The Parliament of the Commonwealth of Australia

Advisory Report on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011

House of Representatives
Standing Committee on Economics

June 2011
Canberra

ISBN 978-0-642-79476-5 (Printed version)

ISBN 978-0-642-79477-2 (HTML version)

Foreword

The National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011 makes a number of reforms to lenders' practices for home loans and credit cards. For example, it requires lenders to publish key fact sheets for both these products, which will make it easier for consumers to compare products. Additional reforms for credit cards are:

- preventing lenders sending unsolicited limit increase offers to individuals, unless they elect to receive them;
- preventing lenders charging fees where a consumer goes over their credit limit, unless the consumer elects to be able to go over their credit limit; and
- requiring lenders to pay off consumers' debt with the highest interest, unless the consumer elects otherwise.

The most important reform concerns unsolicited credit limit increase offers to individuals. The committee heard consistent evidence during the inquiry that the aggressive marketing by banks of limit increases was a key reason why some consumers have credit problems. Credit cards have a number of unique features, two of which are high interest rates and that consumers are only required to pay a very small amount each month. Aggressive marketing by the banks appears designed to put consumers at the limit of their credit capacity, whereupon the unique features of credit cards mean that the individuals concerned are paying interest with little capacity to reduce the principal.

While the 'debt treadmill' may be good for bank profits, it has significant social costs and this is why the committee supports the Bill.

The committee also supports the Bill because it will increase competition in the market and make consumers better off. Therefore, while there will probably be transition costs for lenders, the extra compliance should have no impact on prices for consumers due to increased competition. Costs for lenders should be further reduced because many have already voluntarily adopted some of the reforms.

In addition to recommending the Bill's passage, the committee is also recommending that the commencement date for fact sheets for home loans be set back from 1 September 2011 to 1 January 2012. This is because the industry has consistently stated that they need more time to prepare their systems and Treasury has agreed that this is the case. Industry has also stated that end of year is a busy period, so the committee believes that ASIC should be practical in how it enforces home loan fact sheets in the early weeks of January.

I would like to thank those organisations that assisted the committee during the inquiry through submissions or participating in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Craig Thomson MP
Chair

Contents

APPENDICES

Membership of the Committee

Chair	Mr Craig Thomson MP
Deputy Chair	Mr Steven Ciobo MP
Members	Mr Scott Buchholz MP
	Mr Stephen Jones MP
	Dr Andrew Leigh MP
	Ms Kelly O'Dwyer MP
	Ms Julie Owens MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr David Monk
Research Officer	Ms Jacqui Woods
Administrative Officer	Ms Natasha Petrovic

Terms of reference

On 11 May 2011 the Selection Committee asked the Committee to inquire into and report on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011.

Under Standing Order 222(e), the House is taken to have adopted the Selection Committee's reports when they are presented.

List of abbreviations

ABA	Australian Bankers' Association
AFC	Australian Finance Conference
ASIC	Australian Securities and Investments Commission
COAG	Council of Australian Governments
NCCP Act	National Consumer Credit Protection Act

List of recommendations

2 Analysis of the Bill

Recommendation 1

Clause 2 of the Bill be amended so that the commencement date for the provisions relating to Key Fact Sheets for home loans be set back to 1 January 2012. ASIC should take a practical approach to enforcing the provisions in the initial weeks after commencement.

Recommendation 2

Subject to the other recommendation in this report, the House of Representatives pass the Bill.

1

Introduction

Background

1.1 On 11 May 2011 the Selection Committee referred the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011 (the Bill) to the committee for inquiry and report.

1.2 The Bill was introduced by the Government into the House of Representatives on 24 March 2011.

Purpose and overview of the Bill

1.3 The Bill amends the *National Consumer Credit Protection Act 2009* (the NCCP Act). The NCCP Act establishes a national consumer credit regime.

1.4 These reforms are part of an agreement by the Council of Australian Governments (COAG), made following its meetings on 3 July and 2 October 2008, to implement a two-phase implementation plan to transfer credit regulation to the Commonwealth and introduce new Commonwealth regulation to enhance consumer protection. The NCCP Act, passed in 2009, put into operation phase one of the implementation plan.[1]

---

1 Australian Government, *Explanatory Memorandum, National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, p. 5.

1.5 This Bill supplements the regulation of lenders and brokers introduced by the NCCP Act and forms part of phase two of the COAG implementation plan.[2]

1.6 The Bill seeks to introduce major changes to the relationship between credit providers and consumers in respect of credit cards and home loans.[3] It forms part of the banking reforms announced by the Government designed 'to empower consumers, to support smaller lenders, and to secure the flow of credit to our economy.'[4]

1.7 The provisions contained in the Bill:

- introduce a requirement for lenders to produce a Key Facts Sheet for standard home loans. This would set out, in a standardised format, pricing and other information about their products, allowing consumers to readily compare different home loans;
- regulate the circumstances in which borrowers can exceed the credit limit on their card, and prohibit fees being charged by the credit provider where they do so (except where the consumer has opted to have a higher 'supplementary buffer' on which they can be charged fees);
- specify a hierarchy for payments made under credit card contracts, requiring credit providers to allocate repayments by the borrower to that part of the balance of their credit card on which they are charged the highest interest rate, unless they elect to have a different payment arrangement;
- restrict credit providers from making unsolicited invitations encouraging borrowers to increase the limit of their credit card (except when the consumer has consented to receive such offers); and
- introduce a requirement for lenders to provide a Key Facts Sheet for credit card contracts, making it mandatory for credit providers to include, in credit card application forms, key information about the annual percentage rate and other terms which would apply to a contract.[5]

---

2 Australian Government, *Explanatory Memorandum, National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, p. 5.

3 Australian Government, *Explanatory Memorandum, National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, p. 5.

4 The Hon. Mr Wayne Swan, Treasurer, *House of Representatives Hansard*, 24 March 2011, p. 3137.

5 Australian Government, *Explanatory Memorandum, National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, pp. 5-6.

1.8 A large proportion of the Bill's operational provisions have been delegated to regulations. For example, it is intended that regulations be made under the NCCP Act requiring credit providers to notify customers of the consequences of only making minimum monthly repayments.[6] Regulations also may require a credit provider to notify a consumer that their credit card has been used in excess of their credit limit.

1.9 Regulations will also be made to:

- prescribe the circumstances in which a Key Facts Sheet for standard home loans needs to be provided and the information it needs to contain;
- prescribe the information to be contained in a Key Facts Sheet for credit card contracts, and any other requirements relating to the provision of the Key Facts Sheet;
- make provisions defining what type of written communication is a credit limit increase invitation;
- prescribe circumstances in which consent to the making of credit limit increase invitations can be given or withdrawn;
- prescribe the requirements for electing to not have a default buffer apply;
- define the circumstances surrounding the operation of a supplementary buffer, and the circumstances in which a credit provider can approve the use of a credit card in excess of credit limit;
- prescribe the requirements relating to how payments are allocated under credit card contracts.

1.10 In addition, regulations may require a credit provider to notify a consumer that their credit card has been used in excess of their credit limit.

1.11 The Bill aims to encourage the responsible use of credit cards by informed consumers and to assist consumers to make financial decisions in relation to home loans.[7] The Explanatory Memorandum states:

> These reforms will assist consumers by increasing their capacity to select products or use their credit cards in a way that reduces the level of fees and interest they are charged; and reducing the risk of

6 The Hon. Mr Wayne Swan, Treasurer, *House of Representatives Hansard*, 24 March 2011, pp. 3138-9.

7 The Hon. Mr Wayne Swan, Treasurer, *House of Representatives Hansard*, 24 March 2011, p. 3137.

> consumers being provided with credit cards limits where they may be unable to pay the total balance within a relatively short period of time.[8]

1.12 The Explanatory Memorandum also suggests that the reforms will place greater pressure on credit card industry participants to be competitive given that consumers will be able to make more informed choices upfront.[9]

Are reforms needed to the credit card and home loans industries?

1.13 Evidence was given at the hearing that 'credit card debt is the No. 1 cause of financial stress and consequent psychological problems'.[10]

1.14 The need for reform has come about because of the implied imbalance between the incentives for lenders and the interests of consumers.[11] This legislation seeks to restore this balance in the interest of protecting consumers.

1.15 Industry raised two general arguments opposing the Bill. Firstly, the Australian Banking Association (ABA) questioned the policy intent behind the Bill because credit card debt had plateaued over the 12 months to the end of March this year.[12] However, the committee notes that this most likely reflects the widely reported increase in household saving rates, rather than going to the specifics of consumer credit.

1.16 Secondly, Visa noted that similar legislation in the United States had the following consequences:

- less credit for consumers;
- an increase in annual fees;
- higher borrowing costs for creditworthy customers; and

---

8 Australian Government, *Explanatory Memorandum, National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, p. 4.

9 Australian Government, *Explanatory Memorandum, National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, p. 4.

10 Mr Richard Brading, Wesley Mission, *Committee Hansard*, 25 May 2011, Canberra, p. 24.

11 Mr Geoff Miller, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 10.

12 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 15.

- little marketing for new accounts.[13]

1.17 The committee's view is that good regulation is a matter of balancing competing interests and that it is only to be expected that banks and other financiers would change how they conduct their business under this new regime. The discussion below demonstrates that there is a clear need for regulation. Given some of the banks' marketing practices, the committee is of the view that the Bill takes a balanced approach to this task. As with other systems of regulation, the provisions in the bill can always be refined over time.

Unsolicited credit card limit increase offers

1.18 The bulk of evidence from consumer groups concerned the prevalence of unsolicited credit limit increase offers and their potential to lead customers into a debt trap. The reforms contained in the Bill make it more difficult for customers to take on a credit card debt they are not able to repay.

1.19 Ms Karen Cox, the Coordinator of the Consumer Credit Legal Centre, gave evidence that credit cards have been the most common reason for people seeking assistance from the centre for the ten years she had been there.[14] She said:

> ...there is no doubt that credit cards are an enormous cause of pressure on families, and we have seen countless examples over the years of people on very low incomes who have accepted a series of credit limit increases.[15]

1.20 Representatives from the Finance Sector Union of Australia confirmed that over the past several years there has been an increase in the number of 'unsolicited marketing and other letters from finance providers suggesting people should increase their credit limit.'[16]

1.21 Although the majority of customers pay off their credit card balance monthly, the most profitable customers from the lender's perspective are

13 Visa, *Submission 11*, p. 3.

14 Ms Karen Cox, Consumer Credit Legal Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 25.

15 Ms Karen Cox, Consumer Credit Legal Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 26.

16 Mr Rod Masson, Finance Sector Union of Australia, *Committee Hansard*, 25 May 2011, Canberra, p. 44.

those who cannot afford to pay back the full balance every month.[17] The Treasury stated:

> One of the issues with credit cards is that because you only have to make the minimum repayments the increases in the credit limit can place you in a position where you are carrying long-term credit card debts at credit card rates without ever necessarily being able to significantly reduce those debts.[18]

1.22 Research by consumer groups shows that banks have aggressively marketed credit cards.[19] For example, a study in 2009 showed that 84 per cent of Victorian credit card holders had received an unsolicited credit card limit increase offer. This rate was virtually the same for people who were unemployed (84 per cent), those studying (83 per cent) or those with a Health Care Card (82 per cent).[20]

1.23 The Consumer Action Law Centre advised that research in 2008 showed that the industry uses various forms of psychological manipulation to encourage consumers to accept an increase offer. This includes the use of the term 'pre-approved' which implies a form of ownership. The letters are also signed by managers and senior staff, which implies expertise and that the individual in question can afford the increase.[21]

Profit maximisation

1.24 Financial groups and Treasury stated that it was not in the interests of lenders to have consumers default on their credit cards, as this would result in a financial loss for the lender.[22] They argued that lenders were therefore unlikely to over-extend credit to customers who could not afford it. However, evidence was given by both Treasury and consumer groups that customers can be in financial difficulty or carrying large amounts of debt before they default on their card.[23]

1.25 The Wesley Community Legal Service, Wesley Mission, told the committee:

17 Mr Richard Brading, Wesley Mission, *Committee Hansard*, 25 May 2011, Canberra, p. 28; Abacus Australian Mutuals (Abacus), *Submission 4.1*, p. 1.

18 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 36.

19 In evidence, Abacus stated that the mutuals sector is less aggressive than banks in relation to credit cards: Mr Mark Degotardi, Abacus, *Committee Hansard*, 25 May 2011, Canberra, p. 40.

20 Consumer Action Law Centre, *Submission 12*, p. 2.

21 Consumer Action Law Centre, *Submission 12*, p. 2.

22 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 9.

23 Mr Christian Mikula, Treasury; Mr Richard Brading, Wesley Mission, and Ms Carolyn Bond, Consumer Action Law Centre; *Committee Hansard*, 25 May 2011, Canberra, pp. 11 and 28.

> The actual default rate compared with those who get into difficulty is really quite low. And that is one of the reasons why credit cards in Australia are pushed so vigorously. As a nation we are actually very conscientious in repaying debts and it is only a very small percentage of people who actually do not ultimately pay back their credit card debts.[24]

1.26 The Consumer Action Law Centre reinforced this argument:

> ...with credit card debt it is misleading just to focus on the defaults, because the monthly payments are so low compared to other credit. People are often under stress well before they default and in fact we see people who, for example, pay their pension into their credit card when they get it and then use the credit card to live on.[25]

1.27 It is profitable then for lenders to have customers paying interest on higher credit card loans. As the committee heard, the number of people defaulting on their credit cards is quite low.[26] It can therefore be inferred that the amount defaulting customers would cost a lender is not significant compared to profits made from interest charges across its whole customer base.

1.28 In other words, financial institutions, especially those owned by shareholders, are maximising their profits. Having a small number of borrowers default is not a major issue if these practices allow the lender to make a greater return across the rest of their customers. Further, having a borrower default on a $20,000 credit card debt is only a statistical disturbance for a bank, whereas it is traumatic for the individual. This demonstrates the imbalance between financial institutions and consumers. The committee accepts the ABA's point that only 1 per cent of credit card customers are in difficulties.[27] The problem is that it is a traumatic situation for the consumer for which their bank is partly responsible.

Responsible lending

1.29 During the hearing questions arose as to whether the legislation was necessary as it duplicated the responsible lending obligations which came

---

24 Mr Richard Brading, Wesley Mission, *Committee Hansard*, 25 May 2011, Canberra, p. 28.

25 Ms Carolyn Bond, Consumer Action Law Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 28.

26 Mr Steven Munchenberg, ABA; Mr Richard Brading, Wesley Mission; *Committee Hansard*, 25 May 2011, Canberra, pp. 17 and 28.

27 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 15.

into effect on 1 January 2011.[28] The ABA was of the opinion that time ought to be given for the operation of those provisions to be assessed before further legislation was enacted. The ABA stated:

> The responsible lending laws would seem to deal with most of the government's stated concerns with credit cards, particularly on credit limit increases. However, those laws were not even in force before the government added the additional regulation in the bill before the inquiry.[29]

1.30 Treasury officials and consumer groups gave evidence that this legislation was in fact complementary to those reforms.[30] It was necessary because it specifically addresses some of the particular practices around credit cards that occur because of their unique features, including that only minimum repayments need to be made.[31]

1.31 The Consumer Action Law Centre summed up the difference between the existing provisions and those in the Bill:

> I think with credit increases limit offers we are actually looking at what we regard as a dangerous and irresponsible marketing technique that often really urges people to take more credit than they want. That is a separate issue to the responsible lending, which is when the bank comes to assess whether they are going to provide that increase or not.[32]

1.32 The Treasury confirmed that, despite the introduction of the responsible lending provisions, lenders had continued to make unsolicited credit increase offers.[33]

Conclusions

1.33 The committee concludes that reforms to existing practices are needed. It is clear that credit card debt is a continuing problem for many people, and that current legislation does not adequately protect consumers from increasing their debt to a dangerous level. These reforms will assist those people who need the most help with their financial management.

---

28 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 18.

29 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 15.

30 Mr Christian Mikula, Treasury; Mr David Coorey, National Legal Aid; Ms Karen Cox, Consumer Credit Legal Centre; *Committee Hansard*, 25 May 2011, Canberra, pp. 37, 25, and 29.

31 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 37.

32 Ms Carolyn Bond, Consumer Action Law Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 30.

33 Mr Christian Mikula, Treasury, *Committe Hansard*, 25 May 2011, Canberra, p. 36.

Consultations

1.34 Treasury conducted consultations to guide the development of the Bill. Consultation meetings were held individually and collectively with banking industry representatives, consumer groups and other relevant stakeholders. They took place over five months, from September 2010 to March 2011.[34]

1.35 Following this period of consultation an exposure draft of the Bill was released by Treasury in March 2011. Interested parties were invited to make submissions on the exposure draft, and submissions were received from peak consumer groups, financial institutions and industry groups.

1.36 Numerous changes were made to the final draft of the legislation as a direct result of concerns raised in these submissions. Provisions were introduced in the Bill to allow customers to ask for a higher buffer if they were prepared to pay fees for the service. Changes were also made to the operation of the Key Facts Sheet for home loans to make them more straightforward, and broader regulation making powers were introduced to clarify the definition of unsolicited credit limit extension invitations.

1.37 One of the issues raised by parties, in relation to the consultation process, was the short time frame permitted for submissions to be made. The exposure draft was released by Treasury on Friday 4 March 2011 and the closing date for submissions was Tuesday 8 March 2011. The Australian Bankers' Association (ABA) articulated a concern that 'the banking industry has not been able to fully assess the potential impact or the likelihood of unintended consequences of these new rules.'[35]

1.38 There has now been sufficient time since the legislation was released for parties to adequately assess its effect, and for any further concerns to be articulated to this committee. In addition, Treasury continues to consult with parties on the regulations, which will ultimately contain many of the details of the reforms.[36]

34 Mr Geoff Miller, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 14.

35 ABA, submission on exposure draft Bill, p. 1.

36 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 9.

Committee objectives and scope

1.39 The objective of the inquiry is to scrutinise the technical adequacy of the Bill and its ability to deliver the policy intent.

Conduct of the inquiry

1.40 Details of the inquiry were placed on the committee's website. A media release announcing the inquiry and seeking submissions was issued on Tuesday 17 May 2011.

1.41 Fourteen submissions were received which are listed at Appendix A. Four exhibits were received which are listed at Appendix C.

1.42 A public hearing was held in Canberra on Wednesday 25 May 2011. A list of the witnesses who appeared at the hearing is available at Appendix B. The submissions and transcript of evidence were placed on the committee's website at http://www.aph.gov.au/house/committee/economics/index.htm.

2

Analysis of the Bill

Commencement dates

Background

2.1 Clause 2 of the Bill provides two main commencement dates. The provisions relating to fact sheets for home loans are scheduled to commence on 1 September 2011. This includes the requirement that the lender's website be able to generate the fact sheets. The remainder of the Bill is scheduled to commence on 1 July 2012.

Analysis

2.2 Industry made two sets of comments about these dates. The first was that the 1 September date was too soon. Abacus Australian Mutuals (Abacus), the Australian Bankers' Association (ABA) and the Australian Finance Conference (AFC) all put this view in their submission.[1]

2.3 Treasury said that it had some 'sympathy' with industry that the deadline was challenging and had raised this matter with the Government.[2] However, Treasury also stated that some firms had advised them that the 1 September date was achievable 'at a pinch'.[3] Further, various simplifications had been made to the requirements and many of the firms' websites already have much of the required technology in place:

---

1 Abacus, *Submission 4,* p. 2; ABA, *Submission 9,* p. 11; AFC, *Submission 7,* p. 2.
2 Mr Geoff Miller, Treasury, *Committee Hansard,* 25 May 2011, Canberra, p. 4.
3 Mr Christian Mikula, Treasury, *Committee Hansard,* 25 May 2011, Canberra, p. 5.

> While the date was ambitious, there were various simplifications between the exposure draft and the bill to make the obligations less onerous and more straight forward to comply with. The obligations now only apply where a lender has a website on which you can apply or make an inquiry about a home loan, and many of those lender websites already have a similar mechanism for calculating what is payable in repayments—repayment calculators—but this would require the sort of outcomes of those calculators to be presented in a consistent format. The technology is largely there. We did remove the obligation, or defer to the regulations and possibly a later date, the requirement to provide it on application and have simplified other reporting or technical requirements.[4]

2.4 Industry's response was that, while it was possible for industry in some cases to achieve this tight timeline, it would increase costs. The AFC stated:

> I have been at an interview this morning in relation to the Treasury comment and, as I recall, there were qualifications like: in a pinch, people could be ready by 1 September. That could have a range of meanings, but one meaning it might have is that I can throw several dollars at it and be ready by 1 September. But this is about balance.[5]

2.5 In evidence, there was discussion whether the start date should be extended to 1 January 2012. The ABA subsequently responded that this would not be suitable because banks freeze their IT systems over December due to the high volume of transactions at this time.[6]

2.6 The second request of industry was that the commencement date for the Bill in general should be at least 12 months after the legislation and regulations were finalised. This view was put in submissions by Abacus, the ABA and the AFC.[7] This last organisation spelled out its views in evidence:

> I think industry is uniform in relation to these reforms and reforms in relation to consumer credit generally. In order to allow the other component of government—and that is actually minimisation of implementation cost to occur with the implementation of these

---

4 Mr Christian Mikula, Treasury,*Committee Hansard,* 25 May 2011, Canberra, p. 4.

5 Ms Helen Gordon, AFC, *Committee Hansard,* 25 May 2011, Canberra, p. 33.

6 ABA, *Submission 9.1,* p. 2.

7 Abacus, *Submission 4,* p. 2; ABA, *Submission 9,* p. 11; AFC, *Submission 7,* p. 2.

> reforms—industry needs at least a 12-month lead time from the date that the final detail of the law is known in order to make the relevant changes in the documentation system, staff training et cetera that we have talked about. I think industry would have difficulty at this point in giving a specific date. Assuming that we are going to see this law get through by, say, June, I guess we are looking at 1 July next year for the home loan components to commence.[8]

Conclusion

2.7 The committee recognises that 1 September 2011 is a tight deadline for industry and Treasury confirmed this in evidence. Therefore, the committee supports delaying this commencement until 1 January 2012 to allow industry more time to implement the reforms in a cost effective way. As with many reforms, there may be some teething issues and the committee would like to see some flexibility with enforcement in the early weeks. This would be especially so, given the traditionally high volume of credit transactions at the end of each calendar year.

2.8 At this stage, the committee does not support industry's position that it needs a full 12 months for implementation after all the regulations and legislation are finalised. Treasury is negotiating with industry on the regulations and most of the final content will be apparent to industry before they are made. The 1 July 2012 start date for the remainder of the Bill appears suitable to the committee at this point in time.

Recommendation 1

2.9 **Clause 2 of the Bill be amended so that the commencement date for the provisions relating to Key Fact Sheets for home loans be set back to 1 January 2012. ASIC should take a practical approach to enforcing the provisions in the initial weeks after commencement.**

8 Ms Helen Gordon, AFC, *Committee Hansard*, 25 May 2011, Canberra, p. 33.

Retrospectivity

Background

2.10 Parties raised concerns in submissions and at the hearing around the 'retrospective' application of the provisions relating to credit limit increase offers. Whilst the majority of the provisions in the Bill only apply to new credit card contracts or home loan enquiries, the prohibition on making these unsolicited offers extends to all credit card contracts from the date the legislation comes into effect. This includes making offers to existing credit card contracts.

2.11 It was submitted that these provisions are inconsistent with the Government's 'Fairer, Simpler Banking' policy, released as an election commitment prior to the 2010 election.[9] That policy stated 'The changes will apply to new credit cards.'[10]

Analysis

2.12 The ABA emphasised to the committee the concerns of industry:

> The government's pre-election commitments state very clearly that its new regulations would apply only to new credit cards. This was reiterated throughout the government's consultation with industry. We were therefore very disappointed when, without notice, the government reversed this position and announced it would legislate to change credit contracts retrospectively.[11]

2.13 Lenders were particularly concerned by the 'administrative burden of compliance and the cost of seeking and recording customer opt-ins for the receipt of otherwise prohibited written communications would be extremely high...'[12] They argued that the burden of having to write to 15 million credit card holders asking whether or not they wanted to 'opt-in' to receiving unsolicited credit limit increase offers outweighed any

9 AFC, *Submission 7*, pp. 1-2; GE Capital, *Submission 8*, pp. 1-2; ABA, *Submission 9*, pp. 3-4; Visa, *Submission 11*, pp. 2-3.

10 <http://www.alp.org.au/agenda/more---policies/fairer-simpler-banking/> viewed 8 June 2011.

11 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 15.

12 ABA, *Submission 9,* p. 3.

benefit that might be received by consumers, and that the risk of non-compliance was onerous.[13]

2.14 Consumer groups pointed to the fact that although the provisions apply to existing credit card contracts, they have prospective application. The Consumer Credit Legal Centre advised:

> I can see absolutely no reason why that could be considered in anyway retrospective, because that is about an offer to change your contractual commitments in the future. It does not have retrospective impact at all.[14]

2.15 The committee put this point to the lenders who were of the opinion that, 'They are prospective offers but arising from existing contracts.'[15] Visa expanded on this concern, telling the committee:

> ... the ability for the offer to be made stems from a contract that predates this provision coming into force and cutting off that ability that predated the legislation once it comes into force.[16]

2.16 The committee further asked specifically what contracts customers sign that mean that prospective credit limit increase offers are bound to the original contract. The only response lenders were able to provide is that these were 'standard business practices that lie to some degree at the base of the credit card contract, the card arrangement'.[17] They further put the argument that existing customers would still be able to voluntarily 'opt out' of receiving unsolicited credit limit increase offers.[18]

Conclusion

2.17 Given the importance of this particular reform, discussed in Chapter 1, it is appropriate that provisions apply to all credit card contracts from the commencement date of the legislation.

2.18 The unfairness behind retrospective laws is that people are caught out by a later change in the law that they were unaware of at the time. The industry did not adduce evidence that they acted in a certain way after the

---

13 ABA, *Submission* 11, p. 3; Ms Helen Gordon, AFC, *Committee Hansard*, 25 May 2011, Canberra, pp. 38-39.

14 Ms Karen Cox, Consumer Credit Legal Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 23.

15 Mr Adam Wand, Visa, *Committee Hansard*, 25 May 2011, Canberra, p. 37.

16 Mr Adam Wand, Visa, *Committee Hansard*, 25 May 2011, Canberra, p. 37.

17 Mr Adam Wand, Visa, *Committee Hansard*, 25 May 2011, Canberra, p. 39.

18 Ms Helen Gordon, AFC, *Committee Hansard*, 25 May 2011, Canberra, p. 39.

election commitment, and that they would have acted differently if they had foresight of the Bill's provisions.

2.19 In respect of what was included in the election commitment, this is a political statement and the Government will ultimately be held accountable by the Australian public as to how it has been delivered. The committee agrees that the application of the prohibition on credit limit increase offers to existing credit contracts is appropriate and necessary given the importance of these reforms. The introduction of these measures is in the interests of consumers and in the spirit of the commitment made by the Government.

Costs to industry

Background

2.20 Industry members raised a number of concerns around the costs of implementing the new provisions. They claimed that there was a risk that any additional costs would be passed on to consumers, and would especially affect those consumers who fully pay off their balances each month.[19]

Analysis

2.21 The ABA told the committee that it was difficult to be definitive about the extent of costs, given how much of the detail of the reforms was to go in the regulations. It confirmed, however, that there would be costs associated with the implementation of the legislation:

> Some of these will be transitional costs insofar as we will need to invest time and effort in making changes to bank systems and in training staff to ensure that they understand what is required under the new legislation – particularly as the penalties for non-compliance are quite severe – but there will also be ongoing costs.[20]

2.22 Visa pointed out that similar legislation to the Bill had been passed in the United States. Any reduction to bank revenues through the removal of

19 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 16.
20 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 16.

penalty fees had been largely offset by higher annual fees and other costs. In some instances costs for consumers had even increased.[21]

2.23 Treasury told the committee that administrative costs were likely to be transitional and not extensive over the long term.[22] They also raised the point that costs could be built in to other activities:

> It is not straightforward in the sense that banks take advantage of these to make other changes that suit them. For example, one bank has utilised responsible lending to build in a whole range of conversations with the consumers at that point to have a greater sense of engagement with them.[23]

2.24 Treasury was also of the view that the legislation would provide a huge increase in benefit to consumers and not increased costs.[24] They reiterated this point after the hearing, as well as advising the committee that costs for some lenders would be greatly reduced because they have voluntarily implemented some of the reforms already:

> 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...
>
> 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. [25]

2.25 Consumer groups also dismissed some of these concerns, pointing out that it was a matter of weighing up slightly increased costs compared to the benefits of the legislation.[26] The Consumer Credit Legal Centre told the committee that in relation to the prohibition on credit limit increase offers,

---

21 Mr Adam Wand, Visa, *Committee Hansard*, 25 May 2011, Canberra, pp. 38-39; Visa, *Submission 11*, p. 1.

22 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 12.

23 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 12.

24 Mr Geoff Miller, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 13.

25 Treasury, *Submission 13*, p. 1.

26 Ms Karen Cox, Consumer Credit Legal Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 27.

they could not see how there would be additional costs that would be passed on.[27]

2.26 However the ABA disputed Treasury's assessment of costs as minimal,[28] and in a supplementary submission to the committee assessed that costs could be as high as $100 million to $150 million.[29]

Conclusions

2.27 The committee recognises that there will be short run costs associated with the legislation but believes that these costs are outweighed by the importance of the reforms. Indeed, the greater competitive pressures generated by the Bill will mean that the impact on price will be marginal, if any. The committee also agrees with Treasury's assessment that any administrative costs relating to the reforms will not be significant compared to lenders' profit margins. Further, implementing these reforms could provide lenders an opportunity to change operating systems and customer interactions to their benefit.

Use of regulations

Background

2.28 The frequent use of regulations in the Bill was raised by all the main industry groups. However, they expressed a range of views:

- the ABA recommended that the Bill should not be passed until the regulations are finalised;[30]
- the AFC stated that some of the detail was policy (such as the definition of a standard home loan) and should be dealt with in the Bill;[31] and
- Abacus urged the Government to subject the regulations to comprehensive industry consultations.[32]

27 Ms Karen Cox, Consumer Credit Legal Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 26.

28 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 17.

29 ABA, *Submission 9.1*, p. 1

30 ABA, *Submission 9*, p. 8.

31 AFC, *Submission 7*, p. 1.

32 Abacus, *Submission 4*, p. 2.

Analysis

2.29 At the hearing, the committee asked Treasury to account for its approach:

> The process in relation to the regulations began in the development of the policy, and at some points there were issues that were clearly identified as needing to be addressed, probably preferably in the regulations rather than in the bill itself. An example in relation to over-limit transactions is where lenders are not in a position to reject the transaction. There is a whole range of scenarios where there may not be direct contact between the supplier of goods or services and the lender and where there transaction might take it over the limit but the lender cannot prohibit it. So those types of issues which need to be described in a quite technical and precise way were identified early on as ones that needed to be deferred to the regulations to ensure that the wording captured that sense of precision and the high-level principles were put in the bill.[33]

2.30 The committee notes the ABA's suggestion that the Bill be delayed until the regulations are finalised. However, in the view of the committee, this approach is not realistic and departs from usual practice. It is common practice to pass bills and then flesh out the detail through regulations at a later date. The commencement date for most of the Bill is over 12 months away, which should give industry and Treasury sufficient time to work together on practical measures that deliver the policy intent behind the Bill.

2.31 If much of the detail of the Bill is going to be developed in the near future, then it is important that the regulations are clear and workable. One method of achieving this outcome is achieved is for Treasury to thoroughly consult with industry in developing the regulations, along the lines of Abacus's submission.

2.32 Treasury stated in evidence that it has commenced consultations on the regulations as follows:

> Since the bill was finished we have had a number of consultations on the regulations in a similar format. So Treasury has put out position papers as to what it intends to do or what policy issue is being addressed, and has sought feedback from stakeholders and used that to develop the drafting instructions.[34]

---

33 Mr Christian Mikula, Treasury, *Committee Hansard,* 25 May 2011, Canberra, p. 9.

34 Mr Christian Mikula, Treasury, *Committee Hansard,* 25 May 2011, Canberra, p. 9.

2.33 The committee is satisfied that an appropriate consultation process is under way in relation to the regulations.

Conclusion

2.34 The committee agrees that the fast-moving and technical nature of modern finance requires that some matters must be delegated to regulations. This will give government and regulators increased flexibility to adapt to the industry as technology and consumer tastes evolve. For example, Visa supported this approach in evidence in relation to the buffers.[35] The extent of delegation must be determined on a case by case basis and the committee supports Treasury's approach in this instance.

2.35 Taking into account the highly technical nature of the reforms being undertaken in the Bill, the committee is satisfied that it adopts an appropriate balance between stating principles and delegating detail. However, the effectiveness of the regulations will depend on their clarity and fitness for purpose. Therefore, the committee endorses the comments by Abacus on the value of industry consultation.

Home loan websites

Background

2.36 Proposed section 133AC of the Bill makes a number of requirements of a lender when consumers can use their website to inquire about or apply for a home loan. These include enabling consumers to use the website to generate key fact sheets for home loans and advising them of this functionality. The maximum penalty for an offence is 2,000 penalty units ($220,000).

Analysis

2.37 The Wesley Mission and the ABA both raised the question of whether financial institutions would be prosecuted if a technical problem caused the key fact sheet tool to go down for a short period. The ABA stated that the only option for a bank to escape prosecution in these circumstances would be to shut down its website until it could restart the tool.[36]

35 Mr Adam Wand, Visa, *Committee Hansard*, 25 May 2011, Canberra, p. 34.

36 Weslely Mission, *Submission 10*, p. [4]; ABA, *Submission 9*, p. 9.

2.38 In evidence, the committee asked Treasury how it would manage unintended consequences from the Bill in relation to the buffers:

> Often in these sorts of situations, there is a question of how far you can go in giving everyone the comfort they want in relation to the bill. Usually what has happened in previous situations where clarity has been sought in relation to the credit act is that ASIC has been able to resolve it by providing regulatory guidance about how it will interpret it and give lenders comfort that if they meet the standards or comply with ASIC's regulatory guidance then they will not be at risk of any enforcement action. That model has happened repeatedly in the past and there is no reason why it would not happen here.[37]

2.39 Although this reply was given in a specific context, it is applicable to the Bill generally. The committee accepts Treasury's evidence that an unintended consequence, such as in relation to proposed section 133AC, can be best dealt with through common sense regulation by ASIC.

Conclusion

2.40 The committee anticipates that consumer credit regulators will take a common sense approach to enforcing this provision.

Definition of a credit limit increase invitation

Background

2.41 One of the concerns put forward by industry was that the scope of the definition of credit limit increase invitation was too broad and would prevent banks discussing card use with their customers in a factual way.

2.42 Proposed section 133BE contains the meaning of a credit limit increase invitation:

> (5) A licensee makes a ***credit limit increase invitation***, in relation to a credit card contract, if:
>
> (a) the licensee gives a written communication that relates to the contract to the consumer who is the debtor under the contract; and

37 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 9.

(b) one or more of the following conditions is satisfied in relation to the communication:

(i) the communication offers to increase the credit limit of the contract;

(ii) the communication invites the consumer to apply for an increase of the credit limit of the contract;

(iii) the licensee gave the communication to the consumer for the purpose (or for purposes including the purpose) of encouraging the consumer to consider applying for an increase of the credit limit of the contract.

2.43 Further, subsection 133BE (6) provides for the regulations to make provisions that apply to determining whether a written communication is covered by the definition in subsection (5).

2.44 Lenders argued that the legislation should refer to offers rather than invitations, as the definition of invitation was undefined and potentially too broad.[38]

Analysis

2.45 The ABA submitted that the definition contained in the Bill:

> ... not only includes express offers and invitations to increase the limit of the contract but also has the practical effect of capturing any communication to the consumer that has the purpose of encouraging the customer to consider applying for an increase.[39]

2.46 The ABA further submitted, and this concern was echoed by Abacus[40] and GE Capital,[41] that it could be interpreted as prohibiting more general communications around credit card limits, credit services and general marketing materials.[42] Abacus advised the committee that 'any kind of communication could potentially be seen as some sort of invitation'.[43]

38 ABA, *Submission 9*, p. 5; Abacus, *Submission 4*, p. 3; GE Capital, *Submission 8*, Appendix pp. 3-4.

39 ABA, *Submission 9*, p 4.

40 Abacus, *Submission 4*, p. 3.

41 GE Capital, *Submission 8*, Appendix pp. 3-4.

42 ABA, *Submission 9*, p. 4; Mr Degotardi, p. 40.

43 Mr Luke Lawler, Abacus, *Committee Hansard*, 25 May 2011, Canberra, p. 40.

2.47 A number of lenders stated that the extent of these provisions would mean that they would not contact customers to offer them a temporary credit limit increases in emergency situations, including natural disasters. The Australian Bankers' Association told the committee that:

> Under these laws, as we understand them from our discussion with the government – we are still yet to see the regulations that will provide the details – we understand that we will not be in a position to say to customers, 'If you have been affected by the recent natural disaster we can offer you all of these measures, including a temporary increase to your credit limit.'[44]

2.48 However, on questioning they conceded that there is nothing in the legislation which would prevent lenders advertising at large to people affected by disaster to advise them of the availability of increased credit limits.[45]

2.49 Consumer groups supported the extent of the definition, especially given the particular concerns around these offers, discussed in Chapter 1.[46]

2.50 Treasury advised the committee that consumer groups had emphasised in consultations that there should not be any retreat from this policy through the regulations.[47] They further commented:

> It is always their concern that the banks will somehow twist the words to twist the intention of the legislation so that they still get that sort of behavioural change by the client, and that they could get through one of these letters that they previously sent out. We do not think that the law will allow them to do that.[48]

Conclusion

2.51 The definition of a credit limit increase invitation does not prevent general advertising. In the case of natural disasters such as those seen recently it would presumably be more effective to develop television or radio advertisements than write to a customer who may not be living at a house that had been affected by the disaster.

---

44 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 19.

45 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 22.

46 Ms Carolyn Bond, Consumer Action Law Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 25.

47 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p .6.

48 Mr Geoff Miller, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 6.

2.52 One of the concerns in relation to these provisions was that the definition would need to be clarified in time for lenders to comply with the legislation. As Treasury are currently consulting with parties on the regulations, lenders will soon be in a position where they understand the scope of what is to be included in the definition.

2.53 Finally, this aspect of the legislation was of the most concern to consumer groups. Given the importance of these provisions to keep consumers out of financial difficulty, the committee supports the current definition, which as Treasury pointed out will not allow banks to 'twist the words' of the prohibition. This support is given on the understanding that Treasury will work with parties on the development of regulations to ensure that the precise scope of what constitutes a credit limit increase invitation is understood by all concerned.

Does the default buffer amount to 'free credit'?

Background

2.54 Proposed sections 133BH to 133BN introduce two buffers for credit cards. The first is the default buffer, which automatically applies to a credit card unless the consumer opts out. Under proposed section 133BI, this is set at 10 per cent of the credit limit of the contract. The second is the supplementary buffer, which applies on top of the default buffer. Further detail on the supplementary buffer will be developed in the regulations. The consumer must opt in to the supplementary buffer.

2.55 The importance of these buffers is that, under proposed section 133BN, financial institutions can only apply fees for exceeding a credit limit if the consumer uses the supplementary buffer. In other words, they must opt in to the risk of incurring fees for exceeding their credit limit. Making the assumption that most consumers will neither opt out of the default buffer nor opt in to the supplementary buffer, then the usual scenario will be that consumers will not be charged fees for exceeding their credit limit, although whether they are allowed to exceed their limit will be at the discretion of their lender.

2.56 In other words, under the usual scenario, lenders will have less revenue from these fees because they will be required to cease credit when a consumer reaches their limit, instead of providing credit and charging a fee.

2.57 The buffers were introduced as a product of the consultations. The aim was to reduce the incidence of consumers incurring additional credit card fees, but at the same time giving lenders some discretion so that consumers are not placed in embarrassing situations when they attempt a transaction that puts them marginally over their credit limit.[49]

Analysis

2.58 The ABA raised the issue of whether these provisions in fact turned the default buffer into an additional 10 per cent extension to consumers' credit limit. The ABA was also concerned that consumers, once they were aware of the default buffer, would demand this from their lender:

> The ABA submits that the Bill, by entrenching the 10% default buffer, in effect mandates that a bank has to consider offering a consumer more credit. It may be questioned whether this is the Government's intent and whether these are the types of messages, in relation to consumer credit, that the Government wishes to convey to consumers.
>
> The inclusion of the default buffer in the Bill is also likely to raise customer expectations that they have a right to a 10% buffer on their credit card contract. This may result in increased complaints by customers whose over-limit transactions are declined by the credit provider and do not have access to the 10% default buffer. There is also a further risk that customers will assume their credit limits are 10% more than as stated.[50]

2.59 The formal provisions in the Bill do not make any statement about whether lenders are required to extend credit into the default buffer. Proposed section 133BH merely states that lenders are not to approve the use of a credit card in excess of the credit limit, or the relevant buffer, whichever applies. However, Note 2 to paragraph 133BI(2)(b) states:

> The fact that the default buffer applies to a credit card contract does not of itself result in the licensee being obliged to approve any use of a credit card in excess of the credit limit for the contract.

2.60 The ABA acknowledged this note in its submission.[51]

49 Mr Stephen Munchenberg, ABA, *Committee Hansard,* 25 May 2011, Canberra, p. 22.

50 ABA, *Submission 9,* pp. 6-7.

51 ABA, *Submission 9,* p. 6.

2.61 The committee raised this issue in evidence with Treasury, who replied that they had attempted to work through this matter with industry but had now reached an impasse:

> We are aware of that, and that was something that was discussed in the consultations, particularly in relation to the exposure bill. I suppose it is fair to say there is a difference in legal interpretation as to whether or not the default buffer is automatic. It is a question of the interpretation of section 133(b)(i). Our view is that that does not create an automatic default buffer and the lender still has the discretion whether or not to offer a buffer—and the explanatory memorandum reflects that intention ...[52]

> Yes, but it is fairly explicit; that is the problem. Whether it is an abundance of caution being taken by the advisers in the banks or—I am not sure, but we believe that we are correct in the law that we have done and have expressed that in the explanatory memorandum, and we have spoken to the people who are concerned about this numerous times and explained this to them. I suppose we have reached a position where they do not accept that.[53]

Conclusion

2.62 The note would appear to remove all reasonable doubt and the committee concludes that the ABA has not raised a reasonable concern. There is probably a greater risk that consumers may believe that the default buffer is extra credit. However, this risk largely depends on how the changes are communicated to consumers. Mostly, lenders are well placed to manage this risk through communications with their clients, either one to one or through advertising. There is probably also a role for ministers, Treasury and regulators to make clear at announcements that the default buffer is not ‘free credit’.

2.63 The provisions in the Bill do not amount to ‘free credit’ and lenders are well placed to manage the risk that consumers might mistakenly believe it to be so. There is also a role for government and its representatives to ensure that it does not inadvertently give this impression. Similar to many other reforms, good communication by both government and industry will be necessary for effective implementation.

52 Mr Christian Mikula, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 3.

53 Mr Geoff Miller, Treasury, *Committee Hansard*, 25 May 2011, Canberra, p. 4.

Are the buffers too complicated?

Background

2.64 A number of stakeholders on both sides of the debate expressed concern about the complexity of the buffers. The AFC provided background on how the buffers were developed during the consultations and the dual aim of preventing consumers being charged a fee for going over their credit limit but at the same time giving lenders some flexibility with their customers:

> So we looked for a halfway house where customers retained control and had the ability to consent to be able to go over the limit and potentially incur a fee, but financiers could retain discretion in terms of those temporary excesses where generally fees might actually be waived. What we have ended up with, far from the simple kinds of outcomes we were looking for, is something incredibly complex that creates or entrenches in the law this concept of a default buffer, which was really about a customer relations exercise in terms of people going out for dinner and not being embarrassed because suddenly their credit card was bounced. So, based on that customer's position and their overall financial situation, it was determined to be appropriate to let them exceed the limit, and the fee charging and waiver would flow.[54]

2.65 The Consumer Credit Legal Centre and the ABA agreed that the buffers were too complicated.[55]

2.66 The Wesley Mission took an alternative view. They stated that the default buffer was simple and served the interests of both consumers and lenders. For example, the consumer benefits because a lender may add interest or fees that was not expected, or a transaction may fall into a different period than expected. However, they did not support the supplementary buffer and it would be simpler if it were replaced by consumers requesting an increase in their credit limit.[56]

54 Ms Helen Gordon, AFC, *Committee Hansard*, 25 May 2011, Canberra, p. 35.

55 Ms Karen Cox, Consumer Credit Legal Centre, *Committee Hansard,* 25 May 2011, Canberra, p. 26; Mr Steven Munchenberg, ABA, *Committee Hansard,* 25 May 2011, Canberra, p. 22.

56 Wesley Mission, *Submission 10*, p. [6].

Analysis

2.67 In evidence, Treasury confirmed that the buffers were the product of consultations and that some features were inserted to make the arrangements more flexible:

> In subsequent discussions lenders and consumer groups agreed it would be consistent with the policy and in the best interest of consumers to allow a small default buffer in which consumers could exceed their stated credit limit as long as the consumers were not charged a fee for doing so. This was reflected in the exposure draft bill that was released in March. Based on comments from the exposure draft bill, the bill was also further amended on this issue to incorporate a further supplementary buffer above the default buffer for which lenders could actually charge a fee. The introduction of a supplementary buffer is likely to result in additional costs and compliance burdens for those lenders who offer it with their credit cards but may be of benefit to consumers who have a specific need for short-term credit—for example, where they might be travelling overseas. Allowing this flexibility as an option was considered to be an appropriate outcome.[57]

2.68 Treasury makes an important point in that the supplementary buffer does not have to be offered automatically. It is available if banks wish to offer it. Assuming that consumers do not change their initial settings on their accounts, the supplementary buffer will not affect them and only the default buffer will apply. The committee agrees with the Wesley Mission's comment that the default buffer is 'clear and logical'.[58] In the opinion of the committee, this is partly because it formalises current practice.

2.69 Further, the supplementary buffer appears to be the sort of feature that requires some premeditated conduct on the part of the consumer to implement, which is precisely the Government's intention behind the Bill. In other words, while credit should be accessible, consumers should also be encouraged to give serious thought before they change their credit arrangements.

2.70 The fact that the buffers are the product of consultations is also significant. As the AFC acknowledged, the Government started with the simple idea of consumers not going over their credit limit and being charged a fee.[59]

57 Mr Geoff Miller, Treasury, *Committee Hansard,* 25 May 2011, Canberra, p. 3.

58 Wesley Mission, *Submission 10,* p. [6].

59 Ms Helen Gordon, AFC, *Committee Hansard,* 25 May 2011, Canberra, p. 34.

But because various parties wished to modify it, it is only natural that a more complicated system would result.

Conclusion

2.71 The buffers in the Bill provide an appropriate layer of regulation to the use of fees and limits with credit cards. The initial layer with the default buffer gives consumers and lenders some flexibility in managing their credit limits while achieving the policy aim of reducing the incidence of limit fees. The second, supplementary layer is more complex, but it will have the important effect of encouraging consumers to think about their situation and how they use their card before taking on more credit.

Effect on balance transfer cards

Background

2.72 Transfer balance cards are those that offer a six month zero interest or low interest rate on credit balance transfers. The ABA raised a concern that these cards might cease to be offered under the new legislation.

Analysis

2.73 The ABA spoke of the importance of these cards and the risk that they would be discontinued:

> The banks offer those products because they are keen to attract new customers, and that is part of competition in the banking sector, but those products also allow customers to transfer existing debt to being a zero-interest debt and to being able to pay that off their credit card. It actually can allow customers to manage their debt much more effectively. Those products are going to be effectively banned under what is being proposed here in the legislation.[60]

2.74 However, the ABA also stated that the requirement in the Bill for credit balances at a higher interest rate to be paid off first meant that the commercial reality was that people would not be able to transfer or consolidate debts onto a low interest rate card. They told the committee:

60 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 16.

> ... effectively the government is bringing in a form of price control on how debt is paid off on credit cards. If that automatically attracts to the debt incurring the highest interest rates that will mean it is just not commercially viable for banks to offer those low or zero interest rate balance transfer cards.[61]

2.75 Consumer groups pointed to the fact that these balance transfer cards generally resulted in the poorest consumers taking on more debt. Wesley Mission told the committee:

> A number of products like these low-interest transfers are effectively resulting in a situation where one group of consumers, usually the poorest, are subsidising another group – those who are perhaps more financially astute, better educated and generally better off.[62]

2.76 The Consumer Action Law Centre added to Wesley Mission's comments, saying of balance transfer cards:

> They benefit a small minority who actually have enough money to go out and spend a lot of money, get a transfer and quickly pay it off. They seriously disadvantage people who are attracted to them because they cannot pay off their credit card debt. I have no problems in seeing the end of balance transfers that trap people who are in financial stress.[63]

Conclusion

2.77 The committee does not regard balance transfer cards as a particularly attractive product. Effectively giving more credit to people with a credit problem is not a constructive approach. The committee is happy to leave it to the market to decide whether to offer these cards under the new arrangements.

61 Mr Steven Munchenberg, ABA, *Committee Hansard*, 25 May 2011, Canberra, p. 18.

62 Mr Richard Brading, Wesley Mission, *Committee Hansard*, 25 May 2011, Canberra, p. 27.

63 Ms Carolyn Bond, Consumer Action Law Centre, *Committee Hansard*, 25 May 2011, Canberra, p. 27.

Overall conclusion

2.78 The Bill is a balanced package that will provide consumers with more relevant information and help them obtain credit products more suited to them and their finances.

2.79 Some lenders' traditional sources of revenue, such as limit fees and prolonged interest payments by consumers who are in financial distress, will be curtailed by the Bill. Under these circumstances, lenders' fee structures may change and fees may be spread more evenly across their customer base. But if it comes at the price of fairer dealings for consumers and less temptation for individuals to fall into a credit trap, then it shall be our community that reaps the profit.

Recommendation 2

2.80 **Subject to the other recommendation in this report, the House of Representatives pass the Bill.**

Mr Craig Thomson MP
Chair
14 June 2011

A

Appendix A – Submissions

No.	Provided by
1.	The Westpac Group
2.	Real Estate Institute of Australia (REIA)
3.	The National Australia Bank
4.	Abacus Australian Mutuals
4.1.	Abacus Australian Mutuals (supplementary submission)
5.	ANZ
6.	Finance Sector Union of Australia
7.	Australian Finance Conference
8.	GE Capital
9.	Australian Bankers' Association Inc.
9.1.	Australian Bankers' Association Inc. (supplementary submission)

10. Wesley Mission

11. VISA

12. Consumer Law Action Centre

13. Department of the Treasury (questions on notice)

B

Appendix B – Witnesses

Wednesday, 25 May 2011 – Canberra

Department of the Treasury

Mr Christian Mikula, Manager, Consumer Credit Unit, Retail Investor Division

Mr Geoff Miller, Principal Advisor, Retail Investor Division

Australian Bankers' Association

Ms Jade Clarke, Senior Policy Analyst

Mr Steven Munchenberg, Chief Executive Officer

Wesley Mission

Mr Richard Brading, Principal Solicitor, Wesley Community Legal Service

Consumer Action Law Centre

Mrs Carolyn Bond

National Legal Aid

Mr David Coorey, Solicitor

Mr Andrew Crockett, Chair

Consumer Credit Legal Centre

Ms Karen Cox, Coordinator

Ms Catriona Lowe

Abacus Australian Mutuals

Mr Mark Degotardi, Head of Public Affairs

Mr Luke Lawler, Senior Manager, Public Affairs

Australian Finance Corporation

Ms Helen Mary Gordon, Regional Director and Corporate Lawyer

VISA AP (Australia) Pty Ltd

Mr Benjamin Read, Business Leader, Consumer Credit and Affluent Products, Australia and New Zealand

Mr Adam Wand, Head of Public Affairs, Australia, New Zealand and the South Pacific

Finance Sector Union of Australia

Mr Mark Gepp, Senior Policy and Research Officer

Mr Rod Masson, National Director Policy and Communication

C

Appendix C – Exhibits

No.

1. National Legal Aid, *Submission to Treasury on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, (provided by National Legal Aid)

2. National Legal Aid, *Submission to Treasury on regulations under the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011*, 14 April 2011 (provided by National Legal Aid)

3. Wesley Mission, *The Wesley Report – Making ends meet: Financial stress is not just about money,* October 2010 (provided by the Wesley Mission)

4. Wesley Mission, *Ministerial Briefing Paper – The Wesley Report – Making ends meet: Financial stress is not just about money,* October 2010 (provided by the Wesley Mission)