



Our ref: PQ: UCCC/09

22 May 2009

To: Senator The Hon. Nick Sherry,  
Minister for Superannuation and Corporate Law.

By e-mail: [consumercredit@treasury.gov.au](mailto:consumercredit@treasury.gov.au)

Dear Minister,

## **National Consumer Credit Protection Bill 2009; Exposure Draft**

This submission is made on behalf of Redfern Legal Centre's Credit and Debt Service.

Thankyou for the opportunity to respond to the proposed National Consumer Credit Bill Exposure Draft.

We congratulate the Australian Government for moving so quickly to address consumer protection issues in relation to credit products and services.

Unless otherwise indicated, references below are to the Australian Government's recent publication "The National Consumer Credit Protection Bill 2009 - Delivering Single, Standard, National Regulation of Consumer Credit for All Australians" ["the Government publication"].

We support the statement in the Minister's Message (in the Government publication) that the Government [will move] to require finance brokers and lenders to be licensed, and that all credit providers and brokers will have to be members of an external dispute resolution scheme.

We support the proposals described in "Key elements of Phase one [of the Action Plan]" of the Government publication, except to the extent noted below:

### **Commonwealth legislation**

- enacting the existing State legislation (UCCC) as Commonwealth legislation;

### **A licensing regime**

- establishing a national licensing regime to require providers of consumer credit and credit-related brokering services and advice to obtain a licence from ASIC;

### **Membership of EDR bodies**

- requiring mandatory membership of an external dispute resolution body by all providers of consumer credit and credit-related brokering services and advice.

### **ASIC powers**

- extending the powers of ASIC to be the main regulator of the national credit framework with enhanced enforcement powers. However, there may be room for the concurrent operation of State and Territory Tribunals and Courts, for example in relation to smaller and simpler matters.

### **Responsible lending**

-requiring licensees to observe a number of general conduct requirements including responsible lending practices is supported, and the practices proposed by the draft legislation are an improvement on existing conditions. It is our view that these practices will be only of small assistance to our clients, and there is a risk that the data collection which might occur is an unreasonable information-privacy invasion. (For further discussion see below, under “Responsible lending”).

It is unclear whether we may be able to comment further about responsible lending practices pursuant to the proposals described as element one of Phase Two; namely, “enhancements to specific conduct obligations to stem unfavourable lending practices, such as review of credit card limit extension offers, an examination of State approaches to interest rate caps; and other fringe lending issues as they arise”.

### **Remaining four elements described as “key elements of Phase One”**

We have no comment at this stage on the remaining four elements set out in this section of the Government publication (page one).

### **Phase Two of the “Action Plan”**

At this stage, we have no comment about Phase Two of the Action Plan described in the Government publication.

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Discussion of the principles described in the summary “**How the proposed consumer credit laws will benefit consumers**” (page 3 of the Government publication)

Some of these principles have already been noted above.

Apart from the proposed protections for consumers borrowing for residential investment property, we support all of these principles, subject to the comments about responsible lending discussed later in this letter. (We have no comment about investment properties because most, if not all, of our clients, cannot afford investment properties. They can barely afford to borrow for the purpose of buying their own homes).

The principles are reproduced in full below, for the assistance of those of our colleagues who are not familiar with them.

- Protect consumers from being offered loans that are clearly unsuitable for them or that they cannot afford to repay
- Enhance consumers' understanding of credit products by greater disclosure of information, including fees, charges and commissions
- Increase the maximum threshold for mortgage hardship cases from the current \$312,400 to \$500,000 and puts in place a new, flexible power to raise this further as needed
- Assist consumers to make informed choices by creating a more level playing field on access to information between the consumer and the lender or broker
- Ensure consumers receive reliable credit services from suitably qualified and competent persons
- Protect consumers in borrowing for residential investment property
- Provide a national regulator, ASIC, with enhanced powers to enforce responsible lending conduct standards
- Give universal access for consumers to low-cost external dispute resolution schemes
- Provide the option for the first time of opt-in, tribunal-like access to the Federal Magistrates Court
- Provide comprehensive regulatory coverage of the credit industry for previously unregulated sectors such as mortgage brokers
- Broaden criminal and penalty sanctions to safeguard industry standards
- Enhance consumer protection through improved access to consumer remedies

### **Responsible lending**

The principle that lending should be responsible is supported, of course.

Also, we support the requirements in the draft legislation that credit providers and credit assistance providers etc. must:

provide credit guides to potential borrowers;

assess whether particular credit contracts are unsuitable for a consumer;

disclose in a document any fees or commissions likely to be payable.

It is questionable, however, how much these proposals will protect our clients.

For example, on the second point - assessment of suitability for credit - the writer has strong reservations about the ability of lenders, credit providers, credit assistance providers, finance and mortgage brokers, and credit ratings agencies to correctly and properly assess borrowers' capacity to pay off debt.

Many of these entities have a degree of responsibility for the global financial crisis. They were either too greedy or too careless to see that many financial institutions were massively over-g geared.

It is perhaps arguable that Australian credit assessors (of whatever kind) were better at assessing risk than many world lenders. However, it is the writer's experience that Australian lenders have thought until recently that they were safe lending even to pensioners without any assets other than the [inexpensive] family home, as long as the debt (mortgage) was fully securitised against the borrower's home.

Allowing credit providers to make better attempts to assess credit "worthiness", through massive invasions of the information privacy of borrowers, is not supported, unless there are extremely strict information- or data- privacy protections in place. For example, lenders and credit reporting agencies should not be able to collect, store, and distribute financial or other information about individuals or families until after such guidelines are put in place.

### **Credit guides and disclosure**

We support the provision of credit guides to consumers, and disclosure to consumers, of all credit-related fees, charges, and commissions. It is our experience, though, that many of our clients don't read all the documentation with which they are provided under the present regime. Perhaps one way around this is the requirement in the legislation to provide adequate training to credit providers.

### **Other issues**

#### **Offences**

We support section M500 of the draft National Consumer Credit Protection Act, which allows regulations to be made in relation to penalties for offences and civil penalties. However, the penalty of one-fifth of the maximum in criminal matters and one-twentieth in civil proceedings, is insufficient.

Consideration should be given to the appropriate use of any such monies. Of course, our view is that any such funds should go towards consumer assistance in consumer credit matters, whether through education programs or service delivery. A trust fund could be set up for this purpose.

**Final comment**

It is noted that much of the detail of the legislative package will be, or is already, set out in the Regulations. The package is too large for us to comment upon it all. Broadly speaking, we support the joint submission to Treasury provided by the Consumers' Federation of Australia and others, except where noted herein.

Yours sincerely

**REDFERN LEGAL CENTRE**

**(Signed)**

Penny Quarry  
Senior Solicitor

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