The exemption of retailers from the *National Consumer Credit Protection Act 2009*

Discussion Paper
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CONSULTATION PROCESS

REQUEST FOR FEEDBACK AND COMMENTS

The Government is seeking your feedback and comments in relation to the existing exemption for retailers who engage in credit activities in relation to the sale of goods or services under the *National Consumer Credit Protection Act 2009.*

Specific focus questions have also been included for which feedback is sought. While submissions may be lodged electronically, by post or by facsimile, electronic lodgement is preferred.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless respondents indicate that they would like all or part of their submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* to make available a submission marked 'confidential' will be determined in accordance with that Act.

CLOSING DATE FOR SUBMISSIONS: MONDAY, 25 MARCH 2013

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FOREWORD

I am pleased to release this discussion paper reviewing the need for regulation of persons who arrange credit contracts or consumer leases in connection with the provision of goods or services under the national credit regime.

Prior to the commencement of the *National Consumer Credit Protection Act 2009*, the Government exempted retailers who engage in credit activities at the point of sale from the requirements of the Act, including the credit licensing regime and the responsible lending obligations. These persons can engage in a spectrum of behaviour from assisting the consumer to apply for credit at the point of sale to actively recommending particular products. The exemption has been in place since mid-2010, so it is appropriate to consider the effectiveness and impact of the exemption, in light of the experience since that time for consumers, licensees and retailers.

The retail sector is a significant part of our economy, employing thousands of Australians, many of whom play an important role in enabling consumers to purchase goods and services that they need, when they need them. The Government is therefore committed to ensuring that both business and consumers can continue to have confidence in our point of sale credit regulatory regime.

This discussion paper is an important step in the Government's review. I encourage you to participate in this consultation and provide your views on the different regulatory approaches outlined in this paper. Your input will be important in informing the Government in deciding how best to proceed.

The Hon Bill Shorten MP
Minister for Financial Services and Superannuation

GLOSSARY AND ABBREVIATIONS

ACL	Australian credit licence
ASIC	Australian Securities and Investments Commission
Credit Act	*National Consumer Credit Protection Act 2009*
Credit Regulations	*National Consumer Credit Protection Regulations 2010*
EDR scheme	External dispute resolution scheme
FNI rep	A person who arranges finance and insurance for customers of a car dealership
POS finance	Point of sale finance
Vendor introducer	A person or business who arranges finance with a third party in connection with the sale of their goods or services

Introduction

Background

1. Phase One of the National Credit Reforms saw the introduction of a requirement for persons who engage in credit activities to hold an Australian credit licence (ACL) or otherwise be authorised under the *National Consumer Credit Protection Act 2009* (Credit Act). Persons engage in credit activities where they either provide credit or offer consumer leases to consumers or they provide credit services such as recommending particular products, assisting a consumer to apply for credit or referring a consumer to a credit provider or lessor.

2. Businesses that arrange finance with a lender or lessor in connection with the provision of goods or services are engaging in credit activities and would ordinarily need to obtain an ACL and to meet the obligations imposed by the Credit Act, such as responsible lending conduct requirements. These businesses are called vendor introducers in this Discussion Paper.

3. The Government decided that vendor introducers would be exempt from the Credit Act, pending a review of the sector. The exemption was effected through Regulation 23 of the National Consumer Credit Protection Regulations 2010 (Credit Regulations); for details of the exemption see Annexure A.[1]

4. As part of this review, the Government convened a Point of Sale Working Group. Its membership comprises key stakeholders with specialist knowledge, including representatives from major financiers in the retail sector, the two main retail areas (stores and vehicle dealerships), industry bodies, and consumer groups. This Discussion Paper includes input from members of the Working Group but does not represent their individual views.

5. The objective of this Discussion Paper is to seek public comments as to whether further Government regulation is required in this area, and, if so, the nature of that regulation.

Executive Summary

6. The current exemption is based on the status of vendor introducers as persons engaging in credit activities at the point of sale. It does not depend on the nature of the credit-related functions the vendor introducer is performing, and therefore applies even where they may have a significant role in product selection or be acting similarly to finance brokers who are required to be licensed.

7. The following potential regulatory gaps have been identified in relation to the conduct of exempt vendor introducers:

   a) they are not required to meet any entry standards, and the Australian Securities and Investments Commission (ASIC) is also unable to exclude vendor introducers from the credit market (even if they engage in conduct that is incompetent or dishonest);

1 A further exemption was provided for retailers in relation to the provision of co-branded credit cards, in Credit Regulation 23A. This exemption is not being reviewed as part of this process. However, the exemption is also included in Annexure B for information purposes only.

b) they can select, recommend or propose credit products without having to conduct an assessment as to whether the product is suitable for the consumer, or meets their financial requirements or objectives; and
c) there are limitations on the ability of consumers to access remedies for the conduct of vendor introducers.

8. The Discussion Paper sets out three options in relation to regulating vendor introducers:

a) Option 1 — maintaining the status quo, by retaining the existing exemption in the Credit Regulations for vendor introducers;
b) Option 2 — requiring vendor introducers to comply with the Credit Act; or
c) Option 3 — modifying the application of the obligations in the Credit Act to vendor introducers, according to the functions they are performing, so that vendor introducers who are more actively involved in product selection and delivery would be subject to a higher level of regulation.

9. Option 3 would result in vendor introducers operating under regulatory obligations as follows:

a) 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;
b) vendor introducers who act only on behalf of a single financier or under first or second choice arrangements would be subject to modified and limited regulation under the Credit Act; and
c) vendor introducers who have a role in product selection but have a limited role in arranging finance would be subject to different modified regulation under the Credit Act.

1. ROLE OF VENDOR INTRODUCERS IN THE POINT OF SALE CONTEXT

10. The role of vendor introducers is to facilitate a consumer obtaining goods or services under a credit contract or consumer lease. In this Discussion Paper the term finance is used to describe both classes of products, and the term financiers is used to refer collectively to the providers of these products.

11. The two main categories of vendor introducers are persons located in vehicle dealerships and in retail outlets. Vehicle dealerships encompass businesses that sell cars, bikes, boats and caravans. Retail outlets that provide POS finance cover a diverse range of operations such as major stores, doctors, dentists, funeral homes, vets, travel agents, tyre fitters, garden shed installers, jewellers, swimming pool builders and sellers of gym equipment, computers, hi-fi equipment and furniture. In general, the smaller the retailer the more likely they are only likely to have arrangements with a single financier.

12. It is estimated that currently in Australia the following numbers of vendor introducers are engaged in credit activities:

a) between 12,000 and 12,300 retailers (with approximately 75,000 staff); and
b) about 630 vehicle dealerships (with an estimated 30,000 persons engaging in credit activities).

13. Vendor introducers perform a range of functions including:

a) providing information about the finance options they can arrange;
b) discussing the benefits of these options relative to other payment options;
c) recommending a particular finance option;
d) referring a consumer to a financier;
e) negotiating the terms on which finance is to be provided;
f) providing documents to the consumer on behalf of the financier;
g) assisting the consumer to complete an application form; and
h) verifying the borrower's identity and financial circumstances.

14. In general terms there are significant differences in the structure of these businesses, with a different dynamic operating in relation to the role of POS finance. In the retail store context the retailer makes a profit from the sale or supply of goods or services, and the availability of credit maximises the volume of sales, and therefore the profitability of the business. However, in relation to vehicle dealerships, cars can be sold at a loss or break-even price, with the dealership earning a profit on the transaction through the provision of finance and the sale of extra items (for example, servicing agreements, insurance and warranties). In other words, where no or minimal profit is generated from the sale of the vehicle the dealership will be under economic pressure to maximise the profit earnt through commissions and other financial benefits payable in relation to the finance, and from the sale of items (other than the vehicle) financed through the credit contract.

15. Servicing agreements and warranties may be financial products regulated by the *Corporations Act 2001*, so that their sale is subject to conduct requirements under that legislation.

16. Consumers who opt to use POS finance are likely to approach the financing decision as an incidental matter once the primary decision to purchase goods or services has been made. Research demonstrates that consumers purchasing items such as household goods are often focused on obtaining the product and are financially or psychologically committed to the transaction. A review of practices in this area was undertaken by Professor Justin Malbon, in a report conducted for the Post Implementation Review of the Uniform Consumer Credit Code. His report, 'Taking Credit: A Survey of Consumer Behaviour in the Australian Credit Market' (***the Malbon report***), found that 46 per cent of respondents reported they had entered into a credit contract simply to purchase an item, rather than because of the terms of the credit offered.

17. Consumers may therefore make decisions in relation to the use of POS finance on the basis of convenience, rather than other factors such as price or other features of the credit contract. This means that consumers are unlikely to be familiar with the cost or terms of POS finance available before deciding to purchase goods or services.

18. The operation of POS finance in the retail store context has the following features:

   a) The amount of finance required by the consumer is based on the value of the goods or services being provided by the supplier, and is therefore usually, but not always, for relative small amounts.
   b) There is a large workforce of retail staff who may engage in credit activities, with a regular turnover of such employees.
   c) The role of the vendor introducer is relatively circumscribed, and is generally limited to assisting the consumer to select a finance product (where more than one option is available), and then arranging contact between the consumer and the financier.
   d) The financier exercises control over the terms of the contract once the price of the goods or services and, therefore, the amount of credit required has been ascertained; that is, there is no capacity for the vendor introducer to negotiate on the terms of the contract.

19. Technological developments are likely to diminish the role of these vendor introducers even further, so that consumers will increasingly deal directly with the financier through an in-store computer interface. Deloittes has been developing technology that will provide this facility and expects that it will be available through major retailers within approximately two years.

20. The operation of POS finance in the vehicle dealership context has the following features:

   a) Vendor introducers are more actively involved in arranging the provision of credit or a consumer lease. They tend to be persons who are trained in finance and will arrange finance on a full-time basis. They will usually discuss options for the structure of the loan and the transaction with the consumer before submitting an application (for example, as to the term, amount of deposit, repayments, or effect of taking out insurance).
   b) The vendor introducer will regularly also arrange for the sale of financial products related to the transaction, such as comprehensive insurance, where they may act as Authorised Representatives on behalf of the holder of an Australian financial services licence. This class of vendor introducers provides services in relation to both finance and insurance and are therefore known as ***FNI reps*** (and referred to by that term in this Discussion Paper).
   c) The dealership can exercise significant control over the terms on which credit is likely to be provided, with the financier typically agreeing to the terms proposed by the vendor

introducer in the application (provided the transaction satisfies the financier's 'parameter matrix', that is, all eligibility requirements are satisfied).

d) The terms of the transaction are relatively fluid, as the FNI rep and the consumer may explore a range of options for satisfying the parameter matrix, in order to accommodate the requirements of the lender or the needs of the consumer (for example, a larger deposit can be paid or the dealership can lower the price of the motor vehicle, to reduce the exposure of the credit provider in the event of default).

e) The dealership may have arrangements with some financiers in which the higher the interest rate (above a base rate) the greater the commission earned by the dealership. These arrangements can influence the FNI rep in the way they select an interest rate and encourage them to earn more by selecting a higher interest rate (provided the proposal otherwise satisfies the parameter matrix). These arrangements are called ***flexi-commissions*** in this Discussion Paper. These arrangements can result in the terms of the contract being settled by the vendor introducer first determining the maximum amount of repayments the consumer can afford, and then proposing an interest rate that will result in that level of payments.

f) It is common for the dealership to seek to arrange finance with the lender who provides finance to the dealership for the purchase of stock or to underwrite their floor plan. The dealership may secure financial benefits that increase according to the volume of business placed with the financier, through volume bonus arrangements (where the amount of commission paid increases according to the level of business) or offset arrangements (where the amount of interest paid by the dealership to the financier in relation to their floor plan is reduced according to the level of business).

g) FNI reps are commonly remunerated by being paid a relatively low base salary plus commissions. They can operate in a way that is largely insulated from other aspects of the car dealership business.

h) The financier has not direct responsibility or control in relation to the sale of products such as servicing agreements, insurance and warranties.

2. Effect of current arrangements

21. The current exemption applies to vendor introducers on the basis of their status rather than according to their function, and allows them to rely on the exemption even where they may have a significant role in product selection or are otherwise performing a similar function to licensed finance brokers. This has resulted in some regulatory gaps in relation to consumer protection and competitive neutrality.

22. Specifically, the following issues have been identified:

    a) an absence of any entry or conduct standards and the lack of any power for ASIC to exclude from the market vendor introducers who engage in conduct that is incompetent or dishonest;
    b) the absence of responsible lending conduct obligations (especially where the vendor introducer can arrange products offered by different financiers); and
    c) limitations on the ability of consumers to access remedies for the conduct of vendor introducers.

Absence of any ability to control who engages in credit activities

23. Persons who engage in credit activities have to either hold an ACL or be appointed as a credit representative of a licence holder.

24. A person who is licensed has to meet specified standards and comply with ongoing obligations as follows:

    a) meeting general conduct standards, including acting fairly and honestly and managing any conflicts of interest so as not to disadvantage consumers;
    b) maintaining their organisation's competence to engage in credit activities, including having responsible managers and adequately trained representatives;
    c) maintaining adequate financial resources and risk management systems;
    d) meeting responsible lending conduct obligations, including ascertaining and verifying a consumer's financial situation, and assessing whether the credit contract is not unsuitable;
    e) having in place internal dispute resolution procedures;
    f) belonging to an ASIC-approved EDR scheme; and
    g) lodging an annual compliance certificate with ASIC.

25. A person who is appointed as a credit representative has to:

    a) meet minimum eligibility criteria (for example, they must not have been convicted of serious fraud in the last 10 years); and
    b) be a member of an ASIC-approved EDR scheme in their own right.

26. ASIC also has power to ban persons from engaging in credit activities in specified circumstances (for example, if they become insolvent or ASIC considers they are not a fit and proper person).

27. The structure of the exemption for vendor introducers has the following legal consequences:

   a) vendor introducers do not need to meet any of the requirements that apply to other persons in order for them to hold an ACL or be appointed as a credit representative; and
   b) persons who engage in misconduct cannot be excluded from the industry by ASIC.

28. The exemption therefore does not provide any means of regulating or controlling the activities of vendor introducers who may cause loss or damage to consumers. An example of a situation in which there is a risk of financial harm to consumers would be a scenario where the vendor introducer misstates the consumer's financial position in order to ensure the application for finance is accepted (so that the vendor introducer earns commissions or other financial benefits from the transaction). This may result in the consumer being provided with finance they cannot afford, or which would be unsuitable under the Credit Act.

29. A vendor introducer who engaged in conduct of this type would not have to meet entry standards (which could result in them being denied an ACL if they had to apply for one), and could not be banned by ASIC from engaging in credit activities.

30. Discussions within the Working Group established that the industry is unable to effectively self-regulate to exclude individuals who engage in systemic poor practices as, firstly, misconduct by an individual while employed or acting on behalf of one entity may not necessarily be detected prior to a change in employment, and, secondly, employers consider they are not always able to advise prospective employers of misconduct by an individual unless there is a finding to that effect in a court of law. This means that even if an individual is dismissed for misconduct, they may still remain active in the industry by moving to a different employer.

31. This leaves consumers potentially exposed to the risk of having finance arranged by persons who:

   a) have a demonstrated propensity towards impropriety and a consequent risk for consumers that they may suffer loss or damage; and
   b) may be refused an ACL, if they were required to apply for one in order to engage in credit activities, because they do not meet the conduct standards required of a licence holder.

THE ABSENCE OF RESPONSIBLE LENDING CONDUCT OBLIGATIONS

Effect of exemption on selection of product type and terms

32. Both providers of credit assistance (such as finance brokers) and credit providers and lessors are required by the Credit Act to assess whether a proposed credit contract or consumer lease would be suitable for a consumer's requirements and objectives.

33. However, the outcome of the assessment may vary between brokers and financiers as, in general terms, the broker 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.

34. The way in which different outcomes may result can be illustrated by comparing the obligations on a financier and a broker in a scenario where the consumer's objective is to have the cheapest product that the person can arrange. In this situation:

a) a broker would need to identify the cheapest product available from all of the financiers they deal with; and
b) a credit provider or lessor would only need to identify the cheapest product they offer.

35. Under the current exemption, vendor introducers providing credit assistance (by suggesting, or assisting a consumer to apply for, a particular credit product or consumer lease) do not need to conduct a preliminary assessment as to whether the credit contract or lease would be unsuitable for the consumer. Once the vendor introducer has arranged for the consumer to lodge an application with a financier that financier would undertake a suitability assessment; however, this assessment would be limited in scope since the financier only needs to determine suitability in relation to their own products.

36. This creates a risk of financial detriment to consumers from vendor introducers being exempted from the requirement to undertake a preliminary assessment.

37. The difference in outcomes can be further illustrated through the above scenario, where the consumer's objective is to obtain the cheapest product available. If the vendor introducer refers or encourages consumers to the financier who charges a higher price consumers will necessarily be paying more than if the vendor introducer had had to match the product to their needs or requirements. Different outcomes therefore would result as follows:

a) if the vendor introducer has to undertake a preliminary assessment — they would need to identify the cheapest product available from all financiers; and
b) if the vendor introducer does not have to undertake a preliminary assessment and refers the consumer to the financier who pays the higher commission — the consumer will be disadvantaged by the difference in price between the contract they enter into and the price of cheaper alternative finance.

38. The absence of any requirement on vendor introducers to undertake a preliminary assessment therefore creates a risk that the consumer will be provided with a product that satisfies the suitability requirement of the financier but that would not meet the suitability requirement if the vendor introducer was required to undertake a preliminary assessment.

39. The risk of harm is more likely where the vendor introducer has selected the financier on the basis of the commissions they will receive if finance is approved, where those commissions increase the cost of finance paid by the consumer.

40. The exemption also means that there is a lack of competitive neutrality between vendor introducers and other persons providing credit assistance who may perform similar functions, but are required to be licensed and comply with responsible lending obligations under the Credit Act.

Comparison between retail store and car dealership conduct

41. The economic drivers in relation to the role of POS finance in the retail and caryard context mean that the regulatory gap in relation to suitability assessments creates different risks for consumers.

42. In the retail store context the profitability of the business typically depends on the volume of sales, with the price of goods being fixed or relatively static. There are also unlikely to be significant differences in eligibility requirements between providers — that is, a person who is eligible for one POS finance product will often, though not always, be eligible for other POS products.

43. The primary risk for consumers therefore is that they will be channelled or steered towards a more expensive finance option because higher commissions are paid, and that the provider recoups the cost of these payments in the price charged to the consumer.

44. In relation to car dealerships, cars can be sold at a loss or break-even price, so that the dealership maximises its profit from the provision of credit itself (through commissions and other financial benefits), and from the sale of items financed through the credit contract.

45. These economic pressures can mean that consumers are at risk of being provided with:

a) higher cost finance, particularly as a result of flexi-commissions where the interest rate can be set according to the level of repayments the consumer can afford; and
b) sales of warranties, insurances and other products that may be commission-driven.

46. In both situations consumers are at risk of entering into higher cost contracts because the vendor introducer will receive a greater financial benefit. This outcome is known as 'reverse competition', where competition by providers for access to distribution channels results in increased costs to the consumer. The risk of steering was identified as significant by some participants during meetings of the Working Group.

47. Consumers who opt to use POS finance are particularly susceptible to steering as:

a) they are unlikely to be familiar with the cost or terms of POS finance before deciding to purchase goods or services (see the discussions in relation to the Malbon report at paragraph 16); and
b) they are also more likely to be focussed on deciding which goods or services to acquire, with the financing decision being perceived as more incidental.

Disclosure requirements

48. Both providers of credit assistance and credit providers and lessors are required by the Credit Act to provide the consumer with documents that set out information on fees and charges payable by the consumer or commissions the licensee is are likely to receive. Vendor introducers are currently exempt from these disclosure requirements.

49. In the retail context, consumers are generally not charged fees by vendor introducers directly, although this practice is more common in the car dealership context than stores. However, vendor introducers generally earn commission from the financier, which can be substantial and also differ significantly in amount between financiers, creating a potential risk that product selection will be influenced by the commission that can be earned.

50. The exemption for vendor introducers means that they do not need to disclose the benefits they may earn from arranging finance. The only disclosure is by the financier at a point when

the consumer is about to enter into the credit contract.[2] The absence of any requirement to provide disclosure about commissions before the consumer makes a purchasing decision in relation to finance means that consumers will almost invariably be unaware of the financial incentives payable to vendor introducers, and the way in which they may influence product selection.

LIMITATIONS ON THE ABILITY OF CONSUMERS TO ACCESS REMEDIES

51. The exemption from the Credit Act for vendor introducers applies irrespective of whether or not the vendor introducer is acting on behalf of the consumer, the financier, or both parties. This means that the consumer may not be able to obtain remedies against the financier where:

    a) they suffer loss or damage because of the conduct of the vendor introducer; and
    b) the financier is able to deny liability because the vendor introducer was acting on behalf of the consumer and the financier is therefore not responsible to the consumer for that conduct.

52. Currently, a vendor introducer is exempted if they are undertaking certain acts on behalf of the financier (for example, arranging for applications for credit to be completed). However, these arrangements do not, in themselves, make the financier liable for all conduct by the vendor introducer.

53. At common law a vendor introducer is typically characterised as a broker and therefore as an agent of the consumer, notwithstanding that they perform some duties or functions on behalf of the financier, as the two categories are not treated as mutually exclusive.[3]

54. The consequences of a vendor introducer being treated as an agent of the consumer rather than the financier include:

    a) they may owe duties to the consumer at common law, particularly in relation to the selection of products on behalf of the consumer and the disclosure of commissions; and
    b) the financier is usually not responsible for their conduct, and the consumer's remedy for any misconduct or negligence by the vendor introducer can only be sought from that person and not the financier.

55. In addition to common law obligations the liability of the financier for vendor introducers would also be determined in accordance with the existing framework in Part 2-3 of Division 4 of the Credit Act. These provisions seek to make a financier liable for the conduct of the vendor introducer where the consumer enters into a contract arranged by the vendor introducer. However, their scope is untested in practice.

56. The vendor introducer may also act on behalf of third parties in relation to the sale of products such as insurances or warranties. Even if they are also acting on behalf of the financier, the financier may not necessarily be responsible for conduct by the vendor introducer undertaken on behalf of these third parties.

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2 See section 17(14) of the National Credit Code.
3 See, for example, *Custom Credit Corporation Ltd v Lynch* [1993] 2 VR 469.

57. These consequences limit the ability of consumers to have practical access to remedies since:

a) the financier may not be liable in all circumstances for the conduct of the vendor introducer; and
b) where this is the case, the consumer can only pursue a claim against the vendor introducer through court action, which may be difficult or cost prohibitive (as under the current exemption vendor introducers are not required to be members of an EDR scheme).

58. The Credit Ombudsman Service Ltd (***COSL***), an ASIC-approved EDR scheme, identified this as a significant limitation on its capacity to provide redress to consumers. It provided one example of systemic misconduct by a vendor introducer where it was unable to resolve complaints as only the financier was a member of COSL, and COSL determined that the financier was not liable for the conduct of the vendor introducer.

Questions

1. Are financiers able to provide information as to the number of vendor introducers who engage in credit activities in relation to their products?

2. Does the current exemption result in any additional problems that have not been identified in this discussion paper?

3. To what extent has the introduction of the National Credit Reforms increased the level of scrutiny and supervision of vendor introducers by financiers? Does this vary between market segments?

4. What impediments currently exist to limit the capacity of holders of an Australian credit licence to supervise the conduct of vendor introducers?

5. To what extent do the risks discussed in relation to commission-driven conduct occur in practice? What practices are currently adopted by financiers or vendor introducers to address these risks?

3. Options

Introduction

59. This part of the paper considers the following three options for regulating vendor introducers:

  a) maintaining the existing exemption in the Credit Regulations for vendor introducers;
  b) applying the Credit Act to vendor introducers; or
  c) applying obligations to vendor introducers that differ according to the functions they are performing.

60. This section sets out views on the consequences of these different options in order to assist the Government to decide whether or not regulation is necessary and, if so, which form of regulation will meet the objective of balancing the compliance burden on industry with appropriate protections for consumers.

Option 1: Maintain the existing exemption

61. Under this option, the existing exemption for vendor introducers would remain in place.

Impact Analysis

62. There will be no new impacts on consumers and business under this option.

Consumers

63. Consumers would be at continued risk of suffering financial damage in the following circumstances:

  a) They may not be provided with a product that would be suitable if the vendor introducer was required to undertake a suitability assessment.
  b) They may be inappropriately steered towards a product by vendor introducers where that choice is based upon commissions or remuneration structures (and will not receive disclosure that would inform them about those payments and alert them to their potential impact on product selection).
  c) They may not have access to a remedy unless they commence court action where the financier can deny liability for the conduct of the vendor introducer.
  d) They may enter into contracts arranged by persons who cannot be excluded from the industry, even in the case of demonstrated or repeated fraud, misconduct or incompetence.

Vendor introducers

64. The current exemption allows vendor introducers to engage in credit activities without complying with any of the regulatory obligations under the Credit Act. Retailers can continue to maintain sales volumes by being able to arrange finance for consumers without meeting any additional regulatory requirements or incurring consequent compliance costs.

65. In the retail context, the availability of POS credit is often a well advertised selling point that may provide vendor introducers with a competitive advantage over other vendors.

66. In the car dealership context, the current exemption allows some vendor introducers to operate in direct competition with finance brokers without having to meet the same regulatory requirements.

67. Vendor introducers would continue to be subject to limited indirect supervision by ACL holders, as a result of the obligations imposed on licensees under the Credit Act.

Point of Sale Financiers

68. The current exemption allows POS financiers with continued access to strong, profitable distribution channels, without any new costs being imposed.

Questions

6. Are stakeholders able to provide further information on the consequences of the introduction of an exemption for vendor introducers in addition to those described above?

Option 2: Apply the Credit Act without modification to vendor introducers

69. Under this option, where a vendor introducer is engaging in credit activities, by performing or undertaking functions regulated by the Credit Act, they would be required to either:

a) hold an ACL; or
b) be appointed as a credit representative of a licensee.

70. If a vendor introducer elected to become licensed, they would be required to meet a broad range of obligations including:

a) maintaining their organisation's competence to engage in credit activities (which may result in significant costs being incurred, given that currently compliance is largely arranged by licensees);
b) meeting responsible lending conduct obligations, including ascertaining and verifying a consumer's financial situation, and assessing whether or not the proposed contract is suitable;
c) meeting new disclosure requirements related to their role in suggesting or arranging finance; and
d) adopting internal dispute resolution procedures and becoming a member of an ASIC-approved EDR schemes.

71. If a licensee agreed to appoint a vendor introducer as a credit representative the vendor introducer would be subject to the following obligations:

a) requirements imposed by the licensee (as they would be responsible for ensuring their credit representatives were adequately trained and competent); and
b) becoming a member of an ASIC-approved EDR scheme.

Impact Analysis

Consumers

72. Consumers would be at less risk of suffering financial damage as a result of vendor introducers having to:

a) undertake a suitability assessment where they engage in product selection; and
b) meet higher standards of conduct (because of their greater accountability because of the risk of ASIC taking action in respect of their licence).

73. This option would also provide consumers with the ability to seek redress through complaint to an EDR scheme where they have suffered loss or damage as a result of a vendor introducer's conduct.

74. Additional compliance costs would be incurred by vendor introducers and financiers. As a result this option may:

a) put downward pressure on the availability of POS finance; and
b) increase the cost of POS finance.

75. However, these outcomes may not necessarily reduce the total volume of sales of goods or services. Assuming consumer demand for goods or services is relatively inelastic, then demand would be largely unaffected by whether or not POS finance is available. On this basis this option would have the following impacts:

a) consumers who elect to finance their purchase through non-POS finance would have to make a separate and active decision in relation to finance, and this may result in consumers making more efficient choices, by seeking out or being provided with finance which is cheaper or has better features; and
b) consumers who use POS finance may have fewer choices in relation to the products being offered, and may also face higher charges.

Vendor Introducers

76. Vendor introducers would have the following choices in order to be able to comply with the Credit Act:

a) obtain an ACL;
b) have a licensee appoint them as a credit representative;
c) adjust their functions to have a more limited role in arranging credit than is currently the case, in order to take advantage of other exemptions and remain outside the regulatory regime;[4] or
d) cease offering point of sale finance.

77. Vendor introducers who continue to engage in regulated activities as either a licensee or a credit representative will incur additional compliance costs.

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4 These exemptions are discussed in detail in Annexure A: Current regulatory arrangements. They include an exemption for referrer (regulation 25) and an exemption for persons who pass on prepared documents (regulation 24) in the *National Consumer Credit Protection Regulations 2010*.

78. As licensees, vendor introducers would be subject to entry requirements, ongoing conduct standards and responsible lending conduct obligations. They would also incur a range of costs, including:

a) a licence application fee, and an annual fee that is based on the amount of credit arranged (ranging from $450 to $21,000);[5]
b) EDR membership fees;
c) professional indemnity insurance costs;
d) external training and competency costs; and
e) internal compliance costs, particularly as a result of having to meet responsible lending conduct obligations.

79. Some vendor introducers may be appointed as credit representatives by a licensee. Whether or not a licensee would appoint a particular vendor introducer as a credit representative would be a commercial decision.

80. The effects on the internal structure of retail and car dealership businesses may include:

a) fewer POS staff being involved in arranging finance as it would not be expected that all those currently involved would elect to become licensed, or have a licensee agree to appoint them as a credit representative;
b) smaller retailers may choose to adjust their functions in order to have a less active role so that they can rely on other exemptions from the Credit Act (for example, by performing a referral role only);
c) some vendor introducers may not be able to find financiers who are prepared to provide them with point of sale credit, and may experience a fall in the volume of sales as a result; and
d) some vendor introducers may become credit representatives of fringe financiers who offer credit that is more expensive than existing mainstream arrangements (where mainstream providers elect to terminate existing arrangements).

Point of Sale Financiers

81. Some financiers may appoint vendor introducers as credit representatives. A financier’s decision to appoint vendor introducers as credit representatives would be based on factors such as the expected volume of business and a risk assessment of the potential liability for any misconduct. This may provide an incentive for financiers to only appoint credit representatives from major retailers who provide larger sales volumes to offset any increased compliance costs or potential additional liabilities.

82. These financiers may face demands for additional remuneration from vendor introducers in order to meet higher internal costs as a result of complying with their regulatory obligations. This could increase the cost of credit.

83. These financiers may also decide to refuse to allow vendor introducers to also arrange products offered by their competitors. As a result, other financiers may lose access to distribution channels or have reduced origination volumes.

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5 See ASIC Info Sheet 108 — How much does a credit licence cost?

Questions

7. Are stakeholders able to provide further information on the consequences and costs that would result if this option was implemented?

8. To what extent do stakeholders consider that consumer demand for goods or services is inelastic or that it varies according to the availability of point of sale finance?

9. Are there any other impacts from this option in addition to those described above?

Option 3: Apply function based regulation to vendor introducers

84. Under this option vendor introducers would be regulated under the Credit Act according to the functions they perform so that those who were more actively involved in product selection and delivery would be subject to a higher level of regulation.

85. This option would mean that vendor introducers would operate under different regulatory obligations as follows:

   a) 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 (see paragraphs 91 and 92).
   b) Vendor introducers who act only on behalf of a single financier or under first or second choice arrangements would be subject to modified regulation under the Credit Act (see paragraphs 93 to 105).
   c) Vendor introducers who have a role in product selection but have a limited role in arranging finance would be subject to modified regulation under the Credit Act. Five different proposals are set out in relation to how the modifications could operate (see paragraphs 106 to 131).

86. These three alternatives are complementary and exhaustive, in that vendor introducers would need to fall into one of these three classes of persons to engage in credit activities (or meet the criteria applicable to an existing exemption under the Credit Regulations).

87. The impact analysis of Option 3 is therefore set out below at paragraphs 132 and 133, following a detailed discussion of how the different aspects of this option would work in practice.

88. This option differs from Option 2 as:

   a) licensees would need to meet a lower level of obligations in relation to vendor introducers who act on their behalf than if they were appointed as credit representatives; and
   b) some vendor introducers would not need to meet the obligations that would apply to them if they were required to hold an ACL or be appointed as credit representatives of a person licensed to provide credit assistance (notwithstanding that they have a role in product selection between different financiers).

89. This option discusses regulating vendor introducers as a credit representative of a licensee, but with some modifications; these persons are described as ***supplier representatives*** in this section of the discussion paper.

90. The following Table summarises the operation of Option 3, by setting out, first, the different functions vendor introducers can undertake and the consequences for the level of regulation, and, second, the different proposals under consideration to address the role of vendor introducers in relation to product selection.

Function of vendor introducers	Level of regulation
Acting as a broker	Required to have an ACL or be a credit representative
Acting only on behalf of a financier (including under first choice arrangements)	Regulated as a modified credit representative (a 'supplier representative')
Has arrangements with more than one financier but has limited role in arranging credit products	Regulated as a modified credit representative (a 'supplier representative'), but also may be subject to additional obligations: • Proposal A: Vendor introducer is required to provide generic disclosure of available finance options; • Proposal B: Vendor introducer is required to provide tailored comparative disclosure of available finance options; • Proposal C: Vendor introducer is required to meet reduced responsible lending conduct obligations; • Proposal D: Prohibition on vendor introducers influencing the consumer's choice of product; and • Proposal E: Vendor introducers and POS financiers would be required to meet additional reporting requirements.

Question

10. How practical will it be to determine what obligations a vendor introducer is engaging in, and therefore what level of obligations they, and any licensee, should be meeting in relation to their conduct?

3.1 Vendor introducers who act as brokers required to have an ACL or be a credit representative

91. Under this option vendor introducers who conduct business in a way where they are acting on behalf of a consumer (or hold themselves out as so acting) would be required to engage in credit activities in a way that is consistent with this business model, that is, either by holding an ACL, or by being appointed as a credit representative of a licensee who is not a financier.

92. The activities that could trigger this requirement include:

a) the vendor introducer holds themselves out as able to select a product based on the consumer's needs; or
b) there is a reasonable expectation that they are performing services on behalf of the consumer (for example, the vendor introducer charges the consumer a fee for their services).

Question

11. How should the circumstances be defined where a vendor introducer should be regarded as acting on behalf of the consumer?

3.2 Vendor introducers who only act on behalf of one financier or under first choice arrangements would be regulated as modified credit representatives

93. Some vendor introducers engage in credit activities by acting on behalf of more than one financier but only where they cannot choose between products offered by these providers, because of underlying commercial arrangements known as ***first choice arrangements***.

94. 'First choice arrangements' with a financier are arrangements where the vendor introducer will forward or direct applications for finance to that provider, therefore giving it a right of first refusal and a guaranteed flow of business from that vendor introducer.

95. If the first choice financier has declined an application for finance, or the transaction does not meet their eligibility criteria, the vendor introducer can then refer the application to a second financier. The effect of first choice arrangements is that the dealer will not be selecting between different finance options, but selecting a financier on the basis of underlying commercial relationships and obligations.

96. This arrangement is common in the car dealership context, but not elsewhere. The 'first choice' arrangements can arise directly, out of a commercial relationship between the dealership and a financier (typically with the lender who provides finance to the dealership for the purchase of stock or to underwrite their floor plan), or indirectly, where a manufacturer of cars requires the dealership to direct applications on a first choice basis to a specified financier (typically a related body corporate).

97. It is noted that a statutory definition of first choice arrangements was drafted in the development of the Draft Finance Brokers Bill.[6] This definition is included in Annexure C, and it is assumed the modifications discussed below would apply to persons who satisfy the definition. However, this definition only encompasses arrangements between the vendor introducer and the financier, and not arrangements between the vendor introducer and a manufacturer of vehicles.

98. Under this option, supplier representatives would be defined to include:

a) vendor introducers operating under first or second choice arrangements; and
b) vendor introducers who only have arrangements with one financier, typically smaller retail outlets or service providers such as vets (with this class of vendor introducers necessarily unable to engage in product selection).

99. Financiers would have to formally appoint vendor introducers as their supplier representatives, in accordance with Division 2 of Part 2-3 of the Credit Act. Under this approach vendor introducers could be subject to the following negative eligibility requirements that currently apply to credit representatives:

a) they have not been banned from engaging in credit activities, either under the Credit Act or under a previous State or Territory law;
b) they have not been convicted, within the last 10 years, of serious fraud; and

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6 The Draft National Finance Broking Bill was prepared by the States and Territories through the Ministerial Council on Consumer Affairs prior to the decision by the Council of Australian Governments to transfer responsibility for the regulation of consumer credit to the Commonwealth.

c) they are not a person who is subject to a prescribed order under State or Territory law (with prescribed orders defined to mean orders made to control the activities of specific motorbike gangs nominated in a State or Territory statute).

100. A complementary or alternative approach to eligibility would be to require financiers to obtain a reference from any previous financier for whom the supplier representative acted for, addressing specific criteria that would enable persons who have engaged in serious or systemic misconduct or incompetent behaviour to be excluded. Financiers would be statutory protection in respect of the contents of the reference.

101. However, supplier representatives would be exempted from the requirement to be a member of an EDR scheme in their own right under this option..

102. The operation of section 71 of the Credit Act would be modified so that financiers would not be required to notify ASIC of the appointment of a supplier representative; however, they would be required to keep a list of these representatives and make it available to ASIC upon request.

103. Commissions paid by licensees to vendor introducers would continue to be disclosed to consumers in accordance with the requirements in section 17 of the National Credit Code.

104. 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 (which currently applies to vendor introducers as representatives).

105. If necessary ASIC's powers would be clarified to ensure that supplier representatives could be banned from engaging in credit activities under Part 2-4 of the Credit Act.

Questions

12. Should this option be restricted to vendor introducers who only act under first or second choice arrangements or also apply where the vendor introducer may act as a broker if the consumer is not eligible for finance under the first or second choice arrangements?

13. Should licensees be required to determine whether supplier representatives do not meet any of the disqualifying criteria for credit representatives in section 65 of the Credit Act? If not, what alternative checks should be required?

3.3 Vendor introducers with arrangements with more than one financier and who engage in product selection

106. In the retail store context it is common for vendor introducers to have arrangements under which they can arrange finance with more than one provider, and where no first choice arrangements apply. For example, the vendor introducer may have arrangements enabling them to choose between two credit contracts with different prices or features, or between a credit card contract and a consumer lease. In the absence of first choice arrangements these products can be directly competing with each other — that is, either a credit contract or a consumer lease could meet the consumer's needs and therefore the products are not mutually exclusive in respect of their suitability.

107. Consumers who opt to use POS finance are unlikely to be familiar with the cost or terms of these different products. As the consumer can only be placed in contact with a POS financier through the vendor introducer it is reasonable to expect that a significant percentage will rely on the vendor introducer to assist them in deciding which provider or which option to use.

108. The absence of responsible lending conduct requirements means there is a risk of consumers being inappropriately steered into unsuitable or higher cost products. As discussed previously there are a number of structural economic arrangements in place that may influence the conduct of vendor introducers in promoting or arranging one product over another, irrespective of the outcome for the consumer.

109. Vendor introducers are able to influence the consumer's choice of finance, through conduct such as:

a) only informing the consumer about one finance option (while not explicitly recommending that option); or
b) recommending a particular finance option (irrespective of whether the consumer has been told about or is aware of other finance options); an example of such conduct would be explaining the features of a higher cost product in a way that makes it seem more attractive than a competing lower cost product.

110. This part of the Discussion Paper sets out five different proposals to address the risk of consumers being steered into inappropriate financing options without requiring the vendor introducer to undertake a preliminary assessment in accordance with Parts 3-1 or 3-3 of the Credit Act.

111. The proposals address, in different ways, the tension that arises between allowing a low level of regulation to apply to a class of vendor introducers where, because of the number of people involved, there will be a percentage who are relatively inexperienced or untrained in relation to finance, and the risks for consumers where this class of persons act as a necessary conduit between consumers and providers.

112. Under this option this class of vendor introducers would otherwise be treated as supplier representatives as discussed under Option 3.2.

Proposal A — Require vendor introducers to provide generic disclosure

113. Under this option, vendor introducers would be required to give consumers a generic fact sheet. A specific 'point of sale finance options' factsheet would be developed, in consultation with stakeholders. The factsheet would provide generic information about the different types of finance products available, but would not include information allowing for comparison of the cost or features of the products offered by the specific financiers through the vendor introducer.

114. The consumer would need to be given the factsheet before they begin applying for finance. Where they apply for finance through access to an in-store computer terminal, the vendor introducer could be required to ensure the factsheet was displayed on the screen before the consumer began the application process.

115. Annexure D sets out an example of a possible comparative disclosure documents (based upon a draft provided by members of the Working Group).

Proposal B — Require vendor introducers to provide product-specific disclosure

116. Financiers would be required to provide vendor introducers with information on the key features of their products, such as cost, commissions, minimum repayment, term, and ownership of goods. Vendor introducers would then produce a comparative disclosure document setting out a more detailed factsheet in relation to the features of the competing products available. Vendor introducers would be responsible for providing the document to consumers, prior to putting the consumer in contact with a financier.

117. The financier would be accountable for ensuring the vendor introducer could readily produce information that was correct, up to date and accurately reflected their product.

118. The content and format would take into account the disclosure principles identified in the Uniquest report, *Simplification of Disclosure Regulation for the Consumer Credit Code: Empirical Research and Redesign — Final Report*. This report was commissioned by the Standing Committee of Officials of Consumer Affairs on precontractual disclosure in the Uniform Consumer Credit Code, and was released in May 2010.

119. As with Proposal A, the factsheet would be given to the consumer before they begin applying for finance, including through being presented electronically where the consumer is applying for finance through an in-store computer terminal.

120. Annexure D also includes an example of a comparative disclosure documents (again based upon a draft provided by members of the Working Group).

Proposal C — Require vendor introducers to meet reduced responsible lending conduct obligations

121. Under this option, this class of vendor introducers would be exempt from the general responsible lending conduct disclosures requirement in relation to the Credit Guide, quote and proposal document. However, vendor introducers would only be required to conduct a reduced preliminarily assessment and only suggest or arrange products that meet the consumer's requirements and objectives. They would not be required to assess the consumer's capacity to meet their repayment obligations under the contract (so that they would be excluded from in relation to the consumer's financial situation in Parts 3-1 or 3-3 of the Credit Act) .

122. The financier and the vendor introducer would be jointly and severally liable for any loss or damage (adapting the existing approach in the linked credit provider provisions in the Credit Act). This would ensure consumers were provided with access to a remedy through complaint to an EDR scheme, without requiring each vendor introducer to become an EDR member in their own right.

Proposal D — Introduce a specific remedy

123. Under this proposal, the risk of vendor introducers steering consumers on the basis of the commissions they could earn would be addressed by providing a specific remedy for consumers who suffer loss or damage in the following circumstances:

   a) the vendor introducer fails to inform the consumer about all finance options available (for example, by failing to comply with the obligation to provide a factsheet under Proposal A or B);

b) the vendor introducer representing that one finance option is more suitable than another; or
c) the vendor introducer engaging in conduct that would influence the consumer to chose a particular product.

124. The effect of this proposal would be that the vendor introducer could only provide limited factual information to the consumer. If the consumer wanted advice in relation to choosing one product over another the vendor introducer would not be able to provide this, and would only be able to refer the consumer directly to a financier or to alternative specified sources of information (for example, the ASIC MoneySmart website). Proposal D therefore could not be a stand-alone option, and would need to be linked to either Proposal A or B.

125. The remedy could be sought against either the vendor introducer or the financier with whom the contract was arranged, where the consumer was able to demonstrate that they suffered a loss as a result of entering into this contract. The financier would therefore need to have appropriate supervision arrangements with the vendor introducer to mitigate their liability.

Proposal E — Monitoring requirements

126. Under this option, the risk of misconduct by vendor introducers, including commission-based product selection, would be addressed by requiring vendor introducers to report to ASIC on the extent to which consumers are using particular products to finance goods or services.

127. The requirements would require ASIC to be provided with a summary of information such as:

a) details of the type or amounts of commission payments paid by each financier;
b) details of the range of costs charged by each financier; and
c) details of the number of contracts arranged with each financier, possibly broken down by amount, product category or store (or other factors).

128. The rationale for the reporting requirements is to indirectly discourage steering. Vendor introducers who reported consistently high levels of contracts being arranged with financiers who paid higher commissions and charged higher costs relative to other financiers would be at risk of prompting reviews by ASIC.

129. The reporting requirements would therefore only apply to vendor introducers who offer a choice of products with different financiers. Given that the number of retailers who may have arrangements with more than one financier is estimated at more than 7,500 the application of the requirements may have to be further refined to a smaller number of retailers (for example, only to those who meet minimum volume levels).

130. The reporting requirement would be annual, and could apply for an initial period such as three years, with a decision made at that point as to whether to continue the requirement according to whether there has been any change in behaviour. These reporting requirements could therefore complement the other proposals, as they would enable the Government to determine whether that proposal has had any impact on the behaviour of vendor introducers and product selection by consumers.

131. Financiers would be under a mirror obligation to provide information consistent with that described in paragraph 127 to ASIC about each vendor introducer who satisfies specified criteria.

Impact Analysis

132. Option 3 would have the following impacts:

a) Vendor introducers would be subject to targeted obligations according to the role they performed. In general terms, the amount of additional costs would increase according to the level of independence and the role of the vendor introducer in either selecting finance products or determining the terms on which finance is offered.
b) Some vendor introducers may respond by moving to a mono-finance model, therefore reducing choice for those consumers who elect to use POS finance. It would be expected this choice would only be made where the compliance costs outweighed the profits that could be earnt from being able to access multiple sources of finance.
c) POS financiers would incur additional compliance costs in relation to vendor introducers who are appointed as supplier representatives, with these costs reflecting their responsibility for the conduct of these persons.
d) Consumers would have greater clarity and certainty about the role of vendor introducers, and in particular about whether or not they are arranging finance on behalf of the consumer or the financier.
e) POS financiers would have a greater capacity to control the monitor and supervise the conduct of vendor introducers.

133. Further, as a result of the five proposals being considered under Option 3, consumers would be at less risk of steering and other practices that may disadvantage them. The extent of this impact would vary according to the effectiveness of a proposal. The following Table analyses the factors that are likely to determine their effectiveness.

Proposal	Consumers	Vendor Introducers	Financiers
Proposal A Generic disclosure	Limited impact on consumer's ability to choose between different products	Minimal impact in respect of costs or changes to existing procedures.	Minimal impact in respect of costs or changes to existing procedures.
Proposal B Product-specific disclosure	Tailored, rather than generic, information is likely to be more meaningful to a consumer than Proposal B.	Minimal impact in respect of costs or changes to existing procedures.	Minimal impact in respect of costs or changes to existing procedures.
Proposal C Limited responsible lending obligations	Consumers would be engaged through a discussion of their requirements and objectives with the vendor introducer.	Significant impact in respect of costs or changes to existing procedures. Some vendor introducers may elect to move to a mono-finance model.	Limited direct impact on financiers in relation to compliance costs, but may create indirect pressure from vendor introducers for higher commissions to cover their additional costs.
Proposal D Introduction of a specific remedy	Consumers would be protected from explicit steering practices, but would not be assisted with product selection.	Highest impact on vendor introducers who engage in steering practices, and limited impact on others. Capacity to control changes to internal practices according to business model.	Limited direct impact on financiers in relation to compliance costs.

Proposal	Consumers	Vendor Introducers	Financiers
Proposal E Reporting requirements	No direct impact on consumer behaviour, with changes primarily indirect and on supply side.	Minimal direct costs and capacity to control changes to internal practices according to business model.	Potentially significant reporting costs, depending on the number of vendor introducers that a financier must report on.

Questions

14. Are licensees and vendor introducers able to provide further information on the consequences and costs that would result from Option 3 and from Proposals A to E?

15. Are there any other impacts from Option 3 and Proposals A to E in addition to those described above?

Annexure A: Current regulatory arrangements

Features of the Credit Act

134. The Credit Act applies to a person who engages in credit activities in relation to credit contracts or consumer leases that are regulated by the National Credit Code (Code).

135. The Code regulates:

- credit which is provided to individuals in the course of a business (or incidental to one) for personal, domestic or household purposes or for investment in residential property (section 5 of the Code);

- goods leases where the hirer has an option to purchase, which are regarded as sale by instalment and treated as credit (section 9 of the Code);

- sale of land or goods by instalments which are treated as credit (sections 10 and 11 of the Code); and

- goods leases where the hirer does not have an option to purchase (section 170 of the Code).

136. Credit activities include:

- 'acting as an intermediary' between a credit provider or lessor and a consumer for the purposes of securing a provision of credit or lease (section 9 of the Credit Act);

- providing 'credit assistance', either by suggesting to a consumer that they apply for a particular credit contract with a particular credit provider or a particular lease with a particular lessor, or by assisting them to apply for such a credit contract or lease (section 8 of the Credit Act); and

- 'performing the obligations or exercise the rights' of a credit provider or lessor (items 1(c) and 3(c) in the table in section 6 of the Credit Act).

Licensing

137. The Credit Act generally requires that persons engaging in credit activities hold an ACL. Potential licensees must meet entry standards and, once licensed, are required to:

- be a member of an ASIC-approved EDR scheme;

- comply with ongoing conduct standards including maintaining competence, managing conflicts of interest, supervising and training representatives and having compensation arrangements;

- met reporting and record keeping obligations; and

- comply with the responsible lending conduct obligations.

Responsible lending conduct obligations

138. Under the suitability assessment requirements, a contract will be unsuitable where either it does not meet the consumer's requirements and objectives or the consumer will be unable to meet the repayments, either at all or only with substantial hardship.

- Persons providing credit assistance are required to conduct a preliminary assessment in relation to the suitability of the proposed contract (sections 123 and 146 of the Credit Act).
- Credit providers and lessors are required to conduct their own assessment (sections 128 and 151 of the Credit Act).

139. Under the disclosure requirements, credit assistants are required to provide:

- a Credit Guide, containing standard information about fees payable by the consumer and commissions they are likely to receive;
- a quote in relation to the particular transaction being contemplated, containing information about both the services to be provided by the vendor introducer and the fees and expenses they may charge; and
- a credit proposal document, specifying the fees and charges payable to the vendor introducer, the financier and to third parties, and commissions in relation to the proposed contract.

140. Credit providers and lessors are required to provide a Credit Guide and meet pre-contractual disclosure requirements under the Code.

Credit representatives

141. Persons can also engage in credit activities where they have been appointed as a credit representative by the holder of an Australian credit licence. Credit representatives must meet entry standards and are generally required to be a member of an EDR scheme in their own right. In addition, they are required to provide consumers with a copy of their own Credit Guide and a copy of their licensee's Credit Guide.

142. The licensee is generally liable for the conduct of its credit representatives.

Linked credit providers and Linked lessors

143. Credit providers and lessors are liable for representations, warranties or statements made by a supplier of goods or services to a debtor in relation to a tied credit contract or consumer lease. The provisions also establish joint liability of a credit provider or lessor with a supplier for loss or damage suffered by a consumer as a result of misrepresentation, breach of contract or failure of consideration in relation to the credit contract or consumer lease.

LICENSING EXEMPTION FOR VENDOR INTRODUCERS

144. Credit Regulation 23 provides an exemption from the Credit Act for vendor introducers. The main elements of the exemption are that it applies:

- to a supplier of goods or services who has an agreement or arrangement with a credit provider or lessor, in relation to the distribution of their products through the supplier;
- where they are engaging in credit activities in relation to a credit contract or consumer lease offered by a licensed or registered credit provider or lessor;
- where the credit, in general terms, will be predominantly used for the purchase of goods or services from the supplier of goods or services;[7] and
- where the consumer is not approached as a result of unsolicited contact.

LICENSING EXEMPTION FOR CO-BRANDED CREDIT CARDS

145. The main elements of the exemption in Credit Regulation 23A are that it applies:

- to a supplier of goods or services who has an agreement or arrangement with a credit provider, in relation to the distribution of a branded or co-branded credit card;
- where the credit provider is licensed or registered; and
- where they only engage in credit activities on the premises of the supplier.

LICENSING EXEMPTIONS WHERE PERSON HAS A LIMITED ROLE

146. Where a person has limited involvement in the consumer obtaining credit or a consumer lease, they may be able to take advantage of other exemptions in the Credit Regulations, including the exemption:

- for persons who only engage in credit activities by carrying out statutory obligations of a credit provider or lessor under the *Privacy Act 1988* or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (*National Consumer Credit Protection Credit Regulations 2010*, subregulation 20(13));
- in respect of passing on documents provided or prepared by a licensee or registered person (Credit Subregulations 24(6) and (7));
- where the person engages in communications that consist only of passing on factual information to the consumer (Credit Subregulation 24(8));
- for activities done in the course of work of a kind ordinarily done by clerks or cashiers (Credit Subregulation 24(9)); and
- where a person's role is limited to being a referrer (Credit Regulation 25).

7 There is a variation of this requirement in respect of continuing credit contracts where it may not be possible to predict the predominant use of credit available under the contract over time.

ANNEXURE B: RANGE OF FUNCTIONS PERFORMED BY VENDOR INTRODUCERS

147. The POS Working Group analysed the range of functions undertaken by vendor introducers, in order to determine the consequences of the exemption to the Credit Act under regulation 23. The range of different functions they can perform is summarised below (noting that not all vendor introducers will undertake each specified activity, as this will vary between models).

CONDUCT PRIOR TO A CONSUMER'S APPLICATION FOR A FINANCE PRODUCT

- advertising in relation to the availability of credit to finance the supply of their goods or services;
- providing documents and factual information about the finance options they have available or can arrange;
- discussing the benefits of those finance options, relative to other payment options; and
- assisting the consumer to choose between different finance options:
  - the choice can be between products offered by different credit providers or different products offered by the same credit provider; and
  - there may be different levels of involvement from the provision of factual information to actively suggesting a particular product.

CONDUCT IN RELATION TO AN APPLICATION

- verifying the borrower's identity and/or financial circumstances;
- providing documents to the consumer on behalf of the credit provider or lessor (both before and after the contract is entered into);
- arranging for the borrower to execute a business purpose declaration if required;
- helping the consumer to complete the application form (commonly by way of data entry, but this activity can also include relaying information over the phone to the credit provider);
- discussing options for the structure of the loan and the transaction, before submitting an application;
- assisting with paying out any finance over goods to be traded in, as part of a transaction to purchase new goods; and
- negotiating the terms on which credit can be provided.

ANNEXURE C: EXPOSURE DRAFT FINANCE BROKING BILL 2007 EXCERPT

SCHEDULE 1, CLAUSE 5—FINANCE BROKING UNDER FIRST-CHOICE ARRANGEMENTS

This clause applies to a finance broker:

a) who is party to a first-choice arrangement with a credit provider to offer credit promoted under a single brand, trademark or business name, and
b) who, in relation to a particular consumer, has, in accordance with that arrangement, negotiated credit from that credit provider only and:
    1) is yet to determine whether or not the consumer is eligible for credit offered by the credit provider, or
    2) has determined that the consumer is eligible for credit offered by the credit provider, or
    3) has determined that the consumer is not eligible for credit offered by the credit provider, but has neither notified the consumer of that fact nor yet acted as an intermediary to negotiate credit from any other credit provider, and
c) who does not demand, receive or accept fees from consumers for credit secured from that credit provider, and
d) who does not advertise or carry on business in such a way as to suggest that the broker negotiates credit otherwise than as referred to in paragraphs (a), (b) and (c).

ANNEXURE D: EXAMPLES OF COMPARATIVE DISCLOSURE DOCUMENTS

GENERIC DISCLOSURE

Guide to Store Credit Cards with Interest Free and Consumer Leases

This Guide is provided to assist you to make an informed decision about the type of finance product best suited to your individual needs. This Guide contains general information. For a more detailed explanation, please contact the credit or lease provider on the number below or refer to their contract documents.

	Store Credit Card with Interest Free	**Consumer Lease**
How does each work?	A store credit card allows you to borrow up to a maximum credit limit to buy products or services where the credit card is accepted. The card may allow you to purchase products or services under a Buy Now, Pay Later or Interest Free promotion. You do not pay interest on an interest free purchase provided you pay the balance before the interest free period ends, and pay any minimum monthly repayments required. Providing you have sufficient credit available, and pay any regular minimum monthly repayments required, you may use your card for more interest free purchases, everyday purchases or cash advances.	A lease allows you to pay for the use (or rental) of a product. You make fixed rental payments to use the products for a fixed term. Sometimes a lease allows you to extend the term for a further fixed term, continue month to month, or the option to upgrade the product before the lease term expires.
Is there a fixed term?	Credit cards have no fixed term and may be used to make purchases while credit is available. The card may be deactivated at any time by contacting the credit card provider and paying any balance due.	Leases have fixed terms such as 12, 24 or 36 months.
Will I own the item?	Yes.	You have no right or obligation to own the product. Ownership of the product remains with the lease provider, unless they agree to sell the product to you for an additional sum. The product must be returned to the lease provider in good condition (subject to normal wear and tear) at the end of the term unless other arrangements are made.
What is the total cost?	Where you take advantage of an interest free promotion to purchase a product, the total cost will be the purchase price of the product plus any establishment or monthly account servicing fee, plus any interest charged where the full amount is not paid before the interest free period ends. If you purchase other products or services using the credit card, you will pay interest on the purchases unless an interest free promotion applies. Other fees may apply to a transaction such as overdue, cash withdrawal or international fees.	The total cost will be the sum calculated by multiplying the fixed rental payment by the number of payments to be made during the term. There will be an additional cost if you choose to extend the term for a further fixed term, continue month to month or the lease provider agrees to sell the product to you. Interest or fees may apply if you miss a payment or are in default.

	Store Credit Card with Interest Free	Consumer Lease
Will I pay interest?	Interest is payable if you do not repay the credit card balance before any applicable interest free period ends. For any cash advances, interest is usually charged from the date you withdraw the cash.	Interest is not charged on fixed rental payments. Default interest may apply where you miss a payment.
Is the item protected against theft and damage?	Credit card providers usually do not protect against theft and damage. You should consider making enquiries with your insurer.	Some lease providers offer repair or replacement protection if the product is stolen or damaged in certain situations for the lease term. A replacement product may be provided if a product is in for repair.
Is there payment protection?	Some credit providers offer an insurance program that you may purchase separately for an additional payment.	Some leases have payment protection included as part of the lease.
Does the provider pay commissions or incentives?	Credit providers may pay commissions or fees to the retailer or its staff.	Lease providers may pay commissions or fees to the retailer or its staff.
Who can I speak to for detailed information?	[Credit Provider Ph:]	[Lease Provider Ph:]

TAILORED DISCLOSURE

Guide to FreshStart Master Bank (Store Credit Cards with Interest Free) and FreshLease (Consumer Leases)

This Guide is provided to assist you to make an informed decision about the type of finance product best suited to your individual needs.
For more detailed information about the finance products, contact the credit or lease provider on the number below.

	FreshStart Master Bank (Store Credit Card with Interest Free)	**FreshLease (Consumer Lease)**
How does each work?	FreshStart Master Bank credit card allows you to borrow up to a maximum credit limit to buy products or services at any store that accepts Master Bank cards. GO MasterCard is accepted at Harvey Norman, Domayne or Joyce Mayne. It is however also accepted at over 10,000 stores around Australia and you can purchase again on Interest Free or Buy Now, Pay Later from any of those stores. Your GO MasterCard can also be used just like any other credit card at any store who accepts MasterCard. From fuel to food and bills, you will receive up 62 days interest free on these everyday MasterCard purchases GO MasterCard is accepted at Harvey Norman, Domayne or Joyce Mayne. It is, however, also accepted at over 10,000 stores around Australia and you can purchase again on Interest Free or Buy Now, Pay Later from any of those stores. Your GO MasterCard can also be used just like any other credit card at any store who accepts MasterCard. From fuel to food and bills, you will receive up 62 days interest free on these everyday MasterCard purchases There are several interest free promotions available with your FreshStart Master Bank credit card, depending on where you shop. The most common types of promotions available are a Buy Now, Pay Later or Interest Free promotion. With a Buy Now, Pay Later promotion, you can buy what you want today and you are not required to make any repayments during the interest free period (for example, pay nothing for three, six, 12, 24 months). You can choose to pay the outstanding balance in full on your purchase before the interest free period ends, and you won't pay any interest on that purchase.	FreshLease consumer leases are rental products that allow you to rent items over a term that suits you, with no deposit, and monthly fixed rental payments. These products allow you to extend the term for a further fixed term, continue month to month, or the option to upgrade the product before the lease term expires. FreshLease consumer leases are provided by Fresh Capital Pty Ltd. Minimum product values apply.

	FreshStart Master Bank (Store Credit Card with Interest Free)	FreshLease (Consumer Lease)
How does each work? (continued)	With an Interest Free promotion, you are required to make minimum monthly payments during the interest free period (for example, payments required over six, 12, 18, 24 months interest free period). The minimum amount required each month is either 3 per cent of the outstanding balance of your account or $25 — whichever is greater, and will appear on your monthly statement. You'll need to make more than the minimum monthly payment during the interest free period to avoid paying interest on your purchase. Providing you have sufficient credit available, you can use your card for more interest free purchases, MasterCard purchases or cash advances. FreshStart Master Bank credit card has 62 days interest free on everyday Master Bank purchases. FreshStart Master Bank credit card is a credit facility provided by Master Bank Finance Australia Pty Ltd (ABN XX XXX XXX XXX) trading as Master Bank. Minimum purchase values apply to interest free promotions.	
Is there a fixed term?	FreshStart Master Bank credit card has no fixed term and may be used to make purchases while credit is available. It may be deactivated at any time by contacting the provider and repaying any balance due.	FreshLease consumer leases have fixed terms such as 12, 24 or 36 months to suit your budget.
Will I own the item?	Yes.	You have no right or obligation to own the product. Ownership of the product remains with FreshLease, unless they agree to sell the product to you for an additional sum. The product must be returned in good condition (subject to normal wear and tear) at the end of the term unless other arrangements are made.
What is the total cost?	Where you take advantage of an interest free promotion to purchase a product, the total cost will be the purchase price of the product plus a one off $25 establishment fee, a $3.95 monthly account keeping fee, plus any interest charged where the full amount is not paid before the interest free period ends. A late fee of $25.00 applies if you miss a repayment. If you make everyday purchases using the credit card, you will pay interest on the purchase unless you repay the balance with the 62 day interest free period. Other fees may apply to a transaction such as overdue, cash withdrawal or international fees.	The total cost will be the sum calculated by multiplying the fixed rental payment by the number of payments to be made during the term. There will be an additional cost if you choose to extend the term for a further fixed term, continue month to month, upgrade the product or the lease provider agrees to sell the product to you. For each missed payment, you must pay $25 or 0.05 per cent per day on the overdue amount until paid in full, whichever is greater.
Will I pay interest?	If you pay off any balance due before the end of an interest free period, no interest will be payable. If the balance is not repaid, then interest will apply at a rate of up to 29.49 per cent. For any cash advances, interest is usually charged from the date you withdraw the cash.	Interest is not charged on fixed rental payments.
Is the item protected against theft and damage?	No. You should consider making enquiries with your insurer.	FreshLease replace the product if it is lost, stolen, or accidently damaged (subject to exclusions, for example, accidental loss and where reasonable care is taken). If your product needs repair, you will be sent a loaner product within one business day subject to delivery to an Australian metro area and request made during business hours.

	FreshStart Master Bank (Store Credit Card with Interest Free)	FreshLease (Consumer Lease)
Is there payment protection?	For an additional cost, and at your own option, you may purchase voluntary payment protection insurance that will take over your instalments if you become unable to pay, through no fault of your own.	For an additional cost, and at your own option, you may purchase a payment protection insurance that will protect you if your rented product is stolen, accidentally lost or damaged (conditions apply) in Australia, New Zealand or anywhere else in the world during a trip of not more then 28 days duration. It may also apply in the case of involuntary unemployment, disablement, terminal illness or death.
Does the provider pay commissions or incentives?	Credit providers may pay commissions or fees to the retailer or its staff.	Lease providers may pay commissions or fees to the retailer or its staff.
Who can I speak to for detailed information?	**MasterBank Ph: 1300 XXX XXX**	**FreshLease: Ph: 1300 XXX XXX**