



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeover Panel and the Corporations Legislation
Question No.	069
Topic	CentrePay and Credit
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Committee member	Senator Louise Pratt

Question

Senator PRATT: Yes, I would agree. To what extent are people who sell high-cost, low-value goods, if they're basic household goods and not appliances et cetera, with or without a credit provision, required to be registered credit providers?

Ms Chester: I'm sorry, Senator, I'm struggling to hear the question clearly. Could you repeat it?

Senator PRATT: To what extent is a retailer of a high-cost, low-value good, where a customer pays for that good and takes it home with them, required to have credit protections and be signed up to the credit laws that you regulate—the business that provides those goods?

Ms Chester: I think we might need to take that on notice, Senator, because it would depend on the arrangement between the provider of the good, like a Harvey Norman arrangement with Latitude Financial, and whether that arrangement is in place as to whether or not we would have—for your benefit, Senator, I'm pleased to see that Deputy Chair Court is nodding at what I am saying. We will take that on notice.

Answer

Suppliers of goods or services sold via 'sale by instalment' arrangements are captured by the *National Consumer Credit Protection Act (Cth) 2010 (NCCPA)* including the *National Credit Code (NCC)* where the amount payable under the contract exceeds the cash price of the goods purchased (s11 NCC). The 'cash price' is the lowest price a cash purchaser might reasonably be expected to pay for the item from the supplier, or the market price of the goods (s204 NCCPA). Agreements that meet this definition are credit contracts under the NCCPA and require the retailer to have a credit licence, AFCA membership and the full suite of consumer protections under the NCCPA. However, there are some exemptions, as outlined below.

Suppliers of goods or services may engage in credit activities as defined by the *NCCPA* in the course of the sale or supply of the goods or services. This can include activities such as suggesting the consumer enter a credit contract to pay for those goods, or a consumer lease to hire the goods; assisting the consumer to complete the application form; and performing obligations or exercising the rights of the credit provider or lessor on their behalf (*ASIC Regulatory Guide 203: Do I need a credit licence – RG203.126*).

However, those businesses supplying the goods or services will not be required to hold a credit licence to engage in these activities (*Reg 23 and 23A of the National Consumer Credit Regulations (Cth) 2010*) if:

- (a) the credit activities are in relation to credit contracts, continuing credit contracts or consumer leases:
 - i. provided by a linked credit provider or lessor; and
 - ii. that will wholly or predominantly be used to pay for the goods or services supplied by the store, or will initially be used for this purpose in the case of a continuing credit contract; or
- (b) the credit activities are in relation to a continuing credit contract under which a credit card is provided where:
 - i. the continuing credit contract is provided by a linked credit provider; and

- ii. the credit card is branded or co-branded by the store (RG 203.127).

Although the supplier of the goods or services may not require a licence, the credit provider or lessor providing the credit must be licensed and as such will be responsible for the stores' conduct if they are engaging in credit activities or are covered by another exemption (RG 203.128).

In some circumstances, suppliers of goods or services may be captured under the ASIC Act, where arrangements for payment that they provide meet the definition of a '*credit facility*' (s12BAA(7)(k), Regulation 2 of the *ASIC Regulations*). This may occur if stores allow a customer to purchase goods and pay for them at a later time, but such agreements would require close consideration as to whether these legislative provisions apply and would depend upon the particular arrangement provided. Where a particular store's arrangements meet these legislative definitions, a range of consumer protection provisions in the ASIC Act, including the design and distribution obligations, may apply to that business.