National Consumer Credit Protection Bill

Submissions on the exposure draft released 27 April 2009

The MFAA is the peak industry body for the mortgage and finance industry. We thank government for involving the MFAA in the consultation process, and for the opportunity to lodge this document, our formal submission on the exposure draft.

Executive summary

Our key submissions are summarised as follows.

1. The obligation for assignees to be licensed must be limited to legal assignees to prevent disruption to securitisation and avoid confusion to consumers. Consumers should have recourse to the lender of record, not the holder of some other interest.

2. A provision authorising indemnities similar to s.169A of the UCCC is required to enable trustees, SPVs, and other vehicles used in securitisation to obtain an indemnity for criminal acts. Further, licensees should be able to obtain indemnities from their credit representatives.

3. The legislation should make it clear that obtaining an ACL will not be as difficult as obtaining an AFSL. Licensing processes and requirements should be simplified so as not to disadvantage (or disqualify) small (one person) operators which comprise the bulk of the broker sector.

4. An exclusive arrangement and first choice exemption (similar to the existing NSW exemption) is required so that non-balance sheet lenders are not disadvantaged compared to balance sheet lenders by having to disclose margins.

5. Registration should be permitted until 31/12/10 so as not to exclude new entrants to the markets and so as not to disadvantage existing industry participants who do not register by 31/12/09, or register the wrong entity.

6. Licensees should be obliged to disclose fees paid to referrers.

7. The notices referring consumers to EDR need to be amended to inform consumer about the licensee's own IDR, and to explain that EDR can only assist if there is a genuine dispute.

8. Division 3 DP5-20 creates the risk of states continuing to legislate in relation to credit. Uniform national law is fundamental to these proposals.

9. Disclosure of commission (other than commission payable by the consumer) should be in bands to enable the consumer to assess whether the broker's recommendation may be influenced by the amount of commission the broker will receive.

CHAPTER 1 – INTRODUCTION

Division 3 DP5-20 provide that state laws will prevail over Commonwealth law in the event of inconsistency. National uniformity is fundamental to industry's support for this legislation. Allowing states to legislate in an unrestricted way could create greater inconsistency than currently exists.

CHAPTER 2 – LICENSING

DEF6 + 7– budget coaching

We are concerned that businesses providing 'budget coaching' will not be captured unless they assist the borrower to obtain a loan.

Often the most disadvantaged are taken advantage of by unscrupulous advisers who charge excessive fees for what is often an illusory service. These so-called advisers prey on the weak much in the same way as 'property spruikers'.

The definition of 'credit assistance' should be expanded to include 'providing advice on how to manage cash flows in connection with a loan".

DEF 9 - Assignees

DEF 9 provides that an assignee of a credit provider, lessor, etc is itself a credit provider.

This means the assignee would need to be licensed and because of R232 provide a credit guide.

Securitisation and other financial techniques involve assignments of beneficial interests. It should be made clear that DEF 7 only applies to legal assignments (ie where the lender of record changes). Unless this change is made, securitisation and other funding arrangements will be compromised and consumers will receive many confusing notices.

The definition of assignee in s.166 of the UCCC provides a useful model.

DEF 105 - Trustees

In many funding structures the lender of record is a nominee or bare trustee. The loan program is managed and often controlled by a program manager, the beneficiary, or some other third party.

A section like s169A in the existing UCCC is required to allow an indemnity to be given in favour of trustees and nominees. Further, licensees should be able to obtain indemnities from their credit representatives.

LIC170(b) – No conflict of interest

Many commentators consider there is a fundamental conflict of interest between lenders and borrowers. For example, lenders naturally want the highest interest rate while borrowers want the lowest. It should be made clear that (b) only refers to conflicts of interest which are not self-evident from the nature of the relationship between the licensee and the consumer.

LIC170 – Requirements for licensees

We understand that it is intended that the requirements to obtain an ACL will be reasonably obtainable by the majority of mortgage brokers who are currently members of professional associations such as the MFAA.

However, much of LIC170 is lifted from the Corporations Act and mirrors the requirements for obtaining an AFSL.

We are concerned that a regulator or a court when faced with broadly identical language will have difficulty in imposing different standards. This concern is widespread amongst the industry.

If it is difficult to obtain an ACL, many finance brokers will instead need to become credit representatives. This is likely to significantly increase the cost of business and is a substantial change to the way in which the industry currently operates. In WA it is usual for individual loan writers to be licensed.

If only large brokers and aggregators are able to obtain an ACL, there will be a substantial lessening of competition in the industry, because small brokers will effectively be excluded.

It is important that the difference between the requirements for an AFSL and an ACL is embedded in legislation to avoid misinterpretation by the courts or regulators.

In addition:

- It will be difficult for small brokers to have an IDR that complies with the requirement for independence. A solution may to specify that the IDR can be provided by an outsourced service provider.

- One man businesses will find it impractical to have meaningful systems, written compliance plans, adequate financial and human resources, and a risk management plan.

For the avoidance of doubt, we repeat that we have heard and understood the assurances that it is anticipated that existing MFAA members should have not problems in obtaining an ACL. The thrust of our submission is that the legislation needs to reflect that assurance.

- Further compensation arrangements are not appropriate for credit providers and lenders because the consumer has the ultimate sanction of obtaining a variation of their financial obligations.

LIC186(3)(a) - typo

At the end of subparagraph (a), insert ‘and’.

LIC280 – Provision of information

LIC280 provides qualified privilege to ASIC giving information regarding licensees and authorised representatives to licensees.

One of the great problems confronting the industry for many years is the reluctance of industry participants to inform the MFAA and other aggregators of the misconduct of brokers. This is particularly true of lenders (especially ADIs) who will not make a report for fear of defamation and other claims. The reluctance to report also arises from the fact that there is always an element of doubt concerning most allegations.

There should be an express provision entitling anybody to provide information to ASIC regarding licensees, credit representatives, and other persons who appear to be breaching this legislation (ie unlicensed people).

It would also be useful if ASIC had the right to inform the MFAA and other industry bodies regarding any concerns.

PART 3.1 – RULES APPLYING TO CREDIT ASSISTANCE PROVIDERS

R130(2)(e) – Commission payable other than by the consumer

The information about commissions is divided into three separate sections as follows:

(i) any commissions (expressed in their dollar value) that the licensee, or an employee, director or credit representative of the licensee is likely to receive, directly or indirectly from credit providers in relation to credit contracts; and

(ii) the amount of those commissions or the range of those amounts; and

(iii) the method of working out those amounts.

Paragraphs (i), (ii), and (iii) all deal with the same topic. For example, commission that is disclosed as a dollar value as required by clause (i) is a more extensive disclosure than the disclosure required by (ii) and (iii).

At the preliminary stage of providing a credit guide the credit service provider will usually not have identified the particular loan and so no detail about commissions can be provided.

The detailed requirements in R130(2)(e) are at odds with the general outline described in para 3.30 of the commentary.

It will usually never be possible to express commission as a dollar value because:

- trail commission is payable on the variable monthly balances of the loan account (so this amount is unascertainable); and

- many lenders pay bonuses having regard to factors such as service levels and performance of portfolio.

We understand that the key intent of such disclosure is to assist the consumer identify whether a product is being favoured by the broker because the commission is higher.

We consider this is best achieved by a regime under which commission is disclosed in bands. Disclosure in bands is more useful to the consumer than disclosure of a specific commission amount as band disclosure facilitates comparison. A suggested regime appears below. Under this proposal the ***exact*** amount of commission doesn't need to be disclosed, and so the opportunity for brokers to claim the amount cannot be disclosed because it is unascertainable is removed.

Range	**Lenders**
Upfront commissions (% of loan amount)	
0.0% to 0.3%	[name each lender falling in each band]
Over 0.3% to 0.6%	
Over 0.6% to 1.0%	

Range	Lenders
Over 1.0%	
Trail commissions (%pa of loan balance)	
0.0% to 0.3%	
Over 0.3% to 0.6%	
Over 0.6% to 1.0%	
Over 1.0%	

R130(2)(h) – Information about credit assessment

Amend to refer to '**preliminary** assessment' to conform with R150.

Remove the requirement to provide a copy of the preliminary credit assessment because this document may be misleading (to the extent it anticipates the credit decision by the lender), creates significant training and process issues (which, if the proposal is to proceed, should be progressed as part of phase 2), and may contain information which is not suitable to be released into the public domain.

The commentary in paragraph 3.20, 3.61, and 3.62 states that only copies of favourable assessments must be provided. This is not reflected in the legislation, except by a note that the assessment need only be provided if the credit assistance is provided. An aspect so fundamental should not be limited to a note.

Consumers may ask brokers to try to find a loan despite the broker's view that the loan in unsuitable. Are these consumers to be denied assistance and credit?

The requirement to provide the copy of the assessment within two business days of request does not sit easily with the requirement that the obligation to provide a copy of the assessment only arises if credit assistance is given.

Additional guidance is required on what comprises a 'credit assessment'. We assume that this does not mean full details of the licensee's policies etc – but rather is limited to information used in relation to the particular borrower and the particular application.

R130(2)(i) – Additional disclosure

Delete as this paragraph duplicates the requirements of (h).

R135 – Not demand payment of an amount exceeding the quote

Amend to specify that the licensee cannot demand payment **from the consumer**, as payment may be received from other sources.

R160(1)(c) – Verifying the consumer's financial situation

We understand the intention is not to limit the use of low doc and no doc loans in appropriate circumstances.

As the UCCC will extend to loans for investment housing, there will be circumstances where investors make certain representations regarding their financial situations and expect the lender to accept those representations without verifying them. Accordingly, delete paragraph (c).

If that submission is not accepted, amend to provide that the broker must only take steps to make a preliminary verification to distinguish the more extensive verification that will be made by the lender. In particular, it is unlikely that brokers will be able to verify employment and they cannot obtain credit reports.

We suggest that the verification should be limited to 'reasonably enquiries **of the borrower'** as that is the extent of enquiry practically available to most brokers.

R165(1) – when credit is unsuitable

R165 requires the licensee to determine whether the consumer will be unable to comply with the consumer's financial obligations under the contract at the time the contract is proposed to be entered.

Amend to provide that the assessment must be made as at the date of the assessment. It is not practical for an assessment to be made in relation to the future position of borrowers. Further, frequently it is not known when the contract will be entered.

The introductory words to paragraph (1) should read "that the contract will be unsuitable for the consumer **if and only if** …" in order to conform with R190(2).

Aggregators

Often brokers deal with lenders through aggregators. The aggregator may or may not review the credit application. It should be made clear that 'up the line' intermediaries are not liable to verify the broker's assessment, nor conduct a separate assessment.

R165(2) – Unsuitable contract to remain in

Brokers will often be confronted with credit contracts that are unsuitable, but there is no alternative available to the consumer. It would be unhelpful if brokers in these circumstances are forced to recommend that the customer exit the loan contract when there is no opportunity to do so. Accordingly we suggest R165(2) is deleted in full as the less prescriptive language of R150(2) is sufficient guidance.

R170 – Provide credit assessment

Delete for the reasons specified at R130(2)(h).

R180(1) – Commission disclosure

Time for disclosure

The requirement to provide the commission disclosure 'at the same time as providing credit assistance' is confusing. The appropriate time for this disclosure is before the borrower is obliged to pay any money or borrow any loan.

Referral fees

There should be a requirement to disclose referral fees. Often referral fees are paid to unlicensed persons, and the consumer will have relied significantly on what the consumer thinks is an unbiased recommendation. Although there is an obligation on unlicensed referrers to disclose benefits they

have received, it is unlikely unlicensed referrers will be aware of this obligation and so that disclosure may not happen. Accordingly, it is appropriate to impose this obligation on licensees.

Up the line disclosure

From our reading it appears that only licensees dealing with a consumer need to provide a credit guide and provide a commission disclosure. There is no need for intermediaries up the introduction chain (eg aggregators) to make a disclosure. This is wholly appropriate, and reflects the NSW 'up the line' exemption (s.2B of the Consumer Credit Administration Regulations).

Mortgage managers and other non balance sheet lenders

We submit there is a need for an exemption along the lines of section 2BA of the Consumer Credit Administration Regulations known as the exclusive and first choice arrangement exemption.

A fundamental requirement to fit into this exemption is that the intermediary must not, either alone or together with any other business, advertise or trade in such a way that there is any possibility that a customer could believe that the intermediary may select from a range of lenders. In other words, the intermediary must not conduct the business normally described as finance broking.

This means that mixed businesses which partly broke or work in connection with a broking company will not fit into the exemption.

The exemption will allow true mortgage managers to lend without having to disclose their interest rate margin. This exemption is required to place non-bank and non-balance sheet lenders on a level playing field with ADIs and balance sheet lenders and to avoid a significant impediment on the re-emergence of that market after the financial situation stabilises.

R180(2) – Credit proposal disclosure

Paragraph (a) regarding money payable by the borrower should be deleted as it is already covered by R130(2)(c).

Subparagraph (b) should be deleted as it is already covered by R130(2)(e).

Subparagraph (c) regarding total fees payable to the lender should be deleted as the broker may not know this information.

Subparagraph (d) should be deleted as the broker may not know this information.

R180(2)(e) (Credit left after paying expenses) should be deleted as the broker may not know this information.

In summary, we see no purpose in the credit proposal disclosure document and R180 should be deleted in full. R130 should be amended to require that any information that cannot be given in a credit guide must be given before the borrower is obliged to pay any money or borrow any loan.

R190(1) – Unsuitable principal increases

The broker can only assess suitability at the time of assessment and not at the time the credit contract is entered. The borrower's circumstances may change.

R190(2)(c) – Tests for unconscionability

Delete as it duplicates R165.

R192 – Unsuitable existing loans

Delete as it is covered by R150(2).

PART 3.2 – RULES APPLYING TO LENDERS

R230 – Credit guide for credit providers

R230(1) provides that a licensee must, as soon as practicable '**after** it becomes apparent …' that a loan is likely to be made, a credit guide must be provided.

Where loans are introduced by brokers, it would be impractical for brokers to carry around credit guides for large numbers of lenders. Further, it would be inefficient and add to the 'paperwork' if the credit provider is required to provide the credit guide prior to the communication indicating that the loan is approved.

To provide flexibility we suggest that the credit guide should be provided on or before the time when a credit contract/consumer lease is given to the borrower. This will ensure the consumer obtains the information before signing up for credit, while providing the flexibility the industry needs to allow for different business models. This solution also avoids double handling and significant changes to systems.

R230(2)(d) –compensation arrangements

It is unnecessary for lenders to have compensation arrangements as borrowers have at their disposal the ultimate recourse, namely a reduction or a removal of the obligation to repay the loan. Introducing a requirement for a compensation fund or insurance adds another layer of expense which is not necessary.

There is doubt as to whether relevant insurance can be obtained for lenders.

If the requirement is to remain, special provisions will be required for credit providers who are special purpose vehicles and trustees. Insurance which can be accessed by the SPV or trustee will be arranged by the beneficiary or trust manager.

R230(2)(e) – information about credit assessments

The requirement for a lender to provide a copy of the credit assessment should be removed.

Lenders will encounter significant systems, education, and process issues to establish procedures to provide the credit assessment.

When is disclosure required?

The commentary in paragraph 3.20, 3.106, and 3.107 states that only copies of favourable assessments must be provided. This is not reflected in the legislation, except by a note that the assessment need only be provided if the credit is provided. An aspect so fundamental should not be limited to a note. If despite our submission the requirement is retained, the provision should be amended to provide that the credit assessment need not be provided if the credit assessment is unfavourable, and that provision should be built into the main part of the legislation.

Is the lender obliged to provide all its internal workings? If enquiries are made in confidence or an incorrect conclusion is reached, there a risk that negative statements regarding the consumer could trigger a dispute.

The requirement to provide the copy of the assessment within two business days of request does not sit easily with the requirement that the obligation to provide a copy of the assessment only arises if credit is provided.

R230(2)(f) - Information about the licensee's obligations under R270 and R290

Suggest deletion of (f) as it is an unnecessary duplication of R230(2)(e) (Obligation to provide a copy of the credit assessment on request) and R290 (Not to enter unsuitable contracts).

R232 – Assignees to give credit guide

Credit guides should only be given by legal (not equitable) assignees. See our comments in relation to DEF9.***R265 – unsuitable loan***

R265 requires the licensee to determine whether the consumer will be unable to comply with the consumer's financial obligations under the contract at the time the contract is proposed to be entered. It is not practical for an assessment to be made in relation to the future position of borrowers. Further, frequently it is not known when the contract will be entered. The assessment must be done at the time of the assessment.

The introductory words to paragraph (1) should read "that the contract will be unsuitable for the consumer **if and only if** …" in order to conform with R290(2).

R270 – Provide a copy of the credit assessment

Delete in full for the reason specified at R230(2)(e).

In any event, delete as the section duplicates R230(2)(e).

R270 – Provide copy of credit assessment within two business days

Delete as asking for a copy of a credit assessment at a future time is likely to be abused and not required for bona fide purposes. In any event two business days is far too short a period to access a document in respect of a credit assessment which may have occurred over 30 years before.

R280 – Provide information of commission

Commission includes any kind of payment including salary. The clause (or the definition of 'commission') needs amendment to make it clear that only payments in the nature of a success fee or incentive must be disclosed.

- Paragraph 3.111 of the commentary notes that this disclosure would normally be made in the s.14 UCCC pre-contractual disclosure. Such an important matter should be made clear in the legislation.

R290 – Not enter by unsuitable contracts

The lender can only assess suitability at the time of assessment, not at the time the credit contract is entered into. The borrower's circumstances may change.

There should be no civil penalty for entering an unsuitable contract. This creates an unacceptable risk for lenders (especially compliance conscious lenders) who would risk committing an offence each time they lend. Rather, the remedy should be re-opening the contract and any security.

R290(2) and (3) – Tests for unconscionability

Delete as these duplicate R265.

PART 3.3 – CREDIT GUIDE OF CREDIT REPRESENTATIVES

R330(2) – Information for credit guide

As drafted there is no requirement for an identifying number to be given by the credit representative. We understand that credit representatives will have a unique identifying number and so that should be shown on the credit guide.

Further, if a corporate representative has authorised an individual, the unique identifying number for that individual should be disclosed.

The information in subparagraph (b), (c) and (d) should only be required to the extent, if any, that they differ from the information provided in the licensee's credit guide.

As for disclosure of commission, part 3.3 does not replicate R280 where the licensee has to provide further information (primarily commission disclosure). Accordingly it seems that it is contemplated that the commission disclosure will be at the licensee level. This needs to be clarified. In this regard LIC250(1) provides that the credit representative 'engages in specified credit activities on behalf or the licensee'. The representative does not in any other sense have a separate 'existence'.

We have suggested that R180 should be deleted, but if it isn't then the obligation on a credit representative to provide that information will be required so that credit representatives are not providing a lower level of information than licensees.

If despite our submissions R320(2)(b) and (d) are to remain, our comments about the impossibility of determining certain items made in respect of R230 relating to (b), the impossibility of obtaining certain information at the time that the credit guide is provided made in relation to R130(2) apply equally here.

PART 3.4 – CREDIT GUIDE OF DEBT COLLECTORS

It appears that a person who is managing loans on behalf of a credit provider does not need to be licensed as they are not providing a credit service. However, under R430 if the manager happens to be a licensee or a credit representative, a credit guide must be provided. This operates to the disadvantage of licensees, because debt collectors who are not licensees are not required to provide a credit guide.

In any event, we submit that it is confusing for debt collectors to provide a credit guide. Debt collectors (including mortgage managers) are just one type of outsource service being provided to the credit provider and as such operate under the credit provider's licence. If the outsourced service provider breaches the Act, the licensee will have breached the Act and the licensee needs to take recourse under its outsourcing agreement.

We maintain there should only be two types of credit guides – one for lenders and one for credit assistance providers (generally brokers and mortgage managers) – otherwise the disclosure regime becomes too cluttered.

The states need to amend their CAPI Acts to make it clear that mortgage managers are not required to be licensed as commercial agents.

If despite our submission R430(2) remains, credit representatives who are authorised to collect money should provide their credit representative number. Credit representatives need a unique number to enable appropriate tracking.

UCCC PROVISIONS

6(b) – credit to which the Code applies

As currently drafted, a loan made to purchase residential investment real estate will be regulated. but a loan made to refinance that loan will not be regulated. This should be corrected.

46(2) – prohibition on mortgages over essential household goods

It is usual for real estate mortgages to charge fixtures and some fittings (such as stoves, curtains, blinds, carpets etc). This is to enable the mortgagee to sell these assets on default. These types of items must be excluded from the prohibition. The goods listed in the example could well fall within the excluded property in s.6.03 of the Bankruptcy Regulations.

Referral to EDR

There are a number of circumstances where a consumer is referred to EDR, namely:

- 66(2A) – Notice of refusal of hardship application;
- 79A– Notice of a defaulted direct debit payment;
- 80 – Additional information in a default notice;
- 86(1A) – Notice that postponement application not granted.

In each case the notices:

- do not recommend that the consumer should first access the credit provider's IDR (a seven day turnaround for internal IDR would be suitable);
- do not clearly state that an application to an EDR should only be made if the consumer considers that the credit provider has done something wrong.
- As currently drafted consumers are encouraged to contact EDR if they are unhappy or remain in hardship. This is rather the role of financial counsellors as EDRs are designed for dispute resolution.

Unless this bias towards EDR is reviewed there is significant risk of a large number of frivolous applications to EDR delaying credit providers exercising their rights appropriately and thereby damaging the Australian financial system and the integrity of our mortgage industry. There would also be an increased cost to industry.

Unless IDR is brought into the regime, it seems pointless to make IDR compulsory.

72A – ASIC intervention

A scheme should be established for obtaining rulings from ASIC similar to the ATO ruling system. In the absence of a ruling system, there can be 'regulation by ambush'. Unless ASIC is authorised to give rulings, ASIC may claim it is not allowed to do so.

79A – Direct debit payment default notice

It is unclear whether this notice must be sent the first time each debit fails – ie if the debtor fails to pay each month, do you need to send a notice each month?

Section (1)(b) needs to refer to a default ***'in payment pursuant to the direct debit'*** otherwise it could apply to any kind of default.

It is inappropriate to send a notice if the default has been rectified.

The notice has to be *'given'* within 10 days of the default having occurred. Other notices are allowed to be given within 10 *business* days. If the notice is mailed it is *'given'* when received by the borrower through the ordinary course of the post (s173). As three business days for posting must be allowed, the time of 10 days is very tight when holidays and weekends intervene.

It is wholly inappropriate to have a penalty applying for failure to give this notice. The lender may not want to give the notice as the borrower may regularly pay late and the lender is happy with that, or the lender may be willing for arrears to be capitalised.

On balance, we suggest that the proposal for this notice is dropped in full. We do not understand the purpose of the notice.

Section 186A Definition of residential property

S186A defines residential property as land *'on which a dwelling is or will be affixed for residential purposes'*.

This has the potential to capture almost any vacant land because there may be a possibility that a dwelling will be affixed at some time in the future. Some temporal nexus is required.

The position of farm land containing residences needs to be clarified. Possibly the mixed use example 7.1 in paragraph 7.12 of the commentary is relevant. If the predominant use of the property is to be taken into account, that should be specified in s.186A.

Example 7.3 in paragraph 7.14 of the commentary reaches a conclusion that it is opposite to zoning and tax law – ie serviced apartments are considered commercial properties for those purposes. If it decided to retain serviced apartments within the UCCC, an express provision should be made to avoid confusion.

UCCC Regulations

50(2), 52 – Both these regulations refer to comparison rate schedules which have been abolished.

Form 2, 6, 7, 8, 9, 12 and 13. All these forms inform the consumer of the consumer's right to contact EDR. The legislation has made IDR compulsory, and so it is appropriate that these notices should first refer an aggrieved consumer to the licensee's IDR scheme with a short turn around period of say, seven days. The notices need amendments to make it clear that EDR can only assist if there is a dispute, and not just because the consumer is in difficulties.

Form 8 re direct debits. If this form remains despite our submission that it be deleted (see above), the form needs amendments as the information described as 'useful tips' is not of much use when a borrower is in default. It may have helped when the direct debit is first set up. Inclusion of this information at the time of default is not helpful. The notice should tell borrowers what to do to rectify the default.

National Consumer Credit Protection Regulations 2009

Throughout this regulation there is reference to *'credit agents'* which should be *'credit representatives'*.

2.3 – Requirements for an IDR

Most small brokers will struggle to comply with these standards.

National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations

Throughout this regulation there is reference to *'credit agents'* which should be *'credit representatives'*.

National Consumer Credit Protection (Transitional and Consequential Provisions) Bill

TL 25 - credit activities from 1 January 2010 to 30 June 2010

Typo at the end of (1)(a) should be *'or'* not *'and'* so that the provision specifies that a person must not engage in a credit activity if:

(a) the person is unregistered (ie they can engage if they are registered); **OR**

(b) the person does not hold a licence (ie they can engage if they are licensed).

TL 35 - credit activities from 1 July 2010 to 30 June 2011.

At the end of (1)(a)(ii) *'and'* should read *'or'*, so that the provisions specifies that a person must not engage in a credit activity if:

(a) the person is not registered; **Or**

(b) the person is registered but has not applied for a licence (ie they can engage if registered and has applied for a licence); **Or**

(c) the person does not hold a licence (ie they can engage if licensed).

TL 50 – becoming registered

TL50 states that a person can become registered by lodging an application with ASIC between 1 November 2009 and 31 December 2010. This is inconsistent with the Minister's information sheet which states that registration ceases on 31 December 2009.

We submit that registration should continue to 31 December 2010 so that interested participants who accidentally fail to register by 31 December 2009 or enter the industry after 31 December 2010 are not significantly disadvantaged. After 1 July 2010, the person would need to achieve registration and have applied for a licence.

TL 70 – Conflict of interest

See our comments at LIC170(b)