

12 October 2011

Mr Tim Bryant
Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Bryant

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

Thank you for the opportunity to comment on the above Bill. We have confined our comments to Part 1 of Schedule 1 - Protection of debtor in cases of hardship.

About the Credit Ombudsman Service Limited (COSL)

COSL is an ASIC-approved external dispute resolution ('EDR') scheme that is approved by the Australian Securities and Investments Commission ('ASIC').

Our primary role is to provide consumers and members of COSL with an alternative to legal proceedings for resolving finance-related disputes.

In doing so, ASIC's Regulatory Guide 139 requires us to:

1. provide its services at no cost to consumers (we are therefore funded entirely by industry)
2. be impartial, accessible and independent of both consumers and industry.

COSL has more than 15,600 members, being non-bank lenders, mortgage brokers, debt collection firms, mortgage managers, pay day lenders and trustee companies.

Importantly, more than one third of all complaints we receive relate in some way to financial hardship and these complaints are accorded first priority in our complaints handling process. We have considerable expertise in this area and secure a satisfactory outcome for consumers in more than 40% of the complaints we deal with.

We have been dealing with such complaints for more than four years and therefore have a significant interest in the changes proposed to be made to section 72(1) by Bill.

Part 1 of Schedule 1 of the Enhancements Bill

We whole-heartedly support the changes proposed to be made by Part 1 (Protection of debtor in cases of hardship), but urge the Committee to recommend a change to the proposed new section 72(1):

Insert in the proposed new section 72(1) the words below that are underlined:

72 Changes on grounds of hardship

Hardship notice

*(1) If a debtor considers that he or she is or will be unable to meet his or her obligations under a credit contract and reasonably expects to be able to discharge the debtor's obligations if the terms of the contract were changed in a particular way, the debtor may give the credit provider notice (a **hardship notice**), orally or in writing, of the debtor's inability to meet the obligations.*

We of course support the policy intent to remove the limitations inherent in section 72(2) of the existing Code (whereby a request for hardship assistance can only be made if the change in the contract terms involves an extension of the term and corresponding reduction in the amount of the payments, postponing payments for a specified period, or a combination of these).

However, we consider that it would be extremely useful, if not critical, for the proposed new section 72(1) to retain in some way the implicit requirement in the existing section 72(1) that the credit contract should be varied where the borrower reasonably expects to meet their obligations under the contract if the contract was changed in a particular way. This has always been the threshold test under section 66 of the former Consumer Credit Code and the existing section 72 National Credit Code: see *Capital Finance Australia Ltd v Fairservice (Credit)* [2006] VCAT 624 (13 April 2006) per C. McKenzie, Deputy President.

There would otherwise be little or no guidance for a Court or an EDR scheme to determine if a credit contract should be varied.

Sincerely

Raj Venga
Chief Executive Officer and Ombudsman