



Min-it Software



Joint Submission –

Treasury Consultation: Corporations Amendment (Design and Distribution Obligations) Regulations 2019

11 October 2019

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Background Information

This submission is made on behalf of the Financiers Association of Australia (“FAA”) and Min-It Software (“Min-It”) clients.

We welcome the opportunity to submit this submission on Treasury’s consultation on the draft Corporations Amendment (Design and Distribution Obligations) Regulations 2019.

The FAA, having been established since the 1930’s, is an organisation for individuals and companies involved in the fields of finance and credit provision. The FAA’s members are either non-ADI credit providers, providing personal loans, mortgage financiers or business financiers.

A number of the FAA members hold both an Australian Financial Services Licence (“AFSL”) as well as an Australian Credit Licence (“ACL”) with conditions enabling them to act as both a credit assistance provider and a credit provider.

Aside from the software produced in-house, specifically by or for franchised organisations, Min-IT Software is a leading loan management software supplier to the micro-lending sector of the Australian market. Additionally, it has a number of clients providing motor vehicle finance as well business loans and consumer leases.

Whilst the majority of Min-it clients hold credit provider ACL’s, a small number do hold an ACL with conditions enabling them to act as both a credit assistance provider and a credit provider.

The vast majority of Min-It’s clients are not affiliated with any industry association.

Introduction

We will limit our comments to the two relevant sections of the draft Regulations with which we have cause for concern.

Definitions – regulated persons

Under subsection 7.8.A.02 (5) that applies to Credit Licencees, we believe the inclusion of subclause (d) which states “a person who engages in a credit activity (within the meaning of section 6 of the Credit Act) on the person’s own behalf” is unnecessary.

Under clause 7.8.A.04 (Financial products for which target market determinations are not required), we note that Pawnbrokers are specifically mentioned but no other product specified in Section 6 of the National Credit Code (“NCC”) , which specifies the provision of credit to which the Code does not apply, is. We note the Explanatory Memorandum states this is because “the regulation of pawnbroking is the responsibility of States and Territories.”

If a credit product is exempt from the NCC and given ASIC has taken the view such credit providers do not require an Australian Credit Licence, requiring an exempt-Code credit provider to have a Design and Distribution Obligation (“DDO”) complicates an already unwieldy and ever-increasing complexity in legislation applying to credit providers. We are left wondering whether the intent is to catch such entities out by their failure to create the requisite documentation and pursue enforcement action. At the very least, if ASIC were to take non-prosecutory action, it could be argued the intent is purely to raise revenue. It would appear to be further unnecessary bureaucratic red tape.

We have repeatedly called for Government and Treasury to amend the exemption provisions of section 6 of the NCC if it is causing such great concern. We repeat that request.

In our opinion, few credit providers would be likely to look at the Corporations Act 2001 (Cth) to see whether or not they would be covered by the requirement. Their primary concern is whether the credit they offer is exempt or not from the NCC. If it isn’t, that should be the end of the matter. We suggest there would be many solicitors of the same mind and the Explanatory Memorandum does not satisfactorily answer why it believes clause 7.8.A.02 (5) is required and the exemption cannot be
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applied to all credit provided under section 6 of the NCC. For this reason, we recommend that this clause be removed.

If there is an issue with such credit and it causes serious consumer hardship , ASIC already has the powers to intervene using the Product Intervention Powers.

7.8A.04 Financial products for which target market determinations are not required – item 10

Following on from the above, we recommend that item 10 relating currently to pawnbroking be replaced with “Credit facilities that are exempt from the National Credit Code under section 6”.