

22 May 2009

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

Email: consumercredit@treasury.gov.au

Dear Geoff,

National Consumer Credit Protection Bill 2009 (Cth)

The LIV welcomes the opportunity to respond to your invitation seeking comments to the proposed National Consumer Credit Bill 2009 (Cth) ('the Bill').

We are still concerned that government has not allowed sufficient time for us to fully engage our membership in consultation to the draft Bill. However, we have attempted to convey as much of our broader member opinion as possible in the comments below.

Background

Recently, the LIV with other law societies throughout Australia sought ASIC Class Order relief (CO 03/1094 and CO 03/1095) to engage in the promotion of financial services products through a range of marketing agreements with external providers. Ultimately, this application was successful after many months of protracted and complex discussions with ASIC.

The Class order relief permits the suggestion of a financial services product or the promotion thereof to our members. The class order is purposely designed to protect organisations like the LIV from a potential conflict with the Corporations Act 2001, which would otherwise require the LIV to have a financial services licence to promote or sell financial products and services with its affinity partners. At present, we have at least two affinity relationships with financial services providers.

The National Consumer Credit Protection Bill 2009 (Cth) now requires us to hold an additional licence; even if we are passively suggesting a form of credit relationship.

The Bill

The LIV is concerned that the Bill, as currently drafted, is inadvertently capturing organisations like ours, which merely co promote a selective range of member benefit products, through a primary financial services provider.

The draft Bill provides a very broad definition of credit activity and, in addition to the provision of credit by primary lenders, will also apply to the provision of a credit service. Like other concerned stakeholders, we feel that the proposed definition of 'credit service' is too broad. The proposed definition would appear to apply to an affinity partner program, or our involvement therein, and would require us to hold an Australian Credit Licence (ACL).

Whilst there are a number of activities that are exempt from the definition of 'credit activity'; and those stated in the explanatory memorandum are noted, the issues of marketing and promotion are still unclear. The notion of a 'referral' still requires much greater certainty and a possible inclusion in a range of 'carve out' exceptions that we would be seeking to this Bill.

Recommendations

As noted at the outset, the LIV considers the introduction of the Bill premature and poorly timed. It is indicative of legislation drafted with inadequate consultation and essentially mirrors the existing deficiencies in the state based credit codes.

Accordingly, we suggest the Bill be delayed until further consultation is undertaken; which should seek to correct the longstanding problems with state based credit codes, before they are mirrored into a federal code.

Secondly, we request that there be a specific 'carve out' for organisations granted class order relief by ASIC under the FSR provisions.

Please do not hesitate to contact me directly or the LIV Commercial lawyer Michael Hayes on 03 9607 9382.

Yours sincerely



Mike Brett Young
CEO
Law Institute of Victoria