



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
NATIONAL CONSUMER CREDIT
PROTECTION BILL 2009

Second Reading

SPEECH

Thursday, 25 June 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner
Speaker Bowen, Chris, MP

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Mr BOWEN (Prospect—Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services) (9.04 am)—I move:

That this bill be now read a second time.

Today, I introduce a bill that will deliver on the commitment of the Rudd government to modernise Australia's consumer credit laws.

This piece of legislation will—for the first time in our country's history—provide for one, single, standard and uniform regime for consumer credit regulation and oversight.

And for the first time, Australian financial services consumers will have a truly national set of laws.

The bill follows the historic agreement by the Council of Australian Governments in October 2008 to implement a two-phase approach for the Australian government to take over responsibility for the regulation of consumer credit.

By replacing the state based Uniform Consumer Credit Code, which operates inconsistently across the eight jurisdictions, it will also reduce duplication, red tape and compliance costs for business.

This bill also has the benefit of being 'road-tested' through a consultation process involving industry and consumer groups. The exposure drafts were released for public comment. The legislation was then reviewed and amended in light of the submissions received by the government.

The new national regime includes several components, which I will now outline.

National licensing regime

The National Consumer Credit Protection Bill, together with the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill, and the National Consumer Credit Protection (Fees) Bill, will establish, for the first time, a comprehensive national licensing regime for people engaging in credit activities.

Lenders and providers of consumer credit broking services must be registered with the Australian Securities and Investments Commission, then obtain an Australian credit licence.

Participants will need to be registered or licensed if they engage in any of the following activities:

- providing credit or consumer leases;
- collecting money due under a credit contract or a consumer lease (including lenders who have ceased providing credit, or assignees who have purchased the debts from the original credit provider);
- exercising rights as a mortgagee or the beneficiary of a guarantee;
- acting as an intermediary between the borrower and the lender. This principally covers finance brokers; however, the definition also covers bodies such as mortgage managers and aggregators; or
- suggesting or providing assistance in respect of a specific credit contract or lease with a particular credit provider.

The licensing process will start on 1 January 2010. Before that date, anyone engaging in credit activities will need to be registered with ASIC, and must apply for registration between 1 November 2009 and 31 December 2009.

They will then have the six-month period between 1 January 2010 and 30 June 2010 to apply for an Australian credit licence.

Anyone who engages in credit activities for the first time on or after 1 January 2010 must apply for, and receive, an Australian credit licence before starting business.

The two-stage process has been adopted to facilitate a smooth transition to licensing. The registration procedure has been designed to be straightforward for industry and can be completed online. The two-stage process also gives industry adequate time to meet all the licensing requirements.

It is expected that ASIC will issue guidance on the procedures for becoming a licence holder including guidance for small businesses.

To qualify for an Australian credit licence, lenders and brokers must meet minimum training requirements and have adequate financial and human resources to meet their obligations.

Licensees must also meet enhanced standards of conduct, including the requirement to act honestly, efficiently and fairly. They must also adequately train and supervise people who act on their behalf.

Authorised deposit-taking institutions can be streamlined into a licence because we are confident that these institutions already satisfy the entry requirements.

We also propose to similarly streamline, by way of regulations, the application process for Western Australian brokers who hold an 'A' or 'B' class licence, because of the rigour of the licensing scheme in that state.

As well, consumers will be able to resolve consumer credit disputes outside the court system at no cost to them, as licensees must be members of an external dispute resolution scheme.

The new scheme enables ASIC to refuse an application if the person does not meet those standards.

ASIC will also be given the power to cancel or suspend a licence, or to ban people from engaging in credit activities, where this is necessary to protect consumers from the risk of financial harm and to maintain the integrity of the credit industry.

A national licensing scheme will mean that a person who is banned or loses their licence or registration will be unable to legally engage in credit activities anywhere in Australia. Currently, there is nothing to prevent a person banned in one state or territory from continuing to operate as a broker or lender simply by moving to a different jurisdiction.

Responsible lending obligations

The National Consumer Credit Protection Bill will establish new responsible lending conduct requirements.

The requirement to meet the responsible lending obligations will be a key condition of holding an Australian credit licence.

When offering consumer credit, lenders and assistants such as finance brokers will be required to do two things. Firstly, they must assess that the loan is not unsuitable for the consumer.

And, secondly, they must assess that the consumer has the capacity to repay the loan. In making this assessment, they will need to make reasonable inquiries and verify the details provided to them. To assist consumers to make better informed borrowing decisions, or in the event of a dispute, consumers will be able to request a copy of this assessment.

All consumers applying for credit will be provided with a credit guide which will inform them of key information early in the process of a credit related transaction. It is important that the consumer knows who they are dealing with, that the credit provider is licensed—and has therefore met the stringent entry requirements of participating in the credit market—and has early advice of any fees and costs.

As part of the responsible lending requirements, licensees will also have to let consumers know, upfront, what fees and charges they will need to pay before the loan is suggested or entered into. As well, brokers will need to

disclose any commissions if the suggested loan is secured, and credit providers will continue to disclose various commissions related to the matter.

Further, consumers will now be made aware of their right to request a variation in their credit contract in the event of financial hardship, rather than continue to suffer distress or seek to refinance their loan and exacerbate their debt levels.

Additional measures have been included to help protect consumers' family homes by requiring more rigorous assessment of any credit offer that will require the consumer to sell their home in order to meet the obligations of the contract.

These provisions will help consumers to make better informed choices and use credit more effectively.

ASIC's role during the transition to the new regime

To ease the transition for industry and allow the national credit regime to be implemented in a sensible and practical fashion, the government has made some key changes in light of the insights gained through the consultation process.

Firstly, we have simplified the way in which the proposed responsible lending arrangements will apply. We have removed the requirement for lenders to meet credit assistance conduct obligations when providing assistance in relation to their own credit products.

Secondly, we have delayed the commencement of the responsible lending obligations to 1 January 2011. This will give industry more time to implement the necessary changes to support responsible lending.

Thirdly, and importantly, the government has given ASIC greater flexibility to exempt or modify the licensing and registration requirements in the law. During the transition period, ASIC will play a key role in providing assistance to industry.

The government has given ASIC greater resources to ensure it will be proactive in assisting industry to comply with the law. ASIC will undertake intensive industry consultation to explain and clarify the licensing requirements, and will work closely and cooperatively with industry.

I am confident that, by working together closely during this process, industry and ASIC will achieve a seamless and successful transfer to the new credit regime.

Sanctions and remedies

The National Consumer Credit Protection Bill will enhance ASIC's enforcement powers. The relevant provisions are consistent with the Corporations Act 2001 and other Commonwealth consumer protection laws.

The regulatory framework is supported by a tiered approach to the sanctions regime, which includes:

- criminal penalties for licensee misconduct, including possible imprisonment for up to two years for those who lend contrary to the responsible lending requirements;
- civil penalties for licensee misconduct, which enables ASIC to seek fines of up to \$220,000 for an individual and \$1.1 million for a corporation;
- infringement notices enabling ASIC to act quickly to penalise certain breaches of the law; and
- consumer remedies, such as compensation, which allow consumers to seek redress for their loss and damage from a licensee.

Additionally, ASIC's current regulatory powers under the Australian Securities and Investments Commission Act 2001 will be replicated in the credit bill.

New dispute resolution mechanism

The National Consumer Credit Protection Bill will introduce a three-tier dispute resolution system for consumer credit issues. This will make it easier and less costly for consumers to have their disputes resolved.

The three-tier system will give consumers access to:

- the licensee's internal dispute resolution process;
- the licensee's ASIC-approved external dispute resolution scheme; and
- the Federal Court, Federal Magistrates Court and the courts of the states and territories, including the magistrates or local courts.

Consumers will also have access to an 'opt-in' streamlined court procedure for claims of compensation for loss or damage up to \$40,000.

These streamlined procedures will also apply to several key consumer rights under the National Credit Code. For example, consumers will be able to utilise the streamlined processes for:

- applications for hardship variations;
- postponement of enforcement actions;
- regaining possession of mortgaged goods; and
- action against unconscionable fees and charges imposed by their credit provider.

The 'opt-in' streamlined court procedure is designed to ensure consumers continue to receive the benefit of accessibility to dispute resolution in terms of location, procedural simplicity and minimised legal costs.

The procedure will provide consumers with informal court proceedings where legal forms and technicalities do not have to be observed and legal representation is not required.

National Credit Code

The new National Credit Code will also provide a consumer protection framework for consumer credit and related transactions. It largely replicates the Uniform Consumer Credit Code, enacted in the Consumer Credit (Queensland) Act 1994 and in force in the states and territories since 1996.

The code will be enacted as a schedule to the National Consumer Credit Protection Bill.

The National Credit Code is as similar to the Uniform Consumer Credit Code as is practicable, except where the Commonwealth has specifically decided to enhance or extend its operation.

The code has been extended in the following ways:

- It covers credit for residential investment properties, providing important protections to 'mum-and-dad' property investors.
- It increases the monetary threshold under which consumers can request a change to certain terms of their credit contract on the grounds of financial hardship from a fluctuating figure of around \$330,000 to a fixed figure of \$500,000. The code includes a new, flexible power to raise this threshold if necessary. This amendment will enable more consumers to apply for changes to the terms of their credit contract when in financial hardship, for example because of illness or unemployment. This increased threshold also applies to requests for stays of enforcement. In addition, credit providers will have to respond to such requests within 21 days.
- Credit providers will be prohibited from using essential household goods as security.
- Credit providers will be required to give consumers information when a consumer defaults on their contract or a direct debit is dishonoured.
- As well, the code reduces the potential for unscrupulous lenders to avoid the application of the law to consumers.

The National Credit Code also includes amendments to enable the former Uniform Consumer Credit Code to operate effectively as Commonwealth legislation.

The National Consumer Credit Protection Bill and the transitional bill contain power to exempt persons from some or all of the regulatory requirements. This means that the requirements in the bills can be ‘turned off’ or varied, enabling the application of the bills to be refined or calibrated to meet different practices across the credit industry; or to be applied in a sensible and practical way.

Point-of-sale retailers who provide credit assistance to consumers will be exempt from the requirements, with a review of the issue of regulatory oversight to occur within 12 months. However, the providers of credit and leases at point of sale will not be exempt.

In addition, debt collectors who hold a state or territory licence and are authorised by a lender to collect a debt will be exempt for a 12-month period, pending further consultation with state and territory governments and industry.

Conclusion

The National Consumer Credit Protection Bill introduces sweeping changes to our consumer credit laws. It establishes the foundations for a new robust regulatory framework, on which phase 2 of the COAG reforms will be built.

As well as making the consumer credit system fairer, more consistent and more workable, the new regime will significantly improve the effectiveness of protection for consumers. It will also address many of the regulatory gaps that have plagued the state regulatory system.

Full details of the measures in the bill are contained in the explanatory memorandum.

I commend this bill to the House.

Debate (on motion by **Mr Lindsay**) adjourned.