Views](#) section.

4. STANDARDS

New Starter: Lauren Kenny has started as our new Standards Coordinator, replacing Jo Higginson.

Nanotechnology: One of our hard working consumer representatives, Elaine Attwood, was accepted as the Standards Australia Nanotechnology Committee's nomination to the working group on nanotechnology societal and consumer issues at the International Standards Organisation. Well done Elaine!

Water Safety Signs: This committee is hoping to get some consumer feedback about proposed changes to water safety signs and to help raise awareness of the dangers of water. Signage is a simple, cost effective and extremely valuable tool for injury prevention and it's essential for thorough and effective water safety practice.

If you'd like to comment, please contact our [standards co-ordinator](#) for a copy of the proposals.

New consumer representative required: Safety of Household Electrical Appliances committee is looking for a new consumer representative. If you're interested, please [contact Lauren](#).

5. MONEYHELP

Site Visits: January and February have been the busiest since the service was launched in September 2009 in regard to workplaces retrenching workers or reducing their hours. We've had several constructive workplace visits with employees of companies that have announced retrenchments or a reduction in hours. Following the MoneyHelp presentation, many workers fill out a registration form requesting further assistance from MoneyHelp and the financial counsellors call them back to discuss their specific situation and also offer face-to-face financial counselling.

Retrenching work sites visited include Inghams Chickens, Castricum Abattoir, Cadbury, K-Mart and Murray Goulburn.

Although some of these workers were in financial crisis before they lost their job, it's been rewarding for the financial counsellors to assist many of them before they are actually in crisis.

On the phones: Financial counsellors report that over-commitment continues to be the biggest problem for consumers contacting the service.

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

Part IX Debt Agreements: MoneyHelp and the legal practice are seeing increasing numbers of cases where clients have been needlessly signed up for Debt Agreements and, in some instances, haven't been advised that they are effectively committing an act of bankruptcy. The debate around this has been played out on the pages of the Financial Review in recent weeks but will continue when the Government formally announces the start of its review of Part IX of the *Bankruptcy Act* later this year.

Insurance: Denis Nelthorpe appeared on behalf of consumer groups at the Victorian Bushfires Royal Commission two weeks ago [to rebut the Insurance Council's assertions](#) that the fire services levy had contributed to under-insurance arising out of last year's devastating bushfires in Victoria. Denis pointed out that for many people affected by under-insurance, the problem lay in the fact they had "sum insured" rather than "replacement" policies. [Read our media release.](#)

That issue followed hot on the heels of last week's developments on insurance law reform (see [Policy and Campaigns](#) section). The new national unfair contract terms laws were welcome news to consumer groups, but the exclusion of insurance contracts from these laws adds to the list of mounting concerns about the power of the insurance industry in Australia.

Energy Distribution Pricing: In February, we prepared a [submission](#) to the Australian Energy Regulator in response to Victoria's electricity distributors proposing new pricing forecasts that would see Victorians paying 14% more for their electricity by 2015. The distributors' forecasts are used by the regulator to set new prices for the next statutory period, 2011-2015, which are then passed on to consumers as part of the price of their final bills.

After analysing historical forecasts, Consumer Action found that distributors' past forecasting of expenditure and revenue was often far removed from the actual figures. We have asked the regulator to take this into account in making pricing decisions based on the new forecasts, and have called for more information to be released so that the distribution businesses' claims can be more transparently and publicly scrutinised. [Read our media release.](#)

7. ODD SPOT

[A few days in Upper Bavaria:](#) German pensioners adopt a novel approach to financial services regulation.

[Bankers called Barbara:](#) Apparently some viewers think that "Barbara", TV's newest advertising dragon, is "*sexist, ageist, and vilifies mature female bank employees, specifically those named Barbara*".

[Short of Cash:](#) And finally, one for the little guy!!

8. YOUR VIEWS

Do Not Knock: We recently received this email from one satisfied consumer who used the stickers in her street with great results.

“Recently I discovered the Do Not Knock information on your website. We live in a small court of 7 houses and all were constantly being pestered by unwelcome door knockers. I was able to obtain stickers for all the residents and all went up on front doors. Miracles do happen and this is one of them. Myself and my neighbours watch in amazement (and amusement) as these unwelcome pests wander up our court looking for a door they can bang on and leave with obvious angst when they discover our little street is a no knock zone. Thanks to all at Consumer Action for your stickers, we are telling all our friends and they all ask where can they get the stickers. Keep the pressure up, it’s working.

Karen”

8. CALC IN THE MEDIA

New credit card laws won't stop gouging by companies

Sydney Morning Herald, 24 March 2010, Melissa Singer

New laws designed to improve consumer protection will not block credit card companies from imposing onerous fees and charges on their customers, legal experts have warned.

Appliances not quite the stars they seem

Sydney Morning Herald, 20 March 2010, Melissa Singer

ONE in three electrical appliances audited for energy efficiency is either unfit for sale or has exaggerated environmental credentials.

Consumer advocates warn of slick sales tricks

World Today, ABC Radio, 15 March 2010, Ashley Hall

The Consumer Action Law Centre is calling for stronger protection against the slick sales techniques used by in-home sales staff. The centre is warning that the national consumer laws, that are due to come into effect later this year, will whittle away some of the protections now offered to Victorian consumers.

Now a bill for power poles

Herald Sun, 18 February 2010, Karen Collier

Consumer Action’s Senior Policy Officer for Energy, Janine Rayner, discusses concerns over electricity distributors’ expenditure forecasts that could mean Victorian consumers will be charged up to \$200 on their annual electricity bill by 2015.

Bankruptcy Reform

Online Opinion, 9 February 2010, Nicole Rich and Fiona Guthrie

Consumer Action's Nicole Rich and Fiona Guthrie from the Australian Financial Counselling and Credit Reform Association write about the need for reforms to Australia's bankruptcy laws – including raising the threshold necessary to bankrupt a debtor from \$2,000 to \$10,000 and changing the amount both debt collectors and bankruptcy trustees can charge in fees.

Judges want control over regulatory body

The Australian, 5 February 2010, Chris Merritt, Legal Affairs Editor

The push to give lawyers and judges control of the national legal services board was denounced by Victoria's Consumer Action Law Centre, which endorsed the taskforce's plan for a balanced membership.