

14 October 2011

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insurance  
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The Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

**BY EMAIL TO [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)**

Dear Sir

**Inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011**

Thank you for the opportunity to make a submission to the Committee in relation to the abovementioned proposed legislation.

Aussie operates as a mortgage broker, mortgage manager and sells its own branded loans; consequently we are very interested in legislation which impacts these businesses.

**Our submission**

**1. National Consumer Credit Protection Act 2009 (NCCP Act) - s72 Changes on grounds of hardship**

- If a debtor is unable to meet his or her obligations, the proposed change gives the debtor the option to provide the credit provider with an oral or written hardship notice of the debtor's inability to meet the obligations.  
Due to the compounding interest costs, it would benefit the debtor to provide the credit provider with the hardship notice as soon as the debtor is aware of the inability to meet the obligation, consequently a mandatory obligation for the debtor to make the hardship notice may encourage earlier notification of hardship situations.
- We are concerned about the proposal to remove the cap of \$500,000 for changes on the grounds of hardship to apply, which means that borrowers of any amount can make a hardship application. Our concerns are heightened because this extension applies to loans secured by residential investment properties. We recommend that the statutory right should continue to be limited to loans of \$500,000. Alternatively and if our submission does not find favour, we submit that the right should only be unlimited when the loan is secured over the borrower's principal place of residence. It is important that lenders have commercial certainty on large investment loans. Borrowers already have sufficient protection under new laws in any event without the need to provide defaulting borrowers with additional mechanisms to further delay the recovery process.

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## 2. NCCP Act - s74 Changes by court

- Under the proposed section 74(2), it appears that a court (which will include for practical purposes an EDR scheme) may vary a contract but not so as to reduce the amount ultimately payable. This is a significant change from the current situation where any variation could not extend the loan term, nor deprive the lender of interest. Any order could only adjust the payments to address the borrower's difficulty. The proposed change will permit reduction of interest and extension of term. Any extension beyond the current regime is unnecessary to protect consumers and may create significant problems for financiers which utilise securitisation programs to fund loans, and this may result in increased interest rates and prevent some borrowers from obtaining a loan.
- It is important to set our comments in context. We understand an increasing number of disputes are being referred to the two ASIC approved external dispute resolution schemes (Financial Ombudsman Service and Credit Ombudsman Service Limited) and it appears that some of these references are being made just to buy time, and not because there is a genuine dispute.

Once a hardship notice is given to a lender, the lender cannot commence enforcement proceedings until 14 days after the response to the hardship notice. However, if the matter is then referred to an EDR scheme, the matter can be placed in abeyance for many months while the scheme deals with the application. This is an unnecessary and inappropriate result.

To provide balance and fairness, EDR schemes should be mandated to determine hardship matters within 60 days of reference, failing which any standstill of enforcement action should lapse.

## 3. NCCP Act - s94 Postponement of exercise of rights

- Under the proposed s94(3) whereby if a lender receives a postponement application, the lender must not begin enforcement proceedings until 14 days after giving the response to the postponement application. Further delays will arise if the issue is referred to an EDR scheme. To put this in context, this is an application for postponement to the enforcement of a mortgage after default, and after a 30-day default notice. Allowing this situation to operate for more than two months after the referral to an EDR scheme is inappropriate for the reasons discussed in 2 above in relation to hardship applications.

As also indicated in 2, EDR schemes should be required to determine postponement matters within 60 days of reference, failing which any standstill of enforcement action should lapse.

- The delays at the EDR stage (which can run into many months) are a cost to both industry and consumers. Consumers can find their interest bill mounting very quickly whilst the dispute is considered, and eventually be left with a bigger problem than when they started out. Prompt resolution of EDR disputes is essential for both consumers and industry.

**4. NCCP Act - New s180A Orders to remedy unfair and dishonest conduct by credit service providers**

- We welcome the proposed s180A which allows courts to make orders to address any unfair or dishonest conduct by finance brokers and mortgage brokers. Aussie supports the highest standard of conduct by participants in the industry.

We would be pleased to provide any further information on the above discussed matters.

Yours sincerely

Stephen Porges'  
Chief Executive Officer