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Mr Tim Bryant
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

via: corporations.joint@aph.gov.au

INQUIRY INTO CONSUMER CREDIT AND CORPORATIONS LEGISLATION AMENDMENT (ENHANCEMENTS) BILL 2011

The Australian Finance Conference (AFC) appreciates the opportunity to make a submission to the Inquiry. By way of background, the AFC was formed in 1958 as the national association of finance companies and has evolved into a non-institutionally-based financial services association. Our Membership includes financiers involved in the bank as well as the non-bank sectors of the market. A current membership list is attached. AFC credit provider member companies provide the full range of lending financial services in both the consumer and commercial market. A range of the reforms contained in the Consumer Credit & Corporations Legislation Amendment (Enhancements) Bill 2011 [the Bill] are particularly relevant to their consumer business.

The AFC has been participated in Treasury consultation on the National Consumer Credit Law reforms, including this Bill, through our representation on the Main Industry and Consumer Group Forum. Matters contained in the Bill as currently drafted raise concerns for our Members that we appreciate being able to re-raise through the Committee process.

Our intention is to identify key area of concerns in this letter and follow with a later submission containing a more detailed explanation of these.

KEY ISSUES:

POLICY

We acknowledge that the Government's focus with the reforms proposed in the Bill is largely to protect the vulnerable consumer or consumer in financial distress. As a matter of principle, the AFC recognises and supports moves by Government to address identified consumer risk or detriment. We remain concerned, however, that the particular risks with current regulation for the consumer demography intended to benefit from these reforms remains unclear.

The Phase 1 National Consumer Credit Law [NCCL] reforms (including the changes introduced to the hardship provisions as part of the transfer of consumer credit regulation from the States to the Commonwealth and enactment of the NCC, together with the licensing obligations and compulsory membership of an ASIC-approved EDR Scheme) and the unfair contract terms provisions under the Australian Securities Investment Commission Act, are relevant to considerations of whether further enhancement of the National Credit Act (including the National Consumer Credit Code [NCC]) is required. Given the majority of the NCC Law changes effectively commenced from 1 July 2010 (a little over 12 months ago), we submit that further amendment of the NCA may be premature.

The AFC recommends that the Phase 1 reforms be given a chance to bed-down and following a reasonable time to take effect that empirical research should thereafter be undertaken to determine

whether these reforms have achieved the underlying policy of protection of the vulnerable consumer and to identify areas where further reform may be required.

As has been the view expressed by the AFC over a number of years including the pre-NCC management of consumer credit regulation by the States through to recent consultation following transfer to the Commonwealth, a significant part of the underlying policy with vulnerable consumers and those in financial distress is one of social and income inequality. This is because some consumers are forced to borrow to meet pressing basic needs, not because the poorest consumers pay more for credit or face the prospect of over-commitment through the use of credit as often alleged. Consumers with limited income and resources have no choice other than to borrow to meet basic needs. No amount of regulatory responses to credit provision will change this situation. In fact the unintended outcome of a regulatory response may be to make credit more difficult or expensive to get, thereby resulting in the exclusion from the credit market of low income earners or those with poor credit ratings. As a result, these consumers may resort to other sources of credit, including unregulated sources. In effect, the outcome of the regulation will be to harm rather than protect consumers and to cause a market failure.

The AFC is concerned that what are intended as NCC enhancements in the Bill to protect vulnerable consumers and those in financial distress introduce significant compliance frameworks, increase regulatory breach risk and potentially adversely impact on legitimate, commercially sound businesses; consequences which have flow-on economic effects which are at best questionable without clearly identified consumer protection benefits.

COMMENCEMENT DATE

The reforms detailed in the Bill are potentially significant for AFC members and others providing consumer credit. We would therefore urge the Government that the proposed timeframe contained in the Bill for implementation of these reforms be reviewed and revised in the context of the implementation period for significant NCCL Phase 1 reforms, the 1 January 2012 commencement of Home Loan Key Fact Sheet obligations, the 1 July 2012 commencement of a raft of reforms in the regulation of the credit card product, competing demand from government and others for response on a range of other major regulatory reform initiatives (eg personal property securities, privacy, e-commerce, taxation) and the challenging economic conditions currently confronting the industry.

SPECIFIC TECHNICAL ISSUES

Hardship provisions:

The AFC is concerned that the proposed amendments to the hardship provisions are beyond the policy intent of the Government, fail to provide an appropriate off-set to compliance rigidity and operating risk for the financier to balance the greater accessibility and flexibility proposed for the consumer in financial hardship and may cause consumer detriment (eg through loss of value of secured assets to off-set outstanding debt) by imposing delay on enforcement proceedings.

Small amount lending & caps on small amount credit contracts

The AFC is concerned that, contrary to recommendations including by the Victorian Government in the report published on conclusion of its Small Amount Lending Inquiry 2008, regulatory options, other than a cap inclusive of fees and charges, that have been implemented under the NCCL Phase 1 reforms (eg licensing, mandatory membership of an external dispute resolution scheme, responsible lending obligations) have not been given a chance to take effect and be tested for areas of failure as a pre-cursor to inclusion of these amendments in the Bill.

Cap on credit contracts provisions more generally

The AFC acknowledges a sound policy basis for the exemption for bridging finance products from the cap and supports its inclusion.

However, the AFC is concerned that the cap proposed for credit contracts generally is flawed particularly because the parameters of what is to be included in cap calculations remain too broad and uncertain for providers of consumer credit to be able to clearly determine whether their products are affected or not.

While supporting an exemption for ADIs from the cap, the AFC seeks a level playing field by the application of the exemption to other mainstream providers of credit. We submit that, like the split commencement regime for responsible lending, the appropriate categorisation of these providers are registrable corporations (RFCs) as defined under the Financial Sector (Collection of Data) Act 2001.

Responsible Lending – Amendments

The AFC is concerned that the proposed amendments to the Chapter 3 NCA responsible lending provisions to address concerns with representations are beyond the policy intent of the Government and introduce additional compliance obligations and regulatory risk in the credit assessment process which are not justified.

Voting at AGMs – Schedule 7

We note the proposed amendment to the Corporations Act relating to voting at AGMs of public companies contained in Schedule 7 of the Bill. This issue is relevant to a number of our Members given their public company status and their remuneration reporting requirements. We understand that the amendment is one of clarification and the AFC supports its inclusion. .

AFC would be pleased to assist the Committee with additional information, as required.

Yours truly

Ron Hardaker
Executive Director

(Attachment: List of AFC members)



AFC MEMBER COMPANIES

Advantagedge Financial Services	Nissan Financial Services
Advance Business Finance	Once Australia t/as My Buy
Alleasing	PACCAR Financial
American Express	Pepper Australia Pty Ltd
ANZ t/as Esanda	Provident Capital
Automotive Financial Services	Profinance
Bank of Queensland	RABO Equipment Finance
BMW Australia Finance	RAC Finance
Branded Financial Services	RACV Finance
Capital Finance Australia	Resimac Limited
Caterpillar Financial Australia	Ricoh Finance
CNH Capital	RR Australia
Collection House	Service Finance Corporation
Commonwealth Bank of Australia	Sharp Finance
Credit Corp Group	SME Commercial Finance
De Lage Landen	Solar Financial Solutions
Dun & Bradstreet	St. George Bank
FlexiGroup	Suncorp
Ford Credit	Suttons Motors Finance
GE Capital	The Leasing Centre
Genworth Financial	Toyota Financial Services
GMAC	Veda Advantage
HP Financial Services	Volkswagen Financial Services
HSBC Bank	Volvo Finance
Indigenous Business Australia	Westlawn Finance
International Acceptance	Westpac
John Deere Credit	Wide Bay Australia
Kawasaki Finance	Yamaha Finance
Key Equipment Finance	
Komatsu Corporate Finance	
Leasewise Australia	<u>Professional Associate Members:</u>
Liberty Financial	Allens Arthur Robinson
Lombard Finance	CHP Consulting
Macquarie Equipment Rentals	Clayton Utz
Macquarie Leasing	Dibbs Barker
Max Recovery Australia	EDX Australia
Members Equity Bank	Henry Davis York
Mercedes-Benz Financial Services	