

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 196

Topic: Claims lodged with ASIC re. Unfair contracts

Senator Pratt asked:

Senator PRATT—You mentioned a range of complaints that you are receiving as a result of having these new powers looking at unfair terms in contracts. Are you able to tell us the nature of some of those complaints?

Mr D'Aloisio—No, I would have to take that on notice and give you a bit of a breakdown. They will range from credit cards to mortgages and fees. We could probably look at that and give you a bit of a breakdown of what is coming through.

Senator PRATT—Is telecommunications credit still featuring highly in there?

Mr D'Aloisio—I cannot answer that.

Senator PRATT—I know it has been a significant problem historically.

Mr D'Aloisio—This is phone bills, is it, basically?

Senator PRATT—Usually mobile phone bills which are in effect.

Mr D'Aloisio—I know that people have been looking at that and are involved in the issue. I will have to get some more specifics for you.

Answer:

The complaints ASIC has received on unfair contract terms / unfairness / unconscionability from 1 July to date are almost exclusively credit related.

We have received **89** relevant complaints. Of the complaints received, the top 5 issues raised by complainants included unfair contract terms, mortgage exit fees, excessive interest and fees and poor disclosure of contract terms. Many complainants raised more than one of these issues.

Residential mortgages were the most complained about product, however we also received complaints relating to break fees on reverse mortgages and a couple in relation to the terms and conditions of trading accounts, exchange rate calculations, margin loans, consumer leases and short term (or payday) loans.

Telecommunications credit

- ASIC does not generally receive complaints about telecommunications credit – the Australian Competition and Consumer Commission (ACCC) has jurisdiction over mobile phone contracts.
- From June 2009 to September 2010, ASIC received four complaints in relation to mobile phone contracts. These were referred to the ACCC and/or the Telecommunications Industry Ombudsman (TIO).

What is ASIC's jurisdiction?

ASIC has responsibility for financial products and services under the *Corporations Act 2001* (Corporations Act) and *Australian Securities and Investments Commission Act 2001* (ASIC Act).

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ASIC is also the national regulator of consumer credit. Under the ASIC Act, ASIC has responsibility for administering the general consumer protection regime (including prohibitions against misleading or deceptive conduct and unconscionable conduct) that applies to financial services. A broader range of financial services are regulated under the ASIC Act than the Corporations Act, including credit facilities.

Consumer credit is also comprehensively regulated under the National Credit Code (NCC), which ASIC has been responsible for administering since 1 July 2010 (previously, the State and Territories administered the Uniform Consumer Credit Code).

Are mobile phone contracts regulated as 'credit'?

Although mobile phone contracts might appear to involve the provision of credit by the telecommunications provider to the consumer, ASIC's jurisdiction under the NCC is generally not applicable in relation to mobile phone contracts. The NCC regulates credit provided to consumers where there is a charge for the provision of credit. As mobile phone contracts do not typically involve a charge for the provision of credit (that is, the ability to make telephone calls prior to paying for them), mobile phone contracts are not subject to the NCC. The ASIC Act does also not generally apply to mobile phone bills.

Instead, mobile phone contracts, as with all other non-financial products and services, generally fall within the jurisdiction of the ACCC under the *Trade Practices Act 1974*.

What if there is uncertainty as to which law applies – the ASIC Act or Trade Practices Act?

Where telecommunications matters raise issues where there is uncertainty as to whether they fall under the ASIC Act (as conduct in relation to a financial service) or under the Trade Practices Act (as conduct in relation to other than financial services), or where the one matter may involve both jurisdictions, we can give, and in the past have given, the ACCC an appropriate referral of our powers under the ASIC Act. This ensures that the ACCC can deal with the whole matter comprehensively.

Where can consumers complain to about mobile phone bills?

Consumers with complaints about their mobile phone service can complain to the TIO. The TIO is an independent dispute resolution service that is free to consumers. Mobile phone providers are required to be members of the TIO by Commonwealth legislation (the *Telecommunications (Consumer Protection and Service Standards) Act 1999*).

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