

I am following up the Committee's request for more examples of legislative instruments that potentially overlap with proposed section 235 relevant to parties that may seek to engage in inappropriate market conduct. At this stage I can advise as follows:

1. Trade Practices Act - Parts IVA Unconscionable Conduct and V Consumer Protection, both of which extend to individuals and small businesses.
2. Australian Securities and Investments Commission Act-that replicates the corresponding provisions in the Trade Practices Act in respect of financial services Part 2, Division 2, Subdivision C Unconscionable Conduct and Division 2 Subdivision D Consumer Protection.
3. Corporations Act -s180 duty of directors and officers of a corporation to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise in that position subject to a business judgment rule that requires them to act in good faith and for a proper purpose and to act in the best interests of the corporation. f
4. Corporations Act section 419 , liability of a receiver or controller who enters into possession or who assumes control over the property of a corporation in respect of debts incurred for services rendered, goods purchased or property hired leased used or occupied and section 420A requiring a controller to exercise the power of sale of a corporation's property to take reasonable care to sell the property for not less than its market value or otherwise the best price reasonably obtainable.
5. Consumer Credit Code, Part 5 that sets out procedural requirements for the protection of consumers when a credit contract is to be terminated or enforced.
6. State consumer credit administration legislation, for example the Consumer Credit Administration Act 1995 (New South Wales) that allows a consumer to complain to the regulator that a credit provider has engaged in unjust conduct (i.e. unfair,dishonest or fraudulent conduct) in relation to the provision of consumer credit.

Sincerely,

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