



Banking & Financial Services Law Association

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**National Credit Reform Take 3:
The Ascendance of the Commonwealth**

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National Credit Reform Take 3: Commentary

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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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