



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

23 July 2009

Mr John Hawkins
Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hawkins

Abacus – Australian Mutuals Submission

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

Abacus – Australian Mutuals is the industry body for credit unions, mutual building societies and friendly societies. Collectively, Abacus member institutions have more than \$70 billion in assets and serve more than 6 million Australians.

Abacus welcomes the Senate Standing Committee on Economics' inquiry into the National Consumer Credit Protection Bill 2009 and related bills, and is pleased to make this submission on behalf of its members.

Mutual financial institutions in Australia play a critical role in delivering competition and choice in the market. Australia has a strong mutual financial services sector, including one of the largest credit union sectors in the world.

As mutuals, Abacus members are committed to responsible and ethical retail banking services that put members, not profits, first.

Our commitment to our members and to responsible lending is clearly demonstrated by our performance. The credit union and mutual building society sector have the lowest arrears of any group in the retail banking sector – a situation that has remained constant throughout the global economic crisis. This is a testament to the sector's ethical and prudent lending behaviour.

Given our commitment, credit unions and mutual building societies are supportive in principle of the aims of the new federal consumer credit laws. A single harmonised regime, a level regulatory playing field for all credit providers, and access to low cost dispute resolution are all welcome and important steps to provide protection to consumers.

Beyond the high level principles, however, Abacus also believes that this legislation also strikes the right balance between effectiveness and efficiency. Abacus is supportive of the government's proposed credit regulatory environment and notes that significant improvements have been made to the Bill from the earlier Exposure Draft released in April.

These amendments include:

- Greater distinction between the roles of credit providers, and credit assistants such as brokers;

- Delay of the responsible lending provisions until 1 January 2011;
- Longer timeframes for the provision of written assessments by lenders to consumers and removal of the requirement to provide those assessments after seven years from the date of the contract;
- Reductions of the civil and criminal penalty provisions;
- Changes to the requirements around timing of unsuitability assessments;
- Clarification of the application of the legislation to debt collectors; and
- Changes to the ability of ASIC to revoke or vary the credit licence of an ADI.

These are important amendments that will ensure the Bill is better focused on giving consumers the right information at the right time and on ensuring that there are mechanisms to provide redress for consumers – whilst allowing those institutions that are already behaving responsibly to avoid unnecessary, restrictive and costly over-regulation.

Using resources effectively is particularly critical for smaller financial institutions such as credit unions and mutual building societies and our industry welcomes these changes.

It is vitally important that ineffective regulation does not divert our resources away from the outstanding responsible lending practices credit unions and mutual building societies already implement to support and protect their members.

Ongoing challenges for the legislative framework

Whilst we are pleased to see a number of sensible changes to the earlier draft legislation, we remain concerned about some elements of the current Bill and the overall consumer credit framework.

Role of ASIC

As noted above, Abacus and its members are pleased to have a single regulator for consumer credit and endorse the selection of ASIC as that regulator. The legislative framework however places significant powers in the hands of the regulator as ASIC is responsible for providing guidance to regulated institutions about the interpretation of fundamental elements of the Bill. These include licensing, responsible lending and training requirements.

Abacus and its members support placing conduct obligations on licensees as part of the consumer protection framework. Regulating what lenders and brokers actually do (conduct obligations) is a more effective consumer protection tool than merely regulating what they say (disclosure obligations), especially when consumers are given the right to seek redress against lenders and brokers through low-cost EDR.

Section 47 in the National Consumer Credit Protection Bill 2009 sets out the high level conduct requirements for licensees, including the requirement for systems to manage conflicts of interest, systems to meet compliance requirements, and internal dispute resolution processes.

Section 47(1)(g) also sets out requirements for licensees to ensure that *“its representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence”*.

The wording of the sub-section implies that *all* directors and employees (see Division 2 of the Bill for the definition of “representative”) are required to be trained and competent in *all* credit activities authorised by the licence. This interpretation could

cause significant and ineffective compliance burdens on licensees and Abacus recommends that the legislation be amended to clearly provide that adequate training should be provided to representatives for the credit activities they are actually engaged in.

Authorised Deposit-Taking Institutions (ADIs) such as banks, building societies and credit unions already invest heavily in training for their staff in consumer related areas, such as credit risk assessment and management. The effectiveness of this training in credit unions and building societies is clearly demonstrated through the exceptionally low levels of non-performing loans on their lending books.

Given this performance, it would be counterproductive for consumers and cause significant compliance costs for mutual ADIs if they were required to change effective existing training programs to fit into inflexible guidelines developed under the new legislation.

Section 47(1)(g) is broad and is one of the areas that will be subject to interpretation by ASIC. Whilst guidance from the regulator can be a useful tool for some licensees, it is critical that the competency and training requirements set down in the ASIC guidance are flexible, giving institutions the ability to formulate tailored training programs according to their size and complexity and the nature of their lending activities.

Credit unions and mutual building societies already train their staff to assess credit applications responsibly and ethically. The evidence from the extremely low arrears experienced by the sector proves that these internal training policies are effective and would easily meet the general conduct requirements envisaged under Section 47(1)(g).

It is critical that any guidance in relation to training and competency requirements be sufficiently flexible, and essentially facilitative rather than prescriptive, in order to allow for different approaches by different institutions whilst still meeting high-level competency standards that will assist in consumer protection.

Abacus is particularly concerned that the Bill does not adequately distinguish between employees on credit licensees, instead placing the training burden universally on all employees and directors universally regardless whether or not they are involved in credit-related activities.

Similar concerns exist in terms of how ASIC will interpret the various requirements under the responsible lending framework, notably the credit assessment and suitability assessment.

Abacus believes that the Bill in its current form lays down a solid platform for the regulation of the consumer credit framework. The success of that framework however will come down to how it is implemented by the regulator. If ASIC repeats the mistakes experienced in the implementation of the FSR reforms through the formulation of highly prescriptive, ineffective and inflexible "back door regulation", then consumers and lenders will be poorly served. We note and welcome ASIC's commitment to proper consultation with industry on the proposed regulatory guidance papers.

Penalties

Abacus believes that many of the penalties and sanctions as articulated in the Bill are excessive and will in fact have a negative impact on consumers by altering the arrangements as currently operate through the Uniform Consumer Credit Code (UCCC) that allows institutions to voluntarily identify their breaches to increase their standing before the law.

Whilst it is important that there are sufficient sanctions and penalties within a regulatory regime to ensure that there is motivation to comply and to provide regulators with the necessary tools, it is also important that sanctions and penalties are appropriate to the nature of the breach. The risk with too onerous a penalty regime is that it prevents institutions from "confessing" to breaches and rectifying consumer detriment of their own accord.

Although the government has made some amendments to the penalties as outlined in the Bill, the standard penalties still include criminal sanctions and civil penalties including up to five years prison and fines of \$1.1 million for even very simple breaches that do not necessarily have any element of consumer detriment.

This approach runs counter to some of the most effective aspects of the Uniform Consumer Credit Code that allows institutions to identify breaches of the Code, rectify any consumer detriment and have their actions considered by a Court as an ameliorating factor in determining any penalties payable as a result of that breach. This is a far more preferable approach than the combative and defensive approach caused by excessive penalty regimes.

Next Steps

Abacus now looks forward to engaging with the government on the key proposals as outlined in Phase 2 of the credit reform process. Abacus believes strongly that the focus on fringe and predatory lending in phase 2 is important.

Abacus is confident that the Mutual Banking Code of Practice (MBCOP) will meet the government's proposed conduct arrangements relating to these issues during Phase 2. The MBCOP, which commenced on 1 July 2009, is the code of practice for mutual ADIs. The MBCOP is a strong statement of the value credit unions and mutual building societies place on the financial wellbeing of their members and communities.

Thank you again for the opportunity to comment on the Senate Standing Committee on Economics Inquiry into the National Consumer Credit Protection Bill 2009 and related bills. If you have any questions in relation to this submission, please contact Matt Gijselman from Abacus Public Affairs on 02 8299 9048 or email mgijselman@abacus.org.au.

Yours sincerely



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