

CONSUMER *INTER*ACTION

ISSUE 3/2010

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Welcome to the third edition of **Consumer InterAction**.

Once again, it's been a busy couple of months for the Centre with more consumer law changes on the way from Canberra. Consumer rights are also front and centre in the utilities sector as new laws are being drafted for Australian energy consumers and Victorian water users. Other hot issues since our last edition include insurance law reforms and the ongoing smart meter rollout here in Victoria, as well as the problems facing large retailer Clive Peeters.

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.

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1. HOT TOPICS

Federal Budget outcomes for consumers

The Federal Budget for 2010-11 was a consumer policy let-down. In fact, the Minister for Competition Policy and Consumer Affairs put out two media releases and produced a Fact Sheet on budget initiatives – all for his other portfolio, on small business – but could not produce any news for consumers.

Consumer Action does strongly support the one Budget initiative related to consumer issues - the ACCC will get \$5.3 million over five years (including \$0.6 million in the current year) to deliver guidance on, and enforce compliance with, the national unfair contract term provisions in the new Australian Consumer Law.

Without specific funding, we were concerned that the ACCC would not have the resources to fulfil this new and important function along with its existing functions. However, as with the specific funding allocated to the ACCC last year for unit pricing-related work, we will be watching closely to ensure action is, in fact, taken with these funds to uphold consumer rights under these important new laws.

We also support the Government's initiative to provide \$154.0 million over four years to increase the resources for legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services.

The biggest disappointment was the noticeable absence of any initiative to fulfil the Productivity Commission's recommendation in its 2008 review of Australia's consumer policy framework, that there be public funding for national consumer representation, consumer policy work and policy-related consumer research.

Extremely modest funding to the Consumers' Federation of Australia and to a research network could deliver on this recommendation, but rather than providing funding in last year's Budget, the Government chose to "consult" further by releasing an Issues Paper in May 2009. There has been no response to this consultation process. Instead, when this issue was raised at the National Consumer Congress in March this year, the new Minister invited people to discuss this important issue with him, as if it was the first time the matter had come up!

With the Government progressing other important recommendations from the Productivity Commission review, including a new national Australian Consumer Law, and with serious concessions being made in response to special pleadings from different industries (see the Policy & Campaigns section), the need for adequate representation of consumer interests has again been strongly highlighted.

More Consumer Law changes on the way

Stop the press – on 27 May the Federal Government introduced another piece of legislation to amend national consumer laws. This follows the two significant Australian Consumer Law Bills of the past year.

The new **Competition And Consumer Legislation Amendment Bill 2010** adopts the new name that the *Trade Practices Act* will take on once the second Australian Consumer Law passes the Parliament. It contains two sets of changes – one to deal with creeping acquisitions and the other to amend the current unconscionable conduct laws. The changes are not huge but, significantly for consumers, the current separation between the unconscionable conduct protections for consumers and for small businesses will be removed by combining them into one. There are pros and cons to this approach, so Consumer Action will be examining the proposals carefully.

In-Home Sales update

Since our last e-bulletin, the Senate Economics Committee has conducted and reported on its inquiry into the second Australian Consumer Law Bill.

The Committee threw its weight behind some of the most important consumer issues in the Bill. Most noticeably, the Committee recognised that high-pressure selling to consumers in their homes is a significant problem. Consumer Action strongly supports the Committee's recommendation to tighten up what the Bill considers is an 'unsolicited' consumer agreement, so that sellers can't get around the laws protecting consumers in telemarketing and door-to-door situations by getting a consumer to "solicit" an invitation from the seller to market to the consumer in their home, such as when consumers provide their contact details in a shopping centre or supermarket. We have seen major problems with high-pressure sales tactics used unfairly to sell expensive products, often sold with finance, in people's homes.

We are also pleased that the Committee saw through self-serving arguments against the direct sales rules more generally. The Committee has backed the rules, including a 6pm limit on weeknights for telemarketing and door to door sales and a 10 business days cooling off period for consumers in these sales situations.

More on the Senate inquiry in [Policy and Campaigns](#).

2. Wins (and other news)

Wins:

Susie* against Australian National Car Parks Pty Ltd and Dun and Bradstreet

In November 2009, Susie received a letter of demand from Australian National Car Parks Pty Ltd in which ANCP claimed \$88.00 (the debt) from Susie for alleged "liquidated damages". ANCP claimed they had suffered these damages when Susie allegedly breached a private car parking contract in 2007.

Susie denied being indebted to ANCP for \$88.00. On 15 January 2010 Dun and Bradstreet (on behalf of ANCP) sent a letter of demand to Susie for \$163.00 demanding she make the payment in 7 days. Susie's partner contacted Dun and Bradstreet and their representative was very rude and uttered words to the effect that "I know when someone's stalling off and you're one of those people", and also "You can go ahead and fight all you like, we will go ahead and get our money and you will get a bad credit rating".

We sent a letter to Dun and Bradstreet on behalf of Susie, denying she owed \$88.00 for various reasons, including that the terms of the purported contract were unfair and the amount demanded is an unlawful penalty (see our [Fact Sheet](#)).

However, in this case Susie had also reported that a threat had been made that Susie's credit rating would be affected if she didn't pay. We informed Dun and Bradstreet that we did not think ANCP could use the credit reporting system in Australia because it cannot be regarded as a credit provider under the *Privacy Act*. Accordingly, we alleged that claims that Susie's credit rating would be affected were misleading and deceptive. We also complained about this conduct to ASIC and the ACCC (to no avail).

Dun and Bradstreet agreed to close Susie’s “account” with ANCP and not pursue the matter further. They also confirmed their commitment to comply to the relevant provisions of the *Fair Trading Act* and *Privacy Act* and undertook to use our letter and the concerns raised for further coaching and development purposes.

* **Not her real name**

Bank fees class action

We are supportive of Maurice Blackburn’s proposed class actions against Australia’s major banks for excessive penalty fees charged to their customers. We encourage consumers to [read more](#) about the legal actions if they are considering joining up. You can also read [our report](#) that kicked off the campaign back in 2004!

3. POLICY AND CAMPAIGNS

Australian Consumer Law

The Australian Consumer Law reforms are meant to generate benefits through being national, uniform laws that apply economy-wide – with no carve-outs to accommodate industry pleadings for special treatment.

This means that there is no justification for exemptions from the law for certain industries.

Unfortunately, we have seen some industries successfully lobby for exemptions from the law. This is particularly the case with the new national consumer guarantees law.

The second Australian Consumer Law Bill contains the new guarantees law, which will replace the different State and Territory laws that imply certain conditions and warranties into consumer sales – such as that a consumer product will be of ‘merchantable quality’ or fit for its purpose, or that services will be provided with ‘due care and skill’ – with a single set of clearer provisions.

The current laws all have little differences, it is hard for traders and consumers to understand exactly what happens if an implied term is breached, and it is hard for consumers to enforce their rights to repairs, exchanges or refunds.

Consumer Action supports the new national consumer guarantees law, and we believe it should apply to all consumer products and services.

The Senate Economics Committee recently reported on its inquiry into the second Australian Consumer Law Bill. The Committee rejected the pleas of architects and engineers to be exempted from the guarantees regime, and also found that any exemption for telecommunications should be treated with caution. We also strongly believe that there is no case for treating energy or insurance differently from other services. The exemptions for these industries should be dumped.

We have also always said that just re-writing, on paper, what consumer rights are in this area will not do much to bring about changes in practice. Research shows that most consumers and traders are not aware of the laws around rights to a refund, repair or exchange and, even where traders are aware, they still do not comply with the law. If

people aren't aware of their rights to a repair or refund or can't enforce them, the laws don't mean much.

We think it is important that the Committee agreed that the new guarantee laws alone are not enough. The Committee made a number of recommendations to support consumers to exercise their new guarantee rights.

There were many other issues that were raised with the Committee but are simply not discussed in its report. The Government chose not to undertake an exposure draft consultation process on the Bill as originally intended, meaning that many details had not been addressed before the Senate inquiry and this left the Committee with a huge range of issues to confront that it simply could not address. We believe that the Government still has some work to do to deal with all of these issues. For consumers, the top priorities include improving the protections from harassment and coercion and requiring consumer contracts to be clear and transparent.

For those wishing to read the Bill, its full title is the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010.

Meanwhile, the Victorian Parliament this week passed amendments to the Victorian unfair contract terms law to align it with the new national (although weaker) unfair contract terms law. The new national provisions were in the first tranche of the Australian Consumer Law legislation and are expected to come into force on 1 July.

Insurance Law Reforms

The Federal Government certainly has its hands full with insurance issues at the moment.

The *Insurance Contracts Act* governs dealings between insurers and consumers in Australia and was reviewed between 2003 and 2005. Five years on, a Bill to implement some of the Review Panel's recommendations has been introduced into Federal Parliament and was supported by the Opposition in debate last week, although it has not yet passed the lower house.

The Bill implements only a selection of the Review Panel's recommendations and its small number of positive reforms for consumers are strongly outweighed by proposals that would largely benefit insurers. An exposure draft version of the Bill released by the former Government in 2007 was fairer to consumers but several consumer-friendly proposals have been removed in the current Bill. Further consultation on the Bill is urgently needed and Consumer Action has joined a number of other organisations in writing to Federal MPs with our concerns.

Meanwhile, the Government has now received submissions on its Options Paper on addressing unfair terms in insurance contracts. Regular readers will know that the Federal Government inexplicably failed to fix the technicality in the *Insurance Contracts Act* that has meant insurance contracts are exempted from the new national unfair contract terms law that applies to all other consumer contracts. This is despite the Productivity Commission warning against carve-outs for any specific industry in its 2008 report recommending a national consumer law, and the Senate Economics Committee recommending that this insurance loophole be fixed.

We strongly advocate that the simplest and best option be taken – remove the exemption. While we wait for the Government’s response, interested readers can find the submissions to the Options Paper on the old [Insurance Contracts Act review website](#), which also contains information on the review discussed earlier.

Finally, the Government has indicated that it will look into extending its proposed ban on commissions for financial advisers to risk insurance – it had initially said insurance brokers would not be covered by the new rules. Consumer Action believes that risk insurance should not be treated differently to other financial products and services – commissions create a conflict and can influence a broker’s advice, whether it is investment or insurance product related.

4. STANDARDS

International standards

It has been a busy time for our consumer representatives who sit on international standards development committees. Our representatives on the working groups for the international Social Responsibility and Sunscreens Testing standards have recently returned from trips overseas, as have our representatives on the International Standardisation Organisation (ISO)’s broader-themed working groups on Consumer Policy and on Societal and Consumer Issues. It is great to have Australian consumer representation on these international forums.

More generally we have had our busiest period for the financial year with many domestic standards development committees also meeting. A big thanks goes out to all our standards consumers representatives who have volunteered their time to take on these important roles.

Do you have an interest in representing consumers and know something about household appliances?

We are looking for a new representative to represent the interests of consumers on the Standards Australia **Safety of Household Electrical Appliances** committee. Representatives volunteer their time but are reimbursed for travel and other expenses. If you’re interested, please contact our [Standards Coordinator](#).

5. MONEYHELP

Criteria

The criteria for accessing the MoneyHelp financial counselling service have been expanded to include clients who are suffering mortgage and/or rental stress as well as those more generally affected by the financial downturn.

Site Visits:

In the past fortnight, MoneyHelp has done outreach at Clayton – CSIRO (25 retrenched) and Bayswater – AFCO Foam (49 retrenched).

In addition, last week our Industry Liaison Officer presented to Centrelink Social Workers in Victoria and one of our financial counsellors, Heather Brown, presented at the Victorian annual professional development day for Financial Information Service Officers.

Industry Liaison Officer

Megan Lewis' last day with the Centre was on Thursday. Applications for her replacement close on 2 June 2010 so if you know anyone who might be interested, please direct them to the [job description](#).

On the phones

Client battles car repossession: This client is a construction worker who was laid off for around six months and although he had just regained employment, he had fallen into arrears with his car loan and his creditor had a tribunal hearing listed to get repossession of the car. The car loan was the client's only debt and he was very concerned to keep his car as he had already paid a significant amount of the loan and the value of the car was worth more than the amount left outstanding.

The financial counsellor ascertained details of the client's income and expenditure and formed a preliminary view that the client could manage to pay the arrears if the loan contract were extended. The financial counsellor then worked together with one of the Consumer Action's solicitors who agreed to attend the tribunal hearing to assist the client get a stay of any repossession order until the Financial Ombudsman (FOS) considered the client's application for the loan to be varied on hardship grounds.

The financial counsellor then got the client to send in further information which confirmed the preliminary assessment that it would be possible to pay the arrears if the loan were extended for six months and the repayments increased by \$65 per month.

The hearing of the application for the repossession order is listed for a few days' time and the application to FOS will probably not be heard for a few weeks.

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

National Energy Customer Framework Laws: The Federal and State Energy Ministers will meet to finalise new national energy consumer laws in June. Consumer Action is concerned the proposed penalties in the new laws don't offer any real deterrent to electricity companies breaching consumer protection laws. For more information, read our [media release](#).

Victorian Water Laws: The State Government is proceeding with its plans to

harmonise Victoria's water laws over the coming months. Consumer Action and welfare groups are concerned some of the protections currently enjoyed by metropolitan water customers will be lost and they'll be subject to some of the same draconian penalties currently used by regional water companies. See our [media release](#) on this issue.

Smart Meters: The Victorian government announced a fortnight ago that it had miscalculated and the cost of rolling out its fancy new smart meters was likely to blow out by an additional \$500 million. The government is continuing to assess what benefits (if any) are likely to flow on to consumers from the electricity companies as a result of the new metering system.

Regulation of the Legal Profession: Our co-CEO, Carolyn Bond, is on a national consultation group that is considering proposed national laws to regulate, and deal with complaints against, lawyers. Government is seeking comments on the draft Bill and there will be a web page established shortly that seeks consumer input. If you would like further information, or you have any thoughts or experiences to contribute, you can email [Carolyn](#).

7. ODD SPOT

Productivity Commission Reports: Consumer Action often refers to the Productivity Commission's seminal 2008 report on Australia's consumer policy framework, but not everyone agrees that the Commission's reports are useful.

iHobo: For the iPhone user who has everything.

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 offering comes from the National Australia Bank.

The National Consumer Credit Protection (NCCP) Act commences on 1 July 2010, and with its introduction comes some changes to the mortgage broker industry, including licensing of mortgage brokers. National Australia Bank shares its thoughts on what this means for the industry and consumers.

Licensing will bring about an overdue change in the industry and it is an important step toward establishing mortgage brokers as a recognised advice profession. ASIC monitoring and licensing creates an "advice framework" that mortgage brokers will need to adhere to. This ensures set standards of product knowledge, client interactions and dispute resolution, similar to the professional conduct standards required by other advice professions such as accountants.

Regulation gives consumers extra assurance that they are better protected if something goes wrong as they will have recourse set within a prescribed legal framework.

NAB supports the remuneration disclosure requirements under the NCCP as it ensures consumers are aware of the influence of a broker's remuneration structure, such as commissions, may have on the advice they receive. We are aware that volume requirements exist in the industry. Our view is that any remuneration models that incorporate volume requirements on targets should be avoided.

A professional mortgage broker should not have any lender influenced formulas that distract them from acting in their clients' best interests. Volume based remuneration arrangements will erode consumer confidence and NAB has deliberately avoided such "schemes" in favour of quality criteria. NAB uses application conversion, portfolio delinquency and education as key criteria for quality. A mortgage broker's remuneration is scaled based on the level of quality.

The NAB philosophy is underpinned by becoming the preferred partner for quality advice focussed business.

8. CALC IN THE MEDIA

[Dodgy doorknockers blamed as hundreds of complaints to energy watchdog](#)

Herald Sun, 28 May 2010, Karen Collier

Households are being conned into switching to new electricity and gas deals with higher charges.

[Power cuts for hard-up families under new energy laws](#)

The Australian, 27 May 2010, Natasha Bitá

Power companies will be permitted to disconnect customers too poor to pay their bills, under the first national consumer energy law to be signed off by the states and territories next month.

[ANZ debt collector investigated for Facebook spying](#)

ABC Radio PM, 26 May 2010, Sarah Gerathy

The ANZ bank has launched an investigation after it discovered some of its staff had been secretly using Facebook to gather customers' information. It's alleged that someone in the bank's debt collection team set up a fake Facebook profile.

[Caution needed on commission ban](#)

InsuranceNews, 24 May 2010

The Federal Government's announcement that it is considering extending its ban on commissions to include the risk insurance industry has reignited debate on the likely effects of such a change.

[Customers could be charged interest on overdue water bills](#)

Herald Sun, 17 May 2010, Karen Collier

Households could be hit with new fees for paying soaring water bills late.

The insidious parent trap

The Age, 5 May 2010, Lesley Parker

Consumer Action's co-CEO Carolyn Bond discusses the high pressure sales tactics used to sell educational software as regulators warn parents about the misleading methods of some door-to-door sellers

Consumer setback feared

The Age, 30 April 2010, Ari Sharp

Victorian consumers could face a return to previously outlawed debt collection tactics as part of a move to introduce a single set of consumer protection laws.