

House of Representatives

Supplementary Order Paper

Tuesday, 3 December 2019

Credit Contracts Legislation Amendment Bill

Proposed amendment

Hon Kris Faafoi, in Committee, to move the following amendment:

Clause 31A

In *clause 31A*, replace *new section 100(1AAA)* (page 31, lines 1 to 6) with:

- (1AAA) No person may enforce a guarantee after the court finds a breach of section 9C(4)(a) in respect of the guarantee, unless the court grants relief to the creditor under **subsection (1AAB)**.
- (1AAB) The court may, on the application of a creditor under the consumer credit contract, grant relief from the effect of **subsection (1AAA)** if the court considers it fair and reasonable in the circumstances after having had regard to all relevant matters, including—
- (a) the nature and seriousness of the breach;
 - (b) the ability of the guarantor to comply with the guarantee without suffering substantial hardship;
 - (c) any statutory damages that have been paid or are payable and the extent to which statutory damages have been, or are to be, extinguished or reduced under section 91.

Explanatory note

This Supplementary Order Paper relates to the enforcement of guarantees given by guarantors in respect of consumer credit contracts.

Currently, the Bill provides that, in the case of a breach of section 9C(4)(a) (failure to make reasonable inquiries before a guarantee is given), in addition to statutory damages, no person may enforce the guarantee unless the court considers it fair and reasonable in the circumstances after having had regard to all relevant matters,

including the seriousness of the breach and the ability of the guarantor to make payments under the guarantee without substantial hardship.

The proposed changes clarify the following:

- that the “no enforcement” rule applies if a court finds a breach of section 9C(4)(a):
- that, in ordering relief from the “no enforcement” rule, the court must consider the full picture with statutory damages:
- that the creditor can apply for the relief.