

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

Question: SBT 66

Topic: National Credit Code

Senator Bushby asked:

From 1 July, action may be taken against lenders by ASIC if they charge an early exit fee which is unconscionable under the National Credit Code, or is unfair according to the ASIC Act.

Has ASIC used any of these new powers so far?

Answer:

ASIC has undertaken a range of work leading up to and after the 1 July 2010 commencement of provisions in the National Credit Code (NCC) and unfair contract terms (UCT) law that apply to exit fees.

On 10 November 2010, ASIC released regulatory guidance for mortgage lenders that sets out how provisions in the NCC and UCT law apply to mortgage early termination fees. Regulatory Guide 220 *Early termination fees for residential loans: unconscionable fees and unfair contract terms* (RG 220) outlines ASIC's guidance on points including:

- what costs and types of loss can be included in exit fees;
- types of loss that should not be recovered through exit fees; and
- the limited circumstances in which a lender may vary exit fees during the life of a mortgage.

The release of RG 220 follows consultation with industry bodies, consumer representatives and other interested stakeholders that began in June 2010. As part of the consultation process, we received submissions from stakeholders on our proposed guidance on unconscionable fees and unfair contract terms that apply to mortgage early exit fees.

In light of our regulatory guidance, we anticipate that lenders will review their practices and their fees to ensure compliance with the law. ASIC's initial focus will be on the highest exit fees in the market, and where an exit fee cannot be justified by the lender, ASIC will take appropriate compliance or enforcement action.

ASIC also continues to monitor complaints from consumers about exit fees and will take appropriate action where lender practice does not comply with our guidance.

ENDS