

Appendix 3

Clause 156 – Exposure Draft of the National Consumer Credit Protection Amendment (Enhancements) Bill 2011

Clause 156 Canvassing of credit etc. at home

(1) A credit provider, a prospective lessor under a Part 11 consumer lease or a supplier who has a linked credit provider or a linked lessor must not (personally or through an employee or agent) induce a person at the person's place of residence to do any of the following acts (each of which is a credit commitment act):

- (a) apply for or obtain credit;
- (b) enter into a Part 11 consumer lease;

(c) give information that may be relevant to a decision, to be made later by a credit provider or prospective lessor under a Part 11 consumer lease, whether or not to enter into a credit contract or Part 11 consumer lease with the person.

Criminal penalty: 100 penalty units.

Exception—invited visit to place of residence

(2) Subsection (1) does not apply if a person who resides at the place of residence invited the credit provider, prospective lessor, supplier, employee or agent to visit that place to enable a person who resides there to do a credit commitment act.

(3) For the purposes of subsection (2), the following acts by a person are taken not to be invitations to the credit provider, prospective lessor, supplier, employee or agent to visit that place:

(a) the person giving his or her name or contact details other than for the predominant purpose of doing a credit commitment act;

(b) the person contacting the credit provider, prospective lessor, supplier, employee or agent in connection with an unsuccessful attempt by the credit provider, prospective lessor or supplier (personally or through an employee or agent) to contact a person who resides at that place;

(c) the person agreeing to have someone visit the person's place of residence to give a presentation to help anyone at that place decide whether to purchase goods or services if:

(i) the agreement was made following contact by someone (the rep) operating in a place where the rep could readily make uninvited approaches to consumers in person; and

(ii) it is reasonable to expect that most consumers who do or will purchase goods or services through the rep do or will do so as a result of presentations made in their places of residence; and

(iii) the terms on which the goods or services mentioned in subparagraph (ii) are offered do not differ substantially on the basis of whether or not a presentation is made in the purchaser's place of residence.

Effects of contravention on credit contract, consumer lease etc.

(4) Subsections (5), (6), (7), (8) and (9) apply if:

(a) a person is induced in contravention of subsection (1) to do a credit commitment act; and

(b) at or after the time the person does the act, the person:

(i) enters into a credit contract with the credit provider who contravened that subsection or a credit provider who was, at the time of the contravention, a linked credit provider of the supplier who contravened that subsection; or

(ii) enters into a Part 11 consumer lease with the lessor who contravened that subsection or a lessor who was, at the time of the contravention, a linked lessor of the supplier who contravened that subsection. Subsections (5), (6), (7), (8) and (9) apply whether or not anyone is charged with, or convicted of, an offence against subsection (1).

(5) Despite the credit contract or Part 11 consumer lease, the person:

(a) is not liable (and is taken never to have been liable) to make a payment to the credit provider or lessor under the contract or lease; and

(b) may recover such a payment as a debt due to the person by the credit provider or lessor, in a court of competent jurisdiction.

(6) If goods are supplied to the person under a credit contract described in subparagraph (4)(b)(i), the goods are the property of the person, free from all mortgages, liens and charges of any description in favour of the credit provider.

(7) If goods are supplied to the person under a Part 11 consumer lease described in subparagraph (4)(b)(ii), the goods become the property of the person, free from all liens and charges of any description in favour of the lessor, unless the lessor:

(a) gives the person written notice within 60 days after the supply of the goods that the lessor intends to collect the goods from the person; and

(b) collects the goods from the person within 30 days after giving the notice.

(8) If goods become the property of the person under subsection (7), they do so:

(a) 60 days after the goods are supplied, if the lessor does not give notice as described in paragraph (7)(a); or

(b) 30 days after the lessor gives notice as described in paragraph (7)(a), if the lessor gives such notice but does not collect the goods from the person within that period.

(9) A guarantor of the person's liability under the credit contract:

(a) is not liable (and is taken never to have been liable) to make a payment to the credit provider under the guarantee; and

(b) may recover such a payment as a debt due to the guarantor by the credit provider, in a court of competent jurisdiction.

1.1 The committee understands this would prohibit the following unsolicited conduct by credit providers at residential properties:

- selling goods or services on credit
- inducing a consumer to apply for or to obtain credit
- inducing a consumer to enter into a consumer lease, and
- collecting information from a consumer relevant to any subsequent decision on whether or not to enter into a contract with the person.¹

1 Treasury, *Exposure Draft National Consumer Credit Protection Amendment (Enhancements) Bill 2011, Commentary on amendments: Enhancements*, 5 August 2011, pp 3 - 4.

