

Chapter 7

Unsolicited residential sale of credit dependent products

7.1 The committee received five submissions about a proposal in the Exposure Draft Enhancements Bill to extend existing restrictions under the National Credit Code on the unsolicited residential sales of credit.¹ While the measure is not contained in the Enhancements Bill as presented to the House of Representatives on 21 September 2011, the committee notes advice from the Direct Selling Association of Australia that on 7 October 2011 Treasury circulated revised draft legislation, allocating two weeks for industry comment.² The committee therefore outlines the concerns with the proposal as presented in evidence before the committee, for use by Government and Parliament should the proposal be further considered.

7.2 Currently, under section 156 of the National Credit Code, it is an offence for credit providers to visit a place of residence to offer credit contracts without prior invitation. Subsection 156(2) expressly states that the offence does not apply to the unsolicited residential sale of credit dependent products. That is, credit providers may approach residential property, without invitation, to offer a credit contract to finance the purchase of simultaneously advertised goods. Colloquially, such sales are known as 'direct sales' or 'door-to-door sales' that include the provision of credit.

7.3 As outlined the Exposure Draft, the proposal would repeal existing section 156 and replace with a section that would prohibit the unsolicited residential sale of credit dependent products. The committee was not provided with a copy of the draft legislation as circulated by Treasury on 7 October 2011. However, the committee note that the proposal was set out a clause 156 of the Exposure Draft, which is extracted in full at Appendix 5.

7.4 As contained in the Exposure Draft, clause 156 would also limit the circumstances in which the conduct would be considered to be invited.³

Concerns with the proposal

7.5 The submissions addressing the proposal are highly critical. The Direct Selling Association of Australia argued that if introduced the proposal would

1 Australian Finance Conference, *Supplementary Submission 29a*; A Better Chance Pty Ltd, *Submission 46*; Direct Selling Association of Australia, *Submission 31*; Tony Davis and Associates, *Submission 48*; UCFS Australia Pty Ltd, *Submission 6*.

2 Direct Selling Association of Australia, *Submission 31*, p. 1.

3 Treasury, *Exposure Draft National Consumer Credit Protection Amendment (Enhancements) Bill 2011, Commentary on amendments: Enhancements*, 5 August 2011, p. 5.

'effectively prohibit' door-to-door credit dependent sale of products.⁴ The view was shared by A Better Chance Pty Ltd.⁵

7.6 The commentary that accompanied the Exposure Draft stated that it is necessary to prohibit the unsolicited residential sale of credit dependent products to 'address the particular risks associated with sales presentations in the home of the consumer as a result of an uninvited visit'.⁶ However, this view was not supported by evidence submitted to the committee.

7.7 The Direct Selling Association of Australia argued:

[t]he proposed change is unnecessary as existing legislation in the National Consumer Credit Protection Act and the National Credit Code already contains significant consumer protections to prohibit unfair and unconscionable practices as well as a stringent licensing regime for credit providers...The existing ACL and National Credit Code provisions adequately cover any issues of consumer vulnerability and there is no evidence of widespread consumer complaint or prosecutions that could justify any wholesale policy shift.⁷

7.8 A Better Chance Pty Ltd also noted the protection afforded to consumers under the NCCP Act and the National Credit Code, and further submitted that the introduction of the proposed measures was 'premature', as the effect of the NCCP Act and the National Credit Code on credit provider practice has not yet been evaluated.⁸ Similarly, UCFS Australia questioned the evidence base for the proposal, stating that:

[t]he proposal...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 very limited opportunity to assess their effectiveness in relation to industry behaviour and despite the fact that the provisions remain untested by an Australian regulator.⁹

7.9 It was also questioned whether the proposal would facilitate an appropriate balance between consumer protection and a robust credit industry. Tony Davis and Associates characterised the proposal as 'dramatic overkill' and stated that '[t]he objective of protecting vulnerable consumers is greatly disproportionate to the impact the proposed section would have on certain business within the alternative marketing industry.'¹⁰ Commending the Government for not including the proposed measure in

4 Direct Selling Association of Australia, *Submission 31*, p. 1.

5 A Better Chance Pty Ltd, *Submission 46*, p. 2.

6 Treasury, *Exposure Draft National Consumer Credit Protection Amendment (Enhancements) Bill 2011, Commentary on amendments: Enhancements*, 5 August 2011, p. 3.

7 Direct Selling Association of Australia, *Submission 31*, p. 3.

8 A Better Chance Pty Ltd, *Submission 46*, p. 2.

9 UCFS Australia, *Submission 6*, p. 2.

10 Tony Davis and Associates, *Submission 48*, p. 2.

the Enhancements Bill, the AFC commented that the organisation 'looks forward to providing responses to the Discussion Paper on this issue with a view to ensuring a regulatory response that appropriately identifies and addresses market failure and consumer risk in this area.'¹¹

7.10 Concerns were also raised with the consultation process. While noting discussion in the *Green Paper* about the regulation of unsolicited sales, the Direct Selling Association of Australia commented that no consultation had occurred prior to the release of the Exposure Draft.¹²

Committee view

7.11 As the proposal is not part of the Enhancements Bill as of the date of this report, the committee does not draw conclusions about the possible restrictions on the unsolicited residential sale of credit dependent products. However, the committee draws to the Government's attention the concerns with the possible restriction should the proposal be further considered.

Mr Bernie Ripoll MP

Chair

11 AFC, *Supplementary Submission*, p. 7.

12 Direct Selling Association of Australia, *Submission 31*, pp 1–2.

