

22 May 2009

Geoff Miller
General Manager
Corporations & Financial Services Division
The Treasury
CANBERRA ACT 2600

Dear Geoff,

National Consumer Credit Protection Bill 2009

Credit Corp takes this opportunity to provide further comment on the National Consumer Credit Protection Bill (NCCP).

We are concerned by the impact of the NCCP on:

1. our business and its capacity to employ an increasing number of young Australians;
2. the economy through a move to less efficient forms of debt recovery;
3. debtors with unsecured lending arrears; and
4. small business service providers we currently use in our business.

Credit Corp Background

Credit Corp is Australia's largest debt buyer. We are an ASX listed company and employ 455 full time equivalent staff across the states of NSW, QLD and WA. We purchase unsecured past due credit card and personal loan debts from major banks, regional banks and finance companies. We maintain an extensive compliance regime, which includes voluntary membership of the Financial Ombudsman Service external dispute resolution scheme.

Benefits of Debt Sale

Debt sale is an extremely efficient method for dealing with credit arrears. It provides credit originators with the ability to relieve themselves of agency, supervision and overhead costs in the collection process. Debt Sale operators such as Credit Corp are generally single purpose operators with limited overheads. By focusing on one activity and achieving excellence in this activity, operators such as Credit Corp achieve superior collection outcomes to originators at lower cost to income ratios. These savings are passed on to originators in the form of higher and more timely returns on credit arrears. These savings can be passed on to borrowers through lower lending margins. Keeping the cost of credit low stimulates aggregate demand and supports long term economic growth.

Debt sale facilitates the creation of credit by improving capital adequacy ratios. Credit arrears impair the capital adequacy ratios of credit originators. This limits the pool of funds available for lending into the economy. The sale of credit arrears, however, relieves the originator of these impaired assets and realizes an immediate cash inflow.

Debt sale facilitates the creation of credit by providing increased certainty to credit originators. The majority of debt sale is conducted through 'forward flow' contracts whereby the buyer agrees to acquire

all debts which reach a specified stage of delinquency at a fixed percentage of the amount outstanding for periods up to 24 months ahead. This is effectively a form insurance, which limits the extent of any future credit loss for the originator. This insurance allows the originator to continue to lend with an enhanced degree of confidence, even during times of considerable economic uncertainty.

Other forms of debt collection do not deliver these outcomes to the same extent as debt sale.

Debt sale also provides superior outcomes for debtors in a state of genuine hardship. Debt buyers acquire permanent tenure to the debts they purchase, subject only to the provisions of the statutes of limitations in the various states. This permanent tenure, coupled with the fact that the debts have been purchased at a significant discount to the face value outstanding, enables the debt buyer to take a flexible and long-term approach to the collection process.

Credit Corp approaches each purchase with a 6 year time horizon. Our approach is to work with debtors to understand their financial capacity. We aim to structure payment plans which enable them continue to function as active members of the community, while continuing to recognize their credit obligations. Currently, Credit Corp has 46,000 customers in various forms of hardship making regular payments on a fortnightly or weekly basis. Almost two thirds of the company's collections are received pursuant to long-term payment arrangements.

Alternative forms of debt collection do not adopt such a long term perspective and focus on immediate and inflexible lump sum payments. These forms of collection do not appropriately address debtor financial capacity, resulting in increased distress and adverse social outcomes.

Key Issues with the NCCP and their specific impacts

1. The legislative regime fails to recognize the limited nature of credit provision activities undertaken by some credit providers, such as debt buyers. The legislation fails to differentiate between large and comprehensive service providers such as major trading banks and smaller limited providers, such as debt buyers. Debt buyers are generally smaller organizations with very limited compliance risks. A differentiated regime needs to be considered for limited operators such as debt buyers to avoid the potential for disproportionate compliance costs which are not commensurate with the compliance risks.
2. The proposed legislation creates the potential for significantly increased risk for debt buyers. Debt buyers make large capital outlays to acquire debts which produce returns over 6 years. Licensing risk will not only jeopardize the ability of debt buyers to acquire new debts but the ability to collect existing and forward contracted debts. This additional licensing risk will need to be taken into account by debt buyers through reduced purchase prices and a reduced ability to compete with alternative forms of debt collection. This creates the potential for the loss of the economic and social benefits of debt buying.
3. There is potential for licensing which overlaps and duplicates state-based regimes, which creates inefficiency. This is simply additional cost which will affect the survival of marginal small business operators and ultimately result in reduced competition and an increase in lending margins.

4. The draft legislation suffers from the use of broad and undefined terms in stating the conduct obligations of registered/licensed persons. For example the terms efficiently, honestly and fairly are not defined within the legislation. This creates considerable uncertainty potentially unintended compliance costs. Further, while these terms may be relevant to service providers such as credit advisers or brokers it is hard to see their relevance to the activity of debt collection. The existing legislative and common law regime already prevents dishonesty and unfairness through the articulation of these concepts in areas of the law including unconscionable conduct, misleading and deceptive conduct together with other legislation. Any lack of efficiency in the debt collection process can only prejudice the interests of the collector rather than those of the debtor.
5. The draft legislation prohibits the suffering of disadvantage by clients through conflict of interest. The fact that the interests of a provider of any goods or service are in conflict with those of the recipient of those goods or services, is only problematic when an advisory or trust relationship exists between the provider and the recipient. The legislation needs to quarantine conflicts of interest to situations where there is a relationship of advisory or trust. The interaction between a debt collector and debtor simply cannot be construed as one of advisory and trust. Any attempt to comply with this requirement is only likely to arise in needless compliance costs.
6. The requirement for the provision of an assignee's credit guide upon assignment will create considerable economic inefficiency. The vast majority of debtors readily recognize their obligations and up until the point that they consider they have a grievance this information is not relevant. This information may focus the debtor on avenues for delay and cost. Ultimately, this may result in increased cost and reduced collections from debtors with a clear capacity to make repayment. It also completely impractical for a field agent or repossession agent to serve people with such a document in the course of their activities. These costs will result in increased lending margins.
7. The requirement to produce a Preliminary Credit Assessment within 2 business days of its request is unreasonable. The time for producing such a document should be 30 days. Such information is not required for the collection process, which means the collector will need to liaise with the originator for its production. It is unrealistic to require it to be produced in less than 30 days.
8. The requirement that Licensees are jointly and severally responsible for the conduct of Credit Representatives, as between themselves and the client, whether or not the representatives conduct is within the authority of any of them, is overly burdensome. It is accepted that a Licensee would be responsible for the conduct of an authorised representative in respect to representatives conduct in carrying out the instructions of that licensee. It is, however, unreasonable that a licensee is jointly and severally liable for conduct associated with another licensees instruction to a Credit Representatives. While this provision was no doubt intended to focus the minds of originators on brokers and credit advisors it also encompasses the activities of field agents, repossession agents and debt collection agents. Most of these providers are small business operators who are already licensed under state regimes. If Credit Corp is required to assume liability for all the activities of these parties, including those which are carried out on the instruction of other licensees, then Credit Corp will have to seriously

consider performing these activities itself. This will push many small businesses into failure and result in increased cost and inefficiency as Credit Corp attempts to replicate these activities internally. We suggest the removal of joint and several liability of licensees between themselves and the client, and the restriction of liability only to the conduct of the Credit Representative in acting on that licensees instructions

9. The requirement for a compensation fund in the context of debt collection is a needless burden. A debt buyer such as Credit Corp is not providing advice or selling any financial product to a consumer. The relevant consumer is a debtor and actually owes an amount to Credit Corp. This means that if there is a circumstance where a debtor is validly aggrieved, the relevant compensation may involve a waiver of part or all of the debt outstanding. This will not require the transfer of any monies from Credit Corp to the aggrieved debtor. Accordingly, there is no need for a compensation fund. The costs of such a fund would have an adverse impact on lending margins.

Specific Issues

3 – Exposure Draft Bill 1 – National Consumer Credit Protection Bill 2009

Chapter 2 – Registration & Licensing of persons

1. The definition of Credit Provider specifically includes debt buyers who obtain debts by way of assignment. The only interface a debt buyer has with a consumer is in the process of debt collection. Some state-based debt collection licensing regimes, such as the NSW CAPI Act, arguably require parties who obtain debts by way of assignment to be licensed to engage in collection activities. Accordingly, a single debt buyer may need to be licensed under both the federal and state regimes at the same time for identical activities.
2. This is an inefficient and unfairly onerous compliance regime for relatively small organizations to be burdened with. It is also counter the objective of streamlining national activity.
3. It results in a competitive market distortion which prejudices the ability of debt buyers to compete with debt collection agents. Debt buyers compete with debt collection agents for debts from credit originators. The draft legislation may result in a situation where debt buyers are required to incur the costs of complying with both federal and state licensing regimes while debt collection agents only incur the costs associated with state regimes.
4. There is potential for competitive market distortions which will result in inefficiency and increased costs for consumers.
 - a) Debt buyers compete with debt collection agents to perform essentially the same service for credit originators as debt collection agents. Debt collection agents are specifically exempted from the licensing, reporting, penalty and general compliance regime, while debt buyers must comply to the same extent as credit

- originators. This increases the cost and risk of operating as a debt buyer rather than as a collection agent.
- b) Debt sale is an extremely efficient form of service provision which may be prejudiced by the proposed legislative regime. Debt sale promptly recycles capital and improves the capital adequacy ratios of regulated credit originators, enabling originators to expand the creation of credit necessary for the proper function of the economy and the promotion of economic growth. Debt sale is often conducted through 'forward flow agreements' which provide originators with future certainty on the impact of credit delinquency. This enables originators to confidently plan for the creation of credit. Increasing the risk and cost burden borne by debt buyers relative to collection agents shifts the balance away from a more efficient form of service provision to a less efficient one.
5. The proposed legislation creates the potential for significantly increased risk for debt buyers.
- a) The requirement for licensing is activated through definition of credit activity, which is not limited to the origination of credit alone. Debt collection activity is explicitly covered by the legislative regime pursuant to sections 1c), 3c), 4b), 5b) and 6 of DEF5 definition of credit activity. DEF9 covers Assignees. The potential for license revocation creates the real risk that a debt buyer might not only be restricted from making future debt purchases but will be unable to collect on past purchases.
- b) The potential that a debt buyer will be unable to collect on past purchases creates additional risk which debt buyers will need to factor into pricing decisions. Debt buyers outlay substantial sums up-front in anticipation of achieving returns over long periods exceeding 6 years. If at any time during this extended collection period a debt buyer suffers license revocation, and is unable to collect previously purchased debts, the buyer will risk complete failure. This additional risk of failure will reduce the price offered to originators, the cost of which will ultimately be passed on to consumers and the economy generally through increased lending margins and tighter credit standards limiting the creation of credit.
- c) To ameliorate this risk an exemption should be created for debt buyers to collect existing debts, while prohibiting the purchase of further debts, in the circumstances where a license has been revoked. This exemption should be extended to any forward purchasing commitments made to credit originators.
6. The draft legislation suffers from the use of broad and undefined terms in stating the conduct obligations of registered/licensed persons.
- a) Subsection 1 (a) of LIC170 requires that parties 'do all things necessary to ensure that the credit activities authorized by registration are engaged in efficiently, honestly and fairly'. The terms efficiently, honestly and fairly are not

defined within the legislation. There is no sense of degree associated with these concepts. It is not clear whether the concepts relate to procedural matters only or whether they extend to outcomes. There are no existing common law or legislative definitions which can be used to circumscribe the scope of these concepts.

- b) In order to create clarity these terms need to be brought within the broader legislative and common law framework by reference to pre-existing legal concepts such as misleading and deceptive conduct, unconscionable conduct, fraud, negligence, procedural fairness and due process.
- c) Subsection 1 (b) of LIC170 prohibits the suffering of disadvantage by clients through conflict of interest. The interests of a provider of any goods or services are fundamentally always in conflict with the recipient of those goods or services. The profit motive encourages the provider to always charge the highest price possible at the cheapest cost. In a market-based economy the discipline of competition, together with limited legislative intervention, will restrict the scope for the exploitation of the recipient. Conflict of interest only becomes an issue for specific intervention when a party expressly acts in advisory capacity or acts in some other special relationship of trust, such as a fiduciary, while also receiving a benefit either from a third party with whom the client will transact or directly from the client, where the receipt of the benefit is contingent on a particular action which is the subject of the advice.
- d) Subsection 1 (b) of LIC170 needs considerable clarification. It should specify the precise circumstances of the advisory capacity or special relationship which activates the potential for conflict of interest. It should specify the disclosure obligations required of the advisor and criteria by which disadvantage will be assessed.
- e) Subsections 1 (f) and 1 (g) of LIC170 are framed as absolute prohibitions. The reality in the large and complex operation of financial services operators is that any organization can not absolutely eliminate the potential for non-compliance it can only ensure that appropriate procedures and controls are in place to minimize the risk of non-compliance. Accordingly, both these subsections should only require the taking of reasonable steps to ensure compliance.
- f) The legislative regime fails to recognize the limited nature of credit provision activities undertaken by some credit providers, such as debt buyers.
- g) The legislation fails to differentiate between large and comprehensive service providers such as major trading banks and smaller limited providers, such as debt buyers. Debt buyers are generally smaller organizations with more limited compliance risks. A differentiated regime needs to be considered for limited operators such as debt buyers to avoid the potential for disproportionate compliance costs which are not commensurate with the risks.

7. LIC 250 relates that a licensee may authorise a “credit representative” in writing to engage in specified credit activities on behalf of the licensee.

We submit that these activities could include field calls, repossession of security and service of court process, if related to a credit contract regulated by the Credit Bill. This would then require the credit representative to comply with certain obligations imposed by the Credit Bill, including the issue of a Credit Guide and to become a member of an EDR scheme. We understand that the proposed legislation was intended to apply to situations where a credit representative is authorised for the purpose of suggesting or assisting in the provision of credit rather than assisting in the collection of overdue credit contracts. It would be impractical for a credit representative to issue a credit guide to a debtor where it is intended to repossess security relevant to the credit contract. Any breaches of the legislation are the responsibility of the licensee under LIC 290 & 295, and any disputes arising from such activities could be channeled through the licensee's IDR & EDR processes. It is difficult to understand why a credit representative in these circumstances would be required to be a member of an EDR scheme.

8. Two categories of participants have been identified who can be streamlined to a Credit Licence as noted in paragraph 2.27 of the Commentary to the Consumer Credit Protection Bill and the Transitional and Consequential Bill:
 - ADIs
 - Holders of either an ‘A’ or ‘B’ class license under the Finance Brokers Control Act (WA)

We submit that a person licensed as a Credit Provider pursuant to the Credit (Administration) Act 1984 (WA) should also be included as a participant identified who can be streamlined to an Australian Credit Licence. The process requirements for this licence are similar to that of the WA Finance Brokers Licence.

Chapter 3 – Responsible Lending

The requirement for the provision of an assignee's credit guide upon assignment, pursuant to s232 will create considerable economic inefficiency.

- a) The provision of a credit guide upon assignment will serve to distract the debtor from the need to dialogue with the assignee. The overwhelming majority of accounts sold by credit providers to specialist debt purchasers represent unsecured debts which are in default and are in excess of 180 days in arrears, despite considerable collection efforts by the original credit provider and its agents. Prior to sale much of the dialogue with the debtor will focus on the need to negotiate some form of repayment. Upon sale the first piece of communication from the assignee will be the provision of a credit guide which will focus the mind of the debtor on avenues for complaint and various rights, rather than the need to contact the assignee and agree a suitable repayment plan. This will lead to considerable obfuscation and inefficiency in the collection process as the debtor seeks to assert various rights, many of which will not be relevant until at least some dialogue with the assignee has taken place.
- b) The provision of External Dispute Resolution (EDR) details with the initial notice of assignment has the potential to inundate the EDR with vexatious matters. There can

be no grounds for any genuine dispute until at least some dialogue between the debtor and the assignee has occurred. Professional debt purchasers', such as Credit Corp, maintain internal compliance procedures and independent complaint investigation and resolution functions. It is considerably more efficient for any complaints/disputes to exhaust the debt purchaser's internal processes before proceeding to the EDR. This ensures that the EDR is not inundated with vexatious matters which hinder the EDR's ability to deal with genuine disputes and, in the instances where a complaint warrants determination by the EDR, it ensures that the necessary facts and evidence are available.

- c) Compensation arrangements are not relevant in the context of credit provision generally and debt assignment more specifically. There is no requirement for compensation schemes as a debtor is not deprived of any assets or wealth by the provision of credit or the assignment of such credit. These compensation arrangements will just mean increased cost and inefficiency.
- d) The provision of a rights-based credit guide to debtors at the point of assignment has the potential to create economic inefficiency. It is important that debtors who have the capacity to make payments subsequent to debt sale are encouraged to make payments to the extent of their financial capacity. It is often those delinquent debtors with the capacity to pay who will seek to exploit rights to obfuscate and delay the collection process. This obfuscation and delay increases costs and reduces net collection outcomes realized by debt buyers. This reduces the prices debt buyers can pay for debts and increases the cost to credit providers. Ultimately, this must be passed on to credit consumers in the form of higher lending margins and more limited access to credit.
- e) Section 430R, Credit Guide for credit representatives, and section 430, Credit guide for debt collectors, also require a credit guide to be issued to consumers. It would seem impractical for these types of persons to be required to issue a credit guide as they are acting as agents for the credit provider/licensee and are required to comply with the same obligations as the credit provider. The credit provider's EDR scheme and other measures would be relevant as the credit provider is responsible for the actions of the agent/credit representative or debt collector. See Section 176 (1) of the National Credit Code.
- f) It would also be impractical for a repossession agent to be required to issue a credit guide prior to repossessing goods. Similarly a process server if they too are caught by the definitions within the draft legislation.

Chapter 5 – Dispute resolution and courts

It is proposed that any legal proceeding in respect to credit regulated by the Credit Bill, be required to be issued in the jurisdiction where the debtor ordinarily resides, or if that is not known, where the debtor ordinarily resided at the time the contract was made. See page 119 of the Commentary to the Credit Protection Bill and the Transitional and Consequential Provisions Bill.

1. The jurisdictional issue only arises where the debtor intends to raise a defense to the proceedings. This situation would arise in a small number of instances. For example defenses

received by Credit Corp in the past 12 months represent 0.37% of the total number of Statements of Claims issued in that period.

2. A Debt Buyer, having legal title to an assigned debt, may issue originating process in its own name. This obviates the necessity for the Debt Buyer to use Solicitors and thereby incur increased costs, which are recoverable from the defendant/consumer.
3. Credit Corp purchases debts from financial institutions that are relevant to credit being extended within each state and Territory of the Commonwealth. Currently Credit Corp issues initiating process in NSW irrespective of the jurisdiction where the debtor ordinarily resides. This provides efficiencies in managing court process and provides a reduction of costs recoverable from the debtors.
4. If Credit Corp is required to initiate process in states other than NSW it will be necessary to engage external Solicitors. This would increase the costs that are recoverable from the defendant/consumer. This cost can be avoided in the majority of matters by permitting the initiating process to be performed in one court.
5. Credit Corp currently issues initiating process in NSW for service throughout the Commonwealth pursuant to the Service and Execution of Process Act. Included with the documents served is an advice to defendants that if they intend to raise a defense, an application can be made to transfer the proceedings to a court more suitable to them in order to appear and defend the proceedings. On receipt of such an application Credit Corp will, as a matter of course, consent to the request. Accordingly those defendants who wish to defend are then able to attend a court more suitable to them, and for those defendants who do not have a defense, the costs recoverable against them are minimised by the issue of the proceedings in NSW.
6. We recommend that the process adopted by Credit Corp be enshrined in the proposed legislation. Credit Providers should retain the option of initiating legal process in a central jurisdiction, provided that they give defendants the option of electing to move the proceedings to another jurisdiction.
7. The exercise of transferring Credit to the Commonwealth is an example of removing cross jurisdictional boundaries where the operation of credit may be performed by licensed persons throughout the Commonwealth, thereby minimising restrictions imposed by state legislation. The proposed Consumer Credit Protection legislation appears to oppose the objectives of a national credit regime, in relation to the issue of legal proceedings. Recently COAG agreed to transfer the regulation of the Legal Profession to a Commonwealth level. This too reflects the trend to transfer cross-border activities regulated by state based legislation to a Commonwealth jurisdiction.

Schedule 1 – National Credit Code

The proposed National Credit Code (NCC) is based on the Queensland Consumer Credit Code 1995, which was adopted by each state as the Uniform Consumer Credit Code (UCCC), with amendments to reflect reference to the relevant Commonwealth bodies, tribunals, courts etc, instead of the Queensland state bodies.

Section 79A of the proposed Draft National Credit Code provides for a notice to be given to a debtor on the first occasion a default occurs due to Direct Debit dishonour. This notice must be given within 10 days of the default occurring and must be in the form prescribed by the Regulations. (Form 8 of Schedule 1 of the Regulations). The penalty for not complying with this section is a Criminal Penalty of 50 penalty points. This would appear to be an extreme sanction for a failure to comply with a process which would be of limited benefit to the consumer.

The consumer's banker will charge a fee for any direct debit that is dishonoured, thereby alerting the consumer. If incorrect bank details have caused the dishonour then the credit provider would normally contact the consumer in its normal course of account administration.

When Credit Corp purchases debts, they are in excess of 120 days delinquent. The purpose of this notice would appear to be related to initial defaults prior to the debtor being default listed with a Credit Reporting Agency, and prior to any other form of default notice being issued. It should not be required in regard to any subsequent arrangements (post default) made to repay the balance of the account that has become due pursuant to an accelerated clause in the credit contract. At this stage the debtor has already been default listed and has been issued with a section 80 notice. Failure to honour a subsequent payment arrangement or settlement amount will not have any further adverse implications for the consumer's credit status.

This section of the legislation should reflect that this notice is only relevant in the period prior to any cure period incorporated in a section 80 notice. This section should not apply subsequent to the default payment contained in an uncured section 80 notice.

4 – Exposure Draft Bill 2 – National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009

We submit that current holders of a WA Credit Providers Licence or WA Finance Brokers Licence that are current members of an ASIC approved EDR scheme be granted automatic registration with limited application in the registration process. These participants should also be streamlined in respect to applying for an Australian Credit Licence, as are ADI's and holders of the WA Finance Brokers Licence.

7 – Exposure Draft Regulations 3 – National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2009

These Regulations deal with the registration of persons who engage in credit activities, including:

- the imposition of conditions on a registered person; and
- exemptions from the registration regime.

Credit Corp submits that persons holding a WA Credit Providers licence should be granted automatic registration and also be included as a participant identified who can be streamlined to an Australian Credit Licence.

Yours Sincerely,



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A handwritten signature in black ink, appearing to read 'Geoff Templeton', with a large, sweeping flourish at the end.

Geoff Templeton
Compliance Manager