

# CONSUMER *INTER*ACTION

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Welcome to the April/May edition of **CONSUMER INTERACTION**.

As always, this year feels as though it is flying by at a rate of knots and at Consumer Action things are no different. We have been busy on reform of both the insurance and credit card varieties and are also closely watching movement in the payday lending arena. You can read more about these issues in our [Policy and Campaigns](#) section below.

After many years of advocating for consumers with both Consumer Action and its predecessor organisation, Consumer Law Centre Victoria, Nicole Rich is moving to a position with Victoria Legal Aid. Whilst sad to see Nicole leave, we are delighted to have Gerard Brody aboard to pick up the baton and continue to lead our Policy and Campaigns team. You can find out more about Gerard in our [Policy and Campaigns](#) section.

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...

1. [HOT TOPICS](#)
2. [WINS \(AND OTHER NEWS\)](#)
3. [POLICY AND CAMPAIGNS](#)
4. [MONEY HELP](#)
5. [ODD SPOT](#)
6. [YOUR VIEWS](#)

## 7. CALC IN THE MEDIA

### 1. HOT TOPICS

**VCAT finds Motor Finance Wizard's practices 'unfair' and 'seriously flawed':** On 12 May 2011, the Victorian Civil and Administrative Tribunal (VCAT) ordered Motor Finance Wizard to cancel a car lease contract with a vulnerable customer, refund her money and clear her credit report. The decision, made after Consumer Action Law Centre issued legal proceedings against one of the Motor Finance Wizard group of companies, DGTV1 Pty Ltd, on behalf of the customer, formally found that the company's contract was unjust, its conduct was misleading or deceptive and unconscionable, the finalisation amount was a penalty and therefore unenforceable and its entire leasing process was seriously flawed.

Consumer Action receives numerous consumer complaints about Motor Finance Wizard and the unfair practices used against the customer in this case seem to be repeat conduct. There is now a serious question whether the company should be granted the credit licence it requires to continue trading.

The Federal Government's framework for consumer lending, leasing and broking requires ASIC to assess certain matters before it may grant a credit licence, including whether it has any reason to believe that the licence applicant is likely to contravene the consumer credit laws or to believe that the person is not a fit and proper person. This case was brought in VCAT under the former State-based consumer lending laws (and general fair trading laws), but the relevant parts of the law remain similar or the same under the new national laws.

This decision clearly found that the company's entire leasing process should be redesigned and that it engaged in practices contrary to the consumer credit laws which are there to protect consumers from this kind of sharp practice. Our question is - if this company's leasing process is so flawed and contrary to consumer credit law, should they really be granted a licence which will allow them to keep leasing?

### 2. WINS (AND OTHER NEWS)

#### **\*Sharon v Motor Finance Wizard**

LEGAL TRIBUNAL FINDS MOTOR FINANCE WIZARD'S PRACTICES 'UNFAIR' AND 'SERIOUSLY FLAWED'

First Big Credit Licensing Decision Looms For ASIC.

Motor car dealer and financier Motor Finance Wizard (MFW) has been ordered to cancel a car lease contract with a vulnerable customer, refund her money and clear her credit report.

The legal decision, made after Consumer Action Law Centre issued legal proceedings against one of the Motor Finance Wizard group of companies, DGTV1 Pty Ltd, on behalf of the customer, formally found that MFW's contract was unjust, its conduct was misleading and deceptive and unconscionable, and its entire leasing process was seriously flawed.

**Saving to client:** \$2,000

**\*Martin v Edufin Pty Ltd**

Low-income client entered into a contract to lease a computer and educational software from Educational Finance Company Pty Ltd. He says he was inebriated at the time and had very little recollection of what transpired when he entered into the contract.

The client fell into difficulties in paying the loan early on. He stopped paying after making sporadic payments totalling \$1,395. Edufin Pty Ltd terminated the contract for non-payment and sued him in the Magistrates Court for \$13,444.76. In response, we made a complaint to FOS and had the proceedings in the Magistrates Court stayed. The FOS complaint raised a number of technical issues relating to contact sales provisions of the Fair Trading Act 1999 (Vic) and failure to comply with various aspects of the credit legislation on the basis that the contract was a loan and not a lease. We also raised issues of unconscionable conduct given our client's inability to understand what was occurring.

Astoundingly, in this case, at the time the contract was entered into the Henderson Poverty Line allowed \$3300.18 per month for non-housing costs. In this case, Edufin allowed \$1250 per month for non-housing costs, without any assessment of real expenditure.

Following a conciliation conference at FOS, Edufin agreed to waive the full amount it was seeking meaning a saving to our client of \$13,444.76

*\*Not their real names*

## 3. POLICY AND CAMPAIGNS

**Credit Card Reform:** On 25 May, CALC Co-CEO Carolyn Bond gave evidence to the House of Representatives Standing Committee on Economics in relation to the Government's proposed amendments to credit card regulation. These reforms would (among other things) prohibit lenders from sending unsolicited offers to increase a customer's credit card limit, unless a customer consents to receive them.

Consumer Action wholeheartedly supports the prohibition of unsolicited credit limit increase offers. However, the detail of what qualifies as 'consent' (which will be set out in regulations that are yet to be drafted) may determine whether this reform succeeds or fails. In our view, the regulations must closely define how lenders can seek consent, allow customers to easily withdraw it at any time, and ensure that consent automatically lapses after a certain period of time.

Consumer Action first commented on these proposed amendments in a joint submission in March with Choice and Consumer Credit Legal Centre NSW.

**Insurance reform:** On 13 May, Consumer Action and a number of other organisations made a joint submission to the Federal Government’s Reforming Flood Insurance: Clearing the Waters consultation paper. The consultation paper includes a proposed standard definition of flood, proposed insurance policy key facts sheets and a discussion of time limits for claims handling and Centrepay processing of payments. Consumer Action broadly supports each of these proposals.

**Payday lending:** Consumer Action heard with interest the news last week that NSW would be extending their 48% comprehensive interest rate cap, noting that it had ‘the best protection of any jurisdiction in the nation’. The NSW Government also pointed out that the cap would remain until “appropriate protection is in place at a federal level”.

Treasury is still considering the regulatory options for high-cost, short terms loans to be implemented in Phase 2 of the national credit reforms. Consumer Action, along with our consumer colleagues, are continuing to advocate strongly for a national 48% cap.

Consumer Action is on the verge of releasing a set of case studies that examine how effective responsible lending provisions have proven at protecting consumers from predatory lending. Stay tuned!

**Gerard Brody** starts in mid June as our new Director Policy and Campaigns. Prior to a stint as the Senior Manager of the Financial Inclusion unit with the Brotherhood of St Laurence, Gerard was the acting Director of Policy and Campaigns at Consumer Action while **Nicole Rich** completed her fellowship in the USA. We are delighted to have him back and look forward to furthering our advocacy work with him.

**Eileen Kerrigan** sadly decided to leave Melbourne for Sydney (just in time to avoid a wintry May) so we are excited to announce that **Daniel Simpson** will be commencing as our new Media and Communications Officer. Daniel previously worked in the electorate office for the former minister of Consumer Affairs in Victoria so has a solid grounding in many of the issues Consumer Action takes on.

## 4. 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:**

Our intrepid Liaison Officer visited **Telstra** in Moe, **Salmat** in Geelong, **La Trobe** in Beechworth and **Thales** in Bendigo.

She also provided some very informative sessions to the **Victorian Public Tenants Association** and the **Community Housing Federation of Victoria**. Both organisations were keen to learn how they could advocate on behalf of their tenants and co-tenants.

A number of councils have also expressed interest in working with MoneyHelp in relation to residents who are in arrears with rate payments as a way of managing this process better.

**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**

## **5. ODD SPOT**

**Trader in trouble:** We received a call to our advice line recently from a fencer who had been forced to change his business name by a large pharmaceutical company...can't imagine why...



**Are you a Robot?** In recent weeks, CALC has been asked to comment on new payment systems such as Visa Paywave and [Coles Fast Pay](#). Consumers swipe their card past a scanner and the transaction is complete. Convenience is touted as the biggest benefit but we were a bit stunned as to how Visa PayWave are promoting the product in ads. [Check out the ad on YouTube](#) and judge for yourself - is this is one of the most misjudged ad campaigns ever.

## 6. 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](#).

## 7. CALC IN THE MEDIA

### [Insurers on notice over flood definition and settling claims](#)

The Australian, 6 April 2011, Natasha Bitá and Jared Owens

Insurance companies will be forced to use a simpler definition of "flood" and to decide all claims within six months under legislative reforms proposed by the federal government yesterday.

### [Power bills to jump another \\$100 due to 'smart meters' bungle](#)

Herald Sun, 7 April 2011, Matt Johnston and Karen Collier

Soaring power bills as a result of the bungled "smart meters" program will cripple Aussie families already struggling to get by, homeowners say.

### [Power companies charging us for meters they've removed](#)

Herald Sun, 8 April 2011, Matt Johnston and Karen Collier

Victorians will keep paying for old electricity meters long after they have been replaced with "smart" meters.

### [Credit Lifeline Can be a Dead Weight](#)

Australian Financial Review, 4 April 2011, David Leermakers

Consumer Action Policy Officer, David Leermakers writes to the AFR in response to

Citigroup's response to proposed credit card reforms.

### Power price shock

Surging power prices are sparking a whole new industry to track electricity usage to make sure people are not being overcharged.

Search by the title at <http://au.todaytonight.yahoo.com/video>

### Consumers Fight Back

TT ran a segment on how consumers are being urged to take charge of their bills and make sure that companies are being held accountable for their mistakes. Consumer Action delivers the sage advice '*check your bills*'.

Search by the title at <http://au.todaytonight.yahoo.com/video>

### Consumer Action: How to deal with persistent salespeople

What to do when you are pressured by pushy sales people? They're persistent and can just end up making you very uncomfortable. ABC Central West talked to Consumer Action Law Centre about ways you can avoid pushy salespeople and what your rights are so if you can't avoid them- well then you can tell them to leave you alone.

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