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House of Representatives Economics Committee
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BY EMAIL: economics.reps@aph.gov.au

Inquiry into the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011

GE Capital Finance Australasia Pty Ltd ("**GE**") welcomes the opportunity to make this submission on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011 ("**Bill**") to the House of Representatives Economics Committee ("**Committee**").

GE has several businesses operating in Australia, including GE Money and GE Commercial Finance. There are a number of features of our businesses (for example, our range of credit products, variety of distribution channels, numbers of customers and the fact that we don't take deposits) which means that GE has a significant and distinctive interest in proposed reforms affecting the regulation of financial services, and specifically credit. Although GE conducts a significant financial services business in Australia, our perspective on proposed reforms is often unlike that of any other financial institution operating in Australia.

Our comments as to whether the Bill is adequate to implement the government's stated policy objectives (and GE's recommendations) on specific aspects of the Bill are set out in detail in the Appendix.

In addition to those specific comments, we have significant concerns with respect to the following:

1. Application of the Bill to Existing Credit Contracts

The government's election commitment as articulated by the Prime Minister in the Fairer, Simpler Banking policy announced on 15 August 2010 was that the credit card reforms would apply to new credit cards from mid 2012. The retrospective application of the Bill in respect of the prohibition on unsolicited credit limit increase offers is a significant and unexpected departure from that commitment and is unnecessary to achieve the stated policy objective to provide the benefit of the reforms to new credit cards.

We have the same concern about the government's intention to apply the requirement for tailored minimum repayment warnings retrospectively. The fact that this election commitment is not currently addressed in the Bill introduces an unacceptable level of uncertainty for industry

and may set a dangerous precedent for consultation and implementation with respect to future reform initiatives.

2. Implementation Timing

The Bill currently provides that the credit card reforms must be implemented by 1 July 2012. Many of the reforms will require significant IT systems changes. Such systems changes will require lengthy lead times that can only be planned and scheduled for implementation once all of the detail of the reforms is known. Much of the detail is to be provided in Regulations that have not yet been released. In our view, the implementation date of the Bill must be at least 12 months from the time that all of the detail to be provided in Regulations is finalized.

3. Significant Liability for Non-compliance

The Bill introduces significant penalties, civil and criminal, for non-compliance. In most cases, the criminal offences are strict liability offences. The principle of proportionality has been recognised as being of prime importance in devising, implementing, enforcing and reviewing regulations¹. This principle requires that remedies be appropriate to the risk posed, with costs identified and minimised. In GE's view, the penalties under the Bill are a disproportionate response in the absence of clear evidence of the risk of consumer harm that the Bill purports to address.

We would be happy to discuss our submission further with you. GE requests the opportunity to continue to be represented at any forum that is part of the consultation process with respect to national credit reform, to the extent they are relevant to GE's businesses in Australia.

Sincerely



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¹ Better Regulation Task Force (2003), *Principles of Good Regulation*, www.brtf.gov.uk, 2003

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Policy Objective Stated in Election Commitment	Implementation under Provisions of the Bill	GE Comment & Recommendation
<p>All credit cards reforms will apply to new credit contracts entered into after mid 2012 implementation</p>	<p>The Bill applies to new contracts entered into from commencement of the new law (1 July 2012) except that it applies retrospectively (to existing credit card contracts) with respect to the prohibition on unsolicited credit card limit increase offers without express consent.</p>	<p>GE Comment Extending the application of the Bill to existing credit contracts is unnecessary to achieve the stated policy objective of applying reforms to new contracts from mid 2012. Moreover, it is contrary to assurances provided to industry participants during the implementation consultation period leading up to the release of the Bill.</p> <p>GE is opposed to this departure from stated policy.</p> <p>GE Recommendation GE strongly recommends reconsideration of the recent significant departure from stated policy.</p> <p>However, if the government decides that the prohibition on unsolicited credit card limit increase offers should apply to existing credit contracts then existing customers should be taken to have consented to receiving credit limit increase offers from lenders with whom they have already contracted. These customers will then be able to opt-out of the service should they decide to do so.</p>
<p>Consumers can avoid exceeding their limit and can avoid incurring over-limit fees</p>	<p>The Bill provides for a default buffer of 10% of the credit limit. The customer can opt out of the buffer at any time. No fees or higher interest rate can be charged for transactions within the buffer. Lenders must notify customers when they become aware that they have transacted into the buffer zone.</p> <p>A customer can opt in to exceed the default buffer (so there is a</p>	<p>GE Comment There is significant detail still to be set out in Regulations. Regulations that have not yet been provided:</p> <ul style="list-style-type: none"> • will detail requirements for notifying customers that they have made over-limit transactions • will provide a defence for transactions that lenders cannot “see” (such as offline transactions) • may limit the supplementary buffer and may prescribe how lenders must keep records of opt outs and opt ins. <p>GE is unable to say conclusively whether the Bill achieves the policy objective of this aspect of the reform until it has the “full picture” – including the relevant Regulations.</p>

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	<p>"supplementary buffer"), but they can only opt in for the supplementary buffer if they have not opted out of the default buffer. Fees, charges and/or a higher rate of interest may be charged for transactions in the supplementary buffer.</p> <p>Authorizing transactions that exceed the hard credit limit (if customer has opted out of the default buffer) or the credit limit plus 10% default buffer and the supplementary buffer if any is a strict liability offence.</p>	<p>However, from the detail currently available in the Bill, our view is that enabling customers to opt out of the default buffer is all that is required for the Bill to achieve the stated policy objective that customers should be able to "avoid exceeding their limit and avoid incurring over-limit fees". In particular, the requirement to notify customers after they have transacted over their limit seems pointless, since there is no disincentive for customers not to exceed their credit limits. In GE's view, the notification requirement is not necessary to achieve the policy objective and will be overly burdensome on lenders</p> <p>GE Recommendation</p> <ul style="list-style-type: none"> The notification requirement should be removed from the Bill (or, alternatively, limited to advising customers on their next statement of account of their over-limit amount). Most lenders provide numerous channels that can be readily accessed (by phone and online centres) for customers to keep track of their transaction against their credit limit. The Bill should not be progressed until all of the relevant Regulations have been released.
<p>Lenders must allocate payments to higher interest balances first so consumers don't pay more interest than they expected</p> <p>Ensure consumers can compare interest rates on products by requiring interest charges to be applied under an industry</p>	<p>The Bill provides that customers' payments be applied to higher interest bearing balances first. Customers can request a different application of payments on a case by case basis.</p> <p>Non-compliance is a strict liability offence.</p> <p>The Bill provides that this aspect of the reform will be dealt with in Regulations (which have not yet been released).</p>	<p>GE Comment</p> <p>The amount of interest that a customer will ultimately incur is a function of numerous factors. It is not clear that mandating payments be applied from highest to lowest interest rate will in fact result in customers' expectations being met. However, in principle, GE has no objection to this aspect of the reform.</p> <p>GE Recommendation</p> <p>The Bill should not be progressed until the relevant Regulations (dealing with how customers can elect a different application of payments) have been released.</p> <p>GE Comment</p> <p>The Bill does not refer to an "agreed industry standard". GE's view is that imposing any such agreed industry standard will result in price control but will not achieve the stated policy objective of enabling customers to compare interest rates on different products.</p> <p>A similar reform to impose an industry standard was considered in the UK. This is what the Office of Fair Trading in the UK concluded.....</p>

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agreed standard	<p><i>"The OFT concluded that standardisation of the interest calculation methods used by credit card issuers to calculate interest would not address the fundamental problems faced by consumers, and could prevent card issuers from offering products which met different consumer needs, as well as reducing product innovation."</i></p> <p>In other words, while GE is supportive of the "standard" already used by the majority of credit card issuers (that is, accruing interest against purchases from the transaction date) it is important to note that this, of itself, will not necessarily achieve the stated policy objective of enabling consumers to compare "apples with apples".</p> <p>GE would be happy to provide the Committee with further detail on the UK research and conclusions on request.</p> <p><u>GE Recommendation</u> There should be no mandated "agreed industry standard".</p> <p>Instead, it should be recognised that facilitating comparability of credit products is a disclosure issue – the stated policy objective could be achieved by providing consumers with an independent mechanism (like the OFT calculator now available to consumers in the UK at http://www.money.madeclear.org.uk/ to assist consumers to make a meaningful comparison).</p>
Empower consumers to manage their debt by allowing them to choose their credit limit	<p>The Bill does not address this aspect of the reform.</p> <p><u>GE Comment</u> This aspect of the reform has already been implemented by responsible lending obligations under the National Consumer Credit Protection Act 2009, and guidance given by ASIC Regulatory Guide 209, which have applied to lenders from 1 January 2011.</p> <p><u>GE Recommendation</u> The government should not impose any additional requirements on lenders, since the stated policy objective has already been achieved.</p>
Consumers can choose not to be enticed to increase their	<p>The Bill prohibits "offers" in a very broad sense, including any written communication directly to a customer that "encourages" a</p> <p><u>GE Comment</u> The Bill greatly exceeds the level of prohibition reasonably necessary to achieve the stated policy objective. It does so in two respects:</p> <ul style="list-style-type: none"> • this aspect of the reform applies to new and existing credit contracts from mid July

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<p>credit limit by requiring lenders to obtain express consent to send credit limit increase offers</p>	<p>customer to apply for a credit limit increase. Customers must expressly consent to receiving credit limit increase offers. Such consent must cover all offers that the lender may make from time to time.</p> <p>Non-compliance is a strict liability offence.</p> <p>The Bill does not state whether lenders must procure consents from existing customers, but this may be dealt with in Regulations that have not yet been provided.</p>	<p>2012 (contrary to stated policy); and</p> <ul style="list-style-type: none"> the intention (as we understand it), was to prevent customers receiving pre-approved "offers" in the literal sense. <p>The broad definition of "offer" introduces uncertainty as to the types of communications that might be affected and is unnecessary, since lenders are now subject to responsible lending obligations under the National Consumer Credit Protection Act 2009, and guidance given by ASIC Regulatory Guide 209. The result is that "pre-approved" offers can no longer be made.</p> <p><u>GE Recommendation</u></p> <ul style="list-style-type: none"> The prohibition on unsolicited credit limit increase offers without consent should apply to "offers" in the literal sense. The prohibition should not apply to existing credit contracts as at 1 July 2012. However, if the government decides that the prohibition will apply to existing credit contracts then existing customers should be taken to have consented to receiving credit limit increase offers from lenders with whom they have already contracted. These customers will then be able to opt-out of the service should they decide to do so. The Bill should not be progressed until the relevant Regulations have been released.
<p>Draw attention to important terms before a consumer enters into a credit card contract by requiring lenders to include a summary of key features on the application form</p>	<p>The Bill provides that an up to date key facts sheet must be provided be included in the application form for credit card. Regulations that have not yet been provided will specify exceptions and will prescribe form and content.</p> <p>Non-compliance is a strict liability offence.</p>	<p><u>GE Comment</u></p> <p>In principle we agree that this requirement, if implemented so as to ensure that pre-contractual disclosure is as effective as possible, is adequate to achieve the stated policy objective. However, we have concerns about some practical implementation aspects that cannot be addressed without the detail to be set out in the Regulations.</p> <p><u>GE Recommendation</u></p> <ul style="list-style-type: none"> GE's preference is for the key facts sheet requirement to be deferred to be dealt with holistically as part of the further reforms to the disclosure regime that are slated to be dealt with under the COAG phase 2 reforms. In the alternative, the Bill should not progress until the relevant Regulations have been released.
<p>Make consumers aware of the implications of making only</p>	<p>The Bill does not address this election commitment.</p>	<p><u>GE Comment</u></p> <p>While this is not addressed in the Bill, our understanding is that the government's position is that there is an existing Regulation making power in the National Credit Code that could be used to implement this election commitment - and that the government intends to do so.</p>

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minimum repayments – by including information on their statements about the time to repay and total interest if only minimum repayments are made

We have also been advised that the government has decided that this requirement will apply to new and existing contracts. As we understand it, the government has not yet decided whether these warnings should be tailored to each customer's circumstances (on each statement) – or whether a generic warning would be adequate. There would be significant IT systems costs and implementation lead times in providing messages that are tailored to each customer on each statement.

In GE's view, the stated policy objective of making customers aware of the implications of making only minimum repayments implies that "warning messages" will influence customer behavior such that they will make additional repayments to avoid adverse consequences. We do not agree that this would be the outcome.

In our experience, the vast majority of our customers manage their credit and level of indebtedness prudently and never become overcommitted or experience financial difficulties. However, we acknowledge that there is a material minority of customers who do find themselves in difficulties, and we also acknowledge the responsibility we have to those customers. We also support targeted measures that can be taken to reduce the risks of customers getting into financial difficulties.

If this election commitment is implemented as a tailored warning on statements, it will increase the costs of doing business – which will inevitably lead to higher costs of credit for all consumers, even the majority of customers who manage their credit and level of indebtedness prudently. Therefore, it is imperative that government, consumer financial services industry participants and consumer representatives work together to determine whether a compelling net public benefit from implementing this election commitment by way of a tailored statement message can be identified.

We acknowledge that the effect of credit stress on individuals who are in the affected minority of customers is severe and can be far-reaching. We believe that customers in difficulty can be better looked after with less cost if a targeted approach is adopted instead of the one size fits all approach that appears to be the government's position.

GE Recommendation

- Measures that are better adapted to identify and assist customers who habitually make only minimum repayments should be investigated. The government should

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	<p>not move to implementing a tailored statement message requirement.</p> <ul style="list-style-type: none"> • Alternatively, a generic warning on account statements as to the implications of making minimum repayments should be implemented while further investigation of the extent of the problem and the appropriate response is undertaken. 	
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<p>NOT an election commitment Home Loan Key Facts Sheet</p>	<p>Implementation under Provisions of the Bill The requirement to provide a Key Facts Sheets applies to standard home loans from 1 September 2011</p>	<p>GE Comment & Recommendation</p> <p><u>GE Comment</u> In principle we have no objection to this requirement. However, we have concerns about practical implementation, and the very short implementation timeframe, that cannot be addressed without the final form and content of the Key Facts Sheet, which is to be set out in the Regulations.</p> <p><u>GE Recommendation</u></p> <ul style="list-style-type: none"> • The Bill should not progress until the relevant Regulations have been released. • Implementation timeframe should be a reasonable period of time from when the relevant Regulations are made.
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