



Australian Finance Conference Level 7, 34 Hunter Street, Sydney, 2000. GPO Box 1595, Sydney 2001
 ABN 13 000 493 907 Telephone: (02) 9231-5877 Facsimile: (02) 9232-5647 e-mail: afc@afc.asn.au

Standing Committee on Economics
 House of Representatives
 PO Box 6021
 Parliament House
 CANBERRA ACT 2600

24 May 2011

via: economics.reps@aph.gov.au

INQUIRY INTO NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT (HOME LOANS & CREDIT CARDS) BILL 2011

The Australian Finance Conference (AFC) appreciates the opportunity to make a submission to the Inquiry. By way of background, the AFC was formed in 1958 as the national association of finance companies and has evolved into a non-institutionally-based financial services association. Our membership includes financiers involved in the bank as well as the non-bank sectors of the market. A current membership list is attached. AFC credit provider member companies provide the full range of lending financial services in both the consumer and commercial market. In the consumer context, this includes home lending and credit card products which are the subject of the proposed reforms contained in the National Consumer Credit Protection Amendment (Home Loans & Credit Cards) Bill 2011 (the Bill).

The AFC has been pleased to participate in Treasury consultation on the National Consumer Credit Law reforms, including the Bill, through our representation on the Main Industry and Consumer Group Forum and the more specific, Credit Card Implementation Working Group (the CCWG). In this regard, we note that the focus of the CCWG was one of implementation rather than policy development; with the policy largely covered in the pre-election announcement by the Government; namely, *Fairer, Simpler Banking – A Better Financial Deal for Hard Working Australians*.

We understand that the Committee is examining the adequacy of the Bill in achieving the policy objectives and, where possible, to identify any unintended consequences. Noting the tight timeframe for consideration and report, we have identified key issues for AFC members with the Bill.

By way of summary:

- Consultation on whether the objectives of the reforms have been achieved in the Bill is difficult given that a large amount of detail still remains to be dealt with via Regulations (yet to be developed) both for Part 3-2A Home Loans and Part 3-2B Credit Cards;
- To the extent that some of this detail is policy (eg what is a standard home loan) rather than matters of implementation or operation, we submit it should be dealt with in the Bill rather than via regulation: a process which does not have the same level of Parliamentary scrutiny;
- Given the lack of detail, the 1 September 2011 commencement timeframe for the Part 3-2A Home Loan amendments is unworkable and unrealistic, particularly in the light of Government's commitment to work with industry to minimise compliance costs given in its *Competitive & Sustainable Banking System; Stream One Empower Consumers to Get a Better Deal*;
- The application of Part 3-2A and potential value to a consumer is unclear given the broad definition in the Bill of a standard home loan in a market where home loans are anything but standard;
- The Part 3-2B credit card provisions reflect a significant divergence between the Government's announced policy and the parameters of the amendments;
- This includes, in particular, the Government's commitment to apply the reforms to new credit card contracts only¹. In contrast, the Bill's application provisions (in relation to Division 4 for example) will capture some 15 million credit card contracts² in existence at time of commencement and impose a significant and complex opt-in process and record-keeping obligation for credit card issuers before they can write to these customers about credit limit

¹ As made in the Government's pre-election policy *Fairer, Simpler Banking – A Better Financial Deal for Hard Working Australians*

² As noted by the Treasurer in the Second Reading Speech accompanying the Bill's introduction.

increases. Through the inclusion of existing contracts, liability for breach is magnified and compounded by the hierarchy of offence provisions contained in the Bill;

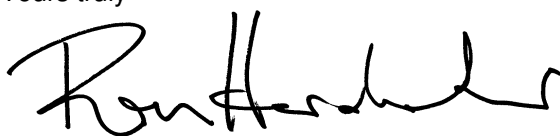
- Because of current system set up and drive to streamline compliance, some of the reforms may in practice be applied by a credit card issuer across the portfolio from commencement. However, compliance in this regard should be at the discretion of the issuer, not mandated in the legislation as this would be beyond the policy underlying the reform;
- The announced reforms are relatively simple and straightforward, yet the provisions in Part 3-2B to implement them are overly complex and, together with proposed regulations, likely to impose a highly prescriptive and rigid compliance framework on credit card issuers which appears at odd with the Government's commitment to principles-based regulation, including under the NCA. Operational detail should largely be left to individual entities and compliance generally scaleable according to the particular characteristics and business model of the regulated-entity;
- The significant compliance risk for breach (eg through inclusion of both civil and criminal offence provisions together with a strict liability component) is not warranted or justified given the existing offence framework that has been adopted in other parts of the NCA (eg Chapter 3 responsible lending).

AFC recommends:

- Amendment in the Bill of the definition of standard home loan to clearly identify that product which the Government is keen to give consumers the disclosure tool to compare price between home loan provider competitors to enable the simple, one-page document envisaged.
- Deferral of the 1 September 2011 commencement date for Part 3-2A to a date that gives home loan providers a twelve month period from the date the final detail of the HLKFS reforms is available to implement the compliance framework (including making relevant systems and documentation changes and conducting necessary staff training in advance of commencement) to achieve the Government's objective of consumer protection while minimising industry compliance costs.
- Amendment of Part 3-2B to adopt a principles-based approach to implementation of the policy underlying the credit card reforms and leaving compliance frameworks for consent, record-keeping and other processes as a matter of for operational management for each business rather than statutorily mandating an overly prescriptive and complex framework.
- Amendment of the application provisions of Part 3-2B (in particular, Division 4 credit limit increase invitations) to align with the announced Government policy of application **only** to new credit contracts; leaving application to existing contracts a commercial matter for credit card issuers and exposure of risk for breach at commercially acceptable levels while minimising implementation compliance costs.
- Amendment of provisions relating to credit limit increases and fee charging (eg in Division 5) to reflect the Government policy so that credit card issuers retain the discretion, with customer consent, to allow customers to exceed a limit on a temporary basis without incurring a fee, rather than a complex framework that draws distinctions based on whether a customer exceeds the limit by ten per cent or more.
- Deferral of the 1 July 2012 commencement date for Part 3-2B to a date to give credit card providers a twelve month period from the date the final detail of the credit card reforms is available for the same reasons given in relation to deferral of commencement of Part 3-2A.
- Changes to the offence / penalty hierarchy, in particular to remove strict liability offences, to ensure that the penalty reflects the breach behavior of the credit provider and reflects the likely detriment to a consumer flowing from the breach.

AFC would be pleased to assist the Committee with additional information, as required.

Yours truly



RON HARDAKER
Executive Director

(Attachment: List of AFC members)



AFC MEMBER COMPANIES

Advantagedge Financial Services	Nissan Financial Services
Advance Business Finance	Once Australia t/as My Buy
Alleasing	PACCAR Financial
American Express	Pepper Australia Pty Ltd
Automotive Financial Services	Provident Capital
Bank of Queensland	Profinance
BMW Australia Finance	RABO Equipment Finance
Branded Financial Services	RAC Finance
Capital Finance Australia	RACV Finance
Caterpillar Financial Australia	Resimac Limited
Centrepoint Alliance	Retail Ease
Citi Australia	Ricoh Finance
CNH Capital	RR Australia
Collection House	Service Finance Corporation
Commonwealth Bank of Australia	Sharp Finance
Credit Corp Group	SME Commercial Finance
De Lage Landen	Solar Financial Solutions
Dun & Bradstreet	St. George Bank
Esanda	Suncorp
FlexiGroup	Suttons Motors Finance
Ford Credit	The Leasing Centre
GE Capital	Toyota Financial Services
Genworth Financial	United Financial Services
GMAC	Veda Advantage
HP Financial Services	Volkswagen Financial Services
HSBC Bank	Volvo Finance
Indigenous Business Australia	Westlawn Finance
Institute of Mercantile Agents	Westpac
International Acceptance	Wide Bay Australia
John Deere Credit	Yamaha Finance
Kawasaki Finance	ZoomLion Finance & Leasing
Key Equipment Finance	
Komatsu Corporate Finance	
Leasewise Australia	
Liberty Financial	
Lombard Finance	
Macquarie Equipment Rentals	
Macquarie Leasing	
Max Recovery Australia	
Members Equity Bank	
Mercedes-Benz Financial Services	

Professional Associate Members:

Allens Arthur Robinson
CHP Consulting
Clayton Utz
Dibbs Barker
EDX Australia
Henry Davis York