

CONSUMER LAW CENTRE VICTORIA

e-bulletin no. 31, December 2004

EDITORIAL

Given this is the final *e-bulletin* of the year, it is appropriate to set out some of the key achievements of the Centre in 2004. These achievements include:

- The Centre undertook extensive research, policy development and advocacy in the consumer interest, presenting a voice for Australian consumers, particularly low-income consumers, to governments, regulators, businesses and other non-government organisations. The Centre also completed over 50 significant policy submissions and undertook over 200 interviews with major media outlets on consumer issues.
- The Centre delivered its free consumer legal practice, representing over 1000 low-income and vulnerable Victorians. In operation since 2001, the practice was originally funded for two years from a grant from the Consumer Credit Legal Service. The Centre received a funding grant from Consumer Affairs Victoria in both 2003/4 and 2004/5 to continue the legal practice. In 2004, the Centre also progressed its Outreach Project, expanding the legal practice to create access to justice for low-income rural and regional and Indigenous Victorians. The Outreach Project has been funded by the Collie Foundation and the William Buckland Foundation, both administered by ANZ Trustees' Charitable Services.
- The Centre launched two major research reports, *Unfair Fees: A report into penalty fees charged by Australian banks* and *Access to Energy and Water in Victoria - A research report*. The launch of both reports received extensive media coverage and will make an important contribution to the policy debate. The Centre also finalised a large project, funded by the National Electricity Code Administrator Advocacy Panel, investigating the need for, and proposed content of, a best practice electricity consumer retail code to operate in the National Electricity Market.
- The Centre completed the first phase of a national capacity building program to create informed consumer contributions in relation to the development of the National Electricity Market. The NEM Capacity Building Project was generously funded through a grant of \$143,000 from the National Electricity Code Administrator Advocacy Panel and was recently extended to the end of 2005 through a further grant of \$107,000.
- The Centre, in partnership with other leading consumer organisations and Consumer Affairs Victoria, organised the inaugural National Consumer Congress. The Centre also co-organised with the Consumer Credit Legal Service, in conjunction with industry ombudsman schemes, a two-day conference for consumer advocates on alternative dispute resolution.
- Centre Executive Director, Chris Field, was appointed as a Member of the Western Australian Economic Regulation Authority for a five-year term. The Authority is the independent regulator of the Western Australian gas, electricity, rail and water industries. Chris was also appointed an Adjunct Professor in the La Trobe University law school.
- The Centre employed an additional five staff and initiated a pilot clinical legal education program with La Trobe University law school that saw four students placed at the Centre for one day per week for 12 weeks.

Eliza Collier
Senior Solicitor

CONTENTS OF THIS EDITION

Editorial

1 1. What are we doing?

[1.1 Centre releases *Unfair Fees: A report into penalty fees charged by Australian banks*](#)

[1.2 Centre releases *Access to Energy and Water in Victoria report*](#)

[1.3 Call for a motor car industry ombudsman](#)

[1.4 Capacity building for the community sector in the National Electricity Market \(NEM\)](#)

[1.5 Harmonisation of electricity retail codes in the NEM](#)

[2. Representing the consumer interest in the development of product and service standards](#)

[3. Next Edition: February 2005](#)

1. What are we doing?

1.1 Centre releases *Unfair Fees: A report into penalty fees charged by Australian banks*

On Tuesday, 21 December 2004, the Centre launched its report, *Unfair Fees: A report into penalty fees charged by Australian banks* (the **Unfair Fees Report**).

The *Unfair Fees Report*, written by Nicole Rich, Supervising Solicitor at the Centre, is the first comprehensive examination of penalty fees conducted in Australia. Penalty fees are those fees charged to customers by banks for customer defaults, for example cheque and direct debit dishonour fees, account overdrawn fees and credit card late payment fees.

The *Unfair Fees Report* finds that penalty fees charged by Australian banks could be unlawful under the legal doctrine of penalties if they are out of all proportion, extravagant and exorbitant in comparison with banks' costs in processing customer defaults. It also finds that Australian banks are likely to be generating hundreds of millions of dollars in revenue each year from penalty fees and that competition in the banking market has not been effective in restraining penalty fees. In addition, penalty fees are more likely to be levied on low-income consumers, as they are the least able to avoid the fees.

The *Unfair Fees Report* makes several recommendations to tackle the problem of penalty fees, including that:

- Australian banks provide information to consumers about their costs in processing customer defaults and the income they earn from penalty fees;
- Australian banks offer a low-cost Basic Bank Account to low-income consumers that does not levy excessive default fees; and
- The Reserve Bank of Australia undertake a comprehensive study into penalty fees charged by Australian financial institutions.

The Centre thanks the Victorian Consumer Credit Fund for generously funding the *Unfair Fees Report*.

If you would like further information about the report, please contact Nicole Rich on (03) 9629 6300 or nicole@clcv.net.au.

1.2 Centre releases *Access to Energy and Water in Victoria report*

On Sunday, 21 November 2004, the Centre and the Consumer Utilities Advocacy Centre (**CUAC**) launched their joint report, *Access to Energy and Water in Victoria - A research report* (the **Energy and Water Report**).

The Energy and Water Report, written by Nicole Rich of the Centre and May Mauseth of CUAC, examines the experiences of Victorian households who have been disconnected from electricity, gas or water services. In particular, the Energy and Water Report focuses on the stories of those households who were disconnected after being unable to afford their energy or water bill. Over 30 Victorian households were interviewed for the report. The Centre concludes that all Victorians should have access to affordable electricity, gas and water services and that it is unacceptable for Victorian households to be disconnected from these essential services on the basis of incapacity to pay alone.

The Energy and Water Report recommends that a range of measures be introduced to stop Victorian households from being disconnected when they are in financial hardship, including:

- imposing an obligation on energy and water suppliers to adopt hardship policies for dealing with customers with payment problems, based on mandated minimum standards under a *Hardship Policy Guideline*;
- considering the introduction of a Basic Energy Account and Basic Water Account, quarantined from additional fees and charges, that guarantee energy or water services at an affordable price to Victorian households in financial hardship;
- Victorian government implementation of more comprehensive and state-wide retrofitting programs;
- forcing landlords to provide information to potential tenants about the likely costs of heating and cooling their rental property and running the appliances in the property;
- mandating minimum energy and water efficiency standards for private rental properties; and
- giving the Essential Services Commission the power to impose financial penalties directly on energy and water suppliers that breach their legal obligations.

The Energy and Water Report is available on our website www.clcv.net.au. The Centre thanks CUAC for generously funding the Energy and Water Report and the Energy and Water Ombudsman (Victoria) for their assistance with the project. If you would like further information about the report, please contact Nicole Rich on (03) 9629 6300 or nicole@clcv.net.au.

1.3 Call for a motor car industry ombudsman

The Centre has received an increasing number of complaints in relation to the conduct of motor car traders over the last 12 months. In response, the Centre is calling for an independent industry ombudsman to resolve disputes concerning motor car traders and repairers. There has been significant public interest in the Centre's campaign, with media coverage focussing on the inappropriate and often illegal conduct engaged in by some traders.

In addition, Anna Stewart, together with Denis Nelthorpe, representing the Consumers' Federation Australia, met with Neil Pullen MLA as part of a review of the *Motor Car Traders Act 1986* (Vic) (the **Act**) to discuss the Centre's views on the need for an alternative dispute resolution scheme for the motor car trading industry.

The Centre was subsequently commissioned by the Royal Automobile Club of Victoria (**RACV**) to document the difficulties faced by consumers when purchasing a new or used car from a motor car trader. The report titled, *Buying a Car: Pitfalls for Consumers* (the **Car Report**) was prepared with the assistance of the Consumer Credit Legal Service, Consumer Affairs (Mallee) Mildura, Peninsula Community Legal Centre and Anglicare Gippsland, effectively using valuable networks created through our Outreach Project in rural and regional Victoria.

The Car Report identified systemic problems experienced by consumers when purchasing new or used cars from motor car traders including misleading and deceptive conduct, unconscionable conduct, harassment and coercion, problems with car and finance insurance and lack of consumer awareness of contractual rights such as cooling-off rights and statutory

warranties. The Car Report also highlighted the difficulties for resource-constrained community agencies in resolving these complaints, which are often extremely time and labour intensive.

The Car Report made a number of recommendations in the context of the review of the Act including extending the cooling-off period to new motor cars, developing a standard form contract for motor car sales that complies with the unfair contract term provisions in Part 2B of the *Fair Trading Act 1999* (Vic) and the inclusion of a cancellation schedule with contacts for the sale of new and used motor cars.

The Car Report is available on our website www.clcv.net.au. If you would like further information, please contact Margery Clark on (03) 9629 6300 or margery@clcv.net.au or Anna Stewart on (03) 0629 6300 or anna@clcv.net.au. In addition, the RACV are asking people to write to them with their car buying stories. Visit the RACV website at www.racv.com.au to submit your story.

1.4 Capacity building for the community sector in the National Electricity Market (NEM)

On 5 October 2004 the National Electricity Code Administrator Advocacy Panel (**Advocacy Panel**) agreed to fund, for a further 12 months until the end of 2005, the Centre's project to build the capacity of the community sector to participate in NEM policy and regulatory debates (**Capacity Building Project**).

In its second year, the Capacity Building Project will focus on engaging in direct advocacy and in facilitating collaborative community sector advocacy. The Project Coordinator will continue to deliver a quarterly newsletter and a training day in each NEM jurisdiction and coordinate communication among the NEM Network.

The NEM Network, formed as a result of the Capacity Building Project, is made up of advocates based in community organisations representing environment, social welfare and consumer interests. Currently the NEM Network is being used as a vehicle for the community sector nationally to communicate on issues surrounding Ministerial Council on Energy's (**MCE**) expansive market reforms. These reforms include transferring retail and distribution regulation to a national body and reconfiguring the mechanism for funding of energy market advocacy by community and business groups. Persons interested in participating in the NEM Network should contact Natasha Leigh on (03) 9629 6300 or natasha@clcv.net.au.

1.5 Harmonisation of electricity retail codes in the NEM

In November, the Centre completed a project investigating the need for, and proposed content of, a harmonised electricity retail consumer protection code to operate in the NEM (**Harmonisation Project**).

The Harmonisation Project was carried out on behalf of the Consumer Consultative Committee of the ACCC and was initiated on the basis of a shared view that all low volume energy consumers should enjoy the same high level of protection irrespective of their geographical location. There was also broad support for the principle that a harmonized framework might result in efficiencies and certainty for retailers leading to increased competition and better price and service outcomes for consumers and greater participation in the national energy market by consumers.

On 10 November 2004, the Centre delivered a submission to the MCE in response to section 6 (Industry Codes and Rules) of the MCE's National Framework for Electricity and Gas Distribution and Retail Issues Paper (**Submission**). The MCE proposes in the Issues Paper to develop a nationally consistent framework for retail and distribution of energy including developing a single consumer protection code (**Code**).

The Centre carried out extensive analysis of the consumer protection provisions currently operating in the NEM jurisdictions including Tasmania and compared these in a document

included as Annexure A to the Submission (**Comparison Document**). The Comparison Document includes an opinion as to the current best practice protections offered in each of the NEM Jurisdictions. The Submission recommends that the MCE make use of the Comparison Document to ensure that, if a single Code is formed, no diminution of consumer protections occurs in any jurisdiction. The Submission also identifies a number of instances where the current best practice protection identified in the Comparison Document is not, in the Centre's view, adequate and we propose that amendments to existing provisions or new protections should be developed.

The Submission and Comparison Document are available on the Centre's website. Questions regarding the Comparison Document and the development of the Code can be directed to Natasha Leigh on (03) 9629 6300 or natasha@clcv.net.au.

2. Representing the consumer interest in the development of product and service standards

The Centre, on behalf of the Consumers' Federation of Australia, place and support consumer representatives on Standards Australia committees. These representatives contribute to the development of Australian and International standards, which play a key role in consumer protection.

We are currently seeking consumer representatives for the following committees:

- • Quality of servicing gas appliances;
- • Residential property inspections;
- • Biodegradable and renewable automotive fuel;
- • Spa pools;
- • Protective helmets for vehicle users;
- • Receiving Antennas for radio and television;
- • Automotive tyres;
- • Mobility appliances for people with disabilities; and
- • Valves primarily for use in warm and hot water systems.

Consumer representatives attending Standards Australia committee meetings are entitled to have their travel expenses reimbursed through this project.

The following draft standards are also available for public comment:

- • Guidelines for the selection of quality management system consultants and use of their services (*DR 04518 CP*). *Comments by 28 Dec 2004*;
- • Household and similar electrical appliances - Safety - various parts including particular requirements for outdoor barbeques, frypans, vacuum cleaners, fabric steamers, insect cleaners, steam cleaners, clothes dryers, towel rails, humidifiers, toasters, grills, cooking ranges, electric blankets, and microwave ovens (*DR 04920 - DR 04934, DR 04936, and DR 04939 - DR 04943*). *Comments by 14 Jan 2005*;
- • Approval and test specification - Hand-held portable electric tools (*DR 04937 CP*). *Comments by 14 Jan 2005*;
- • Approval and test specification - Electrical equipment for spa and swimming pools (*DR 04935 P*). *Comments by 14 Jan 2005*; and
- • Amusement (*DR 04513*). *Comments by 31 Jan 2005*. Draft standards may be viewed at www.standards.com.au, via the 'Standards Development' link.

If you would like to make comment on any of the above draft standards, would like to join a committee, or simply require further information, please contact the Standards Coordinator, Angela Russell, on (03) 9629 6300 on Wednesdays and Thursdays, or angela@clcv.net.au.

3 Next Edition: February 2005

Our *e-bulletin* is designed to keep our stakeholders and other interested organisations and individuals up to date on the work of the Centre, including its policy planning. We welcome your comments on the contents of the *e-bulletin*. If you would like to be added to the Centre *e-bulletin* mailing list, please contact Jane Douglas (on jane@clcv.net.au or (03) 9629 6300).