

Response to House of Representatives Committee on Economics

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

Questions on Notice directed to Treasury

Question 1 (asked by the Honourable Steven Ciobo, MP, page 8): Has Treasury done any modelling or received any advice about what the actual pricing impact of all this extra compliance will be?

Treasury has done internal assessments on the effect of the extra compliance costs that may result from the reforms, and considers that these costs will have no impact on price as there will be countervailing competitive pressures.

The reforms in the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011* (the 2011 Bill) form a package that has a number of different objectives. One of these is to increase the visibility of the costs lenders charge in respect of their credit card products (through the introduction of the Key Facts Sheet requirement that applies to this category of products). Lenders determine the price of their products according to a range of different factors, including internal costs, and it would therefore not be correct to assume that simply because there is an increase in those costs that there will be a commensurate increase in the price charged to consumers.

It is also not possible to generalise in relation to costs. Implementation and transition costs will vary between lenders according to the size and flexibility of their existing systems and their existing practices. For example, some lenders have already adopted in substance, on a voluntary basis, some of the proposed reforms, and will necessarily incur lower transition costs.

Lenders will incur relatively higher larger costs in implementing the reforms in respect of overlimit transactions, requiring repayments to be allocated to highest interest first, and disclosure of the impact of making minimum repayments in statements than the other reforms.

Question 2 (asked by the Honourable Doctor Andrew Leigh, MP, page 9): By what margin is the household sector in the Australian economy more indebted than the government sector?

As of the end of 2010, the level of Australian Government net debt represented 3.3 per cent of GDP.¹ As of the end of June 2010, the level of household debt represented 98.7 per cent of nominal GDP.²

Question 3 (asked by the Honourable Scott Buchholz, MP, page 46): Can Treasury confirm if liability under the Bill will apply to employees of a lender?

The 2011 Bill contains amendments to the National Consumer Credit Protection Act 2009 (Credit Act), and adopts the same approach to penalties as the Act and Commonwealth legislation generally.

The Credit Act and the 2011 Bill both impose responsibility on the licensee (that is, the credit provider, lessor, broker or intermediary), and therefore liability for any contraventions.

However, Section 11.2(3) of the Criminal Code creates ancillary liability for third parties (such as, in this case, employees) for offences across all Commonwealth statutes, including the Credit Act. This liability is not automatic and only arises in specified circumstances that require an intention to commit the offence.

Section 11.2(3) states:

¹ Final Budget Outcome 2009-10

² Calculated using household debt as at June 2010 over nominal GDP for 2009-10, from the national accounts.

(3) For the person to be guilty, the person must have intended that:

(a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or

(b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

Section 11.2(3) therefore includes an element of intending to commit an offence when ancillary liability is relied upon. This provision was drafted to reflect the common law requirements for mens rea in complicity. The effect is that the prosecution must establish that the accomplice intended to aid, abet, counsel or procure the commission of the offence, with this being the case regardless of whether the underlying offence is one of strict liability or not.