



UCFS Australia Pty Ltd

A.C.N 136 959 567

Suite 501, Level 5, 157 Walker Street North Sydney 2060

PO Box 1423 North Sydney 2059

P: 02 9086 8150 F: 02 9086 8155

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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra A.C.T 2600
corporations.joint@aph.gov.au

Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
economics.sen@aph.gov.au

Dear Committee Secretary,

On 28th September, 2011, I received an invitation to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services relating to the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*. The Committee Secretary suggested the submission be copied to the Senate Economics Committee, a suggestion I welcome.

It is with thanks that I accept said invitation and hereby advise that this organisation, UCFS Australia Pty Ltd (UCFSA) has previously made a submission to the Retail Investor Division of the Treasury, dated 17th August 2011. This related to the exposure draft of the *National Consumer Credit Protection Amendment (Enhancements) Bill 2011 (Draft Bill)*, contents from which are included in this submission and comments from which are limited to door-to-door selling, as that is UCFSA's area of commercial interest.

Supporting better regulation of door to door sales activity

UCFSA believes the recent reforms in regulation of door-to-door sales and in particular, the comprehensive Federal and State protections recently afforded to consumers under the "Unsolicited Consumer Agreement" provisions of the Australian Consumer Law will accomplish their purpose. While these reforms have only been in operation for a few months, it is reasonable to expect that through these reforms, COAG will be successful in promoting fair dealing in door-to-door sales. UCFSA is a consumer financier specialising in unsecured personal loans for borrowers purchasing products via door-to-door sales. As a linked credit provider in relation to the suppliers whose goods we finance, UCFSA is subject to the full force of the cooling-off rights consumers have under the Australian Consumer Law by virtue of section 135 of the National Credit Code. Under section 135, a

consumer's right to terminate a purchase is matched by a right to terminate the credit contract which would have financed the purchase.

This remedy supplements a multitude of other protections already afforded to consumers under the National Credit Code and the ASIC Act. The proposal to ban the arranging of finance in the context of door-to-door sales assumes that the comprehensive provisions of the Australian Consumer Law so recently agreed by COAG in relation to unsolicited consumer agreements have already failed despite the very limited opportunity to assess their effectiveness in relation to industry behaviour and despite the fact that the provisions remain untested by any Australian regulator.

The June 2011 Regulatory Impact Statement for the Phase 2 reforms to the NCCP Act reveals that the limited Australian research upon which the amendments to section 156 is based was conducted at the initiative of the Consumer Action Law Centre before the commencement of COAG's Australian Consumer Law and related to the psychology of selling a specific type of educational software program in homes – it in no way related to the activity of arranging finance in the context of door-to-door sales either generally or specifically in relation to educational software. While this specific research might have been relevant to COAG's development of the Australian Consumer Law, it is puzzling why such research is put forward now as a basis for banning the arranging of finance in relation to door-to-door sales which COAG has determined should be permitted under the Australian Consumer Law.

Needless to say, the types of goods and services sold under unsolicited consumer agreements are many and varied. So too are the reasons for suppliers to adopt this form of distribution as distinct from "bricks and mortar" retail outlets or online distribution. Except in the case of low value sales, consumers do not generally have sufficient cash at home to pay the price and many do not have a credit card or sufficient credit available on their credit card to pay the price or they simply prefer to avoid increasing their credit card debt. Obtaining tailored finance from a financier willing to finance the particular product is frequently the most convenient means of paying the purchased price.

Consumers often choose this form of tailored finance over other payment options and the National Consumer Credit Protection Act affords significant protection in relation to such consumer choice. These protections include:

- responsible lending conduct and disclosure obligations imposed both upon credit providers and suppliers who arranged credit
- general licensee obligations including an obligation to operate fairly, efficiently and honestly together with proposed remedies under Phase 2 for unfair and dishonest conduct by credit service providers
- access to no-cost internal and external dispute resolution
- precontractual disclosure obligations
- rights to hardship relief and to reopen unjust contracts (including powers for ASIC to intervene representing the public interest)
- controls on enforcement proceedings
- the related sale regime which attributes significant responsibilities to linked credit providers for the conduct of suppliers and which gives debtor rights of termination where the supply contract is terminated (say under a cooling-off right under the Australian Consumer Law).

ASIC also has an extensive armoury of powers in relation to misconduct under both the NCCP Act and the ASIC Act.

Despite these extensive protective measures, the proposal to impose an outright ban on inducing a person to perform a credit commitment act assumes, without research or investigation, that there is no legitimacy in providing this alternative to cash or credit card payments. No such assumption should be made. It makes little sense to ban financed sales in instalments over time and yet allow payments of the entire purchase price in one lump sum.

More time and research

UCFSA is asking for more time to operate under the current legislative regime. We have had little or no time to properly reflect on whether the new regulatory system is failing. While the proposed amendment to section 156 was initially packaged as a mere “enhancement”, if it were to proceed, much of an industry sector would be unable to continue to trade if payment methods cannot include credit arranged by the supplier.

The seriousness of the consequences of the proposal warrant relevant research and investigation in relation to the finance element of unsolicited sales to identify what, if any, problem needs to be addressed in relation to the finance element. Only if genuine research reveals the existence of a problem with the finance element of door-to-door sales should consideration be given to imposing greater controls.

For example, if research revealed that there were evidence that customers were being inappropriately steered into certain credit products when they could have used cash or a credit card, then it would be appropriate to consider why the existing responsible lending regime (which is specifically designed to address this issue) is failing and to consider what adjustments to the responsible lending regime need to be made.

It would also be appropriate to investigate whether ASIC could have done more using its existing powers. Only after these avenues have been exhausted should consideration be given to adding further controls. An example of such a control, assuming the problem is verified, would be to compel the provision of information about all payment options and to require that cash be an available option.

I would like to thank the Committee for giving UCFSA the chance to make a submission involving issues in which we have a stakeholder interest. We at UCFSA, and I’m sure other reputable financiers offering similar products, look forward to having more time to assess the regulatory regime under which we are currently operating.

Once this process is complete, we would be happy to play whatever role is deemed appropriate with a goal to achieve a regulatory regime supportive of consumer’s interests and responsible lending within a competitive framework.

Sincerely,

Owen Tilley
Operations Manager
UCFS Australia Pty Ltd