

Sent: Thursday, 9 July 2009 3:23 PM
To: Economics, Committee (SEN)
Subject: Submission re NCCP Bill, especially proposed section 8

Dear Committee members,

The Bill as it stands fails to pass the primary test for the imposition of a licensing regime on those already subject to a similar licensing regime – i.e. AFS licensees.

I cannot see why the ACL regime can't be identical in form and content to the regime that AFS licensees currently operate under.

Different entry, disclosure and other operational requirements will impact on the cost of doing business for existing AFS licensees, and for no good regulatory reason.

I note that it has been deemed possible to simply add "margin lending facility" as a new class of financial product under the Corporations Act.

I can't help wondering why it was good enough for margin lending but not for the various other forms of credit product caught under the proposed NCCP Bill.

Putting aside any constitutional issues that might make a separate Act necessary could it not just mirror the Corporations Act viz. licensing and disclosure?

My next point deals with the wording of proposed section 8 – defining "credit assistance".

The term "suggests" is not defined and hence will inevitably lead to industry interpretation or regulatory guidance from ASIC.

Frankly neither outcome is good enough.

To avoid doubt the term needs to be defined somewhere in the Act.

I strongly suggest that it be defined to mean "expressly recommends" or that this term be used in its place in section 8 so as to avoid the (hopefully unintended) consequence of AFS licensees with no affiliation to a credit provider being required to submit to and comply with ACL simply because they give their clients strategic advice from time to time about the suitability of credit to that client's situation.

This will also foster development of proper referral channels so that appropriately skilled (and licensed) people get to give people the credit assistance they need.

Let's avoid inconsistent and opaque legislation and give industry and consumers some certainty.

Regards,

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