



17 July 2009

**Australian Institute of Credit Management Submission to the
Senate Economics Legislation Committee re
National Consumer Credit Protection Bill 2009 and related
bills**

Introduction

This submission has been prepared by the Australian Institute of Credit Management (AICM) following consultation with members and the wider credit industry.

AICM is the association for credit professionals in both commercial and consumer credit comprising both individual and corporate members from all industry sectors in Australia.

AICM acknowledges the ongoing increase in consumer indebtedness and the need for the careful management of the relationship between consumers and credit providers and debt collectors. However AICM would reiterate the figures contained in the joint publication by the ACCC and ASIC *Debt collection practices in Australia; Summary of stakeholder consultation*¹

...that the third party debt collection industry manages approximately \$6 billion of unpaid debt which represents approximately 12 million accounts per annum...²

AICM would highlight that these figures only indicate the extent of unpaid debt managed by a third party recovery process and do not take into account the extent of unpaid debt managed internally by credit providers.

However despite this volume of unpaid debt the ACCC and ASIC acknowledge that the level of complaints regarding debt collection practices are statistically low³.

¹ Australian Competition and Consumer Commission *Debt collection practices in Australia; Summary of stakeholder consultation* 2009

² Ibid

AICM would suggest that the Senate Committee be mindful of these figures when considering the National Consumer Credit Protection Bill 2009 and related bills.

AICM makes this suggestion at the commencement of its submission as it is important to place these proposed consumer law reforms in an overall context namely that there are extensive consumer/credit provider relationships which have operated in an appropriate, ethical manner without detriment to the parties involved in the relationship.

AICM would also like to place before the Senate Committee from the outset that the consumer credit reforms should be considered with regard to consumer debtors' obligations and responsibilities. Debtors are legally responsible for paying debts they legitimately owe and debtors should not deliberately try to avoid their obligations. Unfortunately it has been the experience of AICM members and the credit industry in general that some debtors will seek to avoid their obligations by inappropriately disputing outstanding debt.

AICM does not support unethical or inappropriate credit provision or debt recovery practises. This commitment is evidenced by an array of formal qualification based training programs delivered by AICM, ranging from Certificate III through to Diploma level which address good practice in the offering of credit and debt recovery. As well AICM regularly includes professional development opportunities to its membership and the credit industry on topics relating to these important issues.

Overall Position

AICM supports the introduction of national legislation to regulate consumer credit. AICM believes that this will significantly reduce compliance costs for credit providers and enhance a consumer debtor's understanding of their rights and responsibilities.

AICM believes that nominating ASIC as the single regulator will be beneficial to all parties and result with consistency of application and interpretation of the legislation and regulations. However it will be essential that ASIC is sufficiently resourced to perform this role.

³ Ibid p 2

The introduction of a national register and licensing requirements, whilst likely to be burdensome in the introductory period, will serve to place the credit industry on notice that unacceptable conduct by credit providers and debt collectors will not be tolerated.

The proposal to include all consumer credit under the one legislative reform is welcomed and reflects a practical change in legislative intent since the release of the Financial Services and Credit Reform Green Paper in 2008.

As well AICM believes that the proposed extension of consumer credit to include the '... purchase, renovation, improvement or refinancing of residential investment property...' is a timely and sensible initiative.

In particular AICM believes that the introduction of the proposed National Credit Code (National Consumer Credit Protection Bill 2009 Schedule 1) will result in a clarification of consumer protection which will be advantageous to all parties.

AICM would suggest that the development of the regulations to support this package of reforms should be a priority as it will presumably be in the regulations that the day to day operation of the proposed legislation will be defined.

Further, that as soon as practicable after this legislative reform package is determined, the jointly produced ACCC and ASIC *Debt Collection Guidelines* be reviewed to reflect the outcome of this process.

The interrelationship with the Personal Property Security Bill 2009 needs to be managed carefully to ensure that there are no unintentional inconsistencies between the proposed legislative reforms. It should be noted that AICM strongly supports the introduction of the Personal Property Security Bill 2009 as AICM believes this reform will result in a more transparent and potentially less litigious securitisation regime.

Specific Comments

Licensing (National Consumer Credit Protection Bill 2009 Chapter 2)

The introduction of a licensing regime represents a significant change from the current inconsistent set of state and territory based arrangements and a nationally consistent regime is to be preferred.

AICM would propose that licensing requirements should include the holding of qualifications together with a relevant level of industry experience. A similar provision was recently introduced in the *Tax Agent Services Act 2009* s 20-5. Such a strategy would be supported through the Australian Qualifications Framework and the nationally endorsed Training Package arrangements which come under the Australian Quality Training Framework (AQTF 2007). This would result in quality outcomes with a national consistency in the delivery of learning outcomes which would support the objectives of the consumer credit protection reform package. Should this recommendation be acceptable it would be timely as the Financial Services Training Package (the relevant training package) is currently under review and this would facilitate the incorporation of the competencies which will be required under these reforms.

In addition AICM would strongly argue that should it be determined that qualifications would be a dimension of licensing then the minimum qualification should be a Certificate IV in Financial Services. This position is based on more than 10 years experience as a leading provider of financial services education and professional development.

Credit registers (National Consumer Credit Protection Bill 2009 Chapter 5 Part 5-1)

The development of national credit registers by ASIC will greatly enhance the achievement of the objectives of these reforms and the credit registers will contribute to the transparency of a credit provider's operations. AICM is unable to ascertain any reason why these registers should not be made public, having taken into account appropriate privacy requirements and would suggest that S.214(2) should be revised to enable public access.

Responsible lending conduct (National Consumer Credit Protection Bill 2009
Chapter 3)

Whilst AICM would acknowledge that there have been some extremely high profile and indeed costly instances of irresponsible lending conduct, AICM would reiterate that a consumer should not be obviated from their responsibility to be mindful of the consequences of incurring a debt.

The underlying principle which has been a foundation to consumer protection has been 'truth in lending'. It seems reasonable to also require that a consumer should have similar obligations to prove correct information when applying for credit. Thus it would seem to be unduly harsh for a credit provider to face the possibility of a compensation order under ss178, 179 when the consumer has misled the credit provider as to their financial circumstances.

Equally it would seem that the possibility that a debtor may dispute a credit arrangement on frivolous or vexatious grounds has not been addressed in the draft legislation. While it is imperative to protect consumers from unethical practice there appears to be no recognition of the rights of a credit provider.

Dispute resolution

AICM has consistently supported the use of dispute resolution procedures as a mechanism to expedite disputed matters between a consumer and a credit provider. However what is not apparent from the draft legislation is whether or not the three tier dispute resolution framework will be mandatory.

Credit providers are often left with no alternative to the commencement of legal proceedings when a debtor refuses to enter into negotiations in relation to a disputed matter. AICM would suggest that this matter should be clarified to ensure that all parties are fully cognisant of their dispute resolution options.

Conclusion

AICM does not resile from its support of nationally consistent consumer legislation. However, it does seem that an appropriate balance needs to be struck between the needs of all parties affected by these reforms.