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Consumer Credit Unit  
Corporations and Financial Services Division  
The Treasury  
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PARKES ACT 2600

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Dear Sir/Madam

## Draft National Consumer Credit Reform Legislation

CPA Australia represents the diverse interests of more than 122,000 members in finance, accounting and business in 100 countries throughout the world. Our mission is to make CPA Australia the global professional accountancy designation for strategic business leaders. We make this submission not only on behalf of our members, but also the accounting profession generally and in the broader public interest.

CPA Australia strongly supports the national regulation of credit being implemented by the Federal Government. In this regard we welcome the opportunity to comment on the draft National Consumer Credit reform legislation. This submission has been developed on behalf of the organisation, with member input particularly through our Financial Advisory Services Centre of Excellence.

Our key recommendations are as follows:

1. Implement a single layer of federal regulation for financial services by incorporating the proposed regulation of credit into the Corporations Act
2. A national consumer education campaign is initiated on the differences between credit services and investing in a financial product
3. Establish a streamlined procedure for holders of an Australia Financial Services Licence to apply for an Australian Credit Licence
4. The definition of an 'intermediary' is further clarified to ensure a clear understanding of what activities will result in a person acting as a 'intermediary; and
5. A formal post-implementation review of the new regulatory framework is conducted after a period of three years.

Should you have any questions on either the above or the attached submission, please do not hesitate to contact Keddie Waller, Technical Advisor – Financial Planning on 03 9606 9816 or [Keddie.Waller@cpaaustralia.com.au](mailto:Keddie.Waller@cpaaustralia.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Drum'.

Paul Drum FCPA  
General Manager – Policy & Research

## **Incorporating ‘credit’ into the Financial Services Reform Act 2001**

It is now well understood that regulation of the finance broking market is currently fragmented and there is a need for consistent national regulation to ensure consumers are adequately protected. CPA Australia has been an advocate of reform in this area for some time, as detailed in our 2008-2009 pre-budget submission<sup>1</sup> Accordingly we welcome the decision to implement federal regulation for the provision of credit services and see this as an important step towards achieving this goal.

The commentary to the draft National Consumer Credit Protection Bill 2009 explains that ‘a decision has been made to provide a stand-alone national licensing scheme that is to be distinguished from the regulation of financial services under the Corporations Act 2001 (Corporations Act)’. The reason provided for this decision is to ensure that there is differentiation from where the consumer receives money that must be repaid, from where the consumer purchases or invests in a financial product that may provide a benefit or return.

However when comparing the requirements of the draft bill with current requirements of the Corporations Act, the extent to which the two will overlap is clearly evident. Both require, for example, licensing, the need to comply with the conditions on the licence, maintaining the competence to provide the activities authorised by the licence, internal dispute resolution procedures, membership with an approved external dispute resolution scheme, adequate compensation arrangements, adequate systems to ensure compliance and adequate resources to engage in the specified activities.

The draft bill also requires that reasonable inquiries are made about the consumer’s requirements, objectives in relation to the credit contract and that reasonable inquiries are made about the consumer’s financial situation. Again, the requirement to have a reasonable basis for the advice is an existing obligation set out in section 945A of the Corporations Act. This same provision also requires that the advice is ‘appropriate to the client’ which largely reflects the requirements of the draft bill that the credit contract must not be assessed as ‘unsuitable’ for the client.

We do not consider the business case for differentiating between the provision of credit and investment in a financial product is substantial enough to necessitate the implementation of new regulation, when the draft bill largely duplicates many of the existing provisions that are already required under the Corporations Act.

Furthermore, the proposed regulation of margin lending by including it as a financial product for the purposes of the Corporations Act will in fact result in a number of provisions specifically relating to credit services being included in the Corporations Act. These provisions, such as responsible lending for margin lending including the requirement to make assessment of ‘unsuitability’, have purposefully been drafted to be broadly consistent with the provisions outlined in the National Consumer Credit Protection Bill 2009.

Taking this into account, we consider both a more appropriate and more efficient approach would be to incorporate the proposed regulation of credit into the Corporations Act, as has been proposed for margin lending. This would result in one layer of federal regulation for financial services. Such a move would reduce the red tape for Australian business, which is an important benefit especially in such financially challenging times and ensure a holistic service can be provided to the consumer.

We also consider a national consumer education campaign should be initiated on the differences between credit services and investing in a financial product. This would address Government’s concerns by ensuring that consumers understand the differences between the two services, even though they would be covered by the same legislation. As an expert in providing education and training, CPA Australia would be happy to discuss any assistance necessary in this regard.

### **Recommendations:**

- 1. Implement a single layer of federal regulation for financial services by incorporating the proposed regulation of credit into the Corporations Act.**
- 2. A national consumer education campaign is initiated on the differences between credit services and investing in a financial product.**

<sup>1</sup> CPA Australia Pre-budget submission 2008-2009 - [https://www.cpaustralia.com.au/14131\\_25067](https://www.cpaustralia.com.au/14131_25067)

## The proposed ACL and streamlining arrangements for AFSL holders

Section ^LIC157 of the draft bill details that the regulations may prescribe a streamlined process for 'other applicants' of an Australian Credit Licence (ACL), where some or all sections of ^LIC150 and ^LIC155 do not apply to particular classes of applicants. Alternative processes for the applying and granting of an ACL will apply. The commentary to the draft bill expands on this and identifies holders of either an 'A' or 'B' class licence under the Finance Brokers Control Act 1975 (WA) as participants who can be streamlined to an Australian Credit Licence.

The commentary explains that such persons are not required to demonstrate their competencies and qualifications in order to obtain a licence, as they have been deemed to already have been subject to sufficiently rigorous levels of government supervision. It is our understanding that such applicants must complete a Certificate IV in Financial Services (Finance/Mortgage Broking), including supplementary Western Australia material and in addition, applicants applying for a 'A' class licence must also complete a Diploma of Mortgage Lending/Diploma of Lending/Diploma of Financial Services (Lending). These applicants must also have a minimum of two years full time experience in private lending within the last five years, provide upon application business references, a national police certificate, credit history report and a professional indemnity insurance certificate of currency. Once approved, finance brokers must then adhere to legislation including the Finance Brokers Control Act 1975 (WA) and Finance Brokers Control (Code of Conduct) Regulations 2007.

These requirements largely mirror those for responsible managers of an Australian Financial Services Licence (AFSL), who are also required to demonstrate a combination of training and or qualifications appropriate to their role when applying for an AFSL. This could be through the completion of a relevant industry qualification equivalent to a diploma or higher, for example the Diploma or Advanced Diploma of Financial Services. To satisfy the skills component the responsible manager must also have a minimum of three years of relevant experience.

Applicants applying for an AFSL must also provide business references, criminal history check, bankruptcy check and evidence to support the following; appropriate compensation arrangements, internal dispute resolution system, membership of an approved external dispute resolution scheme and adequate conflict management arrangements. Core proof must also be provided demonstrating the applicants will be able to meet the organisational competence requirements for the financial services products they wish to apply for under the AFSL. Once approved holders of an AFSL are required to comply with a number of ongoing legislative obligations, including those of the Corporations Act.

It is clear that the requirements and obligations to be granted either a class 'A' or 'B' licence and to be granted an AFSL significantly overlap. Holders of an AFSL should therefore also be provided with a streamlined procedure to apply for an Australian Credit Licence.

This argument is further supported by the fact that ASIC will be the responsible body for granting and monitoring ACLs, who are also the same regulatory body responsible for issuing and monitoring AFSLs. Holders of an AFSL will have already met majority of the requirements to be granted an ACL and will have provided evidence supporting this when they applied for their AFSL. They should not be burdened with the task of having to again go through this process.

### **Recommendation:**

**3. Establish a streamlined procedure for holders of an Australia Financial Services Licence to apply for an Australian Credit Licence.**

## Definition of an ‘intermediary’ requires further clarification

The meaning of ‘acts as an intermediary’ is defined in ^DEF8 of the draft bill. It explains that a person will act as an intermediary where they act as an intermediary (whether directly or indirectly) between a credit provider and a consumer wholly or partly for the purposes of securing a provision of credit for the consumer under a credit contract with the credit provider. The same also applies for the purposes of securing a consumer lease.

Whilst the commentary to the draft bill goes on to explain that the definition is intended to regulate every person who may be an intermediary between the consumer and the credit provider and that it is also intended that the licensing requirements will apply to all these persons, we feel that this still requires further explanation.

The term ‘securing’ implies it will apply to situations where the credit or lease is actually recommended or arranged for the consumer. It does not however, explicitly state or infer that it will not apply to situations where for example an entity, that is not involved in recommending or arranging credit, may promote a credit product through direct mail. While the examples provided in 1.31 of the commentary to the draft bill appear to support that the definition of an intermediary is not intended to capture such situations, this is still not clearly stated. Therefore whilst we understand that the definition is intentionally far reaching, we feel that further clarification is needed to ensure that there is a clear understanding of what activities will result in a person acting as a ‘intermediary’ to minimise unintended consequences.

### **Recommendation:**

**4. The definition of an ‘intermediary’ is further clarified to ensure a clear understanding of what activities will result in a person acting as a ‘intermediary’.**

## Review undertaken three years post-implementation

As this is the first time that the provision of credit services will be regulated at a federal level, there will undoubtedly be issues that will be unforeseen and will not arise until post-implementation.

We therefore recommend that a formal post-implementation review of the new regulatory framework is conducted after a period of three years, to ensure that the regulatory framework is operating efficiently and fairly.

### **Recommendation:**

**5. A formal post-implementation review of the new regulatory framework is conducted after a period of three years.**