

CONSUMER *INTERACTION*

ISSUE 2/2011

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Welcome to the February/March edition of **CONSUMER INTERACTION**.

It's been a hugely busy March for everyone at Consumer Action. Some of the issues we have been involved in include a roundtable on insurance and unfair contract terms hosted by Parliamentary Secretary to the Treasurer, David Bradbury; credit card reform; the Insurance Council of Australia Regulatory Update Conference; Veda Advantage consultative meeting and the Commonwealth Consumer Affairs Advisory Council.

One of the most common complaints made by consumers is that a trader won't provide a refund for faulty goods. Research undertaken by NEIAT^[1] showed that only about 16% of consumers and traders understood what their rights and obligations were under the old warranty laws. Dell Computers recently changed one of their contracts after Carolyn Bond, one of our co-CEOs, issued proceedings against Dell for misleading conduct and unfair contract terms when software she purchased from Dell didn't work. You can read more about this in [Bulls-eye](#).

Whether the new consumer laws will greatly depend on whether regulators take advantage of the larger range of enforcement tools to deal with non-complying businesses (such as unfair contract terms and substantiation notices). The signs so far are good, but it's early days, and we'll be paying close attention to what the regulators are doing.

We hope you enjoy this edition of **CONSUMER INTERACTION** and, as always, encourage you to forward it throughout your networks.

IN THIS EDITION...

1. HOT TOPICS

^[1] http://www.consumerlaw.gov.au/content/consumer_policy/downloads/NEIAT_baseline_study_2009.pdf

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1. HOT TOPICS

Insurance and Unfair Contract Terms

In March, Co- CEO Catriona Lowe and Director of Policy and Campaigns Nicole Rich attended a “Roundtable” discussion in Sydney hosted by the Federal Parliamentary Secretary, David Bradbury, on whether the national unfair contract terms law should also apply to insurance. Joining us was David Coorey from Legal Aid NSW and Kat Lane from the Insurance Law Service (at CCLC NSW). Four representatives of the Insurance Council also attended, as well as officials from Treasury, ASIC and APRA and Colin Neave and John Price from FOS.

Credit card reforms

The Government also [introduced legislation into the Parliament](#) covering (among other things) reforms to credit cards. These reforms include a ban on unsolicited credit limit increases (unless customers agree to receive them), a requirement to warn customers of the effects of only making the minimum card repayments and restrictions on lenders allowing customers to exceed their card limit.

Banks [complained](#) loudly in the press about the short time frame for consultation on the draft credit cards legislation but, while there's no doubt this period was very short, there were few actual surprises in the legislation after months of consultations with stakeholders on the details of the proposals, which the banks somehow forgot to mention.

Consumer Action provided a submission on the draft legislation which can be found [here](#). In particular, we are pleased to see the Government restrict the use of unsolicited credit limit increases, which can frequently work to extend harmful amounts of credit to financially vulnerable consumers. For a discussion of the behavioural aspects of unsolicited credit increase letters, see our 2008 report [Congratulations, You're Pre-Approved!](#)

MoneySmart

During March, ASIC launched an exciting new online tool to help people make smart choices about their personal finances.

[MoneySmart](#) has something for everyone. With tips for coping with almost every financial turning point, whether it's starting work, buying a home and having a baby.

The website gives people practical advice on which debts to pay first in order to reduce their debts faster and how to negotiate with their credit provider. And if people are struggling to cope with their debts, MoneySmart gives them places to turn for help and practical action they can take.

The website includes 26 useful calculators, some that can be used on mobile phones, giving fast answers to money questions and even setting action plans.

Visit the [ASIC](#) website for more information.

Victorians should also remember Consumer Action's [MoneyHelp](#) website, which can link consumers direct to email and telephone advice.

2. WINS (AND OTHER NEWS)

Maternity Leave: Jillian Williams, one of our Legal Practice Directors, commenced maternity leave last Friday. Jillian's role will be temporarily filled by two of our senior solicitors, Michael Hermitage and Tom Wilcox. Michael is currently in the role with Tom to take over from August until Jillian's return in the new year.

New Lawyer: Everyone at Consumer Action is very excited to welcome our law clerk Lachlan Edwards to the legal fraternity. Lachlan's admission was moved by Celia Tikotin, one of Legal Practice Directors, last month. Congratulations Lachlan!

Case Outcomes

Peter Puffin* v Motor Finance Wizard & Kwik Finance

Peter entered into a contract for sale for a vehicle from MFW for a total of \$19,230.70. He also entered into a purportedly interest free loan for that amount. The red book value of the vehicle at that time was \$6k and the value at time of these negotiations was \$4k– Peter had already paid \$11,000.

We argued misleading and deceptive conduct and unfair contract terms in relation to the price of

the vehicle. The matter settled prior to compulsory conference and Peter was released from any future liability and the unencumbered vehicle was transferred to him.

Saving to Client: \$8,230.70

Lesley Mobbs* v Money Fast & City Loans

Lesley, a former bankrupt, borrowed \$2,000 from City Loans in June 2009. Under the loans terms, fees of \$1,400 were payable along with interest of 30% per annum. In October 2009, City Loans offered to refinance the loan with a 'community based lender' which was also described as a '3rd party'. The client accepted the offer and borrowed \$3,000 from Money Fast, which discharged the City Loans contract and provided her with further credit.

We requested documents pursuant to the Code from both Money Fast and City Loans. Both parties refused to provide all the documents we requested and we issued proceedings in VCAT to obtain these documents and also alleging that the disclosure requirements of the parties had been breached.

Money Fast accepted that it had breached its disclosure requirements and agreed to rectify its contracts. It waived Lesley's debt (\$2,318.98) and refunded \$1,492.90 to her. She did not have to pay any fees and charges in relation to the loan and was released from a substantial amount of the principal paid.

Money Fast sent through their revised contract which still appears not to specify the method of charging interest. These issues have been referred to ASIC.

Saving to Client: \$3,810

**Not their real names*

3. POLICY AND CAMPAIGNS

Banking Competition Reform

The Commonwealth Government continues to roll out its banking competition reforms, with a [ban on home loan early exit fees](#) approved by Parliament on 23 March. Consumer Action applauds this measure. Exit fees discourage consumers from seeking out a better deal on their home loan, creating poor outcomes for individual consumers and dulling competitive pressure between lenders. The ban will come into effect from 1 July this year, and you can read Consumer Action's submission on the draft legislation [here](#).

Our submission also pointed out some of the flaws in arguments against the ban, for example that it will inhibit the ability of smaller lenders to "compete" (as opposed to their ability to attract

customers with an *appearance* of being cheaper).

Insurance

On World Consumer Rights Day (15 March), [Consumer Action held an event in the Bourke St Mall](#) in central Melbourne to make the point that for many consumers, an umbrella provides far greater protection against a flood than their insurance contract. On the day, we distributed [flyers](#) to passers-by with tips to on buying insurance and to know how to challenge an unsatisfactory decision by their insurance company.

Since the last edition, [the Commonwealth Government has been working with the Insurance industry](#) to develop a standard definition of “flood” that will be incorporated into the Insurance Contracts Act. Other reforms under negotiation are a one page summary of insurance policies to help consumers understand what they are and aren’t covered for, and the option of paying policies fortnightly to make insurance more accessible to those on low incomes. [We understand that negotiations are ongoing](#) and that public consultation on a draft flood definition will begin before too long.

Consumer Action also welcomed the Commonwealth Government’s announcement that it will be conducting a [review into disaster insurance in Australia](#) after many Australians found themselves without insurance or with insufficient cover to replace what was lost during the recent Queensland and Victorian floods. Many of the issues to be reviewed are reflected in a series of [recommendations](#) proposed by a coalition of consumer advocacy and legal aid organisations in January this year.

National Consumer Fraud Week 2011

CALC is a member of the Australasian Consumer Fraud Taskforce, which is convened each year by the ACCC to raise public awareness about scams. CALC was a principal partner of the National Consumer Fraud week this year.

Co-ordinated by the Australasian Consumer Fraud Taskforce, the week focused on the personal side and impact of scams, and how we can fight fraud that occurs on the home front. Senior Campaigner Sarah Wilson and Media and Communications Officer Eileen Kerrigan participated in a forum to help support victims of scams, and also a networking event where we spoke about our experience as scam victims.

Save the Cap

Direct of Policy and Campaigns, Nicole Rich, visited Canberra in February to make a presentation on our payday lending report to the Australian Financial Inclusion Network – a network of academics, microfinance providers and community organisations with an interest in extending fair and affordable financial products and services to low income Australians.

Energy Assured Limited

Consumer Action has been involved in providing comment to the ACCC on the authorisation of the Energy Assured Limited [guidelines for marketing conduct](#).

While we strongly acknowledge the need for improved practices in relation to energy marketing, we have raised concerns with the ACCC that the EAL code does not adequately address these. We continue to be involved in the process.

4. STANDARDS

New Standards

FT-034 Olive Oils

The objective of the Olive Oil Standard is to provide industry with quality criteria and testing procedures; provide consumers with a clear indication of the nature and style of olive oil they are purchasing and to prevent substitution of inferior olive oil or other (non-olive) oils in olive oil sold in Australia. Currently there is no Australian Standard for olive oil. The CFA representative on this committee is **John Furbank**.

The draft standard will soon be made available for public comment.

EV-019 E-Waste

Standards Australia is about to embark on a project to develop a new Australian Standard for the collection, storage, transport and treatment of electronic waste in Australia.

We have nominated **Michael Hassett** as the Consumer Federation of Australia representative for this Committee.

New Australian Standards committees:

EV-019 E-Waste – A new Australian Standard on the collection, storage, transport and treatment of electronic waste in Australia.

Michael Hassett nominated as the CFA representative.

CS-094 Ceramic & China Tableware – Re-constitution of the committee to revise the existing standard on Ceramic Tableware (1996).

Tom Bellas nominated as the CFA representative.

New representatives appointed to existing committees:

EL-034 Power Quality – Mark Henley is the new representative.

EL-002 Safety of Household Electrical Goods – Allan Mulvena is the new representative.

5. MONEYHELP

On the phones:

Credit Card debt: The information we get from clients presenting to MoneyHelp is that their credit card debt is a significant cause of over commitment and the eventual collapse of their finances.

In one typical example, the client lost his job in late 2010 and is now on Newstart payments of \$424 fortnightly. His wife is also on Newstart also receiving \$242 fortnightly. Family tax benefits are \$295 fortnightly. The client has had trouble finding work so far, although he is actively looking for work.

The client's housing loan is \$200,000 and his other debts are:

- credit card 1 - \$2k
- credit card 2 - \$2k
- credit card 3 - \$10k
- car loan - \$10k

Rental Stress: Median rent for a single bedroom flat in Melbourne is \$289 per week. A single person who is on Newstart gets \$237.45 per week, plus rent assistance of up to \$58 per week (depending on actual rental cost). With \$100 or less per week to pay for food and bills and other expenses it is no wonder that we see large numbers of clients in acute financial stress.

In February & March, 102 people contacted MoneyHelp saying they were in trouble with their rental payments. Many of these clients had rental arrears, some of them had received eviction notices from their landlords and others were due to appear at the tribunal to defend an eviction application. MoneyHelp financial counsellors did a variety of things for these clients depending on individual circumstances including:

- obtained full details of income and expenses to ascertain if there were any surplus funds to pay rental arrears;
- checked whether client was eligible for any government grants such as utility relief grant;
- provided the details of the local housing service to ascertain if any emergency funds were

available to help with rent arrears or bond for new accommodation;

- wrote up a statement of income and expenses including an allowance to pay for rental arrears to provide to the landlord or the tribunal in support of an application to stay in the premises;
- referred client to tenancy advice services and/or face to face financial or other counselling if appropriate.

Bulk Debt Negotiation Outcomes

More bulk debt negotiation results have trickled through for MoneyHelp clients. These are a result of a project being run through West Heidelberg Community Legal Centre, which is negotiating with creditors on behalf of large numbers of low-income, vulnerable individuals. Recently the project undertook negotiations with ANZ.

Mr J, a 39 year old with schizophrenia, living with his parents but sharing the care of his child had an ANZ personal loan of \$23,000 and an ANZ credit card of \$7,300. Jason's only income is the disability support pension. ANZ has agreed to waive Mr J's debts.

Mr L, a 59 year old who has been unemployed for 3 years, 3 ANZ credit cards totalling \$15,000. Mr L was seeing a psychologist for stress and anxiety and struggling to make reduced payments of \$150 per month. ANZ has agreed to waive Mr L's debts.

Ms O, a 51 year old on disability support pension with an ANZ credit card debt of \$5,000. Ms O has had a couple of nervous breakdowns, she is suffering from depression, has acute nervous anxiety, and permanent tension headaches due to the breakdowns. ANZ has agreed to waive Ms O's debt. Westpac has previously waived Ms O's \$9,000 credit card debt.

Outreach

At MoneyHelp, the Liaison Officer has been concentrating on our housing stress criteria. There have been meetings with some local councils who are very interested in working more closely with us to refer rates hardship clients. The city of Frankston is working on putting out a flyer to all residents with our details on it, while The Cardinia Shire Council are interested in potentially distributing Moneyhelps existing printed materials.

Also the Community Housing Federation of Victoria has met with MoneyHelp, as have The Victorian Public Tenants Association. Both are very keen to spread the word, refer to us and engage us in meetings and other networking opportunities.

During March, Danielle was in the Gippsland region meeting with housing providers in both Leongatha and Morwell. She explained the service and how we can work together to improve the situation of people facing financial hardship.

South Pacific: Danielle presented to this print production company in Wodonga on 18 February 2011. The company employs approximately 100 staff divided across two companies – South Pacific and Moore Australasia Group. Moore has around 15 to 20 employees and South Pacific the rest. In the week following the outreach presentation, 10-20 retrenchments occurred, with the remainder being staggered across the following month.

This particular group of companies leased the production facilities of Paragon, the previous operator, who went into administration approximately a year ago. They also retained some of Paragon's staff. When Paragon folded, workers were offered the option of retrenchment, or taking up employment with the new operator. Unfortunately, those staff who chose to move to South Pacific and Moore will now only be offered a redundancy package of three weeks' pay, representing the year during which South Pacific ran operations. Some may also take up the opportunity to relocate to Melbourne for work with other company operations, however this is unlikely with only one worker we heard of considering this option.

This has put many of the workers into precarious and unpredictable financial circumstances.

Outreach presentations were made by MoneyHelp, Back to Work, local TAFE training and skills recognition providers, Centrelink and the local council.

Presentations were followed by a mini-expo of stalls and one to one opportunities to speak to providers. MoneyHelp took part in all these activities as well, handing out wallet cards, flyers and booklets to interested workers, most of whom were Victorian residents.

K-mart – Two of K-mart's large warehousing facilities will be retrenching approximately 170 staff. MoneyHelp has made a series of outreach presentations at both their Laverton and Braeside sites. We are continuing our support by way of a series of lunch time session at both sites, allowing workers to book 10- 15 mins of one to one time to discuss their needs and make an arrangement to speak to a MoneyHelp financial counsellor. Three of these sessions have already been conducted at Laverton, with a further three occurring at Braeside this week.

New Faces: We are pleased to announce one new staff member to join Consumer Action's MoneyHelp team.

Bronny Kernaghan started on 21 March as a locum financial counsellor contracted by Kildonan Uniting Care for one day a week. Bronny is currently working with Kildonan and has had many years of experience working as a financial counsellor in Gippsland.

**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

Dell, the ACCC and Unfair Contract Terms

Following on from our [Dell complaint](#) the CEOs met with the ACCC about the enforceable undertaking it had obtained from Dell. We asked how this and other enforceable undertakings are monitored and enforced, and more generally about the ACCC's enforcement activity in relation to misleading conduct and unfair contract terms.

Victorian distribution businesses appeal against AER determination to the Australian Competition Tribunal

Consumer Action, together with CUAC, sought leave to intervene in the Victorian distribution businesses appeal against the AER determination to the Australian competition Tribunal, however we were unable to proceed with our intervention, after lengthy consultations with our legal team where it became clear that the legal, resource and information barriers we were facing were insurmountable.

This was exacerbated by the fact that several aspects of the proceedings are being fought on information over which the distributors claim “commercial confidentiality”, meaning we are not in a position to assess or challenge their claims properly.

Our view is that the odds are heavily stacked against consumers in the review process established under the national electricity laws.

Consumer Action continues to support the Victorian Government's intervention in this case. We believe it is essential that a view other than those of the electricity distributors be heard in this matter.

We are preparing a report outlining the barriers to consumer involvement in the appeals process.

7. ODD SPOT

Millionaires are just like us: Or are they? Of course they're not! Here's how one Lamborghini owner in China protested unsatisfactory servicing of his car on World Consumer Rights Day.

A hex on your taxes: More bad news for Romanian witches. A month after authorities began taxing them, the country's soothsayers and fortune tellers are cursing a new bill that threatens fines or even jail if their predictions don't come true.

Three Cheesus Pizza: Has the son of God appeared on a Brisbane pizza ... I'll confess, it looks more like the Phantom of the Opera to me. Any thoughts?

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 by one consumer who wanted to share his experience of staying in a mortgage he wasn't happy with in order to avoid the exit fees. A situation new home buyers will no longer find themselves in.

Dear Consumer Action

On the 16th March my wife and I finally refinanced a \$712,000 loan with RHG Mortgage Corporation Ltd after waiting for the period in which termination penalties applied to expire.

Like others, we considered these termination fees to be excessive and also considered the interest rates we had been charged for some years had also been excessive. While the NAB Business Market – Flexible Rate Loan we have replaced the RHG loan with is not exactly cheap, we are still likely to save about \$15,000 a year.

We thought RHG would probably stall on processing the termination of the loan but actually they were reasonably prompt. However, their final parting gesture was classic RHG. I rang them up and asked them to send me details of how they arrived at their final settlement figure. The response was that I would have to wait for at least a further 30 days until they sent out my next statement. However, after telling them in no uncertain terms what I thought of their excessive fees, lousy service and demanding to speak to the Manager etc, eventually the person I was speaking to reluctantly disclosed over the phone how the settlement amount was arrived at and agreed that they would send me a settlement statement with seven days.

Keep up your great work.

[name withheld]

8. CALC IN THE MEDIA

Credit Check Crackdown

The Sydney Morning Herald, 30 March 2011, Lesley Parker

The payment history of consumers will be revealed in-depth once new legislation is passed.

Policies exclude nuclear accidents

The Sydney Morning Herald, 18 March 2011, Andrew Heasley

As thousands of Australians cancel travel plans to avoid or flee the escalating nuclear disaster in Japan, they could be in for a rude shock from their travel insurers.

Banks reveal ignorance over fees, groups

The Age, 10 March 2011, Chris Zappone

Consumer activists say recent comments from Westpac and ANZ suggest they don't know the underlying costs for overdrawn accounts - potentially embarrassing admissions as the banks fight a class action suit on unfair fees.

Private car park 'fine' notices may be unlawful

The Sunday Age, 6 March 2011, Deborah Gough

Tens of thousands of motorists have been issued with potentially unlawful parking "fines" by private operators of car parks at shopping centres and other locations across Melbourne.

Insurance products need to evolve to cover all Australians

Online Opinion, 4 March 2011, Nicole Rich

Consumer Action's Director of Policy and Campaigns opines on the state of our insurance industry.

Banks will have to tell customers real cost of only paying minimum monthly balance on credit card debt

The Courier-Mail, 4 March 2011, Paddy Hintz

Banks could be forced to spell out how much it really costs if customers only pay the minimum monthly balance on their credit card debt. Consumer Action's Nicole Rich discusses CHOICE's suite of suggested reforms to the banking system.

Lender rates are of little interest

Herald Sun, 28 February 2011, Karina Barrymore

Consumer Action's Eileen Kerrigan comments on the fact that many home loan customers appear to have simply switched off from the debate.

Troubled bookstores change gift voucher rules

ABC Online, 18 February 2010

Consumer Action Law Centre spokeswoman Eileen Kerrigan comments on Borders and Angus & Robertson refusing to honour the face value of gift vouchers.

Insurers set to simplify cover

The Australian, 4 February 2011, Siobhain Ryan

Assistant Treasurer Bill Shorten has committed to introducing a standard definition of floods in insurance policies, flagged federal support for flood mapping and warned he may bring insurers under the national consumer law.

Eileen Kerrigan

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