

**SENATE ECONOMICS LEGISLATION COMMITTEE**

Finance Industry Delegation Presentation Notes, tabled with Committee 31.10.18

**NINE CONCERNS IN SUMMARY - PRODUCT INTERVENTION POWERS BILL**

<b>Section</b>	<b>Topic</b>	<b>Comment</b>
<b>Lack of certainty</b>		
<b>994C(6)</b>	“the regulated person”	No clear definition
	“financial product”	No clear definition
<b>761D &amp; 761GA</b>	“ordinary consumer”	No clear definition
<b>Application to exempt credit products</b>		
<b>Section 6, National Credit Code</b>	24% - 5% - 62 days exemption	Amend the National Credit Code - <u>not</u> give ASIC discretionary power - no certainty. Failure to accept that the exception is only from the Code, not the Act
<b>“Significant detriment”</b>		
<b>301A</b>	ASIC alone to assess risk and no lender appeal process	This is unsound, unjust, unconscionable and tyrannical
	ASIC can ignore any consultation process with a targeted lender	Ignoring due and described process doesn't stop the ASIC decision applying
<b>301E, 301D</b>	Simply declared by ASIC	No rules of evidence, no right of appeal to AAT or Minister
	ASIC alone has only to be “satisfied”	Highly subjective
	“detriment” not defined in the bill	Widely defined in the Interpretations Act source - the Minister’s Explanatory Memorandum - “ <i>intended to cover a broad range of harm or damage... (sources)... the product’s features, defective disclosure, poor design, or inappropriate distribution</i> ” - i.e. total uncertainty for adviser and lender
<b>301E</b>	ASIC decides “potential financial loss” and “will or is likely to result in significant detriment”	ASIC guess enough as to future impact
<b>301E(3)</b>	The fact that the product is compliant with the law is irrelevant	Explanatory Memorandum clause 2.35 “ <i>...a product may cause such detriment even if it complies with all laws</i> ”.
<b>301E(2)</b>	ASIC not limited in matters it can take into account	This further broadens its power

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<b>Business model retrospectivity</b>		
<b>301C(1)</b>	Cannot apply to past contracts	However, can apply to template of past contracts in the future - ASIC will not offer approval opportunities and may spring into action at any time. No guarantee if ASIC inactive
<b>Banning orders - ASIC autocratic power</b>		
<b>301D(3)</b>	Imposition of banning order with any condition ASIC sees fit	Absolutely no criteria limitations at all
<b>301C to 301H</b>	18 months to indefinite term	Puts total prohibition/banning in the hands of ASIC alone, without any right of appeal at any time
<b>Minister almost irrelevant</b>		
<b>301J</b>	No Ministerial approval for an intervention/banning order	ASIC autocratic, uncheckable power
<b>301K</b>	Ministerial approval to amend or revoke intervention orders	Why, when the Minister did not have to approve in the first place?
<b>Consultation unnecessary</b>		
<b>301F(3)</b>	Failure to comply with detailed consultation process does not render intervention order invalid	ASIC is exempt from Section 17 Legislation Act 2003. Only has to report failure to consult in Annual Report Section 301F(3)
<b>Notice to lender unnecessary</b>		
<b>301L</b>	Failure to notify victim lender of either imposition or amendment - irrelevant, provided published on ASIC website	The ASIC website becomes compulsory daily reading for all lenders. ASIC does not have to be fair, efficient, etc., as Section 47 NCCP Act demands of lenders
<b>301G</b>	Order for an individual lender is not a legislative instrument, if general - applicability is	Still requires all to watch ASIC website This despite ASIC having email addresses for all lenders
<b>Offences</b>		
	All criminal	Indirect consequences of a criminal conviction ignored No interface with civil/criminal penalty regimes in NCCP, ASIC and Corporations Acts.