

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

[economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

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Dear Mr Hawkins,

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

The following submission is made on behalf of National Australia Bank Limited (NAB) in response to the Committee's Inquiry into the National Consumer Credit Protection (NCCP) Bill 2009 and related bills.

In making our comments, we refer to our previous submissions to the Federal Treasury's consultation on the draft package of consumer credit protection legislation, including draft measures to regulate margin lending. In addition, NAB has contributed to and supports the submissions to this Inquiry made by the Australian Bankers' Association (ABA) on the consumer credit bills and Australian Financial Markets Association (AFMA) on margin lending.

This submission reflects the importance of balanced, proportionate and consistent regulation of consumer credit to NAB's 3.3 million Australian customers in the current, more challenging consumer credit environment. It is vital that all Australian consumers have full confidence that they will be treated fairly and responsibly by all credit providers and intermediaries. As a financial services organisation operating in all States and Territories, NAB supports the move to national consistency in consumer credit legislation.

Whilst regulation must effectively address failures in consumer protection, it must also avoid adding unnecessary complexity and onerous obligations to those in the sector with high standards of consumer protection, as this could risk restricting access for Australian consumers to affordable credit.

### **Consumer Credit Bills**

NAB believes that overall policy direction of the bills will improve consumer protection. We support the introduction of a national licensing scheme for finance

brokers as well as credit providers, with increased transparency to consumers of fees and commissions.

The three Bills introduced reflect changes since the exposure draft stage that go some way to achieving the consumer protection outcomes sought, with regard for the impact on credit providers and others in the consumer credit chain. However, as outlined below, we see ways in which some of the detailed provisions of the primary legislation could be further clarified.

- **Timing of commencement**

We welcome the longer transition to new responsible lending obligations, to commence on 1 January 2011. This will allow more time for the considerable process and system (eg. staff training, credit tools, customer disclosure documentation and information technology) changes required for full compliance. These changes will impact across our Personal (retail) Bank, including our specialist distribution business NAB Broker, our Business and Private Bank, as well as in MLC and other wealth management operations.

However, we are also faced with new obligations generated by the National Credit Code (NCC) that will replace the existing state-based Uniform Consumer Credit Code (UCCC) as of 1 January 2010. These obligations will also require considerable system and process changes and we would therefore request additional time for transition to the following provisions:

- Section 13 (formerly section 11) - business purpose declaration;
- Section 87 (new) - one-off direct debit dishonour notice;
- Section 88 (formerly section 80) - default notice;
- Section 5(1)(b)(ii) and (iii) - extension of the NCC to provision of credit for residential property investment;
- Section 72 (3) (new) - credit provider notice about agreement or otherwise to application for hardship relief; and
- Section 94 (2) (new) - credit provider's notice about postponement of enforcement proceedings.

Due to the extent of the changes required, we request an extension for implementation and compliance, for at least six months, ie. from 1 July 2010.

- **Responsible lending**

NAB has robust and effective systems and tools that are designed to be flexible and sensitive to credit decisioning. In order to allow for such tools, rather than applying a prescriptive, one size fits all approach to credit assessment obligations, there needs to be a safeguard for the actions of a diligent and prudent licensee when conducting their credit assessment.

We consider the credit assessment requirements in Division 3 of Chapter 3 need to be clarified with incorporation of a 'safe harbour' for prudent and diligent inquiries and investigations conducted by a credit provider.

- **Further clarification of credit assistance provider from credit provider's role**

We welcome the government's intention to separate its regulation of credit providers as credit assistance providers under the NCCP. However, this is an issue which needs to be expressly addressed in the Credit Bill by providing an exclusion in the definition of 'credit assistance' that it does not apply to credit providers dealing in their own products and products of its entities within its corporate group.

Additional distinctions between the roles of credit assistants and credit providers are required in the Bill to ensure an accurate and proportionate allocation of roles and responsibilities. Much of this clarification centres on the "preliminary assessment" of the customer undertaken by the credit assistant.

Specifically, the role of credit assistants should take the form of a "know your customer" type test, matching customer objectives with financial capacity, as well as providing the credit provider with accurate information about the customer. The preliminary assessment would therefore involve collecting and verifying identification and employment information and accurate completion of the loan application. Credit assistants would then assess product suitability, for which they retain responsibility.

In order to clarify the scope of credit assistants' activities, we would also request a change in terminology describing the activity of credit assistant, from the current "suggest" to activity where a credit assistant "recommends" or "negotiates" with a credit customer.

- **Disclosure**

The NCCP bill has removed some of the duplication between the activities of credit assistants since the exposure draft, which will result in more effective disclosure of information to consumers.

However, in the case of pre-contractual disclosures, the proposed NCCP diverges from the existing UCCC, by requiring an additional pre-contractual disclosure in the form of a credit guide from the credit provider to a prospective customer. In order to ensure prospective customers receive one set of meaningful disclosures, the UCCC practice should be continued, so that the new credit guide requirement can be met as part of NAB's financial disclosures around the facility proposed.

- **Limit extra-territorial application**

As currently drafted, the National Consumer Credit Protection Bill would create unintended consequences in respect of its territorial application. Namely, the Bill could apply in cases where a credit provider conducting business in Australia provides credit to a foreign citizen residing overseas, as well as cases where credit entered into by parties located outside Australia relates to property for which credit sought is located in Australia.

We recommend that the residency test be reinstated in section 5 of the NCC so that it only applies to debtors ordinarily resident in the jurisdiction ie Australia to minimise its unintended application to debtors who reside overseas. Similarly,

the extra-territorial application in the Credit Bill under section 21 needs to be limited so that it only applies to credit activities within Australia conducted by licensees resident or located in Australia and with debtors ordinarily resident within Australia.

- **Microfinance exemption**

Since 2003 NAB has committed over \$130 million to supporting microfinance initiatives in Australia, in partnership with a range of not for profit community agencies. Our two flagship programs, the No Interest Loan Scheme (NILS) and StepUP program, run with Good Shepherd Youth and Family Services, average approximately 7,000 loans per annum with a value of around \$8 million.

At present the community agencies that operate these schemes are not captured by the provisions of the Uniform Consumer Credit Code (UCCC).

NAB is keen to ensure that the specific role of these types of organisations active in the consumer credit sector on a not for profit basis is acknowledged. In order to address this, regulations to support the legislation should exempt not for profit credit organisations from the obligations on the mainstream credit industry.

- **Sanctions and penalties**

NAB supports a sanctions regime for consumer credit activity that will be proportionate to the severity of misconduct and that will act as an effective deterrent.

However, in our view, criminal penalties for licensee misconduct that could mean imprisonment of up to 2 years and civil penalties to \$1.1 million for corporations are excessive. If introduced, these sanctions would create a risk environment for credit activity that would introduce greater costs and potentially impact on overall credit availability.

- **Approach to any Phase 2 reforms**

The scale of these reforms is the largest the credit sector has faced for well over a decade, and is easily equivalent to the scale of change introduced with the Financial Services Regime in 2001. These reforms will also take place in a more challenging credit environment, where the availability of affordable credit remains an issue for all credit providers. In addition, a number of other major regulatory reforms that will impact the same credit products, processes and system, will take place within a similar time frame: Unfair Contract Terms legislation, Privacy Reforms (including more comprehensive credit reporting) and Personal Property Securities legislation.

NAB therefore strongly recommends that the need for any Phase 2 of consumer credit reforms are only considered when the impacts on the sector from the current reforms are fully evaluated. An approach along these lines will help to ensure that any additional regulation complements the current reforms and addresses only clear evidence of regulatory gaps.

- **Further regulations/guidance**

Implementation of the changes that will come into effect from these reforms will rely heavily on clear implementing regulations and regulator guidance from ASIC. Given the vast range and number of NAB credit products potentially impacted by the new legislation, a huge compliance program will be required.

We are therefore in contact with the Federal Treasury and ASIC to ensure there is early sight of both regulations and regulatory guides. We note the recent release of two ASIC Consultation Papers on Licensing requirements and endorse this approach. We will be providing feedback, both through the ABA and separately as NAB, as appropriate to assist in the development of a workable regulatory regime.

- **Transitional provisions**

The transitional provisions in the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill require clarification, in order to ensure certainty for credit providers transitioning to the new regime. In summary, the issues relate to the treatment of consumer credit contracts that predate the Bill (in particular under the new National Credit Code) and those that are subject to the new legislation. We will be seeking the necessary clarification on these issues with the Treasury

### **Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009**

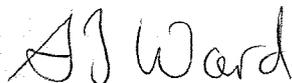
The Australian margin lending sector is a dynamic, innovative and competitive sector, providing a range of flexible investment options for wealth creation.

NAB has been directly involved in the Treasury consultation process for consideration of the legislation. We welcome the extension to the timing for implementation of the new regime since the exposure draft, given the extent of change required during a time of intense regulatory change across our business.

In broad terms, we believe the approach taken in the Bill will achieve the increased consumer protection outcomes sought. However, these broad objectives require underpinning with workable technical detail. Therefore, our focus is on the subordinate legislation and ASIC guidance to enable effective implementation of the legislation.

We welcome the recent release from ASIC of two consultation papers: on training and financial requirements and will continue to work with ASIC and the Treasury to ensure effective operationalisation of the legislation.

If you would like to discuss further any of the issues raised in this submission, please contact me (t: 0409 436 614 e: [sarah.j.ward@nab.com.au](mailto:sarah.j.ward@nab.com.au)).



Sarah Ward  
Manager, Government Affairs  
National Australia Bank

