



27 March 2013

By email: poscredit@treasury.gov.au

Manager
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Dear Sir or Madam

Discussion Paper: The exemption of retailers from the *National Consumer Credit Protection Act 2009*

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on Treasury's Discussion paper regarding the exemption of retailers from the *National Consumer Credit Protection Act 2009* (**the discussion paper**).

Briefly, this submission:

- supports option 2 in the discussion paper, requiring vendor introducers to comply with the *National Consumer Credit Protection Act 2009*;
- does not support option 1 (maintaining the current exemption) as it is in our view an arbitrary and poorly targeted solution;
- argues that option 3 (applying more targeted requirements to vendor introducers) is more preferable than maintaining the current exemption but may introduce new complexities without solving existing problems.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

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Preferred option: Requiring vendor introducers to comply with the Credit Act (Option 2)

We support removing the current exemption for vendor introducers and requiring them to comply with the *National Consumer Credit Protection Act 2009* (the **NCCP Act**) (option 2 in the discussion paper).

As the discussion paper notes, the current system creates an exemption for point of sale introducers regardless of whether they offer only nominal assistance or provide services much like those offered by a finance broker. This creates competitive disadvantages for businesses who meet the cost of holding a licence and are willing to be subject to higher standards set by the NCCP Act relative to point of sale vendors who do not meet those standards. The presence of the exemption also creates a disincentive for businesses who may be willing to submit to the higher standards of the NCCP to do so.

A further problem is that businesses which qualify for the point of sale exemption do not face the sanctions under the NCCP Act that apply to licensees providing very similar services. The case studies below demonstrate that vendor introducers do engage in irresponsible conduct while recommending credit products and leases and assisting consumers to enter those contracts. While action against this misconduct can be taken under other law (such as the general consumer law) it is unsatisfactory that consumers should have fewer avenues for redress against vendor introducers than they do against licensees, despite the services provided being very similar.

Perhaps most importantly, our casework experience is that consumer decisions are made in response to marketing or statements of retailers or vendor-introducers. Indeed, consumers are likely to choose credit contracts when they purchase goods or services through a retail outlet or car yard primarily due to the availability (and purported 'ease') of the credit option, not any decision about the terms of the credit or whether it offers the best deal. Given the significant role that vendor introducers can play in steering consumers into credit contracts (whether the type of credit contract, or the use of a credit contract at all), we strongly submit that they should be regulated on par with other credit providers.

Case Study 1

Veronica (not her real name) visited an electronics retailer in 2012 to purchase a laptop and accessories for her daughter. Veronica's daughter wanted to enter a rental agreement to obtain the goods but was rejected, so Veronica sought to apply on her behalf.

Veronica, who is solely reliant on a Centrelink Carer's Pension and had significant existing debts, originally had her application rejected. The sales staff then made a telephone call, after which the application was approved. Veronica expressed concern about whether she would be able to afford the repayments (48 monthly payments of just over \$100) but was told 'don't worry about it' by the salesman. We are advised that the salesman made no inquiry into her employment, income or financial situation. However, Veronica was later told that her rental application stated that she was a government employee with an income of \$35,000 per annum.

Insufficient explanation of the terms of the agreement was given, and Veronica ultimately signed the agreement under the (inaccurate) impression that she could easily terminate the contract if she could no longer afford the goods she was renting.

Veronica made payments for some time, but ultimately found them unaffordable. She applied for a hardship variation and was rejected by the lessor. Consumer Action has assisted Veronica to make a complaint to the Financial Ombudsman Service.

Case study 2

Jacquie (name changed) suffers from numerous medical complaints and has had a difficult life history. She relies principally on a Disability Support Pension for her income and also works casually at the local supermarket. Jacquie lives in a regional area and therefore relies heavily on having access to a vehicle.

Jacquie needed a new car and decided to use the Household Stimulus Package money she received, together with a smaller amount she had saved, to pay for a deposit. She had seen advertisements for a car dealer (which advise that the company specialises in finance for people who would have difficult obtaining finance) and as Jacquie has a bad credit report she thought that this car dealer would be the only place from which she could buy a car.

Jacquie lives 300 km away from the car dealer's nearest car yard so it took her over two hours to get there. After choosing a car, Jacquie was made to wait at the car yard for approximately six hours while the staff prepared her paperwork. Before she went to the car yard, Jacquie and her sister had worked out a budget under which Jacquie had decided that she could afford about \$100 per week in loan repayments at most, however, after waiting all day she was asked to sign an agreement that would cost her \$130 per week in repayments, which she signed.

After returning home, Jacquie discussed what had happened with her sister and realised she would not be able to afford the repayments. She immediately contacted the car dealer and tried to cancel the contract or have the payments reduced to affordable amount, but they rejected these requests. Jacquie also discovered that the contract she had signed was drafted as a purported lease agreement, not as a loan. The dealer's sales staff had not informed Jacquie of the purported nature of the contract.

The existence of the exemption also adds complexity by creating uncertainty about whether particular traders are covered by the NCCP Act. In the following case study, it is our view that the car dealer does not qualify for the exemption as the credit provider involved does not appear to be licensed under the NCCP Act, though ultimately this would be a matter for the court to determine.

Case study 3

Helen is a young mother in her early 20s with an infant child. Her sole income is a Centrelink pension. In late 2012, our client visited a car dealer to enquire about a car she had seen advertised for sale online.

On the same day, Helen entered into an agreement to purchase the car for \$8000. She paid a \$1000 deposit in cash toward the purchase price that day, and agreed to pay a further \$2,500 in cash prior to delivery and the remaining amount on finance. Immediately prior to entering the contract, a representative of the dealer stated that:

- a. the car was free from defects, safe and roadworthy;
- b. that there was no additional cost to the finance; and
- c. there was an additional, extended warranty on the car.

A couple of weeks later, our client received a call from the dealer stating that her loan had been approved, and that the car was ready for pick up. Helen visited the dealer premises, paid a further \$2,500 in cash to the dealer, and took possession of the car. Our client was also asked to sign, and signed, a loan contract, which provides that she was to repay \$14,820 to a credit provider by way of 156 weekly payments of \$95. The car dealer did not explain the terms of the loan contract to our client, nor why the amount to be repaid was so high, nor what this amount comprised. The loan contract did not provide these details. Our client felt pressured to sign the loan contract, as without signing it the Vehicle would not be released to her.

Our client queried why the amount to be repaid was so high and received an email explaining that the amount comprised:

Financed amount:\$4500; and

Establishment fees: \$3300; and

Interest at a rate of 30%: \$7020.

After having possession of the car for less than two months, Helen took it to a mechanic and was told that the suspension was defective, and that this would cost \$1600 to repair. Our client visited the dealer and requested they pay for the cost of repairing the car. The dealer's representative refused, and stated that there was no additional warranty on the car.

Consumer Action alleges that the car dealer and credit provider have breached a number of legal provisions including those under the Victorian motor car trader's legislation, the Australian Consumer Law and the consumer credit protections under the NCCP Act and the National Credit Code.

In this case, it is not completely clear whether the trader would be covered by the point of sale exemption or not. However, we think it is useful to demonstrate that the exemption can give rise to confusion and can allow traders to develop business models designed to exploit the exemption.

The problems described above—a lack of competitive neutrality, lack of NCCP Act remedies and confusion over whether a trader is covered by the NCCP Act—undermine the effectiveness of the NCCP Act regime. Extending the NCCP to cover vendor introducers is a more targeted response than retaining the exemption. Those staff providing more substantial advice services will need to be licensed and meet responsible lending requirements, but those who only provide nominal assistance (such as passing on forms and factual information or otherwise tasks

ordinarily done by retail cashiers) will be excused by existing exemptions in the regulations (discussed in paragraph 146 of the discussion paper), as long as they are agents of the lender.

Responses to other options

Maintaining the existing exemption (Option 1)

We do not support maintaining the existing exemption (option 1 in the discussion paper). As we have argued above, this is an arbitrary and poorly targeted response. At a minimum, any staff receiving commissions (or similar forms of remuneration) should be required to be licensed and meet responsible lending requirements. Consumers should also be entitled to access an industry dispute resolution scheme should they have a dispute with vendor introducers.

Applying modified requirements to vendor introducers (Option 3)

Applying more targeted requirements to vendor introducers (option 3 in the discussion paper) is preferable to the current exemption. However, Option 3 would introduce new complexities and may not resolve the problems discussed above. We are reluctant to support option 3 unless it is certain that option 2 is not targeted enough.

This submission does not respond in detail to the proposal in option 3, however we make the following broad statements:

- We support the proposal in the discussion paper that vendor introducers that act as a broker or hold themselves out as brokers should be regulated as such;
- We think there may be real difficulties distinguishing between the different categories of vendor introducers proposed under option 3. This may make it more likely that traders will fail to comply with their obligations and make it harder for consumers make a complaint;
- The discussion paper proposes additional disclosure requirements as one of a number of options for vendor introducers with arrangements with more than one financier and who engage in product selection (paragraphs 106-131). Additional disclosure will be very unlikely to prevent consumers being directed into unsuitable credit contracts by vendor introducers. As Treasury mention at paragraph 16-17 of the discussion paper, and as noted above, consumers seeking this sort of finance are likely to be choosing based on convenience and availability rather than on the features of the contract. We expect that in this situation additional disclosure is unlikely to affect consumer decision-making.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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