

Association of Building Societies and Credit Unions

17 October 2011

Dr Richard Grant  
A/Secretary  
Senate Economics Committee  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Sent via: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Dr Grant

**Inquiry into the  
Consumer Credit and Corporations Legislation  
Amendment (Enhancement) Bill 2011**

Thank you for the opportunity to make a submission to the Inquiry into the *Consumer Credit and Corporations Legislation Amendment (Enhancement) Bill 2011*.

Abacus – Australian Mutuals is the industry association for Australia's mutual banking institutions: credit unions, mutual building societies and mutual banks. Abacus represents 98 credit unions, 8 mutual building societies and two mutual banks. Some 4.5 million Australians are members of a mutual banking institution. Consistent customer satisfaction ratings of 90%+ for mutual ADIs demonstrate our track record of delivering fair and responsible services to members.

Abacus and its members strongly support a rigorous regulatory environment for credit, and we are generally supportive of the reforms set out in the Bill. We do have concerns, however, with some aspects of the Bill, and these are set out below.

Please note that the scope of this submission is limited to those aspects of the Bill that are directly relevant to our members as credit provider institutions.

**Enhancements to hardship provisions (Schedule 1, Part 1)**

Abacus members are committed to working with their customers to develop appropriate solutions that will allow customers in financial difficulties to meet their credit contract obligations. Our industry's code of practice, the Mutual Banking Code of Practice [MBCOP], which has been in operation since 1 July 2009, sets out in Clause D.24 [attached] a clear statement of the mutual banking sector's commitment to helping its customers in financial difficulties, including the practical steps members will take when their customers are affected by financial hardship.

Abacus supports the Bill's proposal that consumers should have a statutory right to request a hardship variation regardless of the amount of credit provided under their regulated loan. We also fully support the removal of artificial limits on the form of a hardship variation that can be requested. As will be apparent from Clause D.24, MBCOP, under our industry Code subscribers do not restrict their willingness to seek to assist customers in financial difficulties to circumstances where the customer has a right to request a variation under the current credit laws (D24.1).

Notwithstanding our support for the removal of restrictions on when and what type of hardship variation a customer may seek as a statutory right, Abacus is nonetheless concerned about aspects of the revised *procedures* proposed in the Bill. In particular, we are concerned about the lack of any apparent regulatory incentives for borrowers seeking hardship to *cooperate* with the lender by providing the financial information the lender will generally require in order to assess whether hardship relief is viable and, if so, the appropriate form of assistance.

Further to this, under the Bill, a debtor would be required merely to "give the credit provider notice, orally or in writing, of the debtor's inability to meet the obligations" [s72 (1)] in order to trigger the credit provider's obligation to provide a notice within 21 days stating whether or not it agrees to negotiate and, if not, its reasons for not agreeing [s72 (2)]. This is in contrast to the current provision which requires the debtor to "apply" for hardship relief, thereby giving the credit provider the ability to prescribe an application process (which would normally include the provision of specified information about the debtor's financial circumstances to the credit provider).

The problem in practice with the procedure proposed in the Bill would be that, in many cases, the debtor—although prompted to do so by the credit provider—will not in fact provide the information needed, either at all or within a reasonable time, for an assessment of whether hardship relief can be offered to be made. In such cases the credit provider, in order not to breach the provision, will have little alternative but to refuse to negotiate a hardship change *even if it would have been prepared to do so had it been in possession of the information needed to make an assessment*.

This appears to be a perverse and unintended outcome. We would emphasise, however, that it is not a merely theoretical one. Our members report that getting hardship applicants to provide information about their financial situation is currently a major issue, compounded in some cases by the activities of third party consumer advisers (including some 'credit repair agency' representatives<sup>1</sup>) who actively discourage any cooperation with the lender as part of a strategy for pushing the resolution of hardship issues into the licensee's External Dispute Resolution scheme.

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<sup>1</sup> Discussed further below

While Abacus understands that the intention of the proposed amendment is to enable debtors to more easily notify the credit provider of pending or actual financial hardship, we believe any obligation on the credit provider to respond to a notice of hardship (such as that set out in s72(2) of the Bill) should be contingent on the willingness of the consumer to first provide financial information reasonably requested by the credit provider in order to assess whether hardship relief is viable. This approach is adopted in Clause D24, MBCOP, which points to the need for the parties to work together cooperatively and for the borrower to provide financial information the lender requires when assessing their position and the options available.

For these reasons, Abacus asks the Committee to support an amendment to the Bill by which the 21 day period the credit provider has to give the debtor a notice in response to a hardship notice in s72(2) would only commence from the day the debtor has provided the credit provider with the financial information it reasonably requests in order to assess the debtor's financial position. The Bill might also be amended to oblige the credit provider to seek any financial information it requires as soon as possible after receiving the hardship notice.

#### **Prohibition on certain representations (Schedule 1, Part 4)**

Abacus supports the Bill's proposed restrictions on the use of potent and potentially misleading terms such as "independent", "impartial" and "unbiased" by credit service providers, such as finance and mortgage brokers [s160B]. In our view, commission-based remuneration structures inevitably compromise the capacity of brokers to provide genuinely disinterested recommendations, and consumers should not be given an exaggerated impression of the benefits associated with the broker channel. Excessive claims about the value of brokers' services also have the potential to impact negatively on the competitive position of credit providers who do not make extensive use of broker networks to initiate business (including the majority of our members).

Abacus also supports the introduction of restrictions on the use of the terms "financial counsellor", "financial counselling" and similar terms [s160C]. Abacus considers that these terms should only be permitted to be used by not-for-profit, government-funded agencies, and, in particular, should not be permitted to be used by self-styled "credit repair" businesses which are profit-driven and, in our members' experience, generally do little to assist consumers experiencing financial difficulties.

Consideration could also be given to explicitly restricting any use of the term "counsellor" or "counselling" (whether or not coupled with another term such as "financial", "debt", "credit") by licensees except as permitted by the regulations. The term "counsellor" and cognates is likely to be a particularly resonant one for consumers experiencing financial difficulties, and credit repair businesses and the like should be accorded no ability to leverage off the term's general associations or its links with the established NGO sector.

## **Consumer leases (Schedule 5)**

Abacus has not reviewed these provisions in detail as our member organisations do not offer consumer lease products.

As a matter of general principle, except to the extent that the different product structures require a differentiated approach, we consider it appropriate for consumer leases to be regulated comparably with consumer loans where the lease contains a right or option to purchase. In our view, consumer leases are functionally identical with consumer loans in these circumstances. Generally comparable regulatory treatment is therefore appropriate from both a consumer protection and a level-regulatory-playing-field perspective.

## **Commencement of the Bill**

The majority of the consumer credit protection provisions contained in the Bill will commence on 1 July 2012.

This coincides with the commencement of: new credit card key fact sheet obligations; Future of Financial Advice reforms; new minimum repayment warnings obligations on credit cards; and the new national account switching regime. These reforms will require extensive and costly IT solutions, business systems changes and additional staff training obligations to ensure Abacus members achieve compliance.

Given the Parliament Joint Committee expects to hand down its report into the Bill in mid November 2011, it is reasonable to expect the Bill will be finalised by the end of November 2011, at the earliest.

If this is the case, Abacus members will be under significant pressure to achieve compliance with yet another tranche of complex credit reforms within only seven months. This problem is compounded by the fact the Bill seeks to prescribe extensive policy details in yet to be developed regulations.

Abacus would expect the draft regulations will be subject to an adequate industry consultation process. However, given the December/January holiday season, consultation commencing in February 2012 would leave less than four months for industry to consider the implications of the entire reform package, and implement the necessary provisions of the Bill by 1 July 2012.

For these reasons, Abacus requests that the proposed commencement of the Bill be delayed, and that industry be given a minimum 12 month period to implement the new reforms from the date the complete package, including the regulations, is finalised.

**Concluding comment**

Abacus reiterates its general support for the measures set out in the Bill. We are of the view that the changes we seek above are modest and measured. They will balance the needs of consumers, while allowing Abacus members to make prudential credit decisions within a responsible lending framework.

Yours sincerely

**MARK DEGOTARDI**  
**Head of Public Affairs**