



Financial Counselling Programme

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Eastern Access Community Health (EACH) provides Financial Counselling to the Eastern suburbs of Melbourne, Victoria.

“EACH offers free and confidential financial counselling for people in Maroondah, Knox and Yarra Ranges. For people with gambling-related financial problems the service extends to Boroondara, Whitehorse, Monash and Manningham.

Financial counsellors fully assess people’s financial position, offer information, look at debt-management options, assist in negotiations with creditors, and give information about bankruptcy, budgeting, fines, and government payments.

Financial counsellors do not judge people on how they manage their money, take over their finances, offer investment advice, or do tax returns. They are not lawyers but have a good understanding of consumer law.

EACH counsellors are members of the Financial and Consumer Rights Council of Victoria (FCRC) and the Australian Financial Counselling and Credit Reform Association (AFCCRA)¹

In response to The Australian Consumer Law Discussion Paper ² for public consultation due March 17th 2009.

“Civil remedies

A breach of the consumer protection provisions in the TPA creates a civil liability and exposes the wrongdoer to action by the ACCC or private claimants seeking civil remedies.”

“Administrative remedies

In taking action for a breach of the consumer protection provisions of the TPA, the ACCC can, in place of taking formal legal proceedings, also accept court-enforceable undertakings under section 87B from a party that it considers has breached the TPA”³



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1 EACH Website, http://www.each.com.au/en/services/financial_counselling Access date 14th March 2009

2. Commonwealth of Australia 2009 *An Australian Consumer Law – Fair Markets – Confident consumers* 17th February 2009

3. Commonwealth of Australia 2009 Pg 20 *An Australian Consumer Law – Fair Markets – Confident consumers* 17th February 2009

Additional and other options for remedies could be added to the legislation. This would allow consumers and third party authority's more flexibility in advocating for themselves and others. For example:

The *Uniform Consumer Credit Code* (UCCC) as it stands today has provision for allowing consumers and authorized third parties, access to remedial sections that allow for hardship variations to contracts and it reads as follows:

Section 66 of the *Consumer Credit Code*:

Division 3

Changes on grounds of hardship and unjust transactions

66 Changes on grounds of hardship

(1) General principle. A debtor who is unable reasonably, because of illness, unemployment or other reasonable cause, to meet the debtor's obligations under a credit contract and who reasonably expects to be able to discharge the debtor's obligations if the terms of the contract were changed in a manner set out in subsection (2) may apply to the credit provider for such a change.

(2) Changes. An application by a debtor must seek to change the terms of the contract in one of the following ways—

- (a) extending the period of the contract and reducing the amount of each payment due under the contract accordingly (without a change being made to the annual percentage rate or rates);
- (b) postponing during a specified period the dates on which payments are due under the contract (without a change being made to the annual percentage rate or rates);
- (c) extending the period of the contract and postponing during a specified period the dates on which payments are due under the contract (without a change being made to the annual percentage rate or rates).¹

These provisions are available in the UCCC and are used frequently by consumers and authorised third parties successfully when seeking amendments to contracts for consumers. These provisions can be used and/or amended to suit general consumer protection laws and are transferrable and could be adapted to suit.

Other points in regard to unfair contract terms:

- Any terms that include access to dispute resolution processes should be included in consumer law. This would include access to court or tribunal systems as a way of resolving disputes
- Provisions that would resolve and provide remedies from unfair contract terms from fringe lender contracts for example, the inclusion of protection of the seizure of household items placed as security for high interest loans
- Access to copies of all contracts entered into, including electronic and verbal contracts, by consumers and nominated third parties

¹ Consumer Credit (Queensland) Act 1994 <http://www.creditcode.gov.au> access date 14 March 2009

Page 90 of The Paper states:

“Clarity in consumer documents

Section 163 of the Victorian FTA provides that certain consumer documents (principally contracts) are required to adhere to certain standards. These include:

- being easily legible;
- if printed or typed, being in a minimum of a 10 point font; and
- being clearly expressed.

Similarly, the Corporations Act 2001 (Cth) also contains clarity requirements in relation to specific types of documents, including offer documents (section 1019I), disclosure documents (section 715A), Financial Services Guides (section 942C) and Product Disclosure Statements (section 1013C). In those and certain other sections, identical wording is used to require that specified documents ‘must be worded and presented in a clear, concise and effective manner’, although they do not require the use of specific font sizes.”²

Various legislations (as stated above) have provisions requiring documentation be presented in a certain way for ease of understanding and clarity. It is suggested that as well as existing provisions (as stated above) contract language should be clear language, minimum of 12 point and black text on white paper, for example, so as to be clear and legible for a consumer.

Question

Should the Australian Consumer Law include a provision regulating lay-by sales? If so should this provision reflect the current regulatory approaches used in NSW, Victoria and/or the ACT?

It is thought that the current regulatory approaches set down by the various New South Wales, Victoria and ACT are a fair and reasonable. However it is also fair and reasonable to expect a mirroring provision and best practice demands for the regulation of lay by sales at a national level in the new Consumer Law.

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² Commonwealth of Australia 2009, Pg 90 *An Australian Consumer Law – Fair Markets – Confident consumers* 17th February 2009