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Dear Geoff,

Draft National Consumer Credit Protection Bill 2009 for Australia

Liberty Financial Pty Ltd (Liberty) acknowledges the importance of the Federal Government's initiative to reform Consumer Credit laws and welcomes the opportunity to provide comment on the Exposure Draft of the National Consumer Credit Protection Bill 2009 (the Bill).

Liberty believes a healthy balance is required between the Government's policy of safeguarding the Australian public interest while ensuring that financiers are not unnecessarily burdened with regulation that restricts credit or increases its cost. After reviewing the Exposure Draft, Liberty wishes to make some key points relating to the practicalities of the Bill and how it may be enhanced to better serve the needs of the Australian community.

1. Licensing

Liberty supports a single national licensing scheme for companies and individuals predominantly involved in the provision of credit. Liberty also supports compulsory External Dispute Resolution (EDR) membership for licensees.

However, the proposed legislation extends far beyond primary (and even secondary) participants in the provision of credit and covers entities that are merely performing ancillary services. Compelling such tangential entities to conform to the prescribed license requirements is a disproportionate economic burden that has a significant consequential impact on overall credit costs.

Ultimately, any inefficient increases in the cost of delivering credit will be needlessly borne by consumers. It will also further reduce the level of competition amongst credit providers. In the current format of the Bill, it is possible that the only business model that can economically provide credit will be those with banking licenses and costly branch networks.

Competition already has been seriously crippled in the financial services sector by events of the last eighteen months. This legislation may very well hasten the return of a bank oligopoly and accelerate the trend of increasing credit costs to Australian consumers. It is therefore proposed to focus the scope of licensing to those entities that perform primary and essential credit provision activities.

2. Process and Documentation

Liberty is in favour of clear and transparent consumer documentation and supports the proposed changes to (i) usage of Comparison Rates, (ii) increasing Hardship remedies, (iii) prohibiting certain securities and (iv) introducing further consumer disclosure in the form of appropriately drafted Credit Guides.

Liberty further supports adopting those aspects of the Uniform Consumer Credit Code (UCCC) that oblige credit providers to satisfy themselves that a borrower can afford credit. Liberty also supports the broadening of the current regime to cover areas that have been prone to questionable practices such as unsecured loans and micro credit.

However, extending the accountability of credit providers to determine the appropriateness of the borrower's requirements and objectives is flawed. After all, it is the very same borrowers that credit providers depend on to provide relevant information.

More importantly, undertaking a proper needs analysis requires a complete understanding of a person's financial position and future goals. This service is typically undertaken by a financial planner or accountant and to make this function a mandatory service of credit providers is puzzling.

If the intent of the draft Bill is to ensure the appropriateness of each loan, then a more cost-effective approach would be to require independent advice to be obtained prior to entering loan contracts. Such a provision would leverage the expertise of professional advisors and be more cost-effective for consumers.

Alternatively, if the intent of the draft Bill is to ensure that credit contracts are not unsuitable, existing state based legislation has facilitated this aim. Specifically, the use of Finance Brokers Contracts differentiates the roles that entities play in the supply of credit.

Specifically, this legislation prescribes how suitability should be assessed and holds the individual involved in point of sale accountable for that assessment. The credit provider in turn should be held accountable for assessment of affordability as proposed. Such an approach would ensure that the costs of supply are accurately apportioned to the provided service.

3. Penalties

Credit providers have no incentive to extend inappropriate loans as they are exposed to financial loss in the event of a loan default. In addition to this risk of financial loss, the draft Bill now seeks to add civil as well as criminal penalties. These provisions appear to be heavy-handed compared to other industries and will likely be a strong deterrent to making credit available which could only lead to increased credit costs for consumers.

4. Policy and Consumer Confusion

Liberty supports the policy objective of ensuring consumers be provided with the necessary information to make suitable decisions regarding credit contracts. Liberty further supports holding credit providers accountable to proving the ability of borrowers to repay and that they benefit from the credit provided. However, Liberty does not support holding the credit provider accountable for the consumer's decision to borrow.

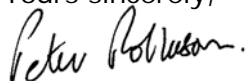
Requiring the credit provider to be able to account for and report in detail how a loan meets the "requirements and objectives" of the borrower is subjective and open to interpretation. This ambiguous provision will create more uncertainty around the integrity of credit contracts and create high consumer credit costs. Liberty proposes that prescriptive criteria be detailed in future versions of the Bill.

Lastly, the emphasis on compensation and EDR schemes in Credit Guides discourages the Internal Dispute Resolution (IDR) procedures. This provision is likely to result in an overburdened, costly and inefficient EDR process. Instead, compelling all credit providers to belong to an EDR scheme and using it as an exception would be a more balanced approach.

Summary

The Government's intention to bring a national, consistent regime for the provision of consumer credit is appropriate and admirable. While the present draft Bill contains some significant shortcomings, practical amendments can be made to ensure consumers benefit from increased protections while enjoying access to available, appropriate and affordable credit. Liberty would be very happy to meet with the department to further explore any of the comments above and thank you for the opportunity to provide this feedback.

Yours sincerely,



Peter Rollason

Executive Director