



**Response to the  
Consultation Paper “Application of unfair  
contract terms legislation to consumer credit  
contracts”**

**July 2007**

## 1 About Consumer Action

The Consumer Action Law Centre (**Consumer Action**) is an independent, not-for-profit, campaign focused, casework and policy organisation. It is formed by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service and builds on the significant strengths of these two centres.

Consumer Action provides free legal advice and representation to thousands of vulnerable and disadvantaged consumers across Victoria and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law-reform agenda across a range of important consumer issues at a government level, in the media, and directly with industry and in the community.

## 2 Unfair Contract Terms and Credit Contracts

Consumer Action strongly supports the inclusion of consumer credit contracts in Part 2B of the *Fair Trading Act 1999* (Vic). It is our view that Part 2B should not have excluded credit contracts, and that the key question should be “Why not apply unfair contract terms to credit contracts?” Significant problems arise for consumers in relation to credit contracts – often having a greater impact than unfair contract terms in some other consumer contracts, and yet the current credit regulation is unable to prevent, or address, them in the way that unfair contract terms regulations could.

Consumer Action, and one of its predecessors Consumer Credit Legal Service, have used section 70 of the *Uniform Consumer Credit Code (UCCC)* in legal proceedings for many consumers. We agree with the consultation paper that it is unlikely that relief under section 70 would be given on the grounds of substantive unfairness alone. However, we also note that section 70 provides a mechanism for an individual consumer. Credit providers often ensure that matters settle prior to hearing, particularly when there is any suggestion that an argument will be made that could bring about any finding that reflected on their standard form agreements. This outcome is often of benefit to the individual, but ensures that systemic problems, such as unfair contract terms, are never legally tested.

We agree with the proposed approach to prioritise certain types of contracts for review, and we generally agree with the priority areas proposed in the Consultation Paper. While we don’t have any examples of reverse mortgage agreements, we believe that the work done by CHOICE highlights problems with these agreements that should be investigated.<sup>1</sup> Non-bank housing finance causes significant problems, particularly loans targeted at consumers who are already in financial difficulty. While we don’t present any examples of these agreements in this submission, we believe this should be a high priority.

We provide some discussion, and examples, of the following areas that we believe should be prioritised:

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<sup>1</sup> CHOICE, *Reverse Mortgage Shadow Shop*, February 2007, available at <http://www.choice.com.au/viewArticleAsOnePage.aspx?id=105198>.

- “Credit” contracts that, due to the structure of the agreements are not (or may not be) regulated by the UCCC. These contracts could be reviewed immediately under current legislation;
- Vendor terms (in relation to houses);
- Small, high cost loans;
- Rent-to-buy contracts (for cars and other goods);
- Consumer leases (particularly those that use lease arrangements to avoid the UCCC requirements that apply to loans);
- Non-bank housing finance;
- Penalty fees relating to credit cards;
- Unilateral variation clauses, particularly those that are very broad or that have already been applied by the lender in an unfair way;
- Default clauses (definition of default)

### 3 Why include consumer credit contracts?

As pointed out on page 5 of the consultation paper, many of the factors that lead to unfairness in consumer contracts generally apply to consumer credit contracts.

The arguments for including consumer credit contracts in Part 2B can be expanded as follows:

- (i) the Uniform Consumer Credit Code does not allow Consumer Affairs Victoria (**CAV**) to have an unfair term prescribed or to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for a declaration that a term is a prescribed unfair term – the absence of the power to prescribe terms is economically inefficient, and largely undermines the objective of protecting vulnerable consumers from unfair terms. While the UCCC allows a consumer to apply to a Tribunal or Court to have a credit contract reopened on the basis that it is unjust, such an action can only be taken by an individual, and cannot be used in a way that can prevent, or address, systemic unfair conduct or contract terms<sup>2</sup>.
- (ii) consumer credit contracts are one of the main areas where consumers enter into unfair contracts. In some cases this is due primarily to unfair advertising or selling practices, or exploitation of the consumer’s vulnerable status. However, other cases unfair contract terms contribute to the general unfairness of the transaction. In fact, along with telecommunications and car hire, we believe that the consumer credit industry is one of the key industries in which unfair consumer contract terms are a serious problem.
- (iii) extending Part 2B to consumer credit contracts would supplement rather than displace the UCCC, and would therefore not undermine the national consistency of the UCCC. Unfair contract terms, unlike some other State-based regulation,

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<sup>2</sup> See *Director of Consumer Affairs Victoria v JLL Pty Ltd (t/as City Finance Loans and Cash Solutions (Moreland))* [2005] VCAT 1989 (30 September 2005).

would not require businesses to adopt different practices in other states, but to simply ensure that their contracts do not contain unfair contract terms.

The remainder of our response provides discussion, and examples, relating to the areas we believe should be given priority.

#### 4 Contracts that avoid the UCCC

Some of the most unfair terms we see, are contained in contracts that in effect are credit contracts, but are worded so as to avoid (or attempt to avoid) regulation by the UCCC. However, we don't believe that this is an argument not to extend coverage of unfair contract terms regulation to credit. The legal status of such contracts is often unclear, and legal proceedings rarely lead to a Court or Tribunal decision. It is a problem that in these cases it is often not possible to clearly establish whether the UCCC applies – or whether unfair contract terms legislation applies. It is unfortunate that in relation to these, often exploitative contracts, consumers currently can't have the benefits of both the UCCC and unfair contract terms legislation.

We believe that Consumer Affairs should immediately prioritise the application of the current unfair terms regulation to the following contracts.

##### 4.1 Interest free loans

Agreements marketed by Motor Finance Wizard and Kwik Finance claim that they are not covered by the UCCC due to their being no interest charged, despite the fact that the price paid for the vehicle is thousands of dollars more than market price.

“It should be noted and understood that there are no credit charges under this contract and that this contract is an “INTEREST FREE” transaction not covered by the provisions of the uniform Consumer Credit Code (enacted by Queensland legislation) (herein after called the “UCCC”) and as a borrower you are upon signing the contract outside the consumer protection provisions of the UCCC.”

##### “4. ATTORNEY

##### WE APPOINT THE LENDER AS OUR ATTORNEY

We irrevocably appoint the Lender as our attorney (with power to appoint substitutes) to do all things, which the Lender considers necessary to protect its interest in the Goods or to enforce the mortgage or any insurance policy over the Goods.”

“IT IS AGREED as follows: -

1. In consideration of:

- 1.1 The loan specified in Schedule 6 (called “the Loan”)
- 1.2 Any further loans which the Lender may make to for on account of the Grantor and of any liability which the Lender may during the currency of this security incur on behalf of the Grantor.”

“PROVIDE ALWAYS THAT:

- 1.3.5 The Grantor shall have the right to pay off the loan and fee at any time before the due date without any rebate or abatement of monies payable hereunder.”

“5. AND the Grantor shall be in default

- 5.1 In the event of default it shall be lawful for the Lender to exercise the powers conferred on the Lender by Law AND in addition the Lender shall with the consent of the Grantor (which consent is hereby expressly given) have and may exercise all the following further powers and authorities.
- 5.1.1 To retain or remove and carry away the Security by lawful force (if necessary) including from the place where the security is situated and/or the premises occupied by the Grantor or otherwise deal with the security as the Lender may deem fit and to take on lease otherwise any land or premises which the Lender may think necessary for the storage or otherwise in connection the Security.
- 5.1.2 To make any sale or disposition authorized hereby of by law of the Security or any part or parts there of at such place or places in or out of the Commonwealth at such time or times by public auction or private contract or partly by one mode and partly by the other and either altogether or in lots and either for cash or at this risk of the Grantor upon credit or partly for cash and partly for credit and if upon credit upon such security or otherwise or without security and with or without interest and upon such terms in all respects as the Lender shall think fit.”

## 4.2 Vendor terms contracts

We agree that vendor terms contracts are one type of contracts that need particular attention.

In *Lewis v Ormes*<sup>3</sup>, the Consumer, Trader and Tenancy Tribunal of NSW (the **CTTT**) determined, in relation to a vendor terms (consumer credit) transaction that the transaction be reopened, the contract set aside and that compensation was payable to the applicants.

One of the factors leading to the determination was a particular clause in the vendor terms agreement that allowed the vendor to retain all payments made as liquidated damages for non-performance by the purchaser. The clause was as follows:

9.5 The following shall apply upon the termination:

- (i) the Purchaser shall forfeit to the Vendor and the Vendor shall keep the deposit and all Instalments paid under this Contract, as liquidated damages for non-performance of the Contract without necessity for the Vendor to give notice or to do any other thing; and
- (ii) the Purchaser shall have no claim against the Vendor for the cost or value of any improvements made by the Purchaser to the property; and
- (iii) the termination shall not extinguish or affect the Vendor’s entitlement to recover all moneys done up to the termination or the reasonable enforcement charges.

We believe it is likely that if unfair contract terms legislation was available, and applied to consumer credit contracts, a regulator would find this clause to be an unfair contract term. However, while the individual consumer was successful in relation to this case, neither the CTTT nor the regulator, has the power to declare the term unfair, or to prohibit its use by the vendor (credit provider) or by other credit providers.

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<sup>3</sup> (Commercial) [2005] NSWCTTT 481 (18 July 2005)

### 4.3 Small, high cost loans

Terms that are commonly unfair in these agreements relate to the high fees and charges. For example, one Amazing Loans agreement included a ‘Loan Advance and Administration Fee’ of \$2269.70 in relation to a \$1500 loan.

The use of fees, rather than interest, to cover the majority of the cost of the loan also means that the consumer is severely penalised if the loan is paid out early.

In some cases terms relating to the type of security taken are unfair, for example where low-value, necessary household items are subject to a mortgage.

#### **(a) Amazing Loans**

In an Amazing Loans contract sighted by Consumer Action, the amount of credit advanced was \$750, the interest rate was 45.5%, and fees of \$750 were also charged. Further, despite the fact that early payout would not entitle the borrower to any rebate of this fee, the contract terms include an early termination fee.

Early Termination Fee.....the fee is equal to 10% of the Amount of Credit.....

11.4 Any part of any legislation having the effect of limiting our rights or powers, or requiring it to give notices or to take away any other action does not apply, unless we are prevented by law from excluding its application. Any part of any legislation that gives rights or protection to us, or imposes obligations on you, will apply except to the extent that it is inconsistent with any part of this contract.

#### **(b) Cash Loan Money Centre**

Cash Loans Money Centre contracts include provisions relating to the recovery of mortgaged household goods.

“The debtor shall cause and permit each person who has an interest in any land upon which the mortgaged goods are situated or to which they are affixed or over which access is necessary to exercise any right of the mortgagee in relation to the mortgaged goods, to grant to the mortgagee in form and substance satisfactory to the mortgagee a right of entry to the relevant property and a right to exercise any other mortgagee’s rights in relation to the mortgaged goods upon that property.”

I authorise Cash Loan Money Centres or its agents to enter the premises where the mortgaged goods are stored so that an inspection, inventory or removal of goods may be carried out”.

### 4.4 Rent-to-buy contracts

#### **(a) Rent & Buy Pty Ltd**

Rent & Buy Pty Ltd contracts appear to give the consumer the right to purchase the vehicle at the end of the term, however the agreement does not appear to comply with the UCCC –

either as a loan or a consumer lease. Terms used include “renter”, “hire agreement” as well as “mortgaged property” and “credit contract”. It is unclear whether or not the credit provider intends the UCCC to apply or not.

“I understand that Management of Rent & Buy P/L will process the Direct Debit according to my due date. If payment is not received, I authorize Rent & Buy P/L to continue to Direct Debit my account daily until Rent & Buy P/L is in receipt of the outstanding payment. All fees and charges incurred will be paid by the Renter.”

The contract also involves risks of a consumer incurring daily bank fees of around \$30 if funds are not available to cover the direct debit.

“5. The Renter warrants and covenants to The Hirer as follows:

- 5.1 The Renter has no real or equitable interest in The Vehicle until the payment of all of The Rental to The Hirer and payment of the costs and charges referred to in Clause 4 hereof.
  
- 5.3 This agreement shall terminate 2 days after the due date of each payment if any payment of Rental is not made by The Renter. Upon termination The Renter shall immediately deliver up possession to The Hirer without charge or encumbrance.
  
- 5.5 The Renter hereby grants to The Hirer the right to enter property and to use such reasonable force as is necessary to recover possession of The Vehicle and The Renter hereby releases and indemnifies The Hirer in respect to any loss claim or damage in respect thereto including the costs of and associated with the recovery of The Vehicle including the payment to any third party collection or repossession agent.
  
- 5.12 The Renter shall comply with all road rules and statutory directions or requirements during the currency of this agreement and releases and forever discharges the Hirer in respect to any and all obligations or responsibilities in respect thereto.”

#### 4.4 Consumer leases

Consumer leases commonly contain unfair contract terms – particularly those that use lease arrangements to avoid the UCCC requirements that apply to loans. In some cases very complex terms are used to, in effect, set up a credit purchase agreement, while not legally giving the consumer the right to purchase. For example, terms that agree to sell the consumer “similar” goods at the end of the lease period. One Flexirent lease gives the consumer the option, at the end of the lease, to sell the equipment to another person as “agent” for Flexirent, to keep all the proceeds (apart from \$1) as commission, on the basis that Flexirent will waive its rights to future lease payments. This clause is unfair because it is structured to avoid the full provisions of the UCCC, and is confusing for the consumer. The problems caused by such clauses in these leases are exacerbated, because representations made to the consumer often indicate that the consumer is entering into a loan (ie with a right to purchase) rather than a lease.

**(a) Flexirent**

Other terms from a Flexirent agreement include:

“recover liquidated damages on the overdue amount which you agree is a genuine pre-estimate of the actual loss that we will suffer....”

“No warranties are given in relation to the Equipment or any services other than those implied by law”

“This obligation (to pay) continues no matter what happens, even if the Equipment is lost, stolen, damaged or destroyed, if it is defective...”

“You must rely on your own judgment as to the quality and condition of the Equipment and its fitness and suitability for any particular purpose”

“To the extent permitted by law, damages for breach of warranties implied by law are limited to repair or replacement of the Equipment or the re-supply of the services”

**(b) Technology Leasing**

Consumer leases from Technology Leasing also include the following unfair terms:

**ACQUISITION AND DELIVERY OF THE EQUIPMENT**

1.3 The owner is not responsible for any delay in, or any damage or any loss arising as a result of, the delivery, installation or set-up of the equipment.

**2 OWNERSHIP OF THE EQUIPMENT**

2.1 The equipment is, and will remain, the sole property of the owner, whether not affixed to realty and shall not become or be made to become part of any real property on which it is placed. The client has no right to purchase the equipment.

2.2 The owner has not given any rights or expectations, nor made any representations, to the client regarding this agreement or the acquisition, use, operation, performance, delivery, installation, or tax treatment of the equipment (or equipment of a similar value and description) by the client at any time.

**3 PAYMENTS**

3.3 Unless the owner otherwise agrees, payments must be made by direct debit from the client's bank account or by a credit card accepted by the owner. For each payment not made by direct debit from the client's bank account or credit card and for which the owner issues an invoice due to the client, the client must pay the owner and invoice fee of \$10.

3.4 The client's obligation to pay the rent and other amount due under this agreement is unconditional for the whole of the term of this agreement, even if the equipment is damaged or destroyed, is defective or breaks down or any other thing happens in relation to it. All payments are to be made without set-off, deductions or withholdings on any account.

**4 THINGS THE CLIENT MUST DO**

The client must at its own expense:

- 4.1 (a) properly maintain and service the equipment and keep it in good order and repair (normal wear and tear excepted);  
(b) have the equipment maintained and repaired only by properly trained and competent persons;  
(e) produce the equipment for inspection or testing by the owner or its nominee at the request of the owner from time to time and (subject to clause 12.3, if applicable) allow the owner or its nominee access to any place where the equipment is kept for any purpose relating to this agreement;  
(f) if the land or premises on or in which the equipment is to be installed is held or occupied by the client as lessee, under lease or licensee or is the subject of a mortgage or charge, then the client must on or prior to execution of this agreement provide to the owner written acknowledgement from the owner of the premises and/or security holder that (as applicable):  
(2) the owner may at any time enter on the land or premises and detach and remove the equipment.

## 6 REGISTRATION AND LICENSING OF THE EQUIPMENT

- 6.2 If the equipment is registered or licensed in the name of the client, when the client is obliged to return the equipment to the owner it must at the time of return sign and give to the owner all documents, and pay all stamp duty and other fees, necessary to transfer the registration or license of the equipment to the owner.

## 7 INSURANCE

- 7.1. Unless the client has elected to accept the Technorent Protection Plan, the client must:  
(a) insure the equipment and keep it insured for its full insurable value or the Recoverable Amount (whichever is the greater) under an all risks insurance policy which names the owner as first loss payee
- 7.2 The client irrevocably authorizes the owner:  
(a) to receive all money payable in relation to the insurance referred to in clause 7.1(a) or payable to any persons in respect of damage to, or loss of, the equipment. For this purpose the client appoints the owner as its attorney to make, recover and/or compromise in the client's name any claim under that insurance or against any person;

## 8 RISK AND INDEMNITIES

- 8.1 The client assumes all risks and liability in relation to the equipment and the use, operation, possession, performance, maintenance, repair and storage of it (including liability for injury to any person or damage to any property, whether direct or consequential) for the period up until the equipment is returned to the owner and whether or not it is covered by insurance.
- 8.2 The client indemnifies the owner against all losses, liabilities and expenses incurred by the owner as a result of:  
(a) loss of, or damage to, the equipment by any cause (including lawful confiscation);  
(b) anything done by or with the equipment  
(c) any other thing in relation to which the client has assumed the risk or liability pursuant to clause 8.1; or  
(d) the occurrence of any event referred to in 13.1

(e) any infringement of intellectual property rights in relation to the equipment.  
The client must pay to the owner on demand any amount payable under this indemnity.

#### 9 DESTRUCTION OF THE EQUIPMENT

- 9.2 Within 7 days of receipt of that notice the client must pay to the owner the Recoverable Amount as if the client had been deemed to have repudiated this agreement and the owner had terminated this agreement for that reason.
- 9.3 The owner will credit to the client any insurance money or proceeds of salvage received by the owner if and when received (after deducting the net present value of the owner’s residual interest in the equipment) but that credit will not exceed the amount payable by the client under clause 9.2

#### 10 OWNER MAY TAKE ACTION

- 10.1 If for any reason the client fails to comply with any of its obligations under this agreement the owner may in its discretion do anything necessary to make good that failure (but without affecting any other right or remedy of the owner as a result of that failure) and do anything (including taking any legal proceedings) which the owner considers desirable to protect or enforce its rights in relation to the equipment and this agreement. The client irrevocably authorizes the owner to use the name of the client, and to act on its behalf, in doing any such thing.

#### 12 PROCEDURE ON EXPIRY OR TERMINATION

- 12.4 Subject to clause 11, this agreement will be automatically renewed following the expiration of the initial term set out above for a further term equal to the lesser of that initial term or 3 months (and otherwise on the terms of this agreement) unless the client:
- (a) notifies the owner in writing not less than 30 days nor more than 120 days before the expiration of the initial term of the client’s intention to terminate this agreement on the expiration of that initial term;

#### 13 DEFAULT EVENTS

- 13.1 For the purposes of the agreement, a “Default Event” applies to both the client and any guarantor and occurs if:
- (a) the client does not pay on the due date any installment of rent or other money payable under this agreement;
- (g) the holder of any security at any time over any of the clients assets becomes entitled to exercise any powers to enforce security;
- (j) breach of representation or warranty made by the client if the client does not remedy.

#### 14 TERMINATION BY OWNER

- 14.1 The occurrence of a Default Event is a breach of a fundamental condition of this agreement.
- 14.3 If a Default Event occurs, the client will be deemed to have repudiated the agreement and the owner will be entitled to terminate the agreement by written notice to the client or by any act of repossession.

#### 15 EXCLUSION OF WARRANTIES

- 15.1 Apart from terms, conditions and warranties which are implied by law and are incapable of exclusion, we give no condition, warranty, or representation as to

ownership, description, condition, merchantability, suitability, or fitness (whether for a particular or any purpose) of the equipment, and no such term, condition or warranty will be implied.

- 15.3 Except as provided in clause 15.2, and notwithstanding any implications arising from any other clause, the owner will not be liable to the client or any persons claiming under the client in contract or in tort in respect of any direct, indirect or consequential loss, damage, expense or injury suffered by the client or any other person, arising out of or relating to the agreement, its performance, any delay in its performance or its non-performance (including, by way of illustration and not limitation, liability due to the negligence or default of the owner), or any error (whether negligent or not) in information supplied to the client before or after the date of the agreement or in connection with it.

#### 16 ASSIGNMENT/THIRD PARTY RIGHTS

- 16.3 The client may not object to the owner entering into this agreement as agent for another person (whether disclosed or not) or to that other person being the true owner of the equipment.

#### 17 AMOUNTS PAYABLE

- 17.1 (b) all other costs and expenses (including legal costs on a full indemnity basis) incurred by the owner in relation to this agreement or the exercise or attempted exercise of any of the owners rights under it.
- 17.2 If any estimate of stamp duty is included in the rent set out above, that estimate does not limit the obligations of the client under clause 17.1 if additional duty is assessed to be payable.

#### 18 INFORMATION

During the term of this agreement the client must provide to the owner from time to time upon request copies of the client’s financial statements and such other information in relation to the client or its business as the owner may reasonably request.

#### 20 MISCELLANEOUS

- 20.1 This agreement may only be varied or replaced by a written document signed by the owner, and cannot be cancelled or terminated except as it expressly provides.
- 20.3 The only agreement between the owner and the client with respect to the equipment is contained in this agreement.
- 20.9 The client authorises the owner to complete any blank spaces in this agreement and in particular to insert the serial numbers and other identification details of the equipment.

#### 21 MAINTENANCE CHARGES

- 21.1 If any maintenance charges in relation to the equipment are included in the rent set out above, the client acknowledges that:
- (a) those charges have been included at the request of the client in conjunction with a direction the client has given to the owner to pay those charges to the person providing the maintenance services in relation to the equipment;
  - (b) the owner is not responsible for the maintenance of the equipment nor related to, or associated in any way with, the provider of those maintenance services; and
  - (c) no failure to perform or other breach by the provider of those maintenance services will in any way affect the clients obligations to pay rent and other

money payable under this agreement and to perform its other obligations under this agreement.

## 22 SERVICES

22.1 (c) No representation, undertaking, understanding or agreement has been made with or given to the client prior to the Rental Agreement being entered into that any such Services would be provided to the client by Technology Leasing Limited or any of its associated persons, corporations or entities.

### 4.5 Non-bank housing finance

As outlined above, non-bank housing finance commonly include unfair terms, such as these from Liberty Finance.

“1.5 We can keep any fees and charges *you* have paid *us* even if *we* do not have to lend the *amount of credit*, if *you* do not ask *us* to lend the *amount of credit*, or if this agreement is terminated.”

“4.9 We may vary the amount, method of calculation, number, frequency or time for payment of repayments for the period over which they are to be paid.”

“7.1 *You* are in default if:

(c) *you* give, or another *person* gives, *us* incorrect or misleading information in connection with this agreement or a *security* or if *you* fail, or another person fails, to disclose information required to be disclosed under or in connection with this agreement or a *security*,”

### 4.6 Credit card penalty fees

Some of these fees, for example for exceeding the credit limit or late payment, are excessive. We believe that they are often higher than the actual cost to the credit provider, and that they are therefore unfair – and probably legally unenforceable. However, current laws require each individual consumer to take their matter to a Court or Tribunal – and this cannot address this problem that impacts on many consumers. For more on this issue, see: [www.fairfees.com.au](http://www.fairfees.com.au)

### 4.6 Unilateral variation clauses

Unilateral variation clauses are common, however we believe they are unfair, are often worded very broadly and can be applied unfairly by lenders. We believe that priority should be given to those clauses that are very broad or that have already been applied to the detriment of borrowers.

#### **(a) Citibank**

In 2006, Citibank changed the terms and conditions of a credit card that had been promoted on the basis that interest charged would be low on transferred balances. However, consumers were unable to take full advantage of the promotional offer when Citibank

advised it would charge a \$160 fee to consumers who did not spend \$1,000 on their card within a specified period of time.<sup>4</sup>

**(b) Holden Financial Services**

In one case seen by Consumer Action, a consumer, after falling into arrears, believed that he had repaid all amounts owing, and that the credit provider was claiming more than was owed. Once the client was legally represented, the credit provider produced a letter, advising of increases in default fees (\$15 to \$25) and introduction of a “referral fee” of \$25 four years earlier. The consumer was unaware of the change.

“The financial information in item 5 is subject to change and the change can be made without your consent.”

**(c) GE Credit Line**

The following unilateral variation clause is very broad, and is of particular concern because these agreements often apply to merchant arranged “interest free” deals where consumers choose the finance based on the promoted interest free period.

“The credit limit, any of the annual percentage rates, the maximum interest free period, the amount, frequency or time for payment or method of calculation of a fee or charge or minimum amount payable in a statement period may be changed, and new fees or charges may be imposed, in each case without your consent.....”

#### 4.6 Default clauses

Finally, we are concerned about the definition of a default in some agreements. In some car finance contracts, the purchaser is in default if the car is taken out of the state without permission of the credit provider.

The clause from an Australian Finance Direct contract includes committing “an act of bankruptcy”. This is unreasonable, as there are various acts of Bankruptcy (ie in relation to a separate debt) that should not cause the borrower to be in default under this contract.

**(a) Australian Finance Direct Ltd (financing contract with Maths and Learning Excellence Pty Ltd)**

“8. Things you must not do

You must not:

- commit an act of bankruptcy; or
- fail to pay us on time any money you have to pay us under the contract; or
- pay any repayment/s with a cheque or direct debit authority that is subsequently dishonoured by a bank; or
- fail to comply with any condition of the Contract; or

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<sup>4</sup> ASIC media release, ‘Citibank responds to concern about ReadyCredit Card’, 1 May 2006, <http://www.fido.asic.gov.au/asic/asic.nsf/byheadline/06-132+Citibank+responds+to+concerns+about+ReadyCredit+card?openDocument>

- make any false or misleading representation in connection with this Contract or  
act fraudulently in connection with this Contract.

If any of these things happen, then you will be in default under the Contract.”

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