

CONSUMER *INTER*ACTION

ISSUE 6/2010

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Welcome to the October/November edition of **CONSUMER *INTER*ACTION**.

It's been another eventful two months since our last edition and that trend looks set to continue with the election of a Coalition Government in Victoria over the weekend.

While we wait for the new Premier to announce his cabinet we're pleased to have some announcements of our own with the appointment of two new directors to the Consumer Action Board.

You can read more about both these issues in [Hot Topics](#).

Congratulations to our friends, Denis Nelthorpe and West Heidelberg CLC, on winning the Tim McCoy award for their Bulk Debt Negotiation project.

Finally, as this is our final edition for the year, we'd like to take this opportunity to wish all of you a safe and happy festive season. Please note the Consumer Action offices will be closing from 5.30pm on Thursday, 23 December and will re-open on Wednesday, 6 January.

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

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1. HOT TOPICS

New Board members

Peter Gartlan and Vic Marles have stepped up to replace departing directors Gerard Brown and Rob Acton.

Peter is currently the Acting Executive Officer of the Financial and Consumer Rights Council and has more than 20 years experience in financial counselling. Peter has held a number of board and council positions including being the current Treasurer of the CFA.

Vic is currently the CEO of Trust for Nature. Prior to that she was the first Legal Services Commissioner and CEO of the Legal Services Board. From 2002 to 2005 she was the Deputy Telecommunications Industry Ombudsman and from 1993 to 2002 worked as a lawyer with the Communications Law Centre. Vic has held a number of board and council positions.

Victorian Election Result

Following this weekend's election, Victorians have a new Liberal Nationals Coalition Government after 11 years of Labor. While consumer policy doesn't typically make it into the "top 10" in an election campaign, there were some important consumer issues that featured heavily in this election, particularly the rollout of electricity smart meters and cost of living pressures more generally. Consumer Action intends to continue its work in these areas and looks forward to working with the new Government on these important issues.

Consumer Action was also very pleased to see that both major parties released a reasonably comprehensive Consumer Policy before the election. You can read the Coalition's [consumer election policy](#) and Labor's [Ministerial Statement on Consumer Affairs](#) released just prior to the formal campaign. (We are unaware that the Victorian Greens released a consumer policy – but we are happy to be advised otherwise if wrong.)

The Coalition has committed to improved consumer and trader education as well as enforcement of consumer laws, which we welcome and look forward to seeing implemented. The new Government's policy also focuses on some specific problem areas

such as retirement villages and motor car trading. While we welcome the spotlight on these issues, we consider that the new Government could go further than it has currently committed and we'll be raising these concerns in the future.

Banking competition and mortgage early exit fees

It would have been hard to miss the public and media debate on banking competition over previous weeks.

One of the developments is a new Senate inquiry into banking competition, and Consumer Action will shortly be making a submission to the inquiry, – having made submissions to various other inquiries on this and related topics over the past 3 years. We also packaged together a summary of some of our views on reforms to improve banking competition in Australia that we have expressed over the past few years, and released this publicly earlier this month – [A Consumer Plan for Australian Banking](#) is on our website.

The issue of mortgage early exit fees has been discussed as part of the recent debate. Some readers will remember that Consumer Action took a test case against RHG on this issue in Dec 2008 which succeeded in drawing more attention to the problem. ASIC has also now released its final Guidance on how it intends to apply the new national consumer credit laws (the provision in the Code against unconscionable termination fees) and the new national unfair contract terms laws (preventing unfair terms, e.g. that penalise the consumer unfairly) to mortgage early exit fees. You can read ASIC's [Regulatory Guide](#) on their website. We made a [submission](#) to ASIC's consultation paper leading up to the Guidance.

2. WINS (AND OTHER NEWS)

Leanne* v GE, NAB and CBA

Leanne sought our help with several credit card debts she was struggling to maintain, owing GE \$6,042, NAB \$24,500 and CBA \$14,705. Leanne's only source of income was her Centrelink benefit and she had been suffering acute financial hardship for some time by trying to make the minimum payments. Leanne had written to all her creditors asking for the debts to be waived, without success.

However, when our legal practice looked into the matter, it became clear that the debt to CBA was her husband's, who had recently died leaving no assets. Once we alerted the CBA to that fact, it agreed to waive the debt.

We subsequently made complaints to the Financial Ombudsman Service alleging maladministration in respect of the GE and NAB debts, in that the lenders hadn't properly

assessed whether the credit should have been given to Leanne based on her capacity to repay the debt.

GE eventually waived the debt entirely following some negotiation. The NAB debt was referred to the bulk debt negotiation project and was also eventually waived.

Saving to client: approx. \$45,000

John Smith* v Rae Muir's Pty Ltd t/a The Good Guys and Flexirent Capital Pty Ltd

In May 2010, John went to The Good Guys and was signed up to a 36 month rental agreement with Flexirent for twelve items totalling \$3,980.

John suffers from bi-polar and he failed to understand that he was signing up to rent the products – believing instead that he had purchased the goods on a no interest loan scheme.

We wrote to The Good Guys and FlexiGroup Limited in July requesting that John's agreements with each of them be terminated because any reasonable observer would have realised that, due to his condition, John lacked the capacity to understand the nature and effect of the rental agreement.

The Good Guys agreed to let John return the goods and cancelled the sale agreement. Subsequently, the Flexirent agreement was also cancelled.

Saving to client: \$7,139.34

**Not their real names*

3. POLICY AND CAMPAIGNS

Credit Reporting

In late 2009 the Federal Government issued its formal Response to the Australian Law Reform Commission's recommendations on reforms to Australia's privacy laws, including the laws on credit reporting. It is now in the process of working towards implementing its proposed reforms, including through legislation.

We recently wrote to the Government raising our concerns about two issues relevant to the drafting of new credit reporting laws.

Pre-screening: The Government has said it will allow lenders to use “pre-screening” – that is, washing their marketing lists through credit reporting information before they send out their marketing material to targets of the marketing campaign. Lenders argue that this will make their marketing more responsible as they can exclude inappropriate borrowers. Consumer groups argue that this is in fact a form of using credit reporting information for marketing, allowing lenders to more accurately and specifically target their marketing materials and thus be more aggressive in each marketing campaign – leading to more, not less, borrowing.

The Government proposed to allow pre-screening but only based on negative information, that is, information about matters such as customer defaults. In our view, the legislation should make it clear that pre-screening must be based on one set of negative criteria only, in order to minimise its use in targeting consumers for specific marketing campaigns. Otherwise, lenders will be able to pick and choose the information they wish to use for pre-screening in each particular marketing campaign, encouraging its use for customer profiling and targeting and more aggressive direct marketing of credit, rather than the intended outcome of more responsible lending.

Serious Credit Infringements: This type of listing remains on a person’s credit report for 7 years, and can have a significant impact on an individual. However, the Government has said that the new law will continue to define a "serious credit infringement" based on the "opinion" of the lender as to whether the borrower's conduct indicates they don't intend to pay.

We believe that the legislation should more clearly define a "serious credit infringement", and should clarify that if it is later shown that the lender would have formed a different opinion if they had all the facts, then the listing should be removed.

For example, if the borrower doesn't respond to the lender's communication because the borrower is ill in hospital, it may be reasonable for the lender to list a "serious credit infringement", but once the facts are known the borrower should be able to have the listing removed.

Energy

3rd Asia Pacific Partnership

Earlier this month, Senior Energy Policy Officer Janine Rayner attended the [3rd Asia Pacific Partnership – Energy Regulatory and Market Development Forum](#) hosted by the Australian Government and which was attended by international delegates from countries including the USA, China, South Korea, Canada and New Zealand.

Presentations from each delegate focused on the policy objectives of clean energy and lower carbon energy markets, within the market and regulatory framework in each country.

Common issues were identified around how to connect intermittent generation to the grid, e.g. wind power (not as reliable, often in remote locations, requires investment in transmission); a subsequent need for more transmission planning; ageing infrastructure and a need for investment in replacing and expanding this; increasing demand; and a focus on electrification of the transport sector, ie electric cars.

While there are common themes, the differences in regulatory and market structures between nations will mean the way in which these are addressed will vary significantly.

Energy Marketing and Hardship

Consumer Action continues to work on policy relating to both high debt (energy and water) and energy marketing practices.

The Victorian Essential Services Commission is currently undertaking a study examining customer experiences of the hardship policies and practices of water businesses and energy retailers. The study will involve face to face interviews of up to one hour in length, and participants will receive a gratuity (\$50) payment for their time and input. Interviews will be conducted in regional Victoria and metropolitan Melbourne. Please contact our Senior Energy Policy Officer, Janine Rayner, at our office for further information or if you have any clients you think might be suitable/interested in participating.

Save the Cap

We continue to advocate strongly to save Australia's cap on the total cost of credit, so that no Australian has to pay back more than a usurious 48% per annum on a loan. Don't forget to "like" the Save the Cap Facebook page if you support the campaign.

We have been collecting numerous strong case studies illustrating the problem with high-cost short term lending and we have been encouraged by the strong response from financial counsellors and CLCs around the country when we have sought these.

We're continuing to search for good case studies that reflect the destructive nature of repeat borrowing, so remember to [contact us](#) if you come across clients that have a history of payday lending!

4. STANDARDS

New Consumer Representatives Needed

Our Standards Coordinator, Regina Godfredson, is looking to recruit consumer representatives for the following Standards Australia Committees that develop important safety standards for the community:

- EL-002 – Safety of Household Electrical Appliances
- Review of AS/NZS 4371 – Ceramic Tableware (which includes standards around safe levels of toxic elements in ceramics that can leach into food)

Consumers' Federation of Australia (CFA) representatives volunteer their time to ensure that consumer interests are met in the development of standards, and expenses are reimbursed based on set guidelines.

New Committee

A new committee on Consumer Project Management Systems was recently created by Standards Australia as an Australian mirror committee for the international standards committees on Product Recall and Consumer Product Safety.

This new committee will identify Australian interests in ISO (the International Organisation for Standardisation) developed standards, formulate the Australian position and communicate it internationally. The committee will also determine to what extent future international standards should be applied in the Australian context.

Existing CFA representative Robyn Easton will join the committee as a logical extension of her work on COPOLCO, which is the ISO's Committee on Consumer Policy, established to provide a channel for consumer views and interests to be communicated to the ISO on standards development matters.

"The inside story of consumer reps" – ISO Focus+ (October 2010)

For those who might be interested in knowing more about what serving on an international standards development committee involves, this is an [excellent article](#) looking at the experiences of five consumer representatives working on various standards committees.

The Australian representative mentioned is Robyn Easton. Robyn has extensive experience as a consumer advocate and has been active as a voluntary CFA representative on Standards Australia committees since 1994. She has served on numerous Standards committees and currently serves on four domestic Standards committees and two international Standards making forums. She is also involved in national bodies in relation to cosmetics and product safety.

Robyn is the Chair of Product Safety on ISO's COPOLCO (mentioned earlier) and has also been the consumer representative on ISO's TC 217 - Cosmetics since 2006. Her passion is

product safety and the safety of consumers.

For more information on any of these matters, please contact Regina Godfredson, Standards Coordinator, at standards@consumeraction.org.au.

5. 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.

Community Liaison:

During November, MoneyHelp visited the hardship team at ANZ bank to conduct a series of presentations. Danielle Archer, Brian Kerr and Heather Brown have spoken to around 50 team members charged with the task of assisting customers facing hardship.

Danielle reports that the awareness of the financial counselling sector and how it operates was pleasing to see. ANZ team members were instructed on what happens once a client is referred to financial counselling as well as the benefits of referring customers and the advantages of early intervention. Former MoneyHelp financial Counsellor, Marie Andrews is ANZ's Financial Counselling Liaison Officer and has provided all her team members with MoneyHelp materials.

Workplace Visits:

Benalla Spinners: Danielle will attend an Information Forum on Wednesday, 1 December 2010. The session is for employees looking at redundancy options and it is anticipated 26+ staff may attend, and staff were encouraged to bring their partners.

Thales, Bendigo: The company is looking to retrench 73 workers. Employee Information Sessions were held on the 25th and 26th November. The first day focused on out-placement and included opportunities such as resume writing, interview techniques etc. The second day provided an opportunity to deliver Employee Information Sessions (ERP).

Delphi Automotive: Danielle attended a worker information session in early November. The company has made the decision to move part of its Australian operations abroad and this will result in the closure of the production activities in Clayton South with 13 staff being retrenched (10 full time and 3 part time).

Bulk Debt Negotiation Outcomes:

Jane* and Westpac

Jane is an unemployed 36 year old who first contacted MoneyHelp in August 2010. She had a Westpac credit card that had been cancelled several years ago. She had not kept up regular payments and, as a result, she had incurred late and over the limit fees. MoneyHelp referred the client to the bulk debt negotiation project and Westpac waived the balance of the card.

Saving to client: \$1,800

Trevor* and St George

Trevor is a 48 year old truck driver receiving sickness benefits. He had a \$15,000 St George credit card debt and after we referred his case to the bulk debt negotiation project Westpac agreed to waive the balance of his card.

Saving to client: \$15,000

**Not their real names.*

**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

Legal Profession Reforms:

Attempts to reach consensus on how the legal profession should be regulated has proved a failure with the [latest blueprint](#) drawing [criticism](#) from every quarter.

Members of the judiciary have rejected the structure of the proposed Legal Services Board saying it gives the executive branch of government too much power, which they say would threaten the independence of the profession.

Consumer groups like CHOICE and Consumer Action do not agree that the independence of the profession is under threat (the same arguments have been made in the past over reforms that are now an accepted part of the legal landscape). Rather, we are concerned it gives too little weight to consumer interests and compares poorly to Britain's recently established Legal Services Ombudsman.

7. ODD SPOT

Open a saving account and take a chance to win raffle: This would be funnier if it wasn't actually true.

Gulag Solarium: Solzhenitsyn would be turning in his grave.

The Micro-Pig that grew into a 8st hog: Read the sad tale of Pigwig and remember, buyer beware (but of course misleading conduct is not on).

Punch Me Panda: Where can I get one of these ...

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 has recently had a string of bad experiences with direct debits.

I personally have generally had good experiences with direct debits, but this year I have had some very unpleasant experiences.

When we moved house and disconnected our service provided by Yarra Water, I was incorrectly direct debited for what was a wrong and rather large amount (a meter reader had incorrectly read the meter). This was despite me calling to notify them of the erroneous bill prior to it being due and being told to not worry. They finally refunded me the wrong amount and gave me a voucher for \$50 but the whole experience was very stressful on top of moving, and the fact that I was out of pocket during the time they took to organise the refund.

But the saga did not end there - we then had to change to South-East Water as they were the only provider in our new area, and they magically resurrected my bank account details from 2 years prior, an account that had been dormant since we had disconnected and changed to Yarra Water.

On the day that I went online to pay the water bill by credit card, the same amount was taken from my bank account by a direct debit that I had never authorized.

I was furious and asked them how they could just use bank details I had never authorized and unilaterally initiate a direct debit. They were apologetic, but of course I have since tried to avoid having any direct debits set up.

But, fool that I am, I joined a gym earlier this year and, now that I am trying to terminate the agreement, I am discovering that I have absolutely no control over the direct debit, despite currently engaging in a dispute with them to question the fairness of the terms of the contract and also the validity of the agreement.

I was advised by the bank that there is nothing I can do about it which is very concerning. It seems that while I thought I had more control over a credit card direct debit, this is not the case and that I should have set up a direct debit from my personal savings account.

Hopefully this latest matter gets resolved but I will never have another direct debit set up again if I can possibly help it.

Regards,
Tracy B.

Consumer Action is currently working on this issue of Direct Debits and will have more to say about this in the new year.

8. CALC IN THE MEDIA

Guesstimates from lala land

The Sydney Morning Herald, 22 November 2010, Simon Johanson

Consumer Action's Director of Policy and Campaigns comments in this article, which says property price advertising operates in a fantasy land of down-sized estimates.

Australia's big four banks not only have higher home loan rates, their deposit interest rates are miserly

The Courier-Mail, 13 November 2010, Alex Tilbury

The Big Four banks have now all stung home borrowers with hefty rate rises but, on the flipside, have also failed to please deposit holders.

Defiant act

7.30 Report, ABC TV, 10 November 2010, Greg Hoy

Nicole Rich, Director – Policy and Campaigns, discusses banking competition.

Banks ducking from political crossfire

Sydney Morning Herald, 9 November 2010, Stuart Washington

Consumer Action calls for disclosure of exit fees as easy-to-understand cash amounts and for early exit fees to only reflect costs directly related to early exits.

Banks brace for exit fee changes

ABC Online, 8 November 2010

The Consumer Action Law Centre's Director of Policy and Campaigns, Nicole Rich, comments on the banks' requests for a tax break on new liquidity rules.

Drowning in debt

Sydney Morning Herald, 1 November 2010, Gayle Bryant

It can be very easy to let your debts spin out of control and before you know it, find you're paying off your car loan with your credit card and asking your boss for an advance so you can still meet your mortgage payments. Is consolidating all your debts into one loan the answer to this conundrum?

Utilities' investment capped

The Australian, 30 October 2010, Natasha Bitá

Senior Energy Policy Officer, Janine Rayner, discusses the energy regulator's final decision on distribution pricing for the next five years.

Power profits surge as users hit

The Australian, 22 October 2010, Natasha Bitá

Nicole Rich, Director – Policy and Campaigns, discusses the mounting cost of electricity and power company profits.

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