

SOAP BOX SESSIONS

George:

Well for those of you who don't know, the soap box has been a deliberate opportunity that has been created for delegates to make a short presentation to the congress on the topic of their choice. They've been listening to everybody else bumping their gums for the last two days and they're going to raise a topic with a three to five minute time frame. Five minutes maximum and this is one occasion where I will have to be absolutely ruthless. They're going to give their presentation from up here, there are six of them and each one of the topics is quite different from the other. So would you welcome please Nick Mostacus from the Communications Law Centre in where? In Melbourne. Nick's going to talk about the consumer education and culturally and linguistically diverse consumers using the telecommunications industry as a case study. Nick.

Nick:

Thank you. The Communications Law Centre conducted a public education awareness campaign which was launched at the end of last year in December called Fairtel. And that project was funded by the PPA Consumer Trust. This Trust was established from regulatory action taken by the ACCC against some telecommunication companies for a practice known as slamming in the telecommunications industry, which basically involves door to door sales people misleading consumers into switching from one carrier to another. Out of that from those cases many consumers actually felt and were misled and incorrectly switched over to a carrier. Many of the vulnerable consumers involved in those cases which the ACCC took regulatory action included people from culturally and linguistically diverse backgrounds. So the campaign focused on the Fairtel campaign focused on a public education awareness campaign helping people choose to select internet, mobile and fixed line services.

Now in conducting the campaign the Communications Law Centre looked at what information is currently out there for consumers particularly people from non-English speaking backgrounds and found that there was pretty much very little information in languages other than English. Pretty much the telecommunications industry onwardsman only had information about a service but that's not very helpful considering that's when a consumer has got a problem. So it's not something that can prevent them from getting into trouble but it's once they've had a problem they can figure out what the service is. We also found that Telstra had, being the largest carrier, had a call centre with some of its representatives covering different languages. Now we, why do I raise this? I raise this because I feel that it's a big problem because there are a significant number of people in Australia that come from non-English speaking backgrounds. And it's particularly a problem because in the telecommunications area as discussed earlier it's something where even if you do have a good grasp of English it's difficult to understand the products and services out there. So for these people it's even more problematic and more important for them to address it. To give you some understanding of the level of problem, in 2001 the census data indicated that 27.4% of people were born overseas, 14% spoke of the whole population spoke another language and just under 500,000 indicated that they spoke English not well or not at all. And I think that's a conservative figure as well because people tend to be reluctant to indicate that they don't speak well.

Anyway, for Australia to overcome this problem that the Communications Law Centre felt may be useful would be to, we didn't have the funds to actually translate all their education material that we develop. So what we did being a community organization with limited funds was offer our information on our website, the Fairtel campaign website which is fairtel.org.au with a copyright free license for hopefully ethnic community organizations to use and not reinvent the wheel but use those materials and translate themselves. Now that was one strategy we felt a new type of approach in trying to overcome this issue but that still requires I think other organizations particularly government agencies to translate material.

Carriers often refer people to their TIS Translating and Information Interpreting Service but that is not an appropriate solution in my view because they don't pay, the carriers don't pay the cost, actually the consumer has to pay for that, and we're talking about, I looked up the charges this morning it's \$21.70 per fifteen minutes. Now to figure out your rights at those kind of rates and not have them in written form either is just not appropriate considering there are so many problems in the telecommunications area. So I think this is a significant problem and one that can hopefully be addressed.

George:

Thanks Nick.

Nick:

Thank you.

George:

You didn't have to get the gong. Jo Higginson is from the Consumer Action Law Centre and Joe would like to get on the soap box about consumer representation on standard Australian committees. Joe.

Jo:

Okay building inspections, bicycles, furniture, household electrical appliances, if you know anything about any of these and you're passionate about consumer advocacy don't move. Consumer Action and the Consumer Federation of Australia need you. Technology, sunscreen, social responsibility, environmental labeling, IT accessibility, safety of children's toys, water efficient appliances, organic and biodynamic food. I could go on endlessly but I think George would do a red Simon's on me. Okay the second list are just some of the Standards Australia technical committees that Consumers Federation Australia represents to sit on.

As Peter Hendy said this morning there are about seven hundred and fifty Standards Australia technical committees. We've got at the moment thirty representatives active on fifty eight different committees, so we definitely need you. CC reps on standards committees are volunteers who represent the interest of consumer's especially low income and vulnerable consumers informing and advising Australian standards or in assessing the local applicability of international standards organizations, that ISO standards. It's a very practical and very useful way of strengthening the consumer voice. Getting involved in issues around consumer protection, product safety, product information. Standards are benchmarks in themselves but they're also called up in a whole range of action and legislation and I disagree a bit with what Peter Hendy said in that I think it is that relationship with the rest of the regulatory system

that really gives standards their peace. And it also acts to make standards you know better standards so that they don't really run feral, you know and (inaudible) applicability. A lot of the time our reps have to be very tough because they are often amongst a whole group of industry people you now who have been working in marketing areas etc, so they're very very good advocates.

The Consumer Action Law Centre works on behalf of the Consumers Federation. We're funded by Standards Australia to place some support volunteers, committee meetings are held across Australia, mainly in Sydney and Melbourne and we reimburse travel expenses. So our reps come from everywhere, we've got people from Townsville, Adelaide. My name is Jo Higginson, I'm the Project Coordinator and look if you think you can help, you know anything about building inspections, bicycles, furniture, house hold electrical appliances or any of the active standards areas that we don't currently have reps on and there are plenty, look please get in touch with me at the Consumer Action Law Centre here in Melbourne. The number is 0396705088 or Jo@consumeraction.org.au. Thank you.

George:

Well done Jo. You've been better than any of the presenters we've had so far in terms of keeping to time is what I meant. Trisha Kerney is from Vision Australia and Trisha wants to get on her soap box about communicating with all Australian's, reaching three point five million people with a print disability. Trisha.

Trisha:

Thank you George. And that you to the organizers for the opportunity and thank you to all of you for staying awake after three o'clock on day two which is practically impossible I think. I work in print disability area with Vision Australia which is a merger of six blindness organizations across Australia. We are a not for profit and we have intrinsic links with the rest of the disability community, so we work within that and we understand a lot of issues and needs.

My soap box is called communicating with all Australian's but it could just as well be called information is power. Graham Samuels spoke earlier today and one of the things he said is, information is empowered and that's what we'd like to talk about. Every Australian needs relevant and current information on which to base decisions, on which to make decisions and all sorts of life decisions. People in this room I know are responsible for the development, the delivery, the distribution of vast amounts of material that is very relevant to this particularly about consumer affairs and consumer issues. So we need you all to help us too.

I was looking today at the scam watch information that is available most of that is in standard print either on paper or on a website and the people that we represent and people with further print disability it's pretty much inaccessible or very difficult to access at the least. So for example if consumers are looking at terms and conditions for a credit card or whatever or you know some sort of insurance policy then you have to get a third party to help you with that. The provider is relying on the third party giving the right advice, you're accepting terms and conditions you may not even understand. So we're in a pretty difficult predicament. So the other thing I was going to say is that it's great to see that provisions of information is the central issue of the Productivity Commissions review and Vision Australia will certainly be making some submissions to that. I should say print disability is not just about blindness or lower vision it can be caused by physical dexterity problems such as Parkinson's, arthritis, paralysis so I can't turn pages or lift the paper, learning disabilities such as dyslexia, brain

injury, cognitive impairment, literacy difficulties is a large area, all different levels of literacy. And what you were touching on or talking about nick and that was different, people for whom English is not their first language. And a lot of the work we do actually we have found that if when information is provided in English in audio it becomes more accessible. There are a lot of people, I don't have exact numbers but I know there are a lot of people in this country who can access spoken English but not understand written English.

George:

What would you like to leave us with?

Trisha:

We're committed and are quite passionate about making sure that information is made available to all Australian's. the research we have that was commissioned by Radio RPH shows that there are three and a half million Australian's that fall into the category that I'm talking about who experience difficulty accessing standard prints. They will need accessible format information. Because George isn't going to let me talk much longer, I have lots of statistics and information in this very handy little flyer and I would be very happy to give you one. I just wanted to finish by saying that there are two things you might like to write down. First of all the commonwealth disabilities strategy you can find on the FACS website, facs.gov.au/disability. The Victorian government last year introduced its external communications access policy and that can be found on egov.inaudible.gov.au. And there are on the (inaudible) website there is a guide to providing information on the Internet with disabilities. If you provide your information in accessible formats you will be ensuring inclusion and supporting the independence of all Australian's, you will be encouraging participation in all aspects of consumer affairs and life, fulfilling social and legal obligations in relation to disability discrimination and you will most certainly be generating a lot of good will. Thank you.

George:

Thanks Trisha, thank you. Karen Chalmers-Scott of Scott Concepts and she would like to use the soap box to talk about financial abuse and the elderly.

Karen:

Yeah I might also George call for an independent time keeper from out in the audience knowing that there are a number of independent people out there. Okay. We've heard words like changing markets, greater choice, informed consumers, empowered consumers, community well being, broader societal goals. I'd like to draw your attention to one group which risks alienation and increasing vulnerability because they don't understand and maybe aren't keeping up with all of those changes. And that's elderly Australian's. I would particularly like to highlight another enquiry. We've heard a lot about the productivity enquiry, productivity commission's enquiry, there's another enquiry happening at the moment. It's the federal government's house standing committee on legal and constitutional affairs, enquiry into older people and the law. It commenced in the last quarter of 2006, it was set up to investigate and report on the adequacy of current legislative regimes in addressing the legal needs of older Australian's in the following areas: fraud, financial abuse, general and enduring powers of attorney, family agreements, barriers to older Australian's accessing legal services and discrimination.

Submissions closed on the 01 December 2006 and there were 104 submissions received from a diverse range of Australian community groups and public advocates and legal centres. While those submissions addressed different aspects of elder abuse in line with the terms of reference, one theme keeps coming out of those submissions and that's the growing concern in the community about financial abuse of older people by people they trust. It's not news that older Australian's might find themselves in a situation where they're being asked for help by their family or a friend financially. But we're in a point in our country's history and we've heard this for the last day or so, there's an ever growing want it now mentality in our community, compulsive consumers George I think you called it. This compels consumers being fed by easy access to credit including regular preapproved and unsolicited offers of even more credit.

The result is that many people are carrying the increasing levels of debt. And Bernard Scott said to us yesterday no matter how much money baby boomers have in retirement it won't be enough. At the same time we've got advances in technology and especially electronic banking and that allows us to move money around pretty much at will and pretty much without detection. Older age springs an increased dependency on carers and family and a greater vulnerability to undue influence, bullying and elder abuse. And significant numbers of ordinary Australian's are now finding themselves wealthier than they every thought they would be just because of the value of their family home. In combination all of those factors open up opportunities for abuse of our elder citizens to an extent that we've never seen before.

The data and research and case studies sighted in the 104 submissions to the enquiry show that only too clearly we have a growing problem. What they also show though is that there are some solutions, there are some answers out there and the submissions again put forward a wider array of practical suggestions as to how older Australian's can be made more aware of the implications of helping others financially. So that any decision they make is well informed. They can be helped to plan ahead to ensure that they retain control of their assets and the capacity to dispose of them as and when they wish to and can be assured of access to independent legal advice and legal services. It also, some of the other solutions go to how banks are lending institutions could be required to use their computer systems to monitor transaction accounts, how tighter controls could be put around the legality of property transfer documents.

The submission shows that we need some red flags going up. That we need older people to be understanding and that it's important for them to ask questions and take precautions. We need public awareness about this and why it's happening, how it's happening and how easily it can happen and I'm getting to the end. We need to be united in our view that this can't be condoned within families, within carer situations or anywhere else. We simply can't accept also being told that how people choose their money is their business or their families business alone. That privacy issues make it too hard to deal with or that it's too hard to monitor transaction bank accounts. They're cop outs. The submission started an initiative overseas, Britain and America which we should look at for application here. The enquiry will run forums around Australia. I urge those of you working in the field to go along and support those agencies who have made submissions and to present your own evidence in case studies. I also couldn't agree more with Jenny Fagg, I don't know if she's here today, ANZ statements that prevention is better than cure and that it's the right time for us to be taking proactive steps. Here's another opportunity for ANZ bank to come the party right now and say this is how we can use our IT systems to help. This is how we will train our staff to recognize the signs of financial abuse. These are the processes that we can put in place to empower older consumers and help them protect their assets. It's really quite disturbing that the very technologies and developments which most of us embrace so readily and which make our

lives in banking etc so much easier are now facilitating a growing financial abuse of our older citizens. These are our grandparents and our parents, our aunts and uncles and our neighbours and in a couple of decades, apart from a few of us, it's going to be us, heaven help us if we let this or we put this in the too hard basket.

George:

Thank you Karen. Brilliant. Alicia Freeman is with the Public Interest Advocacy Centre and she'd like to soap box us about consumers engaging with sustainability. Alicia, away you go.

Alicia:

Thank very much George. I think Bernard Salt would be very happy to see that you have a generation who are presenting to you about operating in an ethical market place. I guess I just really wanted to use the soap box this afternoon to share with you some information about a project that I've been involved in with the global reporting initiative. The global reporting initiative or GRI will be familiar to some of you as a reporting framework that companies are increasingly using to report on their sustainability of their activities. It's just one of the many reporting frameworks that are around at the moment but I would argue that it's emerging as the dominant framework. It's used by companies to voluntarily report their non-financial impact of their activities. And that includes the impact on local economies, local communities through the social aspect of its reporting and then through the living and non-living environment through the environmental aspect of the reporting.

In Australia I think it's about a third of the top five hundred companies that currently do sustainability reporting of some sort, most of which are GRI registered to some degree. Of those companies that are doing sustainability reporting they are manufacturing, mining, utilities, telecommunications and banking and finance. So why is PI sitting here talking about GRI? Well about two to three years ago we started to get approached by energy and water companies to have a look at these lovely sustainability reports that they were producing. PI runs a project that advocates in the interest of energy and water residential consumers. So it made sense for the businesses to come and talk to us as one of their key stakeholders. As I started to look at the reports that I was being given I guess I got concerned really that what I was looking at was more marketing material than substance. I thought also that view that companies were presenting didn't necessarily hold when I saw what sort of lobbying and advocacy they were doing around regulatory reforms. So I really felt that they weren't really putting their money where their mouth is. I also thought the framework was somewhat weak. I thought it looked quite well at the broad issues that companies generally need to look at but I don't think it really looked at what energy and water companies can do in terms of sustainability. So last year I was nominated and was invited to join a working group run by the GRI, it's a multi stakeholder working group which is basically charged with putting together new sustainability indicators specifically for the energy industry. Basically any energy company around the world that will want to do GRI compliant reporting will need to be using these new indicators and for the people who are interested in having a look we've got a draft report that's up on the global reporting website which is globalreporting.org and it's open for comments at the moment.

I guess really what I wanted to share with you was that it's a multi stakeholder process and that PI are representing customers in that particular working group, the working group is made up of ten industry representatives and ten non-industry representatives from environmental MGO's, trade unions, ethical investment companies, other civil society members and customer groups like myself. So at the moment I think PI is kind of critically

engaging both in the reporting frameworks and the actual reports that companies are producing. I think it's important to note that the reporting framework is voluntary in Australia, there are three countries that have made sustainability reporting mandatory. But the, in Australia it is increasing and it's not from a regulatory need, it's because businesses themselves have identified a business case in putting out sustainability reports. When I'm talking to businesses the first question I ask them is why they're doing a sustainability report and they usually give me one of two answers. One is that it's to attract and retain staff and the other that is to attract and retain the funds of investment companies. I guess the message that I want to send to you is that sustainability reporting is here. When you're talking with businesses I wouldn't be very surprised if around the corner they start to produce sustainability reports and I'd urge you all to get engaged in terms of the content of the framework itself and to really critically look at what the businesses are putting out.

George:

Thank you, well done. John Fitzwani is from Credit Onwardsman Service Ltd. And John would like to get on the old soap box and tell us about compensating consumers for loss. John.

John:

Okay, thanks George. The heading is called, Taking the Fault out of Consumer Disputes. This presentation is intended to invite delegates, government, industry and consumer groups to consider a different perspective of compensation for loss suffered by consumers. The views presented in this do not reflect the views of the Credit Onwardsman Service, the subject matter arose during one of the many informed discussions about the (inaudible) Onwardsman Service fosters. In the context of industry and from the perspective of consumers the impact of the current regulatory regime operating across various jurisdictions in Australia on consumer protection yields an unsatisfactory outcome.

Consumers in different states get varying levels of different protection resulting in different remedial outcomes regardless of whether the complaint is resolved through (inaudible) or more formally through tribunals of courts. Further where there is gaps in the regulatory protection relating to conduct of service providers, the consumer has little choice but to resort to plead their case in terms of negligence causing loss. Where in order to succeed in the claim for compensation for loss suffered the component has to make out the wrong conduct and link it to the loss. This talk relates to an idea that is being considered and applied in various instances. It relates to a no fault compensation regime and applied in the context of external dispute resolution translates into a potential workable alternative for both disputes resolution. Its basic premise is that compensation is both on proving loss regardless of fault. Currently for negligence disputes passing through either (inaudible) or courts the compensation outcome is expressed through a formulation that links fault with damages suffered as necessary criteria giving rise the claim of compensation. This formulation incorporates two aspects of the justice that is traditionally sought to be addressed in connection with actual negligible conduct. These are corrective and distributive justice. When the dispute is resolved in open court the pursuant of both these aims yields multiple outcomes including deterrence as well as compensation for the victim of the wrong. In such a process these two aims are said to be coupled and rightly so. In the context of this external dispute resolution such coupling is not necessary since the disputes are resolved away from the public arena making the corrective aspect largely redundant.

Another factor reducing the role of fault when disputes are resolved through (inaudible) is the unavailability of exemplary and punitive damages under these schemes. The disassociation between defendant and plaintiffs is not new and on occasion government has shown willingness to recognize its benefits. Perhaps the most famous example is September 11 compensation scheme set up by the US government for the victims. In that particular context it is considered reasonable on the one hand to allow victims to recover but on the hand a typical difficulty associated with such a scheme is that it sends a signal to potential wrong doers that committing the wrong will go unpunished. This example encapsulates the essential features of such a scheme.

Other features of both schemes include with respect to the no fault schemes compensation is available to any consumer who can prove that they have suffered loss regardless of fault but without addressing the wrong conduct. In relation to traditional court action it allows deterrence and accountability as well as compensation when both conduct as well as the damage can be proved. As far as they relate to the immediate complaint of the consumer the similarity of the two regimes is a compensation for the consumer for the loss suffered is the same. The difference is that the evidentiary burden to be met by the consumer in order to succeed under the traditional methodology is more onerous than the under a no fault scheme. Usually proving fault, proving loss is not too difficult. It's either there or it's not. The critical issue lies in proving the wrong conduct and linking it to the loss suffered. Given both regimes have inherent advantages a reconciliation would promote the advantage of both without the disadvantages of either. Such a reconciliation has been undertaken by Associate Professor Hussan El Menyawi in a seminal paper entitled Public Thought Liability an Alternative to Thought Liability and No Fault compensation 2003, it's available through the Murdock University Elaw website. He proposes an alternative middle ground between the two concepts. He does this by decoupling of fault and compensation where on the one hand compensation, the distributed justice aspect of it is made dependent on meeting the criteria of proving damage while on the other hand fault does the corrective justice aspect of it is investigated separately and proven wrong are sanctioned by money penalties of central funds or other disciplinary actions. Given the advantages of such a scheme for the consumer it is surprising that this approach has not been...

In conclusion given the current features of consumer protection presently found in the credit industry, and these are the disparity between the various consumer protection laws across the jurisdictions the protective gaps found in existing laws the costs and (inaudible) involved in resolving disputes and the evidentiary burdens faced by consumers relating to proving both fault as well as loss the exploration of giving consumers consistent outcomes for at least a class of negligent planes through the decoupling of faults from loss is recommended. Thank you.