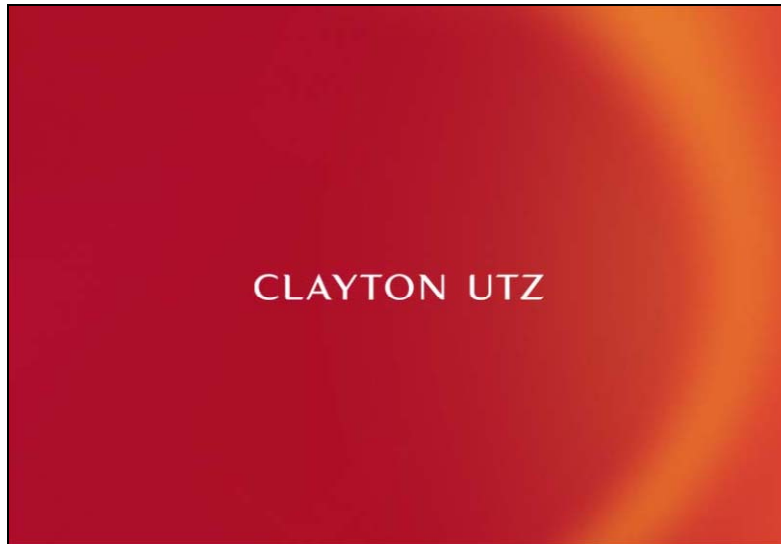
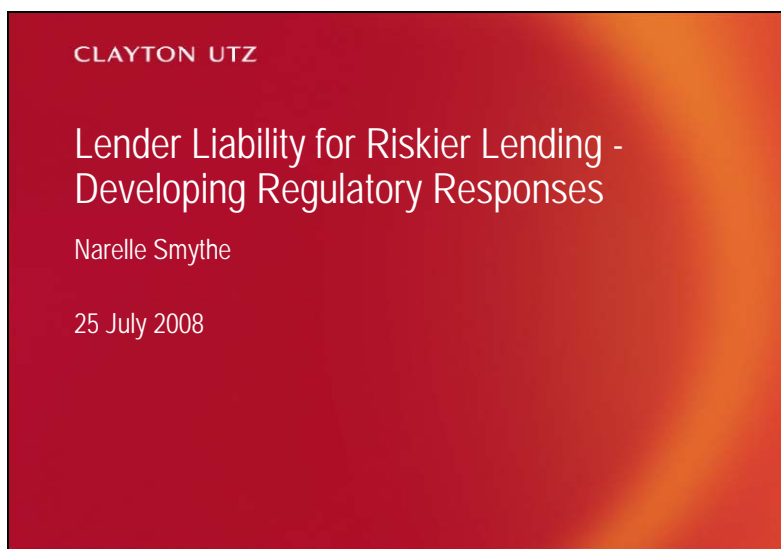


**Narelle Smythe, Partner, Clayton Utz, Sydney**  
**Lender Liability for Riskier Lending – Developing Regulatory Responses**

Slide 1



Slide 2



## Slide 3

### Current Environment

- s70 UCCC - Court may reopen unjust transactions
- s28A Act Fair Trading Act - must carry out a satisfactory assessment process before entering into or increasing the limit under, a credit card contract
- cl 25.1 Code Banking Practice - exercise care and skill of a diligent and prudent banker in selecting and apply credit assessment methods

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## Slide 4

### Current Initiatives and Proposals

- Ministerial Council on Consumer Affairs
  - credit card over-commitment and responsible lending
  - external dispute resolution
- Draft National Finance Brokers Legislation
  - Finance brokers must take steps to assess consumers capacity to repay

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## Slide 5

### Current Initiatives and Proposals (2)

- Productivity Commission and proposed Federal takeover of consumer credit, margin lending and finance broking -
  - developers of national regime should consider how responsible lending issues might impact on the regulatory arrangements
  - unfair terms

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## Slide 6

### Current Initiatives and Proposals (3)

- Proposed "fringe lending" amendments to the UCCC
  - Impacts mainstream as well as fringe lenders
  - "Unreasonable" fees, charges - whether the fee or charge exceeds the credit provider's reasonable or underlying costs that gave rise to the fee or charge
  - Applications may be by a Government Consumer Agency

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Slide 7

### Current Initiatives and Proposals (4)

- Removal of presumptions relating to Business Purpose Declarations - active steps must be taken to ascertain the purpose of the loan.
- Annual percentage rate must include charges "in the nature of interest charges".
- Review of Code of Banking Practice - Interim recommendation that a general principle of responsible lending be included

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### Other matters

- International Trends

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Slide 9

