National Australia Bank

SUBMISSION 3

National Consumer Credit Protection Amendment (Credit Cards and Home Loans) Bill 2011

House of Representatives Standing Committee on Economics

National Australia Bank
20 May 2011

nab MLC Clydesdale Bank Yorkshire Bank Bank of New Zealand Great Western Bank

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The Hon. Craig Thomson MP
House of Representatives Standing Committee on Economics
Parliament House
CANBERRA ACT 2600

Dear Chairman Thomson

The National Australia Bank (NAB) welcomes the opportunity to provide our comments to the Committee on the exposure draft *National Consumer Credit protection Amendment (Credit Cards and Home Loans) Bill 2011* and to provide suggested improvements.

NAB is a financial services organisation with over 40,000 employees, operating more than 1,800 branches and service centres, and responsible to more than 460,000 shareholders. We operate major financial services franchises in Australia, and businesses in New Zealand, Asia, the United Kingdom and the United States. Each of our brands is uniquely positioned but built on a common commitment to provide quality products and services, fair fees and charges, and relationships built on the principles of help, guidance and advice.

For sometime now, NAB has been seeking change based on real, measurable and tangible benefits for our customers. This agenda is about providing a fairer value exchange between us, our customers, our people, our shareholders and the broader community.

Under our *Fair Value* agenda, we have undertaken a number of initiatives, including the removal of a range of bank fees and giving the disadvantaged better access to financial services. These changes are not a marketing gimmick or for the short term, they are integral to NAB's long-term business model. They are unashamedly strategic, commercial, and part of a game changing agenda.

In specific relation to Credit Cards and Home Loans, we wanted to further encourage confidence and gain trust from consumers. We removed the overlimit fee on our personal credit card range and reduced the late payment fees. Similarly, on January 14 this year, we reformed the processes around credit cards so that customers pay off the transaction with the highest interest rate first. We did this for all customers, new and existing, and we did it without Government Intervention.

NAB was broadly supportive when the Government announced during the 2010 Federal Election Campaign that it intended to reform Credit Card Lending as part of the National Consumer Protection Reforms, and was intending to deal with overlimit fees and payment hierarchies. We thought this was an opportunity for all Australian credit card holders to benefit from the changes we had already made (or planned to). Again, when the Government's *'Competitive and Sustainable Banking System'* package was announced in December 2010 and it planned to accelerated the government's election commitment to credit card reforms and also made provision for the home loans KFSs, we were supportive.

However, despite NAB's strong support for elements of the Policy, and the extensive consultation process leading to this inquiry, we retain significant concerns with the Bill and with the planned Regulations. Unfortunately, we don't believe that the Bill will result in better outcomes for consumers than what our own NAB customers already benefit from. In fact, we assert that some provisions in practice will result in confused outcomes for our consumers and increase the risk of consumer complaints. For example, if we were to

implement the reforms as they are currently drafted, a perverse policy outcome would result where we would have to start charging our customers more money under the Payment Hierarchy changes and would need to explain the reasons why.

In addition, NAB is a major investor in, and supporter of the broker and third party intermediary channel. Furthermore, we strongly support the level playing field, fair value and consumer value that brokers and other third party credit assistance providers bring to the mortgage industry. The potential for the Mortgage KFS proposal outlined in the draft Bill to significantly disadvantage brokers, and hamper the ability for third party service providers to provide an equal customer service experience to direct lenders, is particularly concerning.

As currently drafted, the reforms will present substantial business/legal risks and operational concerns for the bank. Given the massive increase in compliance obligations and fear of steep criminal penalties for basic administrative processes, we believe there will be a shift in the market that disadvantages the smaller players and decreases the ability of the market to be flexible and innovate. NAB will specifically have to retrofit the changes we have already made with a multitude of system, process, communication and training changes that come with extremely high legal and business risk – at significant cost.

NAB has offered numerous suggestions for improvement and has outlined a path for reform. Through our actions, customers have obviously benefited. Considering this, we are disappointed that the Bill does not recognise or seek to reinforce the tangible benefits of these outcomes.

Accordingly, we have provided the Committee with a list of our concerns and recommendations that we believe will improve and simplify the Bill, enhance consumer protections, minimise the risk of unintended consequences, and reduce the compliance and burden for credit providers.

We would be happy to provide further information on the comments made and recommendations offered within this submission.

Yours sincerely,

Dallas J McInerney
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National Australia Bank

Concerns & Recommendations

1. Crucial Consumer Protections will apply to new customers from commencement only - leaving existing customers unable to benefit.

All NAB Credit Card and Home Loan Customers already benefit from our changes under *Fair Value*. The Bill does not extend the planned changes to overlimit fees and payment hierarchy changes to existing customers. From the planned commencement date of 1 July 2012, only new credit card customers will benefit from these reforms. The rationale behind whether any of the reforms should or should not extend to existing customers has not been provided, nor has it been included in the Regulatory Impact Statement (RIS). We assume the reason these specific reforms are not planned to extend to existing customers is that Treasury has received Legal advice based on a potential "constitutional" issue with section 51(xxxi) (acquisition of property must be 'on just terms').

Recommendations:

(1) Amend the Bill so important reforms around overlimit fees and changes to payment hierarchies apply to new and existing customers from commencement.

(2) NAB would ask the Committee to seek disclosure of this Treasury/Government Legal advice. If there is then a clear and persuasive question around revenue from fees being classed as "property", we would ask you to consider whether it is possible for the new laws to apply to existing contracts but only in relation to new transactions. It is hard for us to understand how "property" could be taken over transactions that have not yet occurred.

2. Significant complexity and confusion will result from changes to the overlimit processes, including the automatic right for customers to get 10% more credit.

NAB has contended that the issue here was always clearly about the overlimit fee, i.e. across the industry, customers can already nominate a hard limit. Having removed the overlimit fee, NAB doesn't receive complaints now about overlimits. Customers can already opt-in to a hard limit and advise the bank they do not want any over limit transactions approved.

We believe any regulatory response should concentrate on the fee itself, given our research shows that the overlimit service is seen approvingly (customers want to be able to go over their limit when needed). We would note that by not charging overlimit fees, we gave up revenue that our competitors are still reaping. We would also note that generally, overlimit fees are charged to those who are least able to afford them. Therefore, NAB supports the abolition of overlimit fees across the industry. The Bill manages this in part (and then only for new customers) due to the introduction of a maze of obligations, limit alternatives and compliance requirements that will not be easy to explain to customers or implement for credit providers.

However, if the policy response remains attuned to the service of going over the credit limit, we are not opposed to an "opt-in" provided it is dynamic and flexible, and allows a consumer to opt-in at any time by any means, i.e. phone, text, email etc. This needs to be explicitly written in the legislation itself so we can avoid delays with ASIC interpretation.

Alarmingly the Bill entrenches a 10% automatic limit increase for all customers as a result of poor drafting. Section 133BI(2) states that the default buffer automatically applies to a credit card contract unless the consumer has elected not to have the default buffer apply. As drafted, it is very clear that a credit provider will have no option but to have a default buffer facility of exactly 10% available to customers, even though the bank has the discretion to

approve or reject over limit transactions, unless the customer has opted out. Without amendment, every credit card holder will receive an automatic entitlement to 10% additional credit. This is clearly an unintended consequence and requires a change.

Despite assertions from Treasury, the Bill does not provide a bank discretion to decide whether to have the default buffer facility itself, or a buffer of less than 10%, because it is the customer that determines if the buffer is not to apply to their contract (by opting-out). The bank's only discretion is whether to allow any over limit transactions within the legislated 10% buffer facility.

What we are left with is a Bill that mandates that a credit provider has to offer customers more credit. Consequently, if we do not offer the 10% buffer we will be breaking the law (or even one lower than 10%). If we decline a particular over limit transaction, we are likely to face customer complaints because the customer will regard the buffer as an entitlement and will require reasons as to why the transaction was declined.

Further, the Bill introduces a complex and confusing 3-tiered overlimit process that will be very hard to manage and explain to customers. There will be a "Default Buffer", an optional "Hard limit" and an optional "Supplementary buffer". These variations are not needed. A hard limit option already exists. Credit Providers can already, at their discretion, allow a customer to exceed their limit temporarily for small amounts depending on their risk profile – this captures the "$2 over at the grocery aisle" or the "offline transaction scenario where our systems aren't able to pick up on the transaction immediately". The Bill's third option of a supplementary buffer only exists to allow credit providers to continue charging an overlimit fee – but even that provision in the Bill is intended to be capped at just 5% more than the 10% buffer – rendering it almost completely redundant (a fee will only be able to be charged for the 5% over the 10% - it will not include the 10%).

The Bill also mandates that a credit provider must notify every customer when their use of credit card is in excess of their agreed credit limit (Schedule 1, Division 5 (section 133BM)). While we don't disagree with this requirement, it must be able to be met easily and be limited in a way that we can meet practically and also in a way that doesn't cause inconvenience or bother for customers. For example, the requirement needs to be limited to once per statement cycle, allow adequate time for a customer to correct the balance after purchase, and the reform should allow that the notification be sent in a neutral technology way (either directly on their Credit Card Statement, or by any other means).

Recommendations

(1) Extend the prohibition on charging overlimit fees to ***all customers, new and existing***. NAB has already done this and this would simplify the Bill and negate all the confusion.
(2) Allow customers to opt in to a fee-based over limit transaction service. Thereby implementing the original election commitment that "consumers are not charged over-limit fees unless they specifically agree that their account can go over the limit".
(3) Retain the right for customers to opt-in to a hard limit and advise their bank they do not want any over limit transactions approved. However, there are some transactions that cannot be blocked because they might occur off-line or are the result of contactless card transactions, so therefore we acknowledge these may need to be expressly carved out in the regulations in order to avoid the penalties. These are not currently carved out in the Bill itself (reliant on Regulations), so failing to block them (which we can't) would result in criminal penalties.
(4) We don't see the need for a Default Buffer at all. Any reference should be replaced by option 2 and 3 above. For those customers who have not opted-in to a hard limit or a fee based over limit transaction service the bank can exercise their discretion to allow a customer to go over the limit, without a fee, provide the bank is satisfied of the credit

risk in doing so. A fee free residual discretion can therefore be retained for customers who do not opt in to either option 2 or 3 without the need for legislation.

(5) The Notification requirement for when customers exceed their credit limit should be able to be met if a credit provider alerts customers explicitly to this on their next Credit Card Statement. It should also be limited to once per Statement cycle. However, if it needs to be more immediate, it needs to be able to be met in a technology neutral way and balanced with consumer convenience (i.e. mail, telephone, SMS, email, etc).

3. Changes to the way interest is charged according to a hierarchy of highest to lowest balances and may act to the detriment of the customer.

We believe we have met this election commitment as it was intended and did so well ahead of the industry at considerable time and expense. These changes went live on January 14 2011 and were well communicated to our customers. We are applying payments in order of:

1. Statemented interest, fees and charges
2. Statemented cash advances, purchases and balance transfers in order of highest to lowest annual interest rate
3. Unstatemented cash advances, purchases and balance transfers in order of highest to lowest annual interest rate
4. Any other amounts on customers accounts

We decided to allocate payments to interest, fees and charges first because we believe this is a more transparent, easier to understand, and fairer approach for customers. We do not charge interest on fees and charges as others do. The Bill will not allow us to continue to do this for our customers. It will require us to treat fees and charges with the rest of the balance - thus increasing costs for our customers. Any departure from our current practice will need to be communicated to customers and explained.

We are also concerned that the strict and inflexible payment hierarchy changes required by the legislation will act to the detriment of customers in some circumstances. As an example, a customer has a 0% Balance Transfer expiring in one week and a special purchase rate of 10% p.a. going for another year. At present the Bill would require any payment to be applied to the special purchase rate transaction. Given that the Balance Transfer will soon expire, it would be in the customer's best interest to have this applied to the Balance Transfer.

Recommendations

(1) Make the payment hierarchy to apply to ***new and existing customers***.

(2) Amend the legislation to include an exception to allow our current practice to apply (where fees and interest are treated separately) as it is less expensive for our customer base.

(3) Allow a credit provider to pay off transactions that have appeared on a statement before transactions that have not yet appeared on a statement. Do not explicitly require this to be done as the inflexibility may act to the detriment of the customer.

(4) Allow flexibility to provide for banks, to differentiate their products and depart from the standard if it can be reasonably shown to be in customers' interest (acknowledging the complexity of such assessments).

4. The introduction of severe civil, criminal penalties and strict liability provisions for very basic administrative functions that will distort the market and make compliance very difficult.

The Bill was released as an Exposure Draft in March on a Thursday afternoon with comments expected back by the following Monday. During the two days of consultation, we were very alarmed at the introduction of extremely serious offences for breaches; for example, strict liability offences relating to over-limits, credit limit offers and key fact sheets. These penalties were introduced without any discussion, without any rationale for the necessity of including strict liability offences relating broadly to very basic administrative functions.

As argued by the ABA, the Government has previously commenced a review of sanctions within the Corporations law with a view to revising certain provisions and removing disincentives for the implementation of best practices. The introduction of strict liability offences is contradictory to the intent of this review. It also sets a dangerous precedent.

Furthermore, it is not clear whether the civil, criminal and strict liability offences operate separately or cumulatively or the level at which liability operates. For example, a branch staff member could be liable for filling out a KFS form incorrectly or a Call Centre staff member could be liable for not ticking a box in a system making a record of consent to receive a Credit Limit Increase offer.

As a company we would not allow our staff to be impacted upon by a criminal penalty. However as ASIC have very strict requirements around compliance, a breach of this provision would result in a failure to meet those requirements and would impact staff performance outcomes, financial incentives and, in the case of multiple failures, potentially ongoing employment (provided of course that multiple warnings were provided). Training will not suffice. You can provide multiple ways to train staff on how to tick a box, but due to pressure, time, distraction, etc, one small mistake and the law will be broken. The financial penalties are also huge. These provisions go too far and do not justify the potential problem for customers.

We have also alerted Treasury to concerns about how these penalty and strict liability provisions work in relation to key obligations in the Bill. For example, section 133AC states that a credit provider's website must provide capacity to generate key fact sheets (KFS) on standard home loans. Consequently, it would be a breach of section 133AC(2) if a licensee has a website, and does not provide capacity to generate a KFS that contains all the stated requirements. Therefore, if the tool fails to meet the Bill in any way, credit providers would effectively need to shut down their entire website in order to avoid the penalties under section 133AC(3) and the strict liability offence contained in section (4). For a company like NAB whose mortgage offering is just one piece of our operations, to close down our entire website for a minor fault with the Mortgage KFS creates an unacceptable commercial risk.

Recommendations

(1) Remove the strict liability provisions and limit the criminal liability provisions – they do not match the mischief, are not justified, and will result in dramatic compliance costs and impacts on our staff.

(2) Should the penalties remain, amend the Bill so that it is clear that "a person" means the entity and that the penalties operate separately rather than cumulatively.

(3) Either way, request that a full Regulatory Impact Statement be released that clearly articulates and justifies these penalty provisions and the compliance costs they will require.

5. Timelines around the commencement of the Mortgage Key Fact Sheet (KFS) which are completely inadequate and do not reflect the true nature of what the KFS will be (or its importance).

Despite NAB's support for the concept of the Mortgage KFS, we have some concerns around the timelines and distribution model for this proposal.

Currently the Bill requires the Home Loan KFS to be available from 1 September 2011. Yet, we haven't worked out or been told what the KFS will contain, what it must look like, or how it will cover Fixed Rate Loans, Lines of Credits, etc. The Regulations that will deal with these issues won't be finalised until the end of June (planned) and we haven't seen any draft.

The current commencement date hardwired into the Bill of 1 September 2011, means that we will have just 2 months from the release of the final Regulations to design and test systems, train staff, and implement the changes. The industry requires at least 12 months from the finalisation of the regulations to implement KFS provisions. We only have a limited number of windows each year to make system changes. This timeframe is particularly relevant given there are strict liability and criminal penalties attached.

The Bill currently provides that the credit provider is the party that is obliged to provide the KFS, and does not allow any other party, such as a broker or mortgage manager, to provide the document to a customer on behalf of the credit provider.

The Bill therefore puts credit assistance providers such as brokers or mortgage managers at a unique service disadvantage in comparison to direct lenders. At the point in time in which a broker or mortgage manager provides credit assistance, the credit provider does not know the details of the applicant or the application. If the Bill stays the way it is, a broker or mortgage manager would have to perform all of its credit assistance activities, assess the customers needs and objectives and take all the information required in an application form, and then, prior to submitting the application, contact the credit provider and allow the credit provider to provide the KFS directly to the customer, before the customer is able to make an application for the loan via the broker or mortgage managers.

The customer experience with a broker or mortgage manager is therefore always going to be slower and less efficient than a direct lender, putting the broker market at a direct disadvantage to direct lenders. It also gives credit providers an opportunity to offer a loan directly to the customer without acknowledging or attributing any value to the work of the broker or mortgage manager.

The problem is further exacerbated for mortgage managers. Mortgage Managers are in a unique position where they in fact are delegated by the credit provider the right to set some of the loan features for a customer, including rates, fees, and in some cases certain product features. A credit provider will not know these details until the loan application is submitted to the credit provider. The "white labelling" of the mortgage management model is designed so that the credit provider does not directly contact the customer, and the mortgage manager is the face of the lender and the customer's experience. Most mortgage manager credit providers deliberately do not have websites or customer interface - the model is based upon the mortgage manager being the contact point for the customer. It is almost impossible to see how a mortgage manager could comply with the Bill as presently drafted, without removing the very value proposition that the mortgage management model is built on: personalised services and end to end servicing from your local full service mortgage manager, rather than a centralised credit provider.

The proposals contained in the draft Bill appear unworkable from a broker or mortgage manager's perspective. If the draft Bill was amended so that the KFS was able to be

distributed by mortgage managers or brokers on behalf of credit providers, then mortgage managers or brokers would not be prejudiced by the proposed draft Bill. The liability to provide the KFS could remain with the Credit Provider but we propose that the draft Bill be amended to allow brokers and mortgage managers to be able to discharge this obligation on their behalf.

Alternatively, the Bill could be amended to allow brokers or mortgage managers to meet the obligation to provide a KFS by providing a link to a credit providers' website (which could be branded appropriately) in order to provide a KFS on behalf of the credit provider. Given that many brokers are small business with limited IT resources, this could impose a significant burden; particularly those who regularly visit clients in their homes and may not have portable IT resources available. This could be further disadvantaging brokers who offer an important function in the market to promote and encourage competition. It would also provide additional support for our argument that the legislation needs a significantly longer lead time before introducing significant IT changes across the industry.

In all of this, we ask the Committee to recognise the Mortgage KFS for what it actually is. The KFS is simply a print out from an online Home Loan Calculator. It is nothing more. It is based on what a customer punches into a website. It isn't a real assessment of loan adequacy and won't be a true reflection of what a customer can get. The law does not reflect this reality and assigns obligations and penalties that are not justified. In particular the current proposed forms of KFS does not make this clear to a customer, and could in fact mislead a customer that the loan outlined in the KFS would in fact be approved and made available to a customer.

If a customer prints off this KFS and takes it into another credit provider, we will all know that the KFS is not based on any real assessment, and thus it will have very limited value. Having said that, there is merit in the concept, and we'd support some sensible amendments, such as de-personalising the KFS and making it clear that is a point-in-time snapshot of key features and interest rates. We specifically require comfort that the 'mandatory' contents (to be included in the outstanding regulations) will not have the potential to mislead our customers or potential customers.

Recommendations

(1) The Bill should be amended to effect a commencement date of at least 12 months after the Bill has been enacted and the final regulations have been Gazetted (Remember these are yet to be drafted).
(2) The Home Loan KFS should be non-personalised and the required information simplified in order to clearly suggest to a customer that it is indicative and a rough guide to facilitate simple and rudimentary comparisons with appropriate disclaimers. This will reflect the true nature of what the KFS is - a print-out from an online calculator and not a real assessment of loan suitability.
(3) To clarify the role of third parties such as brokers and mortgage managers, the Bill should be amended to make it clear that a credit provider is able to discharge its obligation under these amendments through a third party fulfilling the obligations on its behalf, and by the credit provider taking reasonable steps to ensure that the third party complies with those obligations. Alternatively, the obligation in s133BD could be cast differently. For example, it could be sufficient that the KFS is made available to a customer - either via a website of the credit provider, a link to a credit providers' website (for Mortgage Managers), or directly (by Mortgage Managers) - rather than must be directly provide by a credit provider to a consumer. In this way, a consumer could make their own inquiries at any time much like website calculators do now.

6. The requirement to provide a Credit Card Key Fact Sheet (KFS) to be included with the application is onerous and is not the most effective or efficient form of provision.

Currently Division 3 of the Bill requires a credit provider to make available to consumers an application form which includes an up-to-date Key Facts Sheet for the contract. The requirement is subject to strict liability provisions and criminal penalties. The requirement will require us to pulp every application form in circulation with every change. It would be much easier and more effective to make the Credit Card KFS available on our website or by phone request and include a reference to it in general marketing material.

Recommendation

(1) Amend the Bill to allow a credit provider to meet its obligations if the Credit Card KFS is provided online and made available for download, or by phone request.

7. A proposed prohibition on all generic marketing that has the effect of even suggesting a customer apply for a Credit Limit Increase (CLI) goes much further than necessary and will prevent us from communicating with our customers.

NAB agrees that pre-approved explicit invites for additional credit limit increases are a problem for a small segment of consumers. An explicit opt-in to receive credit limit increases will further protect customers. However, we believe communicating with customers to give them the choice to increase, decrease or discuss their limit without "pre-approving" is part of good customer service and should be allowed. Customers need to be responsible for managing their finances and to do this they need to know that they can review their credit card limit as their circumstances change.

Currently, customers can opt out from receiving CLIs and other direct marketing material (in line with the direct marketing provisions of the Privacy Act) whereas the new provisions in the Bill are an opt-in process i.e. to receive 'solicited' CLIs and other written proscribed communications. The Bill itself could very easily recognise this by deeming that that existing customers have opted in, with the option in the future of opting out. This would obviate the need for opt in letters to be sent to all existing credit card customers.

Our own evidence indicates that customers who accept credit limit increase offers do not perform any worse than those who elect not to. We also note that the responsible lending obligations under the *National Consumer Credit Protection Act*, which commenced 1 January 2011 (after the Election Policy was announced) are already having an impact on how banks and other credit providers engage with customers regarding offers or extensions of credit. The practice of credit limit approvals is already tightly regulated under Responsible Lending Obligations. We do not lend to high risk customers. There are plans underway to introduce a Positive Data set of Credit performance which will allow us to verify a customers application details and help us meet our Responsible Lending Obligations (Comprehensive Credit Reporting is being managed under the current Privacy Reforms). Existing practices supported by Comprehensive Bureau would be a more cost effective solution.

We believe that the draft provision goes much further than necessary and will effectively prevent credit providers from communicating with customers regarding credit limit increases at all; even if an increased or decreased credit limit could be in the best interests of the customer. For example, during emergency and/or temporary relief situations, or on the basis of a customer's transaction history (such as if the customer continuously goes over their limit and perpetually utilizes an over-limit service).

Recommendations

(1) Reduce the scope of the prohibition on written communication regarding CLIs. Provisions should be restricted to explicit pre-approved CLI offers.
(2) Allow communication to customers about credit limit management or the ability for customers to change their existing credit limit. Section 133BE(5) should expressly exclude generic marketing materials e.g. credit providers' websites and product brochures.
(3) The deeming of consent to receive CLIs by existing customers is a reasonable and practical solution to the administrative complexity that the Bill currently creates - it would also negate the need for the regulation making power related to s133BF to be used.
(4) If however, explicit consent is required over and above this, allow consent to be obtained and captured in a technology neutral way (i.e. mail, telephone, SMS, email, etc).
(5) Allow an exception process for emergency relief.

8. The commitment to create an industry agreed standard for how interest is calculated has the potential to encounter price control concerns and not as an aid to comparability as per the election policy.

Only one credit provider deviates from an industry standard; they charge from statement date, the rest of us charge from purchase date. During the consultation process, Treasury stated that the enforcing the majority standard would result in a bad outcome for consumers and were thus favouring the minority approach to be the standard. Recently this stance may have changed, but we remain uncertain as any change is reliant on Regulation Making Powers under Section 30B, which is designed to give effect to the Government to set an agreed standard on when interest charges start to accrue and on what balances.

There is a genuine cost of providing credit from the purchase date that credit providers need to cover. If we were to be forced to provide free credit for this period, it would be very likely these costs would be recovered from impacted consumers or result in credit not readily extended to existing customer segments.

NAB has already made significant changes which have reduced the returns across the portfolio. To be forced to make this change in addition, will have a severe impact on our ability to compete. The playing field is already uneven for us due to our *Fair Value* Changes.

Recommendations

(1) The regulation making power in section 30B for how interest is to be charged is extremely broad (it covers both credit card contracts and other documents or advertisements) and allows for significant government intervention. We recommend this section be removed altogether.
(2) Alternatively we recommend that this regulation making power be redrafted, so it can't be used to implement price controls, and replaced with a disclosure model, which would provide better information about the methodology for charging interest to be provided to the customer (aiding product comparability).

9. The requirement to provide tailored warnings about making Minimum Repayments on every statement will not mean anything to the vast majority of credit card holders and the rationale for doing so ignores international best practice and is not backed by hard evidence.

While the intent of the proposals has great merit and NAB has implemented similar reforms in our UK Business, Treasury has increasingly become reliant on anecdotal evidence to justify

the reform. Treasury have not appeared to be willing to incorporate data voluntarily supplied by the industry into the discussion. Consolidated data from the 4 majors (who represent 76% of the market in Australia), indicates that we have 6% of the accounts making a minimum payment in any given month and 1% making a minimum payment for six consecutive months. This means that 94% of our customers pay more than the minimum in any given month, with most customers paying the majority of their balance:

- 6% of customers make the minimum payment in any given month
- 35% if customers always pay in full each month
- 30% of customers move between being paying in full for some months and then paying a large proportion of there balance; and
- the remaining 29% of customers pay on average 18% of their balance (well above the minimum).

Yet, the Policy has so far been interpreted by Treasury to require a warning on every customer's statement. We will be forced to implement changes at great cost that will not address just those specific consumers at high risk.

While not opposed to generic warnings for every customer, we think a targeted approach to those customers who regularly make only the minimum repayment will result in a better consumer outcome than a tailored approach for all customers (which by the way will also cost a great deal or the same amount to implement).

The suggestions from some during the consultation process that the US Model and UK Models have worked are not supported by the evidence. In fact, declines in credit card balances and defaults were more likely due to wider economic factors such as the GFC and higher unemployment. In the USA, Bankruptcy laws exempt credit card balances, so lower credit card balances may be more likely the result of these laws in the context of the GFC, than any correlation to the changed repayment warnings. A lack of any evidence undertaken on this in Australia in developing this Bill does not render a strong argument for regulation.

In February, the UK implemented a targeted approach after releasing that the "one-size" fits all approach (the exact same approach required in this Bill) has not worked as well as expected. Here are some facts from the UK:

- 27% of cardholders take advantage of the flexibility to pay just the minimum at least once a year.
- 56% say this is all they can afford this month
- 24% say they have more expensive forms of credit elsewhere
- 15% exploiting a promo offer
- 94% of the minimum payers making a conscience decision based on individual circumstance
- 3.1% make minimum payments over a 12 month period
- 1.3% make minimum payments over a 24 month period

In Australia, our better performance (1% of customers over 6 months making the minimum) is in line with our stronger economy and lower unemployment rate.

Recommendations

(1) Under the Bill, we will be forced to create messages on statements for every card holder. This will not be targeted messaging, nor will it focus on the real 'at risk' customer segmentations. We recommend that the policy should be met with the ability for credit providers to provide targeted letters to at risk customers, who make the minimum repayment, and those who only make near the minimum. We believe this will follow

international best practice and will more likely be read; as distinct from inclusion on a statement. We note it will not cost any less, but will be a more effective response.

(2) The Disclosure requirement should only capture customers who make minimum repayments for consecutive months in a row. This will result in more targeted disclosures to those at real risk rather than those who use their credit card as cash-flow tool and miss one month.