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17 July 2009

Mr John Hawkins
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRRA ACT 2600

BY EMAIL: economics.sen@aph.gov.au

Inquiry into the National Consumer Credit Protection Bill 2009 and related bills

GE Capital Finance Australasia Pty Ltd ("**GE**") welcomes the opportunity to make this submission to the Committee in connection with its Inquiry into the National Consumer Credit Protection Bill 2009 ("the Bill") and related bills. GE has several financial services businesses operating in Australia, including the consumer finance business trading as "GE Money". GE has a significant and distinctive interest in proposed reforms affecting the regulation of financial services, and specifically consumer credit.

In our submission to The Treasury on the Exposure Drafts of the National Consumer Credit Protection Bill 2009, the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 and the Regulations[1] we detailed our concerns about numerous aspects of the proposed regime. We commend the government's response to many of our concerns, and those of other stakeholders.

In particular, we support the government's position on the following matters:

- the exemption for point-of-sale retailers announced by The Hon Chris Bowen MP[2], to be provided in Regulations not yet published;
- deferral of the effective date of responsible lending obligations to 1ST January 2011;
- no duplication of disclosures to consumers; and
- the inclusion of consumer lease products within the scope of licensing and responsible lending obligations.

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[1] A copy of our submission dated 22 May 2009 is attached as Annexure 1.

[2] Minister for Financial Services, Superannuation & Corporate Law & Minister for Human Services, Media Release of 25/06/2009 NO. 002

However, we remain concerned about the following significant aspects, in summary:

1. **Substantive Issues under the Bill:**
   (a) licensees' liability for all those who fall within the very broad definition of "representatives" (not just the smaller subset of "credit representatives");
   (b) commissions payable by consumer lease providers not required to be disclosed to consumers;
   (c) requirement to assess and verify "financial" situation is onerous and unnecessary in the context of relatively low-value, unsecured loans;
   (d) the suitability assessment required under the Bill remains unworkable;
   (e) credit providers are required to comply with changes effected by the National Consumer Credit Code (Schedule 1 of the Bill) by 1st January 2010. This timeline is too short; and
   (f) it is unclear whether GE will need to hold multiple licences under the Bill (which would be onerous and unnecessary).

2. **Link Comprehensive Credit Reporting and Responsible Lending:** Credit providers do not currently have access to comprehensive credit reporting data to inform lending decisions. We urge the Committee to recommend to the government that the revised *Privacy Act* should permit comprehensive credit reporting - to take effect prior to, or concurrently with, responsible lending obligations under the Bill (1st January 2011).

3. **Process Issues:** To date, the confidential consultation process adopted for developing the national regime for the regulation of credit has been unsatisfactory in that many impacted stakeholders were excluded. Moreover, given that numerous material changes were made after the Exposure Draft of the National Consumer Credit Protection Bill 2009 was published for a brief period of public debate, our view is that restricting the consultation process has resulted in substantial rework by the government that could have been avoided.

Further comments and recommendations with respect to these issues are set out below.

1. SUBSTANTIVE ISSUES UNDER THE BILL

(a) Liability for representatives

In our previous submission (attached as Annexure 1) we pointed out that licensees' liability should only be prescribed in the context of "credit representatives" – those who have been specifically authorized by the licensee to perform certain "credit activities" on behalf of the licensee[3]. As currently drafted, liability is prescribed for all "representatives" – as very broadly defined in the Bill. This overreach would impose a burden on licensees that is not supported by any articulated policy outcome that we are aware of. Moreover, there is an inconsistency between the Explanatory Memorandum (EM) and the Bill in this regard. The EM (at p.65) refers to liability for "credit representatives" under s74 of the Bill, whereas s74 of the Bill refers to "representatives".

GE recommends that: s74 of the Bill be amended so that all references to "representatives" are replaced with references to "credit representatives".

[3] Our view is set out under heading 1: "Disproportionate Response" in Annexure 1.

(b) Disclosure of commissions payable by consumer lease providers

GE supports the elimination of duplication in disclosures to consumers. However, as a result of the government responding to stakeholder concerns about duplication, a consumer lease provider is not required under the Bill to disclose commissions it pays to third parties[4]. This is because s144 of the Bill that requires disclosure of commissions does not apply (by virtue of s135) when a lessor provides "credit assistance" in respect of its own products.

In contrast, a credit contract provider (but not a consumer lease provider) is already required under the Uniform Consumer Credit Code (UCCC) to disclose commissions payable - and this requirement will continue to apply to credit contract providers when the UCCC becomes the National Consumer Credit Code (NCCC) under the Bill. The NCCC commission disclosure requirement does not apply to consumer lease products.

In the interests of transparency and competitive neutrality, GE's view is that commission disclosure requirements should apply to credit contract and consumer lease products alike.

GE's proposed solution is that s135 of the Bill be amended to read as follows:

"135 Application of this Part

Except for section 144, this Part does not apply in relation to credit assistance provided by a licensee in relation to a consumer lease if the licensee is or will be the lessor under the consumer lease."

(c) Assessment and verification of "financial situation"

The Bill requires an unnecessary and unworkable assessment and verification of a customer's "financial situation".

Our view, and our recommendation to confine this concept to "credit situation", is set out in section 6(b)(ii) of our previous submission (attached as Annexure 1).

(d) Assessment of customers' objectives

In section 6(b)(i) of our previous submission we argued that an obligation to determine a customer's subjective state of mind is unworkable and should be abandoned in favour of action against licensees whose conduct is inappropriate.

In addition to concerns expressed in our previous submission, in GE's case, it is unclear how the requirement to assess a customer's requirements and objectives will be interpreted. GE's business model depends upon distribution of credit products through channel partners who compete with each other. For example, a Myer branded credit product with certain features is distributed through Myer stores and a Harvey Norman branded product with some different features is distributed through Harvey Norman stores. These products are both issued by the same GE credit provider. However, a customer in a Harvey Norman store seeking to enter into a credit contract can only apply to GE for a Harvey Norman branded credit product (and vice versa if the customer is in a Myer store).

[4] We believe this is an unintended consequence.

It is not clear how GE's model will be treated under the Bill because the EM (at paragraph 3.139) appears to require a credit provider who offers a range of products (as does GE) to match one product from its entire range of products to the customer's purpose. However, under our commercial arrangements with our channel partners, GE's entire range of products is not distributed through any single channel.

We reiterate the recommendation we made in section 6(b)(i) of our previous submission (attached as Annexure 1).

(e) Timeline to comply with NCCC

Credit providers are required to comply with the NCCC by 1st January 2010. The NCCC contains a number of changes from the UCCC requirements. The details of these changes are in some cases to be provided in Regulations that have not yet been published. Without the "full picture" of these changes it is impossible for credit providers to design and implement the necessary changes to IT systems and other business processes efficiently and effectively.

Moreover, even if all of the details were made available right now, it is highly unlikely that credit providers could meet the effective date – particularly in light of "IT freezes" (that is, periods within which no computer code changes can be made) that are self-imposed by industry participants towards the end of a year to ensure the stability of their systems during the busy holiday period over Christmas and New Year. In GE's case, this IT freeze typically begins as early as mid October – because of our close commercial relationships with retail partners.

GE recommends that an appropriate grace period, during which no enforcement action will be taken, is available to credit providers. This could be achieved by ASIC developing and promulgating a "no action" policy, setting out the circumstances under which it would not take enforcement action against a credit provider who is not compliant with the NCCC by the effective date under the Bill.

(f) Group structures and the related bodies exemption

Under the Exposure Draft Regulations, related bodies of a licensee are themselves exempt form the requirement to hold an Australian Credit Licence when engaging in credit activities on behalf of a related licensee. In our previous submission (attached as Annexure 1), in section 5, we detailed why this exemption may not apply to GE's group structure or to the group structures of other participants in the financial services industry.

A further draft of the Regulations has not been published with the Bill – so it unclear what the government's response to our concern will be.

We reiterate the view we expressed, and the solution we proposed, in section 5 of our previous submission.

2. LINK COMPREHENSIVE CREDIT REPORTING AND RESPONSIBLE LENDING

Under the existing "negative" credit reporting regime in Australia a lender has no practical, efficient means of assessing and verifying (as required under the Bill) whether an applicant for credit can afford to repay the debt without substantial hardship. Access to independent data on the current

balance of each credit account held by a customer would enable the lender to quickly and efficiently verify an applicant's capacity to repay the loan applied for.

Moreover, this Inquiry's broad terms of reference present the Committee with an opportunity to consider the pro-competitive outcomes that could be achieved by implementing a comprehensive credit reporting regime on the same timeline as responsible lending obligations under the Bill. GE and many other non-bank lenders are currently at a competitive disadvantage vis a vis the banks with respect to our ability to assess an applicant's capacity and willingness to service debt. Due to the banks' larger customer bases and deeper relationships with customers (that is, their wider product ranges means that customers often have multiple products – including transaction or deposit accounts as well as loans - with one bank) the banks effectively have their own private, internal comprehensive credit bureaux – giving them a greater ability to identify and verify their customers' sources of income, and to assess the "financial health" of customers.

Often, bank customers have their salaries, wages or government benefits paid directly into their bank accounts, giving the customer's bank exclusive access to information that confirms the source and amount of that customer's income. This information gives the customer's bank a significant advantage when it comes to making lending decisions about that customer.

This information asymmetry is a disincentive to new entrants and puts existing non-bank lenders at a competitive disadvantage with respect to managing risk.

In GE's view, and as demonstrated by international experience, implementation of a comprehensive credit reporting model is likely to result in increased competition between banks and non-banks (resulting in competitive pricing for consumers), and between credit bureaux (resulting in competitive pricing and product innovation by those credit bureaux). Moreover, new entrants (both lenders and credit bureaux) would have access to the same information, thereby reducing barriers to entry into relevant markets.

Further arguments and our recommendation in support of comprehensive credit reporting to support responsible lending outcomes are set out in out in our previous submission (attached as Annexure 1) in section 6(b)(ii).

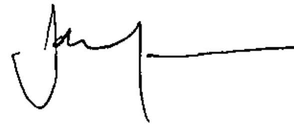
3. PROCESS ISSUES

GE has been involved in the limited, confidential consultation process regarding the Exposure Draft Bill and related Exposure Draft Regulations through its membership of the Australian Finance Conference (AFC). While this has been useful, it has certainly not been optimal, given GE is unique amongst AFC members with respect to its size and distribution model. The constraints imposed on the AFC and on us also meant that we could not work with our business partners to understand the full impact of the reforms until the Bill was published, hence constraining the time we had to analyze the impacts of the Bill and provide input. This was not an ideal situation.

We have been advised that the government has adopted the same (in our view, flawed) limited, confidential consultation process with respect to developing the Regulations under the Bill. In the interests of all stakeholders, we implore the Committee to recommend that the consultation process for the Regulations, and for the proposed stage 2 enhancements to the Bill, be conducted in the pubic domain – with direct participation possible for all affected stakeholders.

If you would like further information about any of the matters raised in this submission, please call Debra Kruse (03 9921 6859) in the first instance.

Sincerely



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ANNEXURE 1

Copy of GE's submission to The Treasury on the Exposure Drafts of the National Consumer Credit Protection Bill 2009, the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 and the Regulations, dated 22 May 2009

PLEASE NOTE THAT APPENDIX 5 IS CONFIDENTIAL AND NOT FOR PUBLICATION

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22 May 2009

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Submission on Exposure Drafts of National Consumer Credit Protection Bill 2009 (the "Bill"), National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 (the "T&C Bill") and Regulations, collectively the "national regime"

GE Capital Finance Australasia Pty Ltd ("GE") welcomes the opportunity to make this submission on the national regime.

GE has several financial services businesses operating in Australia, including the consumer finance business trading as "GE Money". GE has a significant and distinctive interest in proposed reforms affecting the regulation of financial services, and specifically consumer credit. Although GE conducts a significant financial services business in Australia, we do not take deposits and our perspective on proposed reforms is unlike that of any other financial institution operating in Australia. Further background information about GE's financial services businesses in Australia and New Zealand is set out in **Appendix 1** to this submission.

GE welcomed the Council of Australian Government's ("COAG") agreement in late 2008 that the Commonwealth would take over responsibility for the regulation of all forms of consumer credit, initially by re-enacting the *Uniform Consumer Credit Code* as federal legislation (with minor amendments previously agreed by the Ministerial Council on Consumer Affairs). The COAG agreement presented an opportunity for national regulation to promote the objective of enhanced consumer protection while also achieving the objective of enhancing efficiency and achieving long overdue regulatory simplification.

However, the details of the national regime go far beyond the COAG agreement. Many of the obligations and consequences under the national regime have no stated policy rationale, and no regulatory impact statement has been prepared. In addition, the national regime imposes arbitrary implementation and compliance timeframes that are too short for businesses to implement and a consultation process with respect to the national regime which has been unsatisfactory in that many impacted stakeholders (such as retailers) have been excluded.

EXECUTIVE SUMMARY

The purpose of this submission is to detail GE's major concerns with the national regime and to propose alternatives that we believe will address the stated policy objective of providing consumers with appropriate protection. In this submission we address the following 9 key points, in summary:

1. **Disproportionate Response:** The national regime "one size fits all" approach, together with criminal sanctions for breach of some provisions, is a completely disproportionate response to addressing inappropriate lending practices.

2. **Lack of Competitive Neutrality:** One of the principles of good regulation is that it should not impose competitive disadvantages – it should embody competitive neutrality. The national regime creates a competitive bias in favour of particular products and providers in a segment of the market.

3. **Significant Adverse Impact on Economy:** If implemented in its current form, the national regime is likely to inhibit consumer spending significantly, resulting in job losses, at a time when the Commonwealth government is taking unprecedented steps to stimulate growth in the economy and protect Australians' jobs.

4. **The National Regime Should Not Apply to Retailers:** The activities of retailers in connection with point of sale finance should be excluded from the scope of the national regime. In GE's case alone ~12,000 retailers (with ~ 75,000 staff) would be impacted. The government has not engaged retailers in the consultation process and has not articulated a net public benefit in bringing retailers within scope.

5. **Group Structures & the Related Bodies Exemption:** Where multiple legal entities in a corporate group engage in substantially similar credit activities, requiring more than one entity to be licensed cannot be justified where all entities are subject to the same operational risk management.

6. **Responsible Lending Obligations are Unworkable:** The approach taken to responsible lending conduct obligations is fundamentally flawed. Those obligations require comprehensive reconsideration. Lenders must be given the vital tool of more comprehensive credit reporting.

7. **Inconsistent, Ineffective Disclosure Obligations:** The proposed pre-contractual disclosure regime will require costly production of additional documentation that may be of little or no value to consumers. Moreover, additional commission disclosure requirements will conflict with commission disclosure requirements under the UCCC (Schedule 1 to the Bill).

8. **Substantial Increased Costs With No Demonstrated Net Public Benefit:** The costs to businesses of implementing the regulatory changes required under the national regime will be very substantial. In addition, ongoing compliance costs will be disproportionately high relative to revenue from credit products with the scope of the national regime. No net public benefit has been demonstrated.

9. **Implementation Timeframes Unworkable:** No meaningful transition period is provided in the national regime. In our view, a transitional period of 2 years should be legislated.

Further comments and recommendations with respect to the 9 key points of this submission are set out below.

In addition, there are numerous drafting ambiguities and errors in the national regime that need to be addressed. However, of particular concern is the fact that the Exposure Draft Commentary ("EDC") introduces concepts and requirements that are not contemplated by the Bill. We would be happy to provide you with further detailed comments in this regard.

1 DISPROPORTIONATE RESPONSE

The principle of proportionality has been recognised as being of prime importance in devising, implementing, enforcing and reviewing regulations[1]. This principle requires that remedies be appropriate to the risk posed, with costs identified and minimised.

One compelling example of disproportionality under the national regime is Division 4 of the Bill. Under this division, where a licensee has a representative in common with another or multiple other licensees, the licensees may be held jointly and severally liable for the conduct of the representative (even conduct that is beyond the scope of the representative's authority). Notably, division 4 applies to all "representatives", which is a much broader category than its sub-category of "credit representatives". If this is not merely a drafting error, the effect of this is to disregard and overturn the general law principles of liability in agency relationships in the consumer lending segment of the market. In our view, this is a fundamental overreach and is not underpinned by any form of substantive evidence that this is an appropriate outcome.

In light of the significant (and likely prolonged) impact of the global financial crisis on the Australian economy and on financial institutions in particular, it is imperative that new regulation does not impose an unnecessary, additional cost burden on business. Government, consumer financial services industry participants and consumer representatives should work together to determine whether a compelling net public benefit from implementing the national regime can be identified – before the national regime is implemented.

2 LACK OF COMPETITIVE NEUTRALITY

Regulation should not create a competitive bias in favour of particular participants in a market or a segment of a market, unless that is an unavoidable consequence of achieving overriding policy objectives. To date, the necessity of the resulting competitive bias has not been justified on policy grounds.

The national regime discriminates against lenders who do not have direct to consumer business models, increasing their costs (of implementation and ongoing compliance) and decreasing their ability to compete in the consumer finance segment of the market. In addition, the national regime discriminates against lenders whose products are credit contracts by imposing significantly lesser obligations on consumer lease providers.

For the reasons set out in this part 2(a)&(b), GE has grave concerns that, if enacted in its current form, the national regime would have a material anti-competitive effect on the provision of consumer finance in Australia.

(a) Direct v Intermediary Business Model

Lenders with direct to consumer business models will have a distinct operational advantage over lenders (including GE) whose primary product distribution channels are through intermediaries. In particular:

- The EDC indicates that if a vendor introducer is a credit representative for more than one lender, it will never be possible for that vendor introducer to take advantage of the proposed

[1] Better Regulation Task Force (2003), *Principles of Good Regulation*, www.brtf.gov.uk, 2003, page 4

exemption that applies for passing on factual information[2]. In the other words, the mere fact that a vendor introducer is a credit representative for multiple lenders will trigger responsible lending obligations associated with providing "credit assistance". Vendor introducers will have a compelling incentive to move to exclusive arrangements to take advantage of the proposed exemption for passing on factual information. This will result in less choice for consumers and will significantly disadvantage lenders (such as GE) whose business model involves a significant vendor-introducer network.

- Vendor introduced finance is a significant distribution channel for GE. This point of sale finance would become an unworkable business model. Without the interest free and deferred payment options offered to consumers by its vendor introducers, consumers may be less inclined to use a GE finance product, resorting instead to traditional credit cards. This would reduce consumer access to and use of a GE product that can be a less expensive form of credit when used wisely[3].
- It will create a more favourable regulatory environment for the direct provision of credit by lenders, rather than through intermediaries. Consumer finance businesses (like GE) based on intermediary models will operate in a correspondingly less favourable regulatory environment.
- The fact that a credit representative can act for multiple licensees only if all licensees consent will, in the context of vendor introducers, result in refusals to consent designed to keep competitors out of particular channels[4].

Our reading of the national regime is that it reflects, in part, concerns with broker-based home lending practices that have been the subject of significant criticisms over a period of time. However, the effect of the changes proposed in the national regime is not confined to this class of intermediary in the context of home lending – the changes purport to license and regulate a retailer offering finance with the purchase of, say, a $2,000 television in the same way as a broker "equity stripping" a borrower's interest in his or her home. In our view, this is a fundamental overreach and is not underpinned by any form of substantive evidence that this is an appropriate outcome.

(b) Credit Contracts v Consumer Leases

Consumer lease providers will have a distinct regulatory advantage over lenders (including GE) whose products are credit contracts.

Under the Bill, there is <u>no requirement</u> that consumer lease products (whether provided directly by the lessor or through intermediaries) meet the "not unsuitable" for the particular consumer test that applies to credit contracts and limit increases under credit contracts[5]. Nor is there a requirement for lessors to disclose commissions payable to intermediaries.[6] This will encourage intermediaries (in GE's case, its vendor introducers) to make consumer lease products available to their customers

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[2] The Regulations appear to conflict with the EDC on the details of the proposed exemption – see paragraphs 3.56 & 3.57 of the EDC and sub-regulation 6.2(6) of the *National Consumer Credit Protection Regulations 2009*.

[3] See information contained in CONFIDENTIAL Appendix 5.

[4] ^LIC 260 of the Bill.

[5] ^150 to ^R290 of the Bill apply to credit contracts, not consumer leases (as they are defined under the Credit Code).

[6] Commissions payable to intermediaries in connection with credit contracts only must be disclosed under ^R280 of the Bill.

instead of credit contract products. This will place GE at a significant competitive disadvantage and will reduce consumer choice.

3 SIGNIFICANT ADVERSE IMPACT ON ECONOMY

In Australia, consumer spending on credit cards alone is >$215 billion annually – more than 5x the government's total $42 billion stimulus package. A fundamental, threshold issue for the government must now be to determine what impact the national regime will have on the Australian economy.

Using publicly available RBA and ABS data[7], GE has projected the potential impact that could result from the proposed regulation of credit limit increases alone (that is, this projection does not include impact resulting from impact on entering into new credit contracts). Due to the very short period of public consultation, our projections are high-level only and are based on a number of assumptions that we would be happy to discuss with you in detail.

The following results of our analysis are alarming:

- Impact on retail spend – down $~8.7 billion annually (total annual retail sales in Australia are ~$225 billion)
- Assuming productivity of $139,500 sales per retail sales person, potential for loss of 62,000 retail industry jobs

4 NATIONAL REGIME SHOULD NOT APPLY TO RETAILERS

(a) Activities of Retailers should be Excluded

The activities of vendor introducers (in GE's case, primarily retailers of consumer goods and services) should not be considered "credit activities" within the scope of the national regime.

For the reasons set out in part 6(a) of this submission (and further details in Appendix 2), the responsibility to make an assessment as to unsuitably of a particular credit contract (or limit increase) for a particular consumer must rest with the lender.

Moreover, there is no stated policy basis under which it could be argued that requiring retailers to obtain Australian Credit Licences, or requiring GE to appoint retailers as GE's credit representatives, under the national regime, would result in a net public benefit. We note that the new regime, by imposing a substantial cost on credit providers and its retail partners does, little to extend the protection offered to customers that is already provided under the current drafting of the UCCC whereby GE is a linked credit provider with its retailer partners. Finally, the fact that a credit representative can act for multiple licensees only if all licensees consent will, in the context of vendor introducers, result in refusals to consent designed to keep competitors out of particular channels.

If the activities of retailers are not excluded from the scope of the national regime, lenders' costs will increase significantly (see part 8 of this submission for GE's data on costs) which will inevitably lead to higher costs of credit for all consumers. We are not aware of any statements of a net public benefit and do not see how this could be done until such time as there has been:

[7] ABS – Australian Labour Market Statistics 3 July 2008 and RBA Bulletin Statistical Tables [C01 – Credit and Charge Card Statistics].

- meaningful consultation with all potentially affected stakeholders – which has not occurred to date;
- comprehensive research and modeling of the economic impact of the national regime - which is far as we are aware has not been done; and
- a Regulatory Impact Statement produced - which to date has not been done.

(b) The Proposed Solution

GE's proposed solution to exclude retailers from the scope of the national regime is set out in **Appendix 2**, together with a detailed explanation of our concerns about the proposed regulation of retailers' activities in connection with credit contracts.

5 GROUP STRUCTURES & THE RELATED BODIES EXEMPTION

(a) The Issue

GE's corporate group structure includes a number of credit provider entities. It also includes entities that employ the people that conduct the business of the credit provider entities, and entities that provide services (such as technology services) to the credit provider entities. Two of the credit provider entities are Authorised Deposit Taking Institutions ("ADI"), being Specialist Credit Card Institutions authorised under the *Banking Act*. GE's ADI entities are prudentially regulated by APRA (even though they are not authorised to take deposits). Accordingly, GE has comprehensive executive and operational risk management structures in place that apply to, and address the risks in, each of the credit provider entities – not just the ADI entities.

Under the Regulations, an entity engaging in credit activities on behalf of a related licensee (or registrant during the period before an Australian Credit Licence is issued) is itself exempt from the requirement to be licensed (or registered)[8], provided it is engaging in credit activities on behalf of that related licensee (or registrant). In the case of the GE group of companies in Australia there are multiple credit provider entities engaging in substantially similar credit activities, however, each entity issues its own particular suite of consumer credit products. Although these entities are all part of the businesses conducted by the GE group in Australia, it is arguable that each entity engages in credit activities on its own behalf. Therefore, the proposed related bodies exemption may not apply to GE's multiple credit provider entities.

In our view, requiring multiple credit provider entities in the GE group to obtain and maintain Australian Credit Licences would impose a significant, unnecessary burden on GE (in terms of both additional cost and complexity of carrying on business) with no discernable public benefit outcome. In fact, increased costs of doing business would inevitably increase the cost of credit to consumers. A common sense and efficient approach would be to permit all credit provider entities in a corporate group to engage in credit activities under the auspices of a single Australian Credit Licence if each of

[8] Sub-regulation 5.1(5) of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009* and sub-regulation 6.1(5) of the *National Consumer Credit Protection Regulations 2009*.

those credit provider entities' business is conducted within the same, APRA regulated, executive and operational risk framework.

(b) The Proposed Solution

GE recommends that sub-regulation 5.1(5) of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009* and sub-regulation 6.1(5) of the *National Consumer Credit Protection Regulations 2009* be amended to read as follows:

"A person is exempted if the person is:

(a) a related body corporate of a licensee [registered person]; and

(b) engaging in credit activities on behalf of the licensee [registered person;] or

(c) a related body corporate of a licensee [registered person] that is APRA regulated, and is engaging in credit activities in connection with a business that is subject to the same operational risk and governance framework, practices and procedures as the licensee [registered person]."

6 RESPONSIBLE LENDING OBLIGATIONS ARE UNWORKABLE

The approach taken to responsible lending conduct obligations is fundamentally flawed. It fails to distinguish between the service provided by a lender to the consumer and the service that may be provided by an intermediary between the lender and the consumer. An intermediary does not and cannot perform a credit assessment.

(a) Suitability Assessment by Intermediaries

Under Division 4 of the Bill, a vendor introducer (for example, a retailer through its staff members in a Harvey Norman or Myer store) is required to make a "preliminary" assessment to determine that a particular credit contract is not unsuitable for a customer – this is to be done before "suggesting" that the customer enter a particular credit contract, or increase the credit limit under a particular credit contract[9]. Further, before making this preliminary assessment, the retailer staff member must make reasonable enquires about a customer's "requirements and objectives" with respect to the credit contract and the customer's "financial situation". Significantly, the retailer staff member must also take reasonable steps to verify the customer's financial situation[10].

According to the EDC, the minimum requirement[11] for a retailer staff member to satisfy with respect to making reasonable enquiries about a customer's requirements and objectives is to:

- understand the customer's purpose in seeking the credit;

[9] ^R150 of the Bill.

[10] ^R160 of the Bill.

[11] EDC paragraph 3.46.

- determine if the type, length, rate, terms, special conditions, charges and other aspects of the proposed credit contract meet the customer's purpose; and
- if the proposed credit contract does not meet the customer's purpose (as determined by the retailer staff member) put forward credit contracts that do meet the customer's purpose.

The EDC makes it clear that the fact that an assessment is "preliminary" would not diminish a retailer staff member's responsibility to make reasonable inquires and undertake reasonable verification of information[12].

All of the above must be done before a "suggestion" is made. In short, imposing these obligations on intermediaries is futile. They do not have the skills, resources or experience of lenders – nor do they carry the commercial risk that the customer cannot or will not repay. In our view, the only way that intermediaries could continue to introduce credit under the national regime would be for them to outsource the unsuitability assessment – back to the lender.

Our recommendation is that retailers' activities in connection with point of sale credit should not be subject to the national regime (and our proposed solution is set out in part 4 and Appendix 2 of this submission). With respect to other intermediaries who provide credit assistance, our view is that the responsible lending conduct obligations under the national regime should not apply to those intermediaries but should instead remain with the lender.

(b) Suitability Assessment by Credit Providers

(i) customers' requirements & objectives

The national regime imposes a test that goes beyond assessing a customer's capacity to repay a loan made under credit contract. It is a test that requires the lender to determine the customer's subjective state of mind. Moreover, it raises significant concerns about co-borrowers – how would a lender ever determine whether co-borrowers' requirements and objectives were completely aligned? In our view, lenders will be driven to adopt a tick-box approach, since there is no other way of objectively determining a subjective state of mind.

GE's recommendation is that this test be abandoned in favour of action taken against lenders whose conduct is inappropriate.

(ii) capacity to repay

The national regime requires a lender to assess a customer's capacity to repay without substantial hardship. In principle, GE is fully supportive of this. However, there are a number of major flaws in the current form of the national regime. They are as follows:

- the capacity assessment must be done before the customer submits an application for credit. Under the *Privacy Act*, a lender is not permitted to access a person's credit file (held by a credit bureau) unless and until an application for credit has been made;
- the national regime requires lenders to make enquiries (and verify) the customer's "financial situation". This is a concept that would require verification of the customer's assets and

[12] EDC paragraph 3.45.

liabilities. How would a lender verify asset value? That could only be achieved by engaging the services of an independent property valuer. While this is appropriate and workable for secured credit such as mortgages, it is inappropriate and unworkable for unsecured, low value products such as credit cards. In GE's view, the national regime should either exclude the requirement to verify asset value or recognize that it is up to the lender to determine whether it is appropriate in the circumstances to have regard to asset value. In other words, the only unqualified requirement should be to have regard to a customer's liabilities;

- even if a lender could access the customer's credit file, under the existing "negative" credit reporting regime in Australia a lender has no practical, efficient means of assessing and verifying (as required under the national regime) whether an applicant for credit can afford to repay the debt without substantial hardship.

To address these flaws, GE recommends that:

(a) the suitability test be completed as part of the credit application process, so that lenders will be permitted to access credit bureau files; and

(b) the reference to the customer's "financial situation" be narrowed to "credit situation" – or that a lender be expressly permitted to determine whether an asset valuation should be obtained.

GE also recommends that:

The government take this opportunity to equip lenders with the key tool they need to ensure they lend responsibly, that is, more comprehensive credit reporting data. (See **Appendix 4** for further information). Access to independent data on the current balance of each credit account held by a customer would enable the lender to quickly and efficiently verify an applicant's capacity to repay the loan applied for. In the absence of access to independent, comprehensive credit data, there should be a presumption in favour of the lender that the application data provided by a customer is accurate and reliable.

7 INCONSISTENT, INEFFECTIVE DISCLOURE OBLIGATIONS

If additional disclosure obligations are to be imposed under the national regime, there should be a sound underlying policy rationale. The multiple disclosure requirements under the national regime have no such basis. These requirements have been drafted in the absence of any consumer research to ascertain whether the additional disclosure requirements will address a need identified by consumers. In this regard, there is a body of empirical research that has been conducted in Australia and in other jurisdictions (notably the USA) that suggests that too much disclosure results in information overload – and that "simpler" disclosure is more effective.

Further, we have a number of practical concerns about disclosures required under the national regime, including:

- before providing credit assistance, a licensee (whether in the capacity of credit provider or intermediary) must give a customer its credit guide which must disclose, amongst other things, fees and charges payable by the customer for the credit assistance and the method

for working these out. The licensee must also disclose commissions (in $ value) that the licensee or any of its credit representatives is likely to receive and the method for working these commissions out[13]. In our view, there is no basis for requiring disclosure of calculation methodologies if the actual amounts are disclosed. Moreover, the very broad drafting of the commission disclosure requirement (which is far broader that under the UCCC) is inconsistent with Schedule 1 of the Bill and will require licensees[14] to disclose often complex and confidential commercial arrangements;

- all disclosures must be made before each instance of providing credit assistance, credit or limit increase, even if the relevant documentation has already been provided to the particular consumer and there has been no change to the information disclosed. This will be a costly and inefficient exercise with no discernible benefit to consumers.

8 SUBSTANTIAL IMPLEMENTATION COSTS & NO NET BENEFIT

The costs to businesses of implementing the regulatory changes required under the national regime will be very substantial. In addition, ongoing compliance costs will be disproportionately high relative to revenue from credit products within the scope of the national regime.

We understand your need to be provided with data which represents more than an approximation of implementation and compliance costs for the affected GE businesses, and we have begun the work required to produce that data. However, there is significant work involved in doing this, so for the purposes of this submission we have provided our high level, preliminary assessments (these are set out in **Appendix 3**).

As stated in part 4(a) of this submission, we are not aware of any statements of net public benefit accruing from implementation of the national regime that would justify the substantial additional costs burden that consumer finance industry participants would bear if the national regime is enacted in its current form.

9 UNWORKABLE IMPLEMENTATION TIMEFRAME

Implementation timeframes under the national regime are aggressive. For example, requiring compliance with breach reporting obligations from the date of registration with ASIC under the T&C Bill makes it necessary for registrants to have implemented a significant breach reporting compliance program within an impracticably short timeframe of ~3 to 4 months from the date that the national regime is proposed to be enacted.

The reforms proposed by the national regime are of at least the same magnitude as the regulatory changes introduced under the anti-money and counter-terrorism financing laws and the financial services reform laws. These reforms were implemented with an "amnesty" or "assisted compliance period" to enable industry time to ensure compliance with the new obligations. No such transition period is provided in the national regime. In our view, a transitional period of 2 years should be legislated.

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[13] ^R139(2) of the Bill.

[14] A credit provider must disclose commission arrangements under ^280 of the Bill.

The registration process under the T&C Bill is unworkable. Between 1 November 2009 and 31 December 2009, a person must register with ASIC (registration indicates an intention to proceed to obtain a licence). Once registered, a person must comply with a range of general conduct and breach reporting obligations. Significantly, once registered, it is a criminal offence to deal (in connection with credit activities) with any other person who is not also registered. The first person to register will be out of business immediately, since they will not be able to deal with anyone else. For GE, this means that for its current business model to continue GE, together with ~13,000 intermediaries, will be required to coordinate so that they all register on the same day.

Moreover, if a person has not had sufficient time to determine whether they will obtain a licence in their own right, they will be forced to register defensively. In this situation, the registered person would be required to commit significant resources to complying with conduct obligations that, ultimately, will not be relevant if the person subsequently decides that it will be a credit representative of a licensee. These practical matters arising under the national regime must be thought through.

Due to the time constraints resulting from the short public consultation period for the purposes of this submission, we have been unable to conclude a preliminary investigation and high level assessment of the lead times that we will require to implement certain aspects of the national regime. We will continue to work through this investigation and assessment and we would welcome an opportunity to discuss our conclusions with you in the next few weeks.

GE recommends that:

(a) breach reporting obligations do not commence until an Australia Credit Licence is issued;

(b) the requirements of Schedule 1 of the Bill (the amended UCCC) do not apply to a credit provider until an Australian Credit Licence is issued to the credit provider;

(c) only credit providers be required to register with ASIC in the first wave until 31 December 2009. After that time, others may register (if they have resolved to obtain a licence in their own right) – so that all will have either registered with ASIC or have been appointed the credit representative of a registered person, by mid 2010; and

(d) government consults with industry to develop an implementation timeframe that is commercially realistic.

IN CONCLUSION

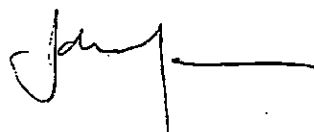
GE remains supportive of a national regime that, in the first stage of reform, reflects the COAG agreement of October 2008. We remain gravely concerned that in the short consultation time that has been provided, there has been no real opportunity for those impacted to consider the ramifications of the national regime, nor for policy makers to demonstrate that the national regime is an effective and targeted means of achieving stated policy objectives.

GE is a member of the Australian Finance Conference (AFC). We have had input into the AFC's submission on the national regime and we also support the comments and recommendations made by the AFC in its submission.

GE requests the opportunity to be represented at any industry roundtables or other any other consultation forum that is part of the consultation process with respect to the national regime.

Sincerely

Debra Kruse
Deputy General Counsel
GE Capital Australia & New Zealand



John Harrison
General Counsel
GE Capital Australia & New Zealand

APPENDIX 1

GE Money

GE Money is the consumer finance division of the General Electric Company, a company that has provided financial services for 70 years. GE Money is one of Australia's leading consumer finance companies, offering an extensive range of consumer finance products, including personal loans, credit cards, insurance and promotional retail finance. GE Money has ~3 million customers across Australia and New Zealand and its financial services are distributed through numerous sales channels, including over 12,000 retailers, 1,400 brokers, in excess of 100 branches, a direct sales channel, and the Internet. GE Money's Australian operations commenced in 1995 and have since grown rapidly through organic growth and major acquisitions. GE Money now employs more than 3,500 people in Australia and has established its headquarters in Melbourne.

GE Commercial Finance

GE Commercial is the commercial finance business of the General Electric Company, and operates around the world. GE Commercial Finance's customers range from small and medium size enterprises up to multinational organisations. GE Commercial Finance has assets in excess of AU$6.8 billion, and more than 150,000 customers across Australia and New Zealand. Its Australian operations commenced in 1991 and have since grown rapidly through organic growth and major acquisitions. GE Commercial Finance is a full service provider of financing solutions, managing credit applications, credit underwriting and funding, credit authorisation, billing, remittance, customer service and collection. With its registered office in Melbourne, GE Commercial Finance now employs more than 1,000 people in Australia.

APPENDIX 2

Detailed explanation of GE's practical concerns with respect to the regulation of retailers who engage in "credit activities" by providing "credit assistance"

The definitions of what will constitute a 'credit activity', including 'credit assistance', under the Bill are broadly drawn, resulting in many persons who are only incidentally involved in the credit application process (such as retailers) becoming regulated and subject to a range of onerous obligations for which they have little or no skills. The issue here is that the breadth of the proposed definition of who will be a regulated person has been set too broadly. The simple provision of assistance with a credit application, or the provision of factual information about the availability of credit to make a purchase on credit (such as by a credit card), should not be enough to give rise to application of the new laws to retailers and their staff, even where there is an object of assisting the consumer to obtain finance.

The Bill currently does not provide for an exemption from the licensing regime for a person who provides credit assistance as a retailer. For the reasons set out below, GE believes that an appropriate exemption should be included in the Bill.

Under the Bill, if a retailer provides a consumer with credit assistance by, for example, suggesting that a consumer may wish to apply for a certain store credit product, and use that product to finance a purchase (or series of likely future purchases) in the retail store, the retailer is first required to:

- provide a written quote for providing the proposed credit assistance (even where no fee will be charged to the consumer);
- conduct a preliminary assessment of the suitability of the proposed credit product for the consumer, in light of the consumer's personal circumstances and objectives, and
- conduct an assessment of the consumer's likely capacity to make their repayments under the product contract without substantial hardship (an **Assessment**).

Requiring retailers to conduct Assessments will impose immense and unreasonable obstacles to the provision of finance in the retail sales environment. This will affect not only the availability of store credit, but also the availability of credit assistance in many other situations such as dentist surgeries and other professional practices. In particular, we note the following:

- Conducting the Assessments requires a high degree of financial literacy, and specific skills. Put simply, retail store staff generally do not have the capability or skills to conduct the level of in-depth enquiry and assessment mandated in the Bill. For example, the core skills of a 20 year old sales assistant in the footwear department of Myer relate to assessing a customer's footwear objectives and needs, and selling the customer a not unsuitable pair of shoes, not assessing the customer's financial objectives and capacity to repay when the customer makes enquiries about applying for a Myer Visa at the cash register. Similar arguments apply to dentists or vets, who may offer credit assistance to consumers in their practices from time to time. The core skill set of a vet is the practice of animal medicine. Vets should not be required to conduct an Assessment on a potential client before suggesting that the client apply for a particular credit product (for example, where the vet has application forms for one or more credit products), or assisting the client to apply for that product, so that the consumer can pay for an operation to save the family dog. The obligation to conduct Assessments should fall solely upon credit providers.

- In conducting Assessments, the Bill also requires a retailer to verify the information provided by the consumer, meaning that retailer will need to inspect documents (and retain copies for evidentiary purposes) provided by the consumer (such as bank statements or tax returns), or make enquiries to third parties (such as the consumer's employer, landlord, or bank) before assisting a consumer to apply for a particular product. In reality a consumer who walks into Myer to buy shoes does not carry with them copies of their bank statements and tax returns, and is unlikely to be willing:
  - to discuss the details of their financial situation with a retailer or its staff; or
  - consent to the shoe salesperson making enquiries about the consumer's financial situation or calling the consumer's employer in the middle of the store, and within earshot of other consumers.

  Such questions and enquiries would most likely seem unduly invasive, and inappropriate to the consumer. Accordingly, it is difficult to imagine in practical terms how a retailer and its staff could be expected to comply with the requirements of the Bill in regard to the obligation to conduct an Assessment (and do so before providing any credit assistance to the consumer).

- In a struggling retail sector, participants will need to absorb the costs associated with;
  - licensing themselves under the Bill,
  - training their staff to comply with the Bill, and
  - setting up compliance procedures and monitoring processes for sales staff in regard to,
    - compliance with the Bill and licensing obligations, particularly in conducting Assessments and providing credit guides and other documents to the consumer,
    - complying with privacy laws in collecting and handling consumer information, and
    - document and information management, retention, and security relating to the storage of Assessments and customer information.

  It will be difficult to execute such procedures and processes in a high paced environment. Ensuring compliance would be made particularly difficult in peak shopping periods, such as Christmas. The costs associated with licensing, training and compliance will be substantial, and will outweigh any benefit the retailer could derive by providing credit assistance in relation to consumer credit, which in turn may lead to a withdrawal of store credit products in the retail sector, negatively impact retail sales, and consequently negatively impact employment in the retail sector and the economy at large.

GE believes that responsibility for conducting Assessments is one that should properly rest with the lender. It is, after all, the lender rather than the retailer that has the commercial interest in ensuring that a potential borrower has the capacity to repay a proposed loan.

In these circumstances it is unreasonable to place a positive obligation on the retailer of the type set out in ^R165 of the Bill. This provision effectively dictates that the level of Assessment to be conducted by the retailer is not only what is reasonable, but also what is necessary, to allow the retailer to form the view that the consumer will be able to meet their commitments under the proposed credit contract without substantial hardship and that the credit product will meet the consumer's requirements and objectives.

In these circumstances, it is not appropriate to require shop assistants, professionals or their employees to conduct exhaustive and independent enquiries into the credit history and capacity of potential consumers interested in finance, and to do so before providing any service (advice or assistance) to the consumer. That, however, is what will be required under the Bill.

Separately, requiring retailers to conduct their own 'preliminary' credit assessment, in addition to the separate assessment to be carried out by the credit provider, will only create an unnecessary and inefficient duplication of functions. Further, regardless of whether retailers are required to assess credit capacity, credit providers will continue to do so, and despite ^R260(3) of the Bill are unlikely to take any comfort in the idea that a retail sales assistant had already separately performed a preliminary assessment. ^R290 of the Bill effectively provides that a credit provider is not protected from its obligations to conduct an Assessment by virtue of any reliance upon information provided. In the example stated above, it is unlikely to be reasonable for a credit provider to rely upon credit assessment information gathered by the 20 year old shoe sales person.

If enacted in its current form, the Bill would effectively end the provision of point-of-sale finance, because of the unworkable obligations imposed.

Exemption
For the reasons set out above GE believes retailers should be provided with an exemption in the draft Bill.

A proposed draft of a suitable section is provided in the following page. The draft exemption is worded narrowly so not to cover persons who provide a consumer with credit assistance, where they have the skills to do so, and provide credit assistance as one of their (or their employer's) a core business activities.

DRAFT EXEMPTION

"A person shall not be required to be registered, hold a licence, or be authorised as a credit representative under this Act, where that person engages in a credit activity, and:

(a) the person does not demand, receive or accept fees from a consumer for engaging in a credit activity or providing a credit service;

(b) the person's dominant business activity, or that of their employer, is the retail sale and promotion of goods or services other than,

  (i) credit services or credit products to which the Credit Code applies, or

  (ii) financial products to which Chapter 7 of the Corporations Act 2001 applies;

(c) the credit activities engaged in by the person are limited to one or more of the following:

  (i) informing the consumer of the potential availability of a licensee's credit product which, if made available to the consumer may be used to purchase the goods or services that the person offers for sale;

  (ii) assisting a consumer to make an application for credit to a licensee using a standard credit contract application form provided by that licensee to the person, where such assistance is limited to one or more of the following:

    (A) providing a licensee's credit guide and any other disclosure documents to the consumer that are required to be given to the consumer by that licensee under this Act;

    (B) collecting information from a consumer that the person will provide to the licensee for the purpose of assisting the licensee to assess:

      (I) whether the proposed credit contract is unsuitable for the consumer; and

      (II) whether the consumer has the ability to comply with the consumer's financial obligation under the proposed credit contract without substantial hardship

    (C) providing assistance to a consumer to complete an application for credit with the licensee;

    (D) acting as a intermediary in transmitting a consumer's application for credit to the licensee;

    (E) taking any necessary procedural steps to allow the consumer to draw down credit under a credit contract offered to the consumer by the licensee;

  (iii) providing only factual and generally available information about the features of the licensee's credit product."

APPENDIX 3

Implementation Costs

Requirement	IT systems costs	Training costs	Compliance costs	Marketing costs	Sub Total
Suitability Assessment	$ 5,500,000	$ 115,400	$ 250,000	$ 400,000	$ 6,265,400
Initial Training	$ 50,000	$ 1,000,000	$ 250,000	$ 100,000	$ 1,400,000
Ongoing Training		$ 1,000,000			$ 1,000,000
UCCC Changes	$ 1,000,000	$ 50,000	$ 100,000	$ 1,300,000	$ 2,450,000
Monitoring & Supervision	$ 200,000	$ 150,000	$ 1,500,000		$ 1,850,000
Credit Rep Authorisation	$ 250,000	$ 250,000	$ 100,000	$ 100,000	$ 700,000

Grand Total = $13,655,400

APPENDIX 4

Comprehensive Credit Reporting

Credit risk assessment is fundamental to GE Money's business, and many of GE Money Australia's key personnel are recognised experts in the field. Their expertise has been recognised across the US, UK, Europe and Latin America. GE Money's extensive international consumer finance presence gives the local GE Money team access to global expertise in credit risk assessment.

GE Money is strongly supportive of changes to privacy regulation to permit and facilitate comprehensive credit reporting (also known as "positive credit reporting").

The customer data currently available to lenders from credit bureaux in Australia only permit a lender to see one aspect of customer payment data, that is, when someone has fallen into bankruptcy, had a default or serious credit infringement (the "negative" events only).

In many studies, in a diverse range of international markets, positive credit reporting has been proven to add more predictive power to assess an applicant's capacity and willingness to service a loan than the demographic data supplied by an applicant on an application form. This is due to positive credit reporting having 2 clear advantages over relying on data supplied by an applicant on an application form:

1. **Data cannot be manipulated**

Unlike application form data supplied by an applicant, credit performance data sourced directly from a credit bureau cannot be manipulated, exaggerated or omitted.

2. **Stronger causal link**

The causal link between previous good performance on a loan and the expected performance on a new loan is much stronger than the causal link between demographic data (for example, time with current employer).

Public Benefits from Positive Credit Reporting

- Positive credit reporting promotes responsible lending, since it has the potential to reduce the number of consumers who take on unsustainable levels of credit commitment.
- Increased transparency to consumers will give consumers the means to "repair" their credit records, and will facilitate increased financial literacy.
- As demonstrated by the U.K. & U.S. experience, a positive credit reporting model is likely to lead to increased competition between lenders, resulting in competitive pricing for consumers - and competition between credit bureaux is likely to result in a greater range of related services available to consumers and lenders.
- Data accuracy would be improved, since fully automated systems would replace the manual processes currently used by many lenders and by credit bureaux.
- Access to comprehensive data would greatly enhance credit providers' ability to detect and prevent money laundering and other fraudulent activities.

Benefits to Lenders

- Positive credit bureaux data adds significantly to lenders' ability to accurately assess applicants' credit risk. This improved capability will enable lenders to more accurately assess risk, which may in turn reduce credit losses (including fraud losses), a cost that is ultimately borne by consumers.
- Positive credit reporting would greatly enhance lenders' ability to comply with an obligation to assess consumers' capacity to repay debt.

The cost to lenders of contributing "full" data files under a positive reporting model would be significantly less than the cost of reporting limited data at "triggers" such as number or days overdue for payment.