

# Chapter 1

## Introduction

### **Referral of the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011**

1.1 On 22 September 2011, the House of Representatives referred the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 to the Parliamentary Joint Committee on Corporations and Financial Services for inquiry and report. The committee initially resolved to report by 10 November 2011. The reporting date was subsequently extended to 2 December 2011.

1.2 The committee notes that on 21 September 2011, the Senate Selection of Bills Committee referred the Enhancements Bill to the Senate Standing Committee on Economics for inquiry and report by 23 November 2011. The reporting date was extended to 7 December 2011. As of the date of this report, the Economics Committee had not presented a report to the Senate.

### **Conduct of inquiry**

1.3 The committee advertised in the *Australian* newspaper. Details of the inquiry, the Enhancements Bill and associated documents were placed on the committee's website.

1.4 The committee wrote to 96 organisations and individuals inviting submissions by 14 October 2011. Appendix 1 lists submissions received from 53 individuals and organisations and lists answers received to questions on notice.

1.5 A public hearing was held on 24 October 2011, at Parliament House, Canberra. A list of witnesses who gave evidence at the hearing is at Appendix 2.

### **Acknowledgements**

1.6 The committee thanks the organisations and individuals who made submissions to the inquiry, and those who gave evidence at the public hearing.

### **Notes on references**

1.7 References to submissions are to individual submissions as received by the committee, not to a bound volume. References to the *Committee Hansard* are to the official *Hansard* transcripts available on the parliamentary website.

### **Background**

1.8 In July 2008, the Council of Australian Governments (COAG) agreed to transfer to the Commonwealth responsibility for the regulation of all consumer credit

products, including mortgages, mortgage brokering, margin lending and short-term lending (also known as pay-day lending).<sup>1</sup> COAG agreed the transfer would be implemented in two phases.<sup>2</sup>

1.9 Phase one was implemented through state and territory referral legislation, and the enactment of Commonwealth legislation that established a national framework for the regulation of consumer credit. Phase one was completed by July 2010, with the commencement of the *National Consumer Credit Protection Act 2009* (the NCCP Act), the National Credit Code, the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* and the *National Consumer Credit Protection (Fees) Act 2009*.<sup>3</sup> Further information about the NCCP Act and the National Credit Code is provided at paragraphs 1.12 – 1.16.

1.10 COAG resolved that phase two of the transfer would address identified issues with the operation of state and territory consumer credit regulations that had not been resolved at the time responsibility was transferred to the Commonwealth.<sup>4</sup> These matters include regulation of short-term lending, credit cards, store credit, personal loans and investment and small business lending.<sup>5</sup> COAG initially agreed that phase two would be completed by mid 2010. The Government has advised that in April 2010 COAG 'endorsed an amended implementation plan.'<sup>6</sup> The Enhancements Bill forms part of the implementation of the phase two reforms.<sup>7</sup> Further information about the phase two reforms is at paragraphs 1.17 – 1.21.

1.11 As a phase two measure, the Bill should be considered against the background of the broader consumer credit reforms and the existing lender requirements and borrower protections in the NCCP Act and the National Credit Code.

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- 1 Council of Australian Governments, Communiqué 3 July 2008, [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-07-03/index.cfm#financial](http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm#financial) (accessed 11 October 2011).
  - 2 Council of Australian Governments, Communiqué 2 October 2008, [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-10-02/index.cfm#regulat](http://www.coag.gov.au/coag_meeting_outcomes/2008-10-02/index.cfm#regulat) (accessed 11 October 2011).
  - 3 The Consumer Credit Code is at Schedule 1, *National Consumer Credit Protection Act 2009*.
  - 4 Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 2.4.
  - 5 Council of Australian Governments, Communiqué 2 October 2008, [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-10-02/index.cfm#regulat](http://www.coag.gov.au/coag_meeting_outcomes/2008-10-02/index.cfm#regulat) (accessed 11 October 2011); Treasury, *National Credit Reform: Enhancing confidence and fairness in Australia's credit laws – Green paper*, July 2010, p. 106.
  - 6 Australian Government, Consumer credit – COAG agreement', [http://www.treasury.gov.au/consumercredit/content/coag\\_agreement/default.asp](http://www.treasury.gov.au/consumercredit/content/coag_agreement/default.asp) (accessed 26 October 2011).
  - 7 Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 1.5.

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### *Phase one reforms – overview of the NCCP Act and the National Credit Code*

1.12 As stated in Treasury's July 2010 *Green Paper*, the phase one reforms were intended to address 'systemic and regulatory gaps which jurisdictions have long sought to address.' To achieve this, the NCCP Act and the National Credit Code introduced 'better dispute resolution mechanisms, national rules on consumer credit, and a national credit licensing system with enhanced enforcement powers administered by the Australian Securities and Investments Commission (ASIC) as a single national regulator.'<sup>8</sup>

1.13 The reforms also included the introduction of the 'responsible lending requirements'. Contained in Chapter 3 of the NCCP Act, the requirements are designed to ensure that before credit is provided a credit licensee must assess the suitability of the proposed credit product for the borrower and the borrower's capacity to repay.<sup>9</sup> As stated by the then Minister for Superannuation and Corporate Law, Senator the Hon Nick Sherry, the responsible lending requirements 'make it illegal for brokers and other intermediaries, known as credit service providers, to suggest credit for a consumer that is unsuitable based on their needs and their financial capacity.'<sup>10</sup> As stated in the Treasury's *Green Paper*, the responsible lending requirements are intended to 'lift industry-wide lending standards and further enhance consumer protection.'<sup>11</sup>

1.14 Released in March 2011, ASIC's *Regulatory Guide 209* provides details of the procedures which credit licensees must complete in order to comply with the responsible lending requirements. The guide provides the following summary.

Meeting your responsible lending obligations will require taking three steps:

- make reasonable inquiries about the consumer's financial situation, and their requirements and objectives;
- take reasonable steps to verify the consumer's financial situation; and
- make a preliminary assessment (if you are providing credit assistance) or final assessment (if you are the credit provider) about whether the credit contract is 'not unsuitable' for the consumer (based on the inquiries and information obtained in the first two steps).

In addition, if the consumer requests it, you must be able to provide them with a written copy of the preliminary assessment or final assessment (as relevant).<sup>12</sup>

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8 Treasury, *National Credit Reform – Green Paper*, July 2010, p. 1.

9 *National Consumer Credit Protection Act 2009*, s. 111.

10 The Hon Nick Sherry, Minister for Superannuation and Corporate Law, 'New national responsible lending laws', Media release 0. 38, 27 April 2009.

11 Treasury, *National Credit Reform – Green Paper*, July 2010, p. 1.

12 ASIC, *Regulatory Guide 209*, March 2011, p. 4.

1.15 A credit contract is unsuitable if it does not meet the borrower's objectives or requirements or if the borrower will be unable to meet the repayments or will incur substantial hardship in doing so.<sup>13</sup> As ASIC has noted, the responsible lending requirements apply not only to new credit contracts and consumer leases but to applications, or suggestions by a credit provider, for increased credit limits; and suggestions by credit providers that the borrower remain in a particular credit contract or consumer lease.<sup>14</sup>

1.16 The responsible lending requirements have not long been in operation. For authorised deposit-taking institutions (ADIs) and registered finance corporations, the requirements applied from 1 January 2011. For all other credit providers, the requirements applied from 1 July 2010.<sup>15</sup>

### *Phase two reforms – overview of measures*

1.17 The Government resolved to progress the phase two reforms in two stages.<sup>16</sup> As outlined in the *Green Paper*, the following measures were included in stage one:

- enhancements to the regulation of and tailored disclosure for reverse mortgages
- consideration of the treatment of consumer leases including the disclosure and linked credit requirements
- regulation of other forms of credit for personal use including peer to peer lending
- enhancements to the regulation of credit cards
- extending unjust conduct provisions to credit service providers, and
- further enhancements to the Code.<sup>17</sup>

1.18 Stage two was allocated to measures that the Government considered required 'more in depth industry consultation'. As stated in the *Green Paper*, the measures include:

- the need for regulation of the provision of credit to small business
- the need for regulation of credit for investment loans other than margin loans and residential property investments
- examination of mechanisms, including State approaches to interest rate caps, to address predatory or fringe lending

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13 *National Consumer Credit Protection Act 2009*, ss. 118 – 119.

14 ASIC, *Regulatory Guide 209*, March 2011, p. 5.

15 ASIC, *Regulatory Guide 209*, March 2011, p. 4.

16 Treasury, *National Credit Reform – Green Paper*, July 2010, p. 1.

17 Treasury, *National Credit Reform – Green Paper*, July 2010, p. 107.

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- an examination of the need for any enhancements to responsible lending conduct obligations
  - a review of the regulation of credit advertising, and
  - reform of mandatory comparison rates.<sup>18</sup>

1.19 The Regulation Impact Statement accompanying the Explanatory Memorandum to the Enhancements Bill explained that, in accordance with the COAG framework for the consumer credit reforms, phase two includes measures to address concerns with the operation of state and territory consumer credit legislation:

During the course of Phase One of the National Consumer Credit Protection reforms, concerns were raised by various stakeholders about possible improvements to specific provisions in the State-based UCCC [the consumer credit legislation], which have been replicated in the National Credit Code. It was agreed these would be considered during Phase Two of the credit reforms...<sup>19</sup>

1.20 According to the Regulation Impact Statement, the following concerns were raised under phase one.

- Provisions relating to variations of credit contracts in circumstances of hardship.
- The absence of a general remedy for unjust conduct by brokers and other intermediaries.
- The absence of restrictions on the use of certain terms, including 'impartial'.
- The limited application of the prohibitions against the door-to-door canvassing of credit.<sup>20</sup>

1.21 The Enhancements Bill contains several measures considered under both stages of phase two, including measures to address concerns identified during phase one. The Bill is one of two pieces of legislation currently introduced as part of the phase two reforms.<sup>21</sup> The other, the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*, which received Royal Assent on 25 July 2011, will, by 1 July 2012, require lenders to give prospective borrowers a fact sheet prior to entering into home loan and credit card contracts, prohibit lenders from sending unsolicited invitations to borrowers to increase credit limits, prohibit lenders

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18 Treasury, *National Credit Reform – Green Paper*, July 2010, p. 107.

19 Regulation Impact Statement, Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 9.12.

20 Regulation Impact Statement, Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 9.12.

21 Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 1.5.

from charging over-limit fees to customers who exceed their credit limit, and require lenders to allocate credit card repayments to higher-interest debts first.<sup>22</sup>

## **Purpose of the Bill**

1.22 To implement phase two reforms, the Enhancements Bill contains proposed amendments to the NCCP Act and the National Credit Code. The amendments proposed include the following.

- Cap the maximum amount credit providers can charge under both short-term small amount credit contracts and all other credit contracts excluding bridging finance contracts and credit contracts provided by ADIs, and introduce additional obligations for short-term small amount contracts.
- Hardship variations: measures to assist borrowers to vary repayments under a credit contract in circumstances of financial hardship.
- Unfair or dishonest conduct: remedies for 'unfair or dishonest conduct' by creditors in relation to credit contracts, consumer leases and mortgages.
- Reverse mortgages: measures to assist borrowers to understand the implications of reverse mortgages and changes to the acceptable terms and conditions that may apply to reverse mortgages.
- Consumer leases: measures to align the regulation of consumer leases with regulations applying to credit contracts.

1.23 The Bill also includes a technical amendment to section 250R of the *Corporations Act 2001* to clarify the effect of amendments introduced by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011*.

1.24 Through progressing phase two reforms, the Bill is intended to 'protect and improve the position of vulnerable consumers'.<sup>23</sup> The intention to address the needs of vulnerable consumers was highlighted in the Second Reading Speech for the Enhancements Bill by the Hon Bill Shorten MP, Assistant Treasurer, Minister for Financial Services and Superannuation, who stated that the measures are designed to ensure 'the balance of fairness is not lost, particularly for the most vulnerable of

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22 *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*, s. 2; Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 1.4.

23 The Hon Bill Shorten MP, Assistant Treasurer, Minister for Financial Services and Superannuation, 'New Consumer Credit Protections Introduced into Parliament', Media release 133, 21 September 2011.

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consumers'.<sup>24</sup> The measures are also intended to support 'the growth and long-term sustainability of financial services businesses'.<sup>25</sup>

### ***Views of the Senate Standing Committee for the Scrutiny of Bills***

1.25 The Senate Standing Committee for the Scrutiny of Bills (the Scrutiny Committee) has considered the Enhancement Bill.<sup>26</sup> The committee raised concerns with the following matters.

- Prescribing currently undefined defences in regulations (Schedule 2, item 10 and subclause 133DD(4)).
- Setting aspects of the formula to calculate caps on credit contracts in regulations (Schedule 4, clause 32B).
- Retrospective application of proposed amendments to section 124 of the National Credit Code (Schedule 6, item 8).

1.26 The Scrutiny Committee sought the Minister's advice regarding these matters. As at the date of this report, advice had not been provided.

### ***Possible Government amendments***

1.27 The committee notes evidence before the committee that following the introduction of the Enhancements Bill on 21 September 2011, Treasury circulated, for stakeholder comment, two draft amendments to the Bill. The committee understands that the amendments concern the cap on certain kinds of credit contracts<sup>27</sup> and the unsolicited residential sale of credit dependent products.<sup>28</sup> As at the date of the report, the possible amendments had not been presented to Parliament. This inquiry took account of the available evidence regarding the possible amendments.

### **Timing of introduction of the phase two measures**

1.28 The committee's attention was drawn to concerns with the timing of the introduction of the phase two measures, and the consultation that has occurred in their development.

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24 The Hon Bill Shorten MP, Assistant Treasurer, Minister for Financial Services and Superannuation, *House of Representatives Hansards*, 21 September 2011, p. 10950.

25 The Hon Bill Shorten MP, Assistant Treasurer, Minister for Financial Services and Superannuation, *House of Representatives Hansards*, 21 September 2011, p. 10954.

26 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 12/11*, 12 October 2011, pp 6 – 8.

27 National Financial Services Federation, *Supplementary Submission*, p. 1; Financiers Association of Australia/Smiles Turner Delegation, *Supplementary Submission*, p. 1.

28 Direct Selling Association of Australia, *Submission 31*; p. 1.

### *The consultation process*

1.29 Evidence before the committee indicates that the following consultations occurred prior to the introduction of the Enhancements Bill in the House of Representatives on 21 September 2011.

1.30 The Regulation Impact Statement advised that 'extensive consultations' have occurred for the development of the Enhancements Bill. As recorded in the Regulation Impact Statement, several consultation groups were established:

The primary vehicle for consultation with stakeholders was the Industry and Consumer Representatives Consultation Group (ICRCG). Its membership comprised of representatives of the banking, financial services, mortgage and finance brokers industries, consumer credit legal services, consumer advocates, ASIC, and the Department of the Treasury. All major industry bodies are on this group, and are able to disseminate information to their members and provide their feedback.

Consultation with this group has generally occurred on a monthly basis. Between January 2010 and October 2010, 7 meetings were held in relation to the Phase Two reforms. The usual structure for these meetings was for Commonwealth Treasury staff to circulate papers on Phase Two topics, with the topics then discussed in detail at the meetings. This format allowed members of the group to provide comments and feedback at all stages of the development of options canvassed in this Regulation Impact Statement, and also enabled differences in views to be explored in detail. This structure enabled prompt and detailed exploration of issues with stakeholders and was important in the refinement and development of different options.

The Financial Services and Credit Reform Implementation Taskforce (FSCRIT), comprises representatives from State and Territory departments and agencies, ASIC and the Department of the Treasury. Its main role in relation to Phase Two is to ensure proposals are developed in accordance with the COAG timetable. FSCRIT consultations have been conducted on a monthly or bimonthly basis, according to need.<sup>29</sup>

1.31 Measures relating to reverse mortgages, consumer leases, short-term small amount credit contracts, hardship variations, remedies for unfair or dishonest conduct and restrictions on the use of certain terms were outlined in the *Green Paper* publicly released on 7 July 2010. It appeared that there was a one-month public consultation process, with comments on the proposed measures due by 6 August 2010.<sup>30</sup> Treasury received 75 submissions.

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29 Regulation Impact Statement, Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 9.16.

30 Treasury, *National Credit Reform - Enhancing confidence and fairness in Australia's credit law*, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1852> (accessed 27 October 2011).

1.32 The Exposure Draft of the Enhancements Bill was released on 5 August 2011 for public comment by 17 August 2011.<sup>31</sup> This did not include proposed measures relating to the cap on the maximum amount credit providers can charge under certain credit contracts and the additional obligations relating to short term small amount credit contracts, which were released on 25 August 2011 for comment by 5 September 2011.<sup>32</sup>

1.33 It is also noted that it appears that the Bill includes measures to address concerns that were identified during the process of introducing the phase one reforms. Therefore, the consultation taken in phase two builds on consultations that occurred for the introduction of the NCCP Act and the National Credit Code.

1.34 The consultation process was noted in evidence presented to the committee. Referring to the overall implementation of the consumer credit reforms, Mr Ian Gilbert, Policy Director, Australian Bankers' Association, noted that the level of stakeholder engagement fluctuated:

This process—and this bill is in the middle of a process—has been characterised by, at some points, extensive consultation but then quite a long time before final settings are actually achieved, whether it be via the primary legislation or through subordinate legislation.<sup>33</sup>

1.35 It is also evident that the degree of concern with the consultation process varied across the different categories of measures proposed in the Bill. For example, in relation to reverse mortgages, Mr Kevin Conlon, Chief Executive Officer, Senior Australians Equity Release Association (SEQUAL), whose submission related to the reverse mortgages reforms, commented that 'there has been proper consultation with industry around the development of the bill'.<sup>34</sup> The committee was informed that the reverse mortgages reforms were developed in consultation with a Treasury Working Group of stakeholders.<sup>35</sup> The Australian Finance Conference submitted that the proposed reverse mortgage provisions 'reflect the negotiated outcomes of that consultation'.<sup>36</sup> In contrast, as will be explored in chapter five, industry representatives expressed strong concerns with the consultation process for the proposed cap on

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31 Treasury, *Exposure Draft - National Consumer Credit Protection Amendment (Enhancements) Bill 2011*, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2116> (accessed 27 October 2011).

32 Treasury, *Exposure Draft - National Consumer Credit Protection Amendment (Enhancements) Bill 2011*, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2131> (accessed 27 October 2011).

33 Mr Ian Gilbert, Policy Director, Australian Bankers' Association, *Proof Committee Hansard*, 24 October 2011, p. 12.

34 Mr Kevin Conlon, Chief Executive Officer, SEQUAL, *Proof Committee Hansard*, 24 October 2011, p. 9.

35 Australian Finance Conference, *Supplementary Submission 29a*, p. 8.

36 Australian Finance Conference, *Supplementary Submission 29a*, p. 8.

certain credit contracts and other obligations applying to short-term small amount credit contracts.<sup>37</sup> The Smiles Turner Delegation/Financiers' Association of Australia made the following criticisms of the consultation process:

1. as to the intolerable demands of repeated discussion papers and the Exposure Draft Bill, with ridiculously short invitation periods (often 1 week or 10 days) to comment. Such ignoring the fact that there are representative bodies on both sides of the argument associated with the issues and Bill in question, whose members deserve the opportunity, within their organisation, to be briefed and participate in discussion, before that organisation responds with a submission to government, and that time is required to facilitate the necessary communications within the organisation;
2. concerning meetings confirmed with Treasury and the Minister at 48 hours or less notice;
3. being asked to repeatedly comment on issues that have been presented in Treasury Discussion Papers previously, but with just enough difference to demand near complete reconsideration and no “cut and paste” from a previous submission;
4. being asked to repeatedly comment on yet another Treasury Discussion Paper or an Exposure Draft Bill which demonstrates that little, if anything, of the content of previous submissions or discussions has been recognised in any way...<sup>38</sup>

### ***Timetable for commencement of phase two measures***

1.36 It was apparent that stakeholders are concerned with the timing of the introduction of the phase two measures. As evident in the view expressed by the Australian Finance Conference, it was questioned whether the proposed further reforms are premature:

We acknowledge that the Government's focus with these proposed reforms is to protect the vulnerable consumer or consumer in financial distress. However, 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 hardship provisions 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.<sup>39</sup>

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37 For example, see Financiers Association of Australia/Smiles Turner Delegation, *Supplementary Submission*, pp 4 – 6; First Stop Financial, *Additional Information*, p. 1; Min-it Software, *Submission 34*, pp 5 – 7.

38 Financiers Association of Australia/Smiles Turner Delegation, *Supplementary Submission 40a*, p. 4.

39 Australian Finance Conference, *Supplementary Submission 29a*, p. 2.

1.37 Representatives of the short-term lending industry (also known as 'pay-day loans') also questioned the need for additional measures to ensure appropriate conduct on the part of credit providers. It was put to the committee that the responsible lending requirements effectively ensure that consumers are protected from unsuitable credit contracts, and therefore the measures proposed under the Enhancements Bill in relation to short-term loans are unnecessary.

1.38 The compliance burden on industry resulting from the consumer credit reforms was also noted with concern. ADI representatives, the Australian Bankers' Association and Abacus – Australian Mutuals, were in agreement about the resources and lead time required to ensure ADIs could adhere to the new consumer credit requirements from their commencement.

1.39 The Australian Bankers' Association noted the multiple consumer credit reforms that are intended to commence in the coming months, and questioned whether the resulting burden on industry has been adequately appraised:

In all, there are 3 substantial pieces of credit regulation requiring industry implementation over the next 7 months.

In setting the commencement timing for these reforms, little account appears to have been taken by the Government of industry's need to plan its resourcing and IT systems modifications and implement necessary compliance frameworks...These are changes that have to be made in a planned and orderly way and not just by the "flick of a switch" to ensure change risk is minimised. Management of change risk not only includes IT systems changes but also all relevant processes, documents and staff training to avoid risk to both the bank and its customers.<sup>40</sup>

1.40 Abacus – Australian Mutuals commented:

The majority of the consumer credit protection provisions contained in the Bill will commence on 1 July 2012.

This coincides with the commencement of: new credit card key fact sheet obligations; Future of Financial Advice reforms; new minimum repayment warnings obligations on credit cards; and the new national account switching regime. These reforms will require extensive and costly IT solutions, business systems changes and additional staff training obligations to ensure Abacus members achieve compliance...

If this is the case, Abacus members will be under significant pressure to achieve compliance with yet another tranche of complex credit reforms within only seven months. This problem is compounded by the fact the Bill seeks to prescribe extensive policy details in yet to be developed regulations.

Abacus would expect the draft regulations will be subject to an adequate industry consultation process. However, given the December/January

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40 Australian Bankers' Association, *Submission 43*, p. 3.

holiday season, consultation commencing in February 2012 would leave less than four months for industry to consider the implications of the entire reform package, and implement the necessary provisions of the Bill by 1 July 2012.<sup>41</sup>

1.41 Both industry representatives submitted that additional lead time is required to ensure efficient implementation of the reforms, and recommended that commencement be delayed.

1.42 In contrast to the views of industry, the Regulation Impact Statement predicted that the reforms would have, on the whole, 'minimal' resource implications for industry.<sup>42</sup>

### ***Committee view***

1.43 The committee considers that extensive consultation has occurred in the development of the measures in the Enhancements Bill. However, the committee notes with concern evidence that on some occasions stakeholders were given relatively short timeframes in which to respond to what were at times complex proposals. Measures for which, in the committee's view, further consultation is required are noted in subsequent chapters.

1.44 The committee notes concerns by industry representatives, including representatives of the short-term loan industry, that the proposed measures are unnecessary due to the reforms under phase one. The committee considers that the phase one reforms, particularly the introduction of responsible lending obligations, will have a substantial, positive impact on the consumer credit market.

1.45 However, the committee notes that the COAG decision contemplated that additional measures would be required post the introduction of the phase one reforms. In relation to short-term loans, the committee notes that the COAG communiqués draw particular attention to the need to consider further reforms to this area. However, as explored in subsequent chapters, the committee would be particularly concerned with regulatory overlap or the introduction of measures that do not adequately take account of existing obligations on credit providers.

1.46 The committee notes the compliance burden on credit providers to ensure infrastructure is in place to comply with the requirements by the commencement date, and acknowledges the uncertainty that may result from piling new requirements on top of relatively new legislation. It is also noted that the Bill provides for significant elements of the reforms to be determined by regulations.

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41 Abacus – Australian Mutuals, *Submission 38*, p. 4.

42 Regulation Impact Statement, Explanatory Memorandum, Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, paragraph 9.15.

1.47 Given the need to develop regulations in consultation with industry, and the regulatory burden on industry to ensure it is in a position to implement the reforms, the committee considers that commencement of certain provisions in the Bill should be postponed. On the basis of evidence presented to the committee, it is apparent that the additional six months will greatly assist credit providers to be in a position to comply with the new requirements upon their commencement. Allocating credit providers sufficient time to prepare for the new regulatory requirements will also ensure that customer service is not compromised by resource limitations.

1.48 The committee recommends that Schedule 1 should commence on 1 January 2013. Issues with the commencement date for the measures in Schedules 3 and 4 will be explored in chapter five. On the basis of evidence to the committee it did not appear that the commencement date proposed for Schedules 2 (reverse mortgages), five (consumer leases) and six (amendment to the Corporations Act) posed significant concern.

### **Recommendation 1**

**1.49 The committee recommends that the Government consider extending the commence date for Schedule 1 (enhancements) to 1 January 2013.**

### **Report structure**

1.50 Chapter two considers the proposals relating to variations to credit contracts in circumstances of hardship.

1.51 Chapter three considers the proposed regulations relating to reverse mortgages.

1.52 Chapter four considers the proposed regulations for consumer leases.

1.53 Chapter five considers the proposed regulations, including the introduction of caps, for small amount credit contracts and other credit contracts excluding bridging finance and credit contracts provided by ADIs.

1.54 Chapter six considers other aspects of the Bill about which concerns were raised during the course of the committee's inquiry, namely:

- restrictions on certain representations and advertisements
- restrictions on the use of certain terms including 'independent' and 'financial counsellor'
- remedies for unfair or dishonest conduct, and
- the proposed amendment to the Corporations Act.

1.55 Chapter seven considers concerns with proposed regulation of direct selling as contained in the Exposure Draft of the Enhancements Bill.

