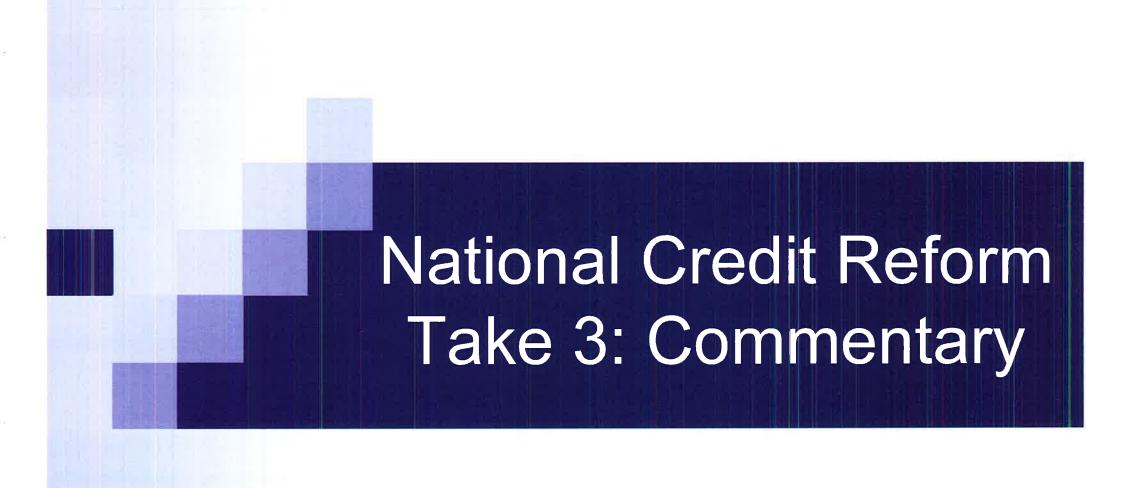


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National Credit Reform Take 3: The Ascendance of the Commonwealth

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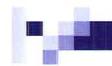
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Policy Objectives - Stated

 Delivering single, standard, national regulation of consumer credit for all Australians

- Code objectives remain the same
 - to ensure strong consumer protection through 'truth in lending'
 - recognising competition and product innovation must be enhanced and encouraged by the development of non-prescriptive flexible laws.



Reform Drivers – The Reality

- Processes
 - MCCA processes ineffective
 - Inability to respond quickly to market developments
- Policy
 - National broking regulatory regime
 - Payday lending
 - Disclosure effectiveness
 - Consumer capacity 'responsible lending'
 - Regulator inaction enforcement issues
- Code, of itself, effective



Key Considerations

- Scope/Reach
- Operational impacts
- Consumer benefit
- Cost benefit
- Consultation process

Scope/Reach

- COAG approach broader than policy drivers
 - ☐ FSR type regime imposed
 - No market failure to justify imposition of licensing regime on credit providers
 - ☐ Failure to consider where risk lies not with consumer but with credit provider
- Capture of service providers already regulated
 - □ Lack of market knowledge = increased regulation
 - Complexity of relationships ignored should the repo agent be captured?
 - Increased regulatory burden, not less
- Confusion of FSR type regime on functions
 - ☐ How to distinguish a broker from a lender?



Scope/Reach

- Broker regime less than currently exists
 - □ 12 month deferral of responsible lending provisions
 - □ Key policy driver unresolved
- Increased overall disclosure, not less
 - □ Despite current research on effective disclosure
- Consumer capacity 'responsible lending' deferred
 - □ Key policy driver unresolved
- Cost benefits
 - Unassessed



Operational Impacts

Multiple regulators

- □ Potential for States to legislate on credit & they are
- Results in increased legislative and compliance requirements

Lack of operational certainty

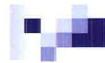
- □ Details still to be finalised Regulations & ASIC compliance policies & guidances
- ☐ Exemptions limited application
- Interest in advance residential investment property loans
- ☐ Licensing process & requirements

Compliance management

- Inadequate compliance time frames
- Demands on limited resources other major legislative changes occurring
- Introducer and service provider business models
- Training
- ☐ Documentation revisions multiple times
- ☐ Costs business models, relationships, policies, procedures, documents, systems etc

Relationships Under Review

- Credit Provider/Introducer and Service provider business models
 - □ Need time to evaluate implications & risks & rewrite contractual agreements
- Vendor introducers a confused compliance position
 - □ Exempt for 12 months from 'credit assistance'
 - □ Inadequate scope of exemption
 - credit activities of 'intermediary' & 'performing functions on financier's behalf' still require compliance
- Debt collectors competition issues
 - □ Agents exempt for 12 months pending consultation with States/Territories, if licensed
 - Impact on ACT collectors?
 - □ But, debt purchasers must hold ACL
 - Competition issues?
 - Impact on market conduct?



Consumer Benefit?

- Consumer benefit
 - □ No assessment assumed but potential detriments
 - Roles, credit guides, mixed messages in important docs etc
 - □ No consumer focus groups etc in development
- Disclosure research
 - MCCA-commissioned research into effective pre-contractual disclosure not available to inform disclosure approach
- Responsible lending
 - □ Credit product 'not unsuitable' test how subjective
 - Unwarranted intrusion into consumer choice?
 - Product implications?



Consultation process

- Inadequate consideration of issues
 - □ Focus not on best regulatory outcome
 - □ Rushed process

Closed

- Many stakeholder groups excluded
- Outcomes compromised by limitations on consultation
- Threat of Crimes Act action not a hallmark of open, accountable government

Cost Benefits - Questionable

Consumers

- ☐ Increased compliance costs = increased credit costs
- Possible lessening of product and provider choices
- ☐ EDR potential to drive up credit costs & confuse processes

Licensees

- Increased compliance costs, now and ongoing
- Potential decrease in competition
- Potential ongoing regulatory reforms to address operational issues
- Potential for multiple credit jurisdictions

Regulators

- ☐ Administration regime broader than anticipated?
- ☐ Potential ongoing regulatory reforms to address operational issues
- □ Compromised regulator/stakeholder relationships through consultation process



Outcomes achieved?

- Single, standard, national regime
 - provided States don't regulate
 - □ But will EDR schemes become the new regulators?
- Truth in lending
 - □ Requires effective disclosure regime
 - □ New disclosures may prove to be counter-productive or ineffective
- Non-prescriptive, flexible laws
 - □ Policy perspective lost
 - □ Product offerings compromised

Conclusion

- Questionable benefits for any stakeholder group
- Areas for improvement
 - Evidence-based policy development
 - Targetted policy development not one size fits all
 - Understanding of market complexity & risk required
 - □ Transparent/inclusive consultation
 - Cost benefit analyses
 - For all stakeholder groups
 - □ Regulatory Impact Assessment
 - to consider all other regulation that impacts on the credit function



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