

22 March 2013

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Dear Mr Mikula

The Regulation of Point of Sale Vendor Introducers

The Credit Ombudsman Service Limited (COSL) appreciates this opportunity to respond to the Discussion Paper on "The exemption of retailers from the National Consumer Credit Protection Act 2009" (Discussion Paper).¹

1. Introduction

1.1 COSL's position can be summarised briefly as follows:

- a) COSL rejects Option 1 as the status quo "carve out" for retailers from credit regulation is no longer sustainable or justifiable.
- b) Option 2 is the best option, subject to further consideration of the position of certain classes of particularly small retail service providers.
- c) COSL does not support Option 3 as it introduces greater regulatory complexity without adequately addressing the systemic issues raised by the conduct of vendor introducers.

2. Option 1 – Maintains a Regulatory Gap

2.1. As the Discussion Paper points out², there are an estimated 105,000 persons engaging in *credit activity who would, but for the exemption for point of sale vendor introducers* in Regulation 23 (the exemption), be subject to regulation under the licensing provisions in the *National Consumer Credit Protection Act 2009* (the Credit Act).

¹ Commonwealth Treasury, *The exemption of retailers from the National Consumer Credit Protection Act 2009: Discussion Paper*, January 2013, Australian Government.

² *Ibid* para 12.

2.2. Credit Act regulation provides consumers with the following protections, among other things:

- a) the requirement that all persons engaging in credit activities must either hold an Australian Credit Licence (ACL) or be appointed as a credit representative of an ACL holder;
- b) all ACL holders must meet certain conduct standards, including:
 - (i) providing the credit service “efficiently, honestly and fairly”;
 - (ii) managing conflicts of interest;
 - (iii) maintaining competence and training;
 - (iv) having adequate financial resources and risk management strategies;
- c) ACL holders must have in place internal dispute resolution procedures;
- d) ACL holders must lodge annual compliance certificates with ASIC and are potentially subject to ASIC inspections and audits; and
- e) ACL holders must be members of an ASIC-approved External Dispute Resolution (EDR) scheme.

2.3. COSL acknowledges that both the sale and credit transactions entered into by vendor introducers may still be subject to the National Credit Code (the NCC), which is Schedule 1 of the Credit Act.³ While the NCC does provide for some regulatory offences,⁴ its consumer protections primarily depend on private enforcement and it is this issue which most concerns COSL. Consumer access to EDR is an essential element of the Credit Act regulatory regime. All the rights consumers may have under the NCC without such access are, for the majority of consumers, illusory.

2.4. One of the goals stated by the Council of Australian Governments for the consumer credit reform process which led to the adoption of the Credit Act was:

National regulation through the Commonwealth of consumer credit will provide for a consistent regime that **extinguishes the gaps** and conflicts that may exist in the current regime. The new regime is anticipated to introduce licensing, conduct, advice and disclosure requirements that meet the needs of both consumers and businesses alike. A **seamless national regime** will assist in ensuring that consumers are better protected in their dealings with credit products and credit providers, including brokers and adviser.⁵

2.5. The point of sale exemption maintains such a “gap” and undermines the “seamless” national regime. This is difficult to justify in the light of the overall success of the Credit Act and credit licensing regimes.

³ The sale, for instance, will be covered by Part 7 of the NCC as it applies to “Related Sale Contracts.”

⁴ E.g. section 141 NCC.

⁵ CoAG, *Council of Australian Governments’ Meeting: Sydney – Communique* (3 July 2008) available at <<http://www.coag.gov.au/sites/default/files/2008-03-07.pdf>> p 3.

3. The Absence of EDR

3.1. The chief concern of COSL is that Option 1 and indeed Option 3 (to be discussed below) both deny consumers access to EDR for a large number of their credit transactions. Increased access to free, independent and specialised EDR has been one of the most positive developments in consumer protection in Australia over the last twenty years.

3.2. The Productivity Commission in its *Review of Australia's Consumer Policy Framework* made a strong case for the growth of EDR or Alternative Dispute Resolution ("ADR") for all consumer disputes, but made special mention of consumer credit:

"In the Commission's view, access to effective dispute resolution should be an integral component of consumer protection arrangements in the credit area.

– As a general principle, ADR will often provide for a cost-effective means of consumer redress (see chapter 9).

– For disputes involving consumer credit, recourse to the services of expert third parties is likely to be particularly helpful given both the complexity of many credit products and advice on those products, and the substantial detriment that some consumers experience when things go wrong.⁶

3.3. Without effective, independent, free and efficient EDR, consumers pursuing a complaint face emotional distress, the costs of time spent securing and seeking redress and, if the matter is complicated, and the consumer can afford it, lawyer's fees.⁷ These costs are unequally distributed as between consumers and suppliers with the latter almost always having superior litigious power, both in relative and absolute terms.⁸ EDR schemes can "help level the playing field between large-scale sellers and individual consumers."⁹

3.4. While consumers may have access to the Small Claims Tribunals or their equivalents in each state for point of sale credit disputes, these have not proved satisfactory. These tribunals, and even the lower courts, lack the specialised knowledge necessary to resolve particular kinds of consumer disputes.¹⁰ EDR schemes "can offer more specialised services; provide outcomes that are quick in comparison to other review bodies; as well as offer a dispute resolution process that is informal and more accessible than offered by other review bodies."¹¹

⁶ Productivity Commission *Review of Australia's Consumer Policy Framework* (Inquiry Report No 45, 30 April 2008) Vol 2 p 131.

⁷ *Ibid* p 193.

⁸ O'Shea, P "The Lion's Question as applied to industry-based consumer dispute resolution schemes" (2006) 26(1) *The Arbitrator and Mediator* 63.

⁹ Malbon, J "Consumer complaints" in *Consumer Law and Policy in Australian and New Zealand* (Federation Press, 2013) p 359.

¹⁰ Spiller P and Tokeley K "Individual Consumer Redress" in Howells, G, Ramsay I, Whelmsson T and Kraft D (eds) *Handbook of Research on International Consumer Law* (Edward Elgar, Cheltenham, 2010) pp 499-500.

¹¹ Stuhmcke, A "The Rise of the Australian Telecommunications Industry Ombudsman" (2002) 27 *Telecommunications Policy* 69 at p 69.

- 3.5. EDR, as provided by the Financial Ombudsman Service (FOS) and by COSL, in the financial services areas, addresses these issues by providing a dispute resolution forum which is:
- free;
 - independent;
 - specialised in the relevant areas;
 - efficient;
 - accountable; and
 - effective, in that its decisions bind the respondent industry member.
- 3.6. The Discussion Paper¹² refers to an example provided by COSL of systemic misconduct by a vendor introducer. In fact, there were several such vendors introducing consumers to a single financier. The misconduct was systemic across them all but COSL determined that it was not conduct for which the financier could be made liable in the circumstances. The financier was a COSL member but the vendor introducers were not and were not required to be so. The only recourse COSL had to address this misconduct was to refer the matter to the Australian Competition and Consumer Commission (ACCC). With respect to the ACCC, and its generic role, this is not a satisfactory remedy for an area which is supposed to be subject to industry specific regulation.
- 3.7. In 2011-2012, COSL closed 2,579 complaints. Of these approximately 1/3 were resolved by agreement between the parties, 1/3 in favour of consumers and 1/3 in favour of the respondent member.¹³ Thus, 1/3 of complaints are those for which COSL determined the consumer was entitled to some redress. Given the inequality of litigious power discussed above, it is highly likely that these consumers would not have achieved these results without COSL.
- 3.8. By denying consumers who obtain credit from a point of sale provider or introducers access to COSL, or to FOS, for the resolution of their disputes, the exemption is denying them access to justice.
- 3.9. There are also gains to industry by having appropriate access to justice for consumers. Professor Justin Malbon argues for a "virtuous cycle" where industry: "...benefit from improved access to justice through greater consumer trust, which in turn stimulates greater consumer participation in the market, leading to increased economic activity...."¹⁴
- 3.10. Further, the exemption, in relation to EDR, operates as an anti-competitive advantage in favour of point of sale credit providers and introducers. There are two dimensions to this problem: financial and behavioural.
- a) Firstly, COSL and FOS are funded by fees paid for by their members, both annual membership fees and case management fees. This is a relatively modest overhead amortised over entire industry sectors but is still a cost

¹² At para 58.

¹³ COSL, *Annual Report of Operations, 2011-2012* at p 19 See http://www.cosl.com.au/Resources/COSL/Sites/COSL/PDF/Publications/COSL_Annual_Report_on_Operations_2011-2012.pdf.

¹⁴ Malbon, N 9, p 359.

that industry must bear or pass on to its consumers.¹⁵ Those financiers who benefit chiefly from point of sale referrals and introductions avoid this cost but gain access to a particular section of the market made up of consumers who, according to the Discussion Paper, are likely to make their decisions based on “convenience rather than the price or other features of the credit contract.”¹⁶

- b) Secondly, financial services providers have become increasingly aware of the possibility of quick, free and relatively easy access to an EDR scheme by their customers. This has had a salutary effect on their behaviour. This is both implicit and explicit in that the schemes themselves actively engage with industry on issues that are raised in their complaint handling operations and work with industry to improve practice. COSL, for instance, has a strong program of stakeholder involvement with industry members, aimed partially at raising awareness of issues and improving industry practices as well as obtaining insights and feedback for the COSL process itself.¹⁷
- 3.11. Professor Malbon’s work on consumer behaviour, cited in the Discussion Paper, found that 46% of consumer credit consumers in his survey reported that they entered into credit contracts “simply to purchase an item, rather than because of the terms of the credit offered.”¹⁸ There is, therefore, in this section of the market, less effective competition between financiers as to the terms of credit and between the vendor introducers as to a choice of financier. There is already an anti-competitive advantage for those financiers who use vendor introducers in their unregulated access to this class of consumers which is magnified by the lack of regulation, in particular, consumer access to EDR.
- 3.12. Continuing the exemption for point of sale credit providers, introducers and referrers, is unfair to both consumers and other sections of the consumer credit industry. It flies in the face of specific recommendations by the Productivity Commission and it simply does not make sense.

4. Other Problems

- 4.1. By not requiring point of sale vendor introducers to be licensed under the Credit Act regime, the exemption denies consumers access to a raft of other protections, including those summarised at 2.2 above. In COSL’s experience, some of these are particularly relevant and would be very useful in the point of sale credit situation.
- 4.2. As pointed out in the Discussion Paper, the exemption prevents the regulator, ASIC, from controlling effectively who engages in these credit activities. Point of sale credit providers and introducers have significant turnover in staff. This impacts negatively on:

¹⁵ Malbon, J “Access to Justice for Small Amount claims in the Consumer Marketplace: Lessons from Australia” in Duggan t and Trebilcock M (eds) *Middle Income Access to Civil Justice* (Toronto University Press, Toronto, 2012) p 334.

¹⁶ Discussion Paper, para 17.

¹⁷ COSL, *Annual Report of Operations, 2011-2012* N 13 above, p 49.

¹⁸ Ibid para 16.

- a) accountability to consumers and regulators; and
- b) competence and commitment to provision of compliant services.

4.3. While COSL acknowledges that:

- a) the general law such as the common law and ACL; and
- b) the provisions of the NCC generally,

may apply to the point of sale consumer credit transactions, the power of the regulator to refuse, or put conditions on, a licence holder is absent. This is one of the essential "tools" of effective consumer protection in those industries where consumers have been proven to be particularly vulnerable.¹⁹

4.4. This is clearly the case for credit sold or referred at the points of sale for:

- used cars
- furniture
- electrical goods

4.5. Another effect of the exemption is that vendor introducers, unlike any other credit broker, assister, introducer or referrer, are not required to make a preliminary assessment of suitability to comply with the Responsible Lending Obligations (RLO) which apply to ACL holders.²⁰

4.6. While the financier is still obliged to comply with the RLO, the Discussion Paper, quite rightly, points out the differences between the preliminary assessments conducted by brokers and the final assessments conducted by financiers. The former "will need to consider the consumer's needs in respect of all the products they can arrange, whereas the credit provider or lessor only needs to consider the requirements against their own products."²¹

4.7. If you add to this the fact that many vendor introducers (particularly in the car market) are remunerated by commission as much as by any profit on the item or service sold, then there is a "heady mix" of factors which can lead to consumers obtaining unsuitable credit or, at the very least, credit on terms which are less than optimal for their needs.

4.8. Here again, there is a lack of competitive neutrality and an unfair advantage for vendor introducers as opposed to licensed brokers or other credit assisters.

4.9. While the disclosure requirements of the NCC still apply to credit obtained through a point of sale provider or introducer, the licensed linked disclosure requirements do not for the introducer. As pointed out in the Discussion Paper, this means that vendor introducers do not need to disclose any benefits, like commissions, they earn from arranging the finance. This is important where, as in the case of car sales, the vendor introducer makes as much if not more from such commissions than from the sale of the car itself.

¹⁹ Productivity Commission Note 6 above at p 131

²⁰ The RLO provisions are in sections 115, 116, 117, 128, 129, 130, 140 and 153 of the CREDIT ACT.

²¹ Discussion Paper para 33.

- 4.10. These disclosures are, of course, still required of the financier²² but the transaction is almost always largely concluded, from the consumer's perspective, at the point of sale with the vendor introducer and not at the premises of the financier. By the time the consumer receives the supposedly pre-contractual financier disclosures mandated by the NCC, 23 they will have already decided to enter into the contract.
- 4.11. If the consumer had been referred or introduced to the financier by a broker or other credit assister who was not operating at a point of sale then they would have received a:
- a) Financial Services Guide for the credit assister;²⁴ and a
 - b) Quote for Providing Credit Assistance,²⁵
- prior to receiving any assistance, advice or arrangement by that person. They will have known what commissions, charges or other fees the broker or credit assister will receive as a result of the transaction. They will have a better idea of the true cost of that service. In the point of sale situation, however, these do not have to be disclosed until the consumer has already committed to the credit contract.
- 4.12. While the usefulness of these documents to consumers has been debated, particularly in relation to Financial Services Guides,²⁶ it is clear that their intended benefit is denied to those consumers who obtain credit from a vendor introducer. The exemption certainly produces yet another anti-competitive advantage for vendor introducers over other credit assisters and providers in relation to the compliance costs of disclosure.

5. Option 3 – Complexity with little gain.

- 5.1. Option 3 sets up three different sets of regulatory obligations for vendor introducers depending on their "function." COSL has no problem with the proposition in paragraph 85(a) of the Discussion Paper that vendor introducers who act as a broker would be required to hold an ACL or be appointed as a credit representative by an ACL holder. This would mean that all of the licence linked consumer protections discussed above, such as access to EDR, RLO and Disclosure, would apply. The credit representatives themselves will have to satisfy training and qualification requirements.
- 5.2. COSL does have serious concerns about the "modified regulation" proposed for vendor introducers who act only on behalf of a single financier or under first or second choice arrangement.²⁷
- 5.3. As COSL understands it, this modified regulation would:

²² See *Australian Finance Direct Limited v Director of Consumer Affairs Victoria* (2007) 234 CLR 96 at para 19.

²³ E.g. s 17 of the NCC.

²⁴ CREDIT ACT s 113.

²⁵ *Ibid* ss 114-115.

²⁶ See Queensland Law Society, Submission to the Commonwealth Treasury, *Draft National Consumer Legislation*, 21 May 2009, p 11 and Australian Finance Conference, Submission to the Commonwealth Treasury, *National Consumer Credit Protection Bill 2009*, 22 May 2009, p 19

²⁷ Discussion Paper para 85(b)

- a) require financiers to formally appoint the vendor introducers as their "supplier representatives", a new term introduced in this part of the Discussion Paper and previously unknown to consumer credit law; and
 - b) make supplier representatives subject to the same negative eligibility requirements that apply to credit representatives.
- 5.4. These are positive developments but the specific exemption from the requirement to be a member of an EDR scheme is problematic here.
- 5.5. The Discussion Paper, at para 104, says that the "liability of the financier for supplier representatives would continue to be determined in accordance with the existing framework in Part 2-3 of Division 4 of the Credit Act." Thus, in theory, a consumer could make complaint about the conduct of a "supplier representative" to the financier who appointed them. This financier would have to be a member of either COSL or FOS. The theory is good. In practice, however, it is quite a different matter.
- 5.6. Despite the liability provisions, financiers are separate entities and may be substantially removed from their corporate credit representatives or credit representatives, or the proposed "supplier representatives." The consequences of this separation include:
- a) an often complete lack of knowledge by the financier of the conduct of the representative;
 - b) a significant time delay between the transaction and the complaint making it very difficult for the financier to respond and for COSL to investigate and make findings;
 - c) frequently, a lack of sufficient records in the hands of the financier reflecting the conduct of their representatives;
 - d) a severe lack of sufficient records in the hands of the representatives; and
 - e) the transience of staff, and indeed, employing entities, among such representatives, particularly in the used car market, makes the gathering of evidence for dispute resolution very difficult. Only a few months after the transaction the subject of a complaint, the salesman, other staff, and even the dealer themselves, may have "moved on."
- 5.7. These issues already present problems for COSL, and we imagine for FOS, with existing credit representatives. At least with them, however, they:
- a) are individually members of an EDR scheme and must account to that scheme if required;
 - b) must satisfy the training and qualification requirements for credit representatives. Although more transient than credit providers, credit representatives are still, due to their personal investment in such training, more committed to their respective industry;
 - c) are more likely to keep adequate records and respond usefully to complaints and requests by COSL for information about relevant transactions.

- 5.8. The proposed “supplier representatives” will be neither individually members of an EDR scheme or qualified credit representatives. This will make resolution of disputes with their financier principals very difficult. Indeed, it will make it almost unfair for those principals responding to complaints about conduct over which they had little or no control or knowledge.
- 5.9. The absence of the training, qualifications and reporting requirements which currently apply to credit representatives is a concern for COSL. We have already discussed how these issues impact on the handling of complaints and the resolution of disputes. They do, however, also present problems in their own right.
- 5.10. The Discussion Paper²⁸ discusses the low levels of training and qualifications for vendor introducers. They appear to be virtually non-existent and consist, usually, of a short informal demonstration on how to fill out credit application forms. Vendor introducers are far more interested in training their staff in how to sell products and credit and increase commissions.
- 5.11. This is highly problematic given the functions which such persons perform which are crucial to the consumer credit transaction process²⁹, the incentives for them to oversell credit products to select financiers on the basis of commissions rather than consumer suitability³⁰ and the particular vulnerability of consumers in this section of the market.³¹
- 5.12. Reporting, monitoring and record keeping by credit representatives is a useful means of encouraging “self-discipline” and “self-regulation” in their conduct, as well as providing the regulator, ASIC, with information about the operation of the industry. Without such information, regulatory responses will always be potentially misdirected and inadequate.
- 5.13. The Discussion Paper goes on, at para 85(c) to deal with those vendor introducers who have a role in product selection but have a limited role in arranging finance. The Discussion Paper canvasses five different proposals for regulation of this group in addition to those required for the “supplier representatives” discussed above.
- 5.14. COSL has substantial difficulties with this set of proposals.
- 5.15. Firstly, and most importantly, this new category also does not require vendor introducers to be independently members of an EDR scheme. We have already discussed the problems this presents for consumers and EDR schemes.
- 5.16. None of the proposals for additional obligations for supplier representatives addresses issues of qualifications and training. It would be difficult to achieve the goals of:
- Proposal C: “reduced responsible lending conduct obligations”

²⁸ at para 24(b).

²⁹ Discussion Paper para 13.

³⁰ Ibid at paras 38-47.

³¹ Ibid at paras 16-17.

- Proposal E: “additional reporting requirements”,
without such qualifications and training.
- 5.17. The overall complexity of the proposed regulatory framework may well be counter-productive. The Discussion Paper asks, at Question 10: *How practical will it be to determine what obligations (sic) a vendor introducer is engaging in, and therefore what level of obligations they, and any licensee, should be meeting in relation to their conduct?*
- 5.18. There *appears* to be a typographical error here and the question is really asking: “How practical will it be to determine what **conduct** is being engaged in...etc.?”.
- 5.19. The answer is still the same. It will be very difficult and at times impossible, particularly in the vendor introducer market, both used cars and other retail, to determine whether a vendor introducer is only operating under a first or second choice financier arrangement and/or is not otherwise influencing a consumer’s choice of finance product.
- 5.20. In COSL’s experience, such determinations will depend on, frequently, subjective evidence from consumers and will be difficult to verify from any records, particularly the standard of recording keeping common in used car yards and at furniture retail stores. The admittedly quite ingenious and nuanced proposals countenanced by Options A-E, in addition to the invention of the “supplier representative” concept are a detailed regulatory construct. It rests, unfortunately, for its operational application on evidence about conduct which will be contested and sometimes confused. This is a shaky foundation for such an elaborate edifice.
- 5.21. Option Three countenances two more regulatory sub-regimes to be added to the existing Credit Act regime. Overly complex regulation is a problem in many areas of economic life.³² It frequently invites industry participants to:
- take advantage of complexity to effectively avoid compliance;
 - develop concomitantly complex business models to either avoid compliance or reduce its effect; or
 - engage in simple avoidance through ignorance.
- It rarely assists consumers.
- 5.22. Of course, if new regulation results in clear consumer benefit, some further degrees of complexity may be justified. In COSL’s view, Option 3, for the reasons discussed above, does not adequately address the issues raised by vendor introducers of consumer credit and merely adds new layers of regulatory complexity without the desired result.

³² Gary Banks, Chairman, Productivity Commission, ‘The good, the bad and the ugly: economic perspectives on regulation in Australia’, Address to the *Conference of Economists, Business Symposium*, Hyatt Hotel, Canberra, 2 October 2003 p. 4.

6. Option Two – The Best Result

- 6.1. By simply removing the exemption, point of sale financiers will be forced to appoint vendor introducers as their corporate credit representatives or their credit representatives. Vendor introducer companies will be forced to either comply with the requirements of being credit representatives or otherwise hold an ACL. The benefits are generally well canvassed in the Discussion Paper at paras 69-75 so we will not repeat them here.
- 6.2. This option, in COSL's view, most adequately addresses the problems identified in the Discussion Paper and elsewhere in this submission, which arise in the point of sale consumer credit market. It certainly will give consumers in this market access to EDR which will have far reaching and positive effects as it has had elsewhere in the consumer credit market since the passage of the Credit Act. We note that the Discussion Paper³³ identifies no negative impacts for this option for consumers other than those which are always canvassed when regulation is applied to a new market. Compliance costs and the likelihood that:
- the product may become less available; and
 - such costs will be passed on to consumers.
- 6.3. Even then, as the Discussion Paper goes on to analyse at paragraph 75, there is unlikely to be any substantial effect on the total volume of retail sales. Indeed, it is more likely to "result in consumer making more efficient choices, by seeking out or being provided with finance which is cheaper or has better features."
- 6.4. The Discussion Paper raises some possible adverse and anti-competitive outcomes of adopting Option 2 and simply removing the exemption³⁴.

a) Financiers will only appoint credit representatives if they are in exclusive relationships thus preventing other financiers from accessing that particular retail distribution network.

COSL says that this is not a certainty. The Credit Act canvasses credit representatives holding authorities from more than one financier.³⁵ Even if this does occur, it is only a reflection of the most common current position where most retailers provide vendor introduced finance from one financier. The larger retail chains, particularly in the furniture and electrical areas, are more likely to command a position where more than one financier is willing to give authorities to their in-store credit representatives.

This is a positive outcome as financiers will become more clearly accountable for the conduct of their corporate credit representatives or credit representatives and the retailers would themselves become more

³³ At para 74.

³⁴ Ibid at paras 80-83.

³⁵ E.g. Credit Act s 76

responsible for their in-store credit representative staff, with the representatives being accountable to ASIC and to EDR.

- b) *Financiers are only going to appoint credit representatives at large volume retailers thus denying the customers of smaller vendors access to point of sale finance.*

We would have thought that the frequency and volume of point of sale finance among small retailers is quite low and that the problems in this market are mostly from the larger retailers and the used car market.

- c) *Smaller retailers are likely to adjust their functions in order to have less active roles, for instance, becoming mere referrers.*

COSL does not see this as an adverse outcome. It might reduce consumer convenience, but it does force consumers to take another "step" and gives them more opportunity to consider their choices. The referral will be to an ACL holder, either a credit provider or assister who will be fully accountable under the Credit Act regime and members of an EDR scheme.

While the larger retailers will have the advantage of a "one stop shop", in COSL's view, this is not such a great difference from the current position where very little point of sale finance is available anyway from smaller retailers.

- d) *Some smaller vendor introducers may become credit representatives of "fringe" financiers if the larger financiers refuse to appoint them.*

This is unlikely, in COSL's view, because the shop front pay day style lenders who are members of the National Financial Services Federation do not engage in point of sale credit activities currently. Even so, they are ACL licence holders and accountable as COSL members.

7. Small Amount Transactions – A possible "mini carve out"

- 7.1. COSL is mindful of the extra compliance burden which Option 2 presents, particularly for small retailers who provide services such as doctors, dentists, vets, travel agents, tyre fitters and garden shed installers. It is likely that some of these, due to their relatively low volumes and the lower value of their transactions, will be excluded from the point of sale finance market as a result of this reform.
- 7.2. Some of these services verge on the essential, even when provided privately, such as medical and dental. It would be potentially socially unjust for low income consumers to be denied access to them if such access could be arranged with point of sale finance. There is no question that the general provisions of the NCC would still apply.

- 7.3. There is also an argument for low value goods sales which are financed at point of sale to be exempted, particularly in the areas of furniture and electrical, jewellery, gym equipment and computers.
- 7.4. COSL considers there is some merit in a \$4,000 exemption for point of sale consumer credit for services only from the licence-linked provisions of the Credit Act. This would allow the providers of services for small amounts to avoid the compliance costs of regulation and still be able to provide or access some point of sale finance.
- 7.5. Although such policy settings are frequently a "judgement call" and may require more research and consultation with the relevant industry groups, this amount is most likely to cover most transactions in the following areas:
- Dental
 - Vet
 - Most medical
 - Tyre fitters
 - Car repairs
 - Garden Shed installations
 - Minor household repairs and renovations.
- 7.6. In relation to goods, COSL suggests a limit of \$2,000 for the point of sale exemption.
- 7.7. The Credit Act already recognises that different circumstances can pertain to small amount credit contracts and provides for a different regulatory regime for these contracts, particularly in relation to the cost of credit.³⁶ These are set to effect contracts for loans of \$2,000 or less. Of course, they do not yet apply to point of sale finance.
- 7.8. While many furniture and electrical purchases may come in at less than this proposed \$2,000 limit, increasingly, many do not. In any case, in the current market, point of sale finance is usually not available for purchases below certain limits, frequently \$500 but sometimes more.
- 7.9. These exemption limits should be based on the purchase price of the goods or services, including any deposits, not on the amount financed.
- 7.10. With these "mini-exemptions" in place, the more extreme counter-productive effects of extending the application of full Credit Act regulation to point of sale finance will be ameliorated and the benefits maximised.

³⁶ Those regulations amended by *National Consumer Credit Protection Amendment Regulation 2012 (No. 4)*

Please feel free to contact me should you have any queries.

Sincerely

A handwritten signature in black ink that reads "Raj Venga". The signature is written in a cursive style with a large initial 'R' and a long, sweeping tail on the 'g'.

Raj Venga
Chief Executive Officer and Ombudsman