

Our reference  
AG/

Governor Phillip Tower  
1 Farrer Place Sydney NSW 2000  
GPO Box 9925 NSW 2001  
Tel (02) 9210 6500  
Fax (02) 9210 6611  
[www.corrs.com.au](http://www.corrs.com.au)

**CORRS  
CHAMBERS  
WESTGARTH**  
lawyers

21 May 2009

**By email:** [consumercredit@treasury.gov.au](mailto:consumercredit@treasury.gov.au)

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

**Partner**  
Andrew Galvin (02) 9210 6439  
Email: [andrew.galvin@corrs.com.au](mailto:andrew.galvin@corrs.com.au)

Dear Sir/Madam

## **Submission – Licensing under the National Consumer Credit Protection Bill 2009 (“Credit Bill”)**

We represent two of Australia’s most prominent automotive finance companies, GMAC Australia LLC (**GMAC**) and FCA Holdings Ltd (**Ford Credit**). For reasons related to the global financial crisis, in recent months, both of GMAC and Ford Credit have ceased operations as providers of retail finance in Australia.

Both GMAC and Ford Credit will continue to service existing customer accounts but they no longer accept new applications for finance. As the existing accounts are fixed rate car loans with no provision for further advances, periodic statements of account are not issued and customer servicing is confined to payouts, collection and enforcement action.

Under the present law, GMAC and Ford Credit are permitted to continue to service existing loan accounts without the requirement to be registered or licensed as credit providers in any jurisdiction. Neither GMAC nor Ford Credit has been subject to regulation as a debt collector in any State or Territory because the State and Territory debt collector licensing laws do not apply to a company in respect of the collection of its own debts.

GMAC and Ford Credit are concerned that the Credit Bill will effectively have retrospective operation in relation to pre-commencement credit contracts and that they will be subject to a level of regulation which bears little relevance to the very limited activities which they will conduct. Moreover, it is submitted that even in respect of their limited account servicing activities, there is no evidence of market failure or of any valid policy basis regulating such limited activities in the same manner as credit providers and finance brokers are regulated.

The following aspects of the proposed licensing regime are of particular concern:

1. A key function of the licensing regime is to impose entry standards which will enable ASIC to refuse an application where a person does not meet the applicable standards. While this is an appropriate regulatory measure in respect of activities which a person may choose to conduct in the future, it is an inappropriate measure

**Error! Unknown document property name.**  
**Submission – Licensing under the National Consumer  
Credit Protection Bill 2009 (“Credit Bill”**

---

to take in relation to activities which a person is already committed to perform, particularly where such commitment was given before the licensing regime was even proposed. The servicing and management of existing credit contracts is a contractual and commercial necessity, not a business choice. In effect, the requirement for a person to be licensed merely because the person has already provided credit gives the Credit Bill harsh and retrospective operation. It also gives rise to considerable uncertainty about the status of outstanding debts if the credit provider fails to obtain a credit licence or if ASIC suspends or cancels a credit licence.

2. Under the Credit Bill, a person would commit an offence merely on the basis that the person provided credit under a contract entered into before the law commenced where the credit remains unpaid. The person must successfully obtain a credit licence to avoid commission of the offence. It is submitted that any licensing regime should be voluntary and that persons should not be forced to obtain a licence to avoid the commission of an offence in relation to pre-commencement contracts.
3. Another key function of the licensing regime is to impose standards of conduct in respect of credit activities including the responsible lending obligations. Responsible lending obligations have no relevance to pre-commencement credit contracts.
4. It is submitted that in the context of pre-commencement credit contracts, other licensee obligations add little, if anything, to consumer rights or interests. For example, most, if not all, account servicing activities, including the issuing of statements on request, payout figures, hardship requests, default notices, enforcement action and postponement of enforcement action are specifically regulated by the Consumer Credit Code.

In light of the above considerations, it is respectively submitted that item 1 of the description of “credit activity” in section DEF5 of the Credit Bill be amended so that the concept of credit activity:

- does not extend to activities in respect of pre-commencement credit contracts;
- does not apply to a person merely because the person is a credit provider – rather, it should apply to the specific activity of providing credit;
- allows an unlicensed person who is a credit provider (but who has ceased providing new credit) to outsource management and servicing functions to a credit licensee; and
- excludes the performance of administrative functions such as the delivery of a payout figure on request.

Corresponding amendments should be made to items 3, 4 and 5 of DEF5 which relate to consumer leases, mortgages and guarantees.

21 May 2009

**Error! Unknown document property name.  
Submission – Licensing under the National Consumer  
Credit Protection Bill 2009 (“Credit Bill”**

---

Thank you for the opportunity to make this submission.

Yours faithfully  
**Corrs Chambers Westgarth**

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal line extending to the right.

**Andrew Galvin**  
Partner