

Mr Geoff Miller
General Manager
Corporations and Financial Services Division
Treasury
Langton Crescent
PARKES ACT 2600

Via email: consumercredit@treasury.gov.au

22 May 2009

Dear Geoff,

The following submission is made on behalf of National Australia Bank Limited (NAB) in response to the Federal Government's draft package of consumer credit protection legislation.

National Australia Bank commends the Council of Australian Governments' decision to establish a national consumer credit regime with the aim of improved and consistent consumer protection. As outlined in our submission, we propose some alternative ways to better achieve this aim, balancing consumer, business and public policy outcomes.

This submission reflects the importance of balanced and proportionate regulation of consumer credit to NAB's 3.3 million Australian customers who have access to a wide range of consumer credit products and services. To give some idea of the scope, in 2008 NAB provided its customers with over \$65 billion to buy their homes and properties; we helped nearly 85,000 customers into their first home, upgrade or renovate their existing home and we helped over 35,000 customers to invest in property. The Australian consumer credit sector is a dynamic, innovative and competitive sector, providing consumers with choice and value. Regulation of the sector should strike the right balance between supporting this level of choice with ensuring responsible practices.

The key theme of our submission is the need for adequate time to transition to the new regime. The scale of these reforms is the largest the credit sector has faced for well over a decade, and is easily equivalent to the scale of those introduced with the Financial Services Regime in 2001. Moreover, these changes will take place at a time when the sector faces a range of other key regulatory changes that will potentially impact the same products, systems and channels impacted by the consumer credit legislation. These include the regulation of margin lending, Unfair Contract Terms legislation, Privacy Reforms and Personal Property Securities legislation.

It should also be borne in mind that these major reforms coincide with a more challenging credit and economic environment, where the availability of affordable credit remains an issue for all credit providers. Therefore, it is vital to take sufficient time to transition to a new consumer credit regime: we outline a proposal that will allow up to 24 months.

Importantly, this submission also reflects how consumer credit processes work in practice: from advertising our products, our various distribution channels, through to on-going management of consumers' credit needs. As we have previously presented to your team, these processes are underpinned by numerous systems, customer communications, decisioning tools and staff training programs. We provide 2 outlines of the home lending process with commentary in Attachment A for your reference.

It is important to note that while the proposed legislative changes will be burdensome to credit providers, the burden borne by consumers will not be insignificant. In particular we note that the introduction of the legislation in its current form will slow-down effective and flexible decisioning in the mainstream lending sector. The proposed regime will impose more complex and time-consuming processes for customers and increase costs to the sector. There is the potential that some of this cost will ultimately be borne by

the consumer at a time when access to credit is becoming increasingly more difficult. The disclosure obligations outlined under the proposals will also add to customer confusion as there is a substantial degree of duplication and overlap. This appears to undermine current efforts underway by the government to simplify disclosures and make them more meaningful to consumers.

Also attached is a copy of two of the slides presented to Treasury to illustrate NAB's end-to-end lending process; commentary relating to the role of credit providers and credit assistance as part of this process and a table of feedback comments and proposed recommendations for particular provisions in the Credit Bill, NCC and Transitional Bill.

This submission has been written to align with the two draft Bills and draft regulations, suggesting alternative approaches, where relevant. We have also contributed extensively to and support the Australian Bankers' Association (ABA) submission.

We would welcome the opportunity to explain any of the detail of our submission with you or your team. For further enquires, please contact Steven Münchenberg (t: 0418 597 917).

Yours sincerely

Lisa Gray

Group Executive, Personal Banking

National Australia Bank

Executive summary

National Australia Bank commends the public policy objectives of the national regulation of consumer credit and welcomes the opportunity to comment on the draft package. However, we outline below a number of key concerns with the measures designed to achieve those objectives.

Our submission comprises an Executive Summary of our views, relevant background, followed by a more detailed evaluation of the provisions of the draft bills and regulations, including suggested alternative approaches and questions. NAB is a member of the Australian Bankers' Association (ABA) and has contributed extensively to its submission.

NAB favours a national regulatory model for consumer credit that will ensure the policy objectives of increased consumer protection and national consistency are achieved in a proportional way. This should also ensure that:

- the wider macro-economic objectives of ensuring the effective flow of consumer credit is taken into account;
- compliance costs to business are not increased, such that they become disproportionate to the benefits sought by regulation;
- Australian consumers continue to have access to affordable consumer credit;
- transition periods for compliance with new regulation should be adequate, to reflect the large degree of change to processes, channels and products.

Transitional relief and timing for implementation

The new consumer credit regime will impose a significant regulatory change, touching almost every area of our Personal Banking business, in addition to many areas of our Business Bank and some of our wealth business. It will require review and changes to: processes, systems, products, disclosure materials and training, which will take considerable time to ensure full compliance. All of our 3.3 million customers will need to be made aware of these changes. As such, this is a regulatory change that will easily equate to the changes introduced with the 2001 Financial Services Regime, as well as the Uniform Consumer Credit Code (UCCC), both of which were subject to a 2 year transition period.

As currently drafted, the proposals are unclear and confusing on transition and may, in fact, offer no transitional period, either from the point of registration or licensing. Given the extent of systems, product and consumer information it will be necessary to assess and adapt, this will be unworkable.

In addition, for business certainty, we will need further regulations to give effect to the legislation, which is unlikely to occur in time for us to be confident of full compliance. This is of major concern, when the costs of non-compliance are significant.

Therefore, we strongly recommend consideration of adequate and proportionate transitional measures, staggered as follows:

- commencement of existing provisions of the UCCC as incorporated in the National Credit Code (NCC) on 1 November 2009;
- registration commencing on 1 November through until end 31 December, as currently proposed;
- compliance with credit legislation to be progressed as follows:
 - mandatory EDR membership commencing 1 January 2010;
 - compliance with remaining (new) provisions of NCC by 1 November 2010 (i.e. 12 months after initial registration)

- licensing to be completed 24 months after the end of the registration period, i.e. by 31 December 2011; and
 - Part 3 (responsible lending conduct obligations) to commence upon licensing;
- ADI's not to be subject to ASIC notice requiring application for licensing by a specified date.

The availability of transitional measures along these lines is the key element of this submission, given the vital need to ensure we can deliver the policy outcomes intended and ensure our business has the time necessary to adapt to a major piece of regulatory change.

Clarity of scope and definitions

The scope and definitions set out in the draft National Consumer Credit Protection Bill require clarification to enable the legislation to achieve its stated public policy objectives and achieve successful implementation by credit providers and others in the credit chain. Understanding how roles and activities of participants in the credit chain work and their chronology is essential in allocating expectations and obligations of all in the chain in a proportionate way.

As shown in our more detailed commentary on a number of areas in the table below, there is a lack of clear distinction and understanding in the definitions of credit assistant, credit provider and intermediary, with a resultant duplication/overlap in obligations and disclosure. Not only will this lead to unnecessarily onerous requirements for businesses, it will also undermine the efforts underway by the current government to simplify product disclosure and make it more meaningful to consumers. Under the new proposals there is the potential for consumers to be inundated with disclosure material from various credit service providers in relation to a single enquiry regarding a credit contract. Refer to our 'Customer Impact' sections for further examples of this.

Instead, we propose that the roles of 'credit assistance provider' and 'credit provider' are refined to reflect their functions in practice and relieve the duplication of disclosure and assessment obligations that will otherwise arise. The changes need to recognise the seamless delivery of credit by lenders which necessarily involves preliminary negotiations with consumers. However, this should not lead to prescriptive duplication of credit guides and credit assessments arising from 'credit activity' classifications when in fact it is provided by the one entity.

We propose that this be addressed by amending the definition of 'credit assistance providers' to make clear that this definition excludes employees and directors of a credit provider. Disclosure requirements for credit providers should also be streamlined to avoid duplication of the information provided in credit guides and pre-contractual statements. This would also relieve disconnected disclosures for indirect and remote applications with credit providers such as on-line and telephone applications.

This development would reflect the reality that credit providers advise on credit in relation to their own products rather than making comparisons with products from other credit providers. This is more the function of 'credit assistance providers' who are brokers and other intermediaries.

More generally, we would also welcome re-introduction of the recognised concept of "advice", rather than the new concept of credit assistance. Whilst recognising the key differences between the provision of financial services and consumer credit, "advice" is a familiar term in the Financial Services Regime and, as such, one our business is used to using in systems, products and training. If re-introduced, this would also allow for the introduction of a "no-advice" model for credit provider employees (e.g. NAB's mobile bankers) and channels such as on-line or telephone applications. This is a familiar and useful provision in FSR, which would enable swifter and more effective implementation for our business.

In addition, we recommend excluding assignees from the scope of the legislation. Their capture is unnecessary to achieve consumer protection, as this is assured by general law supported by EDR

schemes, whereas their inclusion would risk constraining credit by increasing costs. It would also skew securitisation and debt factoring arrangements which are needed to retain credit fluidity in the market.

Finally, we question the inclusion of provisions to regulate credit limit increases in phase 1 of the legislation (particularly its application to credit card limit increases), when we had understood that the COAG agreement indicated the issue would be addressed in phase 2. The requirements in the Credit Bill for assessment of credit limit increases does not take into account the most common sourced and reliable data of existing customer account performance and credit history.

Indeed, the Communiqué from the October COAG meeting stated in relation to consumer credit:

“COAG has also agreed to an implementation plan for phase two, the regulation of remaining areas of consumer credit, including pay-day lending (for example, pawnbrokers), credit cards, store credit, investment and small business lending, and personal loans, so that the reform package is completed in the first half of 2010.”

This would be our preferred option, given the amount of change that will be required under phase 1 and the need to give sufficient consideration of the issue and sufficient time for implementation.

Conduct obligations

NAB supports the public policy objective of the proposed conduct obligations: responsible lending is key to how we do business, with multiple systems, tools and risk management systems that support this objective. For this reason, many of our detailed comments point to the need to avoid over-prescription and duplication of activities in these provisions. The conduct obligations must be proportionate and realistically reflect the roles and capacity of those in the credit chain.

As such, we recommend that consideration is given to removing unnecessary duplication between the “preliminary assessment” required of credit assistants and the credit assessment requirements of credit providers. This misunderstands current practice and the key fact that the weight of risk for providing the credit sits with the credit provider, so they must rightly undertake the full capacity to repay activity. In doing so, the correct obligation on the credit assistant in the “preliminary assessment” should reflect the “know your customer” type test that seeks to match customer objectives with stated financial capacity and provide the credit provider with accurate information on the customer. In this context, the ‘credit assistant’ should be required to:

- collect relevant identification documentation;
- complete the loan application information accurately;
- collect relevant information relating to employment details, sighting originals and;
- verify the authenticity of these documents against originals.

Based on this information they would then make an assessment as to product suitability for which they would retain liability. In line with this assessment, the customer would be referred to the credit provider, who could rely on the authenticity of the application, but who would perform the checks and verifications required to bear the liability for advancing the credit.

Disclosure

We are concerned that the policy intent underpinning disclosure is not best served by the design of the disclosure provisions. In their current form, they would result in multiple, duplicating and mis-timed information to consumers, which would run counter to the current Federal Government activity to make disclosure more meaningful to consumers. As we outline in our detailed comments, the measures would be unworkable in practice and we recommend a simplified approach that reflects current practice, as follows:

- remove requirement for credit guides for licensees given the extent of disclosure in the credit contract required by UCCC (NCC);
- remove the separate preliminary assessment requirement for credit providers (retain for intermediaries), as this requirement is captured in the seamless credit assessment process undertaken by lenders;
- simplify disclosure for lenders by relying on pre-contractual disclosures in the credit contract;
- restrict the requirement for credit providers to provide consumers with a copy of credit assessments to cases of disputed lending decisions.

Fees and commissions

NAB strongly supports transparency to consumers of fees and commissions. In our wealth business, MLC has been an industry leader, moving some time ago to a fee for service model away from commission based remuneration structures that do not directly incentivise service performance. Quality advice that warrants a fee for service, transparency and disclosure are important trends in financial planning that we can predict will also flow through to the broking sector.

However, the provisions for disclosure of fees and commissions need to be more straight-forward, timely and consistent, in order to be meaningful to consumers and more easily followed by those in the credit chain caught by these requirements. For this reason they need to be consistent with the requirements in the UCCC/NCC.

Penalties

In our view, the range of criminal and civil penalties and remedies are disproportionate and unclear. They will significantly increase the level of risk exposure for all those operating in the consumer credit chain. Whilst some increased risk is warranted, given the need to increase standards in some cases and avoid unscrupulous operators, the overall level of uncertainty this regime could create for mainstream lenders will inevitably introduce greater costs into the sector. Inevitably, these costs will be reflected, in some degree, to consumers. The excessive nature of the penalties regime may therefore create a more conservative and inflexible regime that will fail to innovate for consumers. Our recommendation would be for a less onerous regime, based around proportionate civil rather than criminal penalties. In terms of the scope of compensation foreseen, we believe that this is too broad, and should extend to direct losses only. There should be no additional recourse under the Credit Act, given extent of remedies under the NCC.

National Credit Code

There are a range of changes (referred to in our detailed comments) required with replacing the existing UCCC with a national code, including those necessary to change documentation to comply with Commonwealth legislation. This will necessitate a detailed review of all contracts, forms, collateral, manuals, websites and systems/technology changes, processes and training requirements. Due to the comprehensive and detailed work required to transition to the new requirements, the transition period outlined earlier will be necessary.

Also to reduce the complexities of the jurisdictional creep of the legislation also applying to credit contracts outside Australia, the residency test in the UCCC needs to be reinstated in the NCC.

The current credit environment

In considering this significant regulatory change, we would like to point to the continuing challenges in credit markets, which impact on both the costs and availability of credit. The key trends NAB is currently seeing are both in supply and demand:

- Slowing credit growth. Monthly data for system credit growth over the year to March 2009 fell to 4.9 per cent - the weakest rate since the early 1990's. This appears to be fundamentally due to demand: businesses and households are deleveraging their balance sheets in the face of rising unemployment and falling business confidence.
- Based on responses from the NAB Quarterly Business Survey in March 2009, businesses continue to experience difficulties finding finance, at levels similar to those in late 2008. More importantly, in terms of demand, around 30 per cent of respondents report that they do not require credit.
- It should also be borne in mind that as lending standards are recalibrated to reflect tighter economic conditions, supply is also impacted. However, unlike offshore markets, 'credit rationing' is not a fundamental part of the Australian credit market.
- NAB's forecasts (see graph below) for the Housing and Personal credit markets are for continued recovery into 2010, but not a recovery to pre GFC levels until post 2010.

Given that Australia is experiencing a more fragile credit market, where the restoration of confidence and certainty is key, we caution against the creation of onerous and costly legislation. The risks would be multiple: consumer credit would be prone to more risk for lenders and more costly and inconvenient for consumers, which would act to reduce supply; innovation and choice for consumers would be reduced, which would run counter to efforts to stimulate wider economic growth and increase confidence in credit markets.

Customer Impacts

We fully support the need to address the issues at the fringe of the consumer credit sector, to ensure consumers have full confidence that they will be treated fairly and responsibly by all credit providers and intermediaries. However, we are concerned that the impacts on the mainstream sector where responsible lending is at the core of operations, will be onerous and slow-down effective and flexible decisioning. By adding to the complexity and costs involved in providing credit at a time of severe economic stress, uncertainty and a shrinking credit market may restrict timely consumer access to affordable credit.

Onerous obligations may also hamper innovation, where this is of benefit to marginal consumers, who may otherwise have difficulty accessing affordable credit. In NAB's case, we have a microfinance program with a range of products for individuals and small business operators who would otherwise be excluded from mainstream lending. For some of these products, we partner with alternate credit providers or not-for-profit organisations. It is essential that consideration be given to exemptions for such organisations, where no-interest or other community-focussed products are involved.

The proposed legislative requirements are also likely to result in confusion for consumers in relation to disclosure, as they are likely to receive disclosure documentation from multiple sources in relation to their application for credit. This would undermine efforts underway in FSR to simplify product disclosure and make it more meaningful to consumers. A repeat of the early, negative experience of product disclosure under FSR must be avoided.

The examples below highlight the customer impact of pre-contractual disclosure requirements as currently proposed in relation to two relatively straightforward scenarios.

Disclosure Examples

Customer Impact - Scenario A

1. Customer has an initial discussion with a **referrer**, who has an arrangement with NAB. The **referrer** suggests the customer meet with a nab member of staff to discuss a fixed rate mortgage.
 - **Referrer discloses to customer any referral fee to be received.**
2. Customer meets with NAB member of staff to discuss fixed rate mortgages
 - **NAB member of staff provides Credit Assistant Credit Guide prior to discussions of options, also provides quote for provision of assistance.**
- Customer accepts quote and discussion commences.
3. Nab staffer collects customer information, including financial situation, requirements and objectives, verifies appropriate information and conducts preliminary assessment.
 - **NAB provides customer with preliminary assessment suggesting a “not unsuitable” product.**
 - **NAB provides customer with Credit Proposal (fees, charges & commissions)**
4. Customer applies to nab for specified product.
 - **NAB provides customer with Credit Provider Credit Guide.**
5. Nab collects additional information in order to conduct assessment of suitability of product. Verifies appropriate information.
 - **NAB provides customer with Assessment. (If and as requested by customer)**
 - **NAB provides customer with commission disclosure**
 - **NAB provides customer with other pre-contractual disclosures (fees and charges).**
6. **Contract executed.**

Customer Impact - Scenario B

1. Customer attends meeting with **financial planner** to discuss *refinancing* current mortgage.
 - **Financial Planner provides customer with FSG**
 - **Financial Planner provides customer with Credit Assistant Credit Guide**
 - **Financial Planner provides customer with quote for provision of Assistance**
2. **Financial Planner** collects information from Customer regarding requirements and objectives, along with financial situation. Verifies appropriate information provided. If credit implications conducts preliminary assessment
 - **Financial Planner provides customer with preliminary assessment suggesting a “not unsuitable” product**
 - **Financial Planner provides customer with Credit Proposal (fees, charges and commissions)**
 - **Financial Planner provides Statement of Advice for any non-basic deposit products discussed (also a PDS if a Margin Lending facility is involved)**
3. Customer applies to nab for specified product(s).
 - **NAB provides customer with Credit Provider Credit Guide.**
 - **NAB provides FSG**
 - **NAB provides PDS(s)/ T&C for any deposit product(s) suggested**
4. Nab collects additional information in order to conduct assessment of suitability of product. Verifies appropriate information.
 - **NAB provides customer with Assessment (if and as requested by customer)**
 - **NAB provides customer with commission disclosure**
 - **NAB provides customer with other pre-contractual disclosures (fees and charges)**
5. **Contract(s) executed.**

Consultation process

The opportunity to directly engage in the Federal Treasury’s consultation process has been available to NAB in recent weeks. This has been essential for our business, to ensure we can explain the practical application of these proposals and to make constructive suggestions to improve their effectiveness. Prior to that, however, we felt the initial process of representation through peak body representatives alone, hampered understanding of lenders and their customers, which could have more usefully informed discussions. In addition, the expected process of assessing regulatory impacts by means of a Regulatory Impact Statement was not followed.

Therefore, we would recommend that this approach, allowing direct representation by lenders and others, is continued for the remaining consultation phase and ahead of phase 2 of the reforms. We also request that sufficient consultation is undertaken by ASIC in formulating further implementing regulations and Regulatory Guides, which will be of vital importance in understanding the changes needed to fully comply and meet the reforms’ objectives.

Background to National Australia Bank

National Australia Group is an international financial services organization that provides a comprehensive and integrated range of financial products and services. The Group is structured around regional banking and wealth management operations and an international capital markets and institutional banking business. The Group's businesses include: the National Australia Bank, MLC, the Bank of New Zealand, the Yorkshire and Clydesdale Banks in the UK and Great Western Bank in the US.

In Australia, the National Australia Bank has:

- over 3 million customers
- more than 24,500 employees
- over 770 branches, 180 business banking centres, 110 regional agribusiness locations and three major contact centres.

The National Australia Bank is organised around:

Personal Banking

The Personal Banking business has a team of more than 13,000 employees and consists of nabretail, Mortgages and Consumer Insurance, Consumer Banking Solutions, Australian Banking Operations, nabretail Strategy, Business Development and Marketing and NAB Broker.

More than 9,000 employees make up our Personal Banking network with some 770 retail stores, over 1600 ATMs and agencies Australia-wide. The team is responsible for delivering banking products and services to more than three million retail customers. In addition, our Direct team sits under Personal Banking as a virtual bank looking after our customer's telephone and internet banking as well as NAB's main contact centres.

NAB Broker

NAB Broker is the specialist distribution business within the Personal Bank responsible for managing relationships with mortgage brokers. This includes packaging the range of products and services from every part of the organisation where it makes sense for a broker and their clients. NAB Broker is a channel brand and under the umbrella of NAB Broker are a number of product and service brands including Homeside, NAB, Vivid Advice and MLC.

NAB Broker holds broker agreements with a wide range of aggregator groups that employ accredited brokers within those groups. The current NAB Broker accreditation process requires brokers to be either a member of the Mortgage and Finance Association (MFAA) of Australia or the Finance Brokers Association of Australia (FBAA).

This specialist distribution business places NAB in a unique position, informing our views from our experience of consumer credit as both a lender and direct link into the broker channel.

Business and Private Banking

NAB's business bank is Australia's largest business lending and deposit gatherer. The bank provides lending, deposit, transaction, custody, asset finance, financial planning and merchant services to more than 700,000 customers ranging from small to medium enterprises to corporate clients. NAB is a leader in the provision of agribusiness banking services to Australian rural businesses, agriculture and the forestry and fishing industries.

Wealth Management

MLC delivers investment, superannuation/pension and insurance solutions and supports financial planners providing quality financial advice, to help people achieve and protect their lifestyle and financial goals. MLC also provides corporate and institutional customers with outsourced investment and superannuation/pension solutions. With more than A\$102 billion (US\$94 billion) under management, MLC is one of the world's largest 'manager of manager' wealth businesses.

Submission on Credit Act

National Consumer Credit Protection (Transitional and Consequential Provisions) Bills 2009

Section Reference	Comments	Solution
TL25	Subsection (1)(b) should be an alternative and therefore consistent with TL35(1)(a)(ii).	Replace “and” with “or” after TL25(1)(a)
TL70 - registration conduct obligations	<p>There is uncertainty regarding subsection (1)(c) “comply with the credit legislation” and whether this includes Chapter 3 of the Credit Act.</p> <p>As Chapter 3 only applies to licensees we would assume that it has no operation during the period of registration. However, this is unclear given some comments in the Commentary.</p> <p>Even if it applies only on licensing this doesn’t give industry participants enough time to comply.</p> <p>As this is such a new regime for disclosure and credit assessments, significant technology build, documentation and training is required.</p>	<p>This should not include Chapter 3 during the registration period.</p> <p>Application of Chapter 3 for licence holders should not apply until at least 24 months from the end of registration i.e. by 31 December 2011.</p> <p>Even this timeframe is significantly less than that which was given for FSR implementation.</p> <p>Given the complexity of this legislation and the scope of participants and obligations arguably more time is required.</p>
TL70 - credit legislation	<p>As this covers Schedule 1 for the National Credit Code – this raises significant timing issues due to the extensive documentation and system changes required in order to comply from 1 November 2009. Changes will be required to address existing UCCC section references in documentation such as prescribed notices etc.</p> <p>There are similar timing problems for when a licence is obtained and trying to comply.</p>	<p>At a minimum the industry needs at least 12 months to be able to change its documents, systems and processes to satisfactorily accommodate the scope of changes required. This is in addition to extensive training of staff and credit representatives.</p> <p>This Act needs to address commencement of the new provisions of the NCC from no earlier than 1 November 2010.</p>
TL105 – suspension or cancellation of registration	<p>The policy objective for this provision needs to be clarified. In what circumstances is this power proposed to be relied on by ASIC?</p> <p>If this provision is to be used in support of streamlining licensing, so that ADIs may be required to licence earlier than they have had time to comply</p>	Exemption for ADIs from this provision – given increased time required for ADIs to be in a position to comply with all the disclosure and assessment requirements.

with the legislation – this will be counter-productive.

National Consumer Credit Protection Bill

Chapter 1 – Introduction:

Section reference	Comments	Solution
DEF1 Credit legislation	<p>Given the compliance requirements and the sanctions that hinge on this definition, it is too broad in applying to other legislation. It should be limited to only the consumer credit protection legislation that these Bills seek to govern. That is, only the actual Credit Act and Transitional Act.</p> <p>The ASIC Act and other laws including existing UCCC have their own penalty regimes for breaches of those Acts.</p>	Remove paragraph (c) and (d) from this definition.
DEF5 'Credit activity'	<p>Is this intended to capture activities of 'aggregators' given their limited involvement in direct contact with consumers? The main service performed by aggregators to brokers is to provide branding, administrative support, IT assistance, training, marketing and other indirect support. However, aggregators do not normally engage directly with consumers for the purpose of securing credit.</p>	Clarify policy objective in relation to these participants.
DEF5 'Credit activity' - microfinance initiatives	<p>Relief and exemption from regulation is required for community focussed loans such as NAB StepUp loans as these are specifically developed for individuals and families living on a low income. A feature of the loan arrangement is involvement of community/microcredit workers to help consumers through the loan process and repayment period.</p>	An exemption is required to exclude these loans from the Credit Act licensing and Chapter 3 obligations.
DEF7 Credit assistance 'suggesting'	<p>This criteria is too broad and therefore unclear in its scope. Merely suggesting a credit contract and credit provider doesn't always carry with it the necessary commitment to warrant the regulation. By comparison a recommendation is a positive engagement in the consumer's affairs.</p> <p>This is particularly of concern for the 'suggestion' to remain in a particular credit contract. This has implications for loan review processes. Credit providers must be able to have internal reviews and discussions with customers without the liability of a positive instruction to stay in the credit contract. This process can be supported if the definition changes 'suggesting' to 'recommending' which carries the positive conduct.</p>	<p>Change 'suggestion' to 'recommendation'.</p> <p>This is then similar to FSR type language and doesn't mix terminology and introduce confusion.</p> <p>In addition, R165 to apply to credit providers only and only in the case of a customer initiated request which gives rise to a positive recommendation.</p>

DEF7 Credit assistance 'assisting'	This criteria is similarly too broad and captures incidental activities. It would apply to any form of 'help' given by an intermediary in relation to a particular credit contract with a particular credit provider. This lacks the commitment of a 'negotiation' for the purpose of securing credit.	Change 'assisting' to 'negotiating'. This ensures activity which is done for the purpose of securing credit is regulated rather than incidental referral type activities.
DEF7 Credit assistance credit limit increase	There has not been sufficient consultation regarding regulation for credit limit increases which was due to be part of the Phase 2 reforms.	Remove references to credit limit increases from this Phase of regulation.
DEF7 Credit assistance - intermediaries	<p>For intermediaries, the timing requirements to provide the credit guide, quote and credit proposal and undertake the assessment – all before providing credit assistance – does not account for the practicalities that these steps are taken in tandem with completion of an application for credit. i.e. the consultation with the intermediary already constitutes credit assistance. Often there is only one consultation with the intermediary. How could the intermediary estimate the information for the quote and proposal when they don't know the size of the loan or credit requirements?</p> <p>They need the parameters of what to ask for in order to avoid collecting unnecessary information in breach of Privacy laws amongst other things.</p>	<p>Need to have the assessment process done contemporaneously with providing the credit assistance – as this is not a sequential process but a simultaneous process.</p> <p>Timing requirement is to complete the disclosure process and preliminary assessment before submission to credit provider.</p>
DEF7 Credit assistance - credit providers	Need credit providers to be specifically excluded because the disclosures contemplated in Chapter 3 are not appropriate for lenders. For example, they contemplate relationships with other credit providers in R130. Quote R135 won't be relevant as credit providers do not charge a fee particularly for credit assistance. R180 – credit proposal would duplicate disclosure already in the credit contract. Duplication has been shown to be confusing for consumers – especially in the FSR context.	<p>Remove credit providers and its employees, directors and credit representatives (i.e. who are not intermediaries) from the definition of credit assistance. This is then to be supplemented with the following amendments in Chapter 3 in relation to credit providers. (i.e. to make sure the whole pre-contractual process is adequately addressed for credit providers).</p> <p>Obligation under R230 could be brought forward to the application stage i.e. when application is made then a credit guide must be given as soon as practicable after that time.</p> <p>This would cover off the scenario where people are applying on-line or over the telephone. This would give the credit provider time to go back to the customer after making the application.</p>

		Timing requirements for credit providers needs to complete the disclosure and assessment before submitting the credit contract to the consumer.
DEF8 – intermediary	<p>This needs an additional clarification that it applies to persons who “negotiate” for securing credit for a consumer i.e. similarly with the WA Broking legislation.</p> <p>This would then more clearly address the current ambiguity surrounding spot-referrers and introducers who do not discuss a particular credit contract, even if they do mention a particular credit provider.</p>	This would need consequential amendments in the exemptions for clerical type activities etc.
Regulation 6.3 – intermediaries National Consumer Credit Protection Regs	<p>The commissions requirement is best placed in these circumstances with the actual credit provider because they will need to control this information flow to the consumer. Otherwise they are made liable for the intermediary even if they don’t follow instructions to positively disclose.</p> <p>Need to expand scope of subsection (2)(a) to address circumstances which readily arise where the intermediary may also hand out material and/or application forms in the process of referring to a particular credit provider – but without discussing the particular credit contract and/or the customer’s financial circumstances.</p>	<p>Amend subsection 2(b) to place this obligation with the credit provider and person authorising the intermediary.</p> <p>Expand scope of subsection (2)(a).</p>
DEF9 - assignees & securitisation	<p>The proposed licensing regime would have far-reaching implications for the securitisation industry. The special purpose vehicles (SPV) which holds the assets and issue notes as part of the securitisation would be caught. The provision of credit guides by SPVs could impact on the legal arrangements that underpin many securitisations and impact our relationship with our customers – creating considerable confusion.</p> <p>The SPVs are not normally set up to be able to comply with the type of onerous licensing obligations in the Credit Bill. They generally have no employees of their own such that the resourcing and competency requirements will be difficult to address.</p> <p>DEF9 would result in equitable assignments becoming legal assignments by giving the customer notice of the assignment when providing the</p>	<p>Remove assignees from this form of regulation.</p> <p>Refer to further comments/recommendations under responsible lending section.</p>

	<p>assignee's credit guide.</p> <p>By nature, equitable assignments operate such that the identity of the assignee is not known. However, this does not disadvantage the customer because they continue to have rights against the assignor.</p> <p>The matter is adequately dealt with under the general law and supported by the EDR schemes. Then it becomes a matter of recourse by the assignor against the assignee.</p> <p>Equitable assignments enable fluidity of financial markets because it is a commercial pricing arrangement. The consumer's rights are still protected.</p> <p>If we interfere with this, this will skew securitisation and debt factoring. This will have a significant constriction of credit in the market and increase pricing of credit generally. SPVs rely on third parties to run them and generally have no employees of their own. If SPVs had to employ responsible managers from the Service or Seller of loans this could trigger rating issues (which rely on the bankruptcy remoteness of SPVs from the Seller/Service). </p> <p>We also query the flow on effects to payment arrangements i.e. direct debits to the legal assignee versus continuation of existing payment arrangements via equitable assignment.</p>	
DEF86 - jurisdiction test	Refer to comments on NCC removal of residency test. Refer to INT25(4)&(5)	
Division 2 Constitutional basis	NAB reiterates ABAs concerns regarding potential for State intervention via legislating on agreed areas of difference.	

Chapter 2 – Licensing

The draft legislation does not provide for corporate group licensing. Rather than related bodies corporate within the same corporate group applying separately for licenses, they should be entitled to be registered under the one ACL since the licensing obligations are the same irrespective of their role in the credit chain or credit activities.

LIC161 & 195 - ACL number	Citing ACL on collateral material and statements of account will not assist consumers. Customers will look to the key documents for identification information.	Limit citing ACL on key documents which is then consistent with the FSR model. This would mean loan document, credit guide, variations – and exclude advertising material and other collateral (including statements of account).
LIC170(1)(b) - conflict of interest	Subsection (1)(b) - if this provision is only meant to apply where a conflict would arise by operation of law (as referred to in 2.167 in the Commentary) – then this should be addressed by positive relationship disclosure requirement in the Credit Guide. For commissions, this would be addressed by the existing commissions disclosure obligations.	Remove from conduct requirements as it is adequately covered in the disclosure requirements.
LIC170(1)(i) - member of an EDR scheme	Issues will arise where licensees are members of different EDR schemes due to conflicting decisions and outcomes determined under different schemes. In addition, FOS has limited jurisdiction and currently wouldn't be able to facilitate disputes from intermediary licensees.	Remove requirement for credit representatives to independently be members of an EDR. They stand in the shoes of their principal licensee and therefore consumers should have recourse to that EDR scheme. FOS will need increased jurisdiction to be able to facilitate disputes of intermediary licensees.
LIC170(1)(j) - compensation arrangements	We note Commentary 2.179 indicates that the regulations will exempt ADIs and related bodies corporate from this requirement.	We are still to see the Regulations.
LIC170(1)(j) - scope of compensation	The compensation right is too broad in the context of the credit relationship (as distinct from an investment relationship under FSR). We accept the customer should have a right to reimbursement when overcharged or inappropriately charged (i.e. fees or interest). However, it is not appropriate for customer's to be compensated for just any contravention. The scope of compensation should be limited to instances of direct loss and not extended to indirect loss. In circumstances where a loan becomes delinquent because it was unsuitable, there shouldn't be an unlimited right to compensation. The customer has had use of the money and the underlying asset appreciated	The scope should be limited to credit assistance providers for incorrect 'recommendations' and assistance for loss or damage resulting from incorrect advice. Given the extent of remedies under the National Credit Code to put a debtor back in the position they would have been but for the contravention, there should not be additional recourse against credit providers under the Credit Act.

	<p>in value over time.</p> <p>It is inappropriate in these cases for the customer therefore to have had use of the money, retain the asset and then be compensated.</p>	
LIC186(3)(a) - breach reporting	<p>It is unclear what is meant by the carve out of reportable contraventions of section LIC170(1)(d) – being compliance with credit legislation?</p> <p>Section 2.188 of the Commentary referring to the transitional provisions does not make it any clearer.</p>	Treasury needs to clarify its policy objective on the scope in this breach reporting obligation.
LIC250(4)(c) - credit representatives	The obligation for all credit representatives to independently be members of an EDR scheme is onerous. This should be addressed by the consumer having recourse through the licensee’s EDR scheme.	Remove requirement LIC250(4)(c).
Division 4 – LIC290 Liability for representatives	<p>Accept the liability for employees and directors conduct beyond the scope of their authority.</p> <p>However, this provision needs to carve out liability for credit representatives conduct beyond the scope of their authority as this otherwise displaces the common law of agency. This will limit the ability for third party relationships – which is a significant portion of this industry. Especially with brokers, intermediaries, debt collectors and increasing outsourcing requirements.</p> <p>These outsourcing arrangements have assisted cost containment issues. While licensees will actively monitor, train and conduct due diligence of their appointed agents, however extended liability to licensees for conduct of credit representatives acting beyond their authority will significantly constrict engagement of credit representatives.</p>	To limit liability for credit representatives only to acts within their authority consistent with the position at common law.
Part 2-5, Div 2 Financial records of licensees	<p>We do not understand the policy objective underpinning these Financial records obligations. The scope of financial records is too broad and unclear (e.g. prime entry and what invoices and receipts must be retained). Also what is meant by the requirement to “explain a transaction or financial position”?</p> <p>Will ADIs be exempt from these requirements on the basis that they already provide substantial reporting to APRA and other government bodies?</p>	More clarity is required. Exemption for ADIs to be addressed.

Chapter 3 – Responsible lending conduct

We have concerns about the focus of this part of the regulation on multiple disclosure documents. There are too many disclosure documents for consumers to read and understand. This is likely to distract them from the key information set out in their credit contracts. The experience with FSR proves that over disclosure is unhelpful. Recent research into disclosure as a consumer protection strategy is not a conclusive tool – given the attempts to shorten the pre-contractual disclosures under the UCCC a couple of years ago.

A suggested alternative approach would be to retain the credit guides but for them to flag that the customer may request additional information on request – i.e. that would be included in the credit quote and credit proposal documents (a proportion of which is addressed in the credit contract). This has been the approach used in the Code of Banking Practice quite successfully.

The regulation of credit limit increases was due for discussion in Phase 2 of the Credit Reform initiatives. We are surprised that they have been incorporated in this Chapter 3 of the Credit Act without appropriate consultation. Some of the regulation for credit limit increases under Chapter 3 is inappropriate given that in most cases an existing relationship precedes a recommendation for a credit limit increase. The disclosure obligations and credit assessment requirements in Chapter 3 do not sufficiently address the difference between new customers for new products and existing customers for a credit limit increase on an existing product. Particularly, the credit assessment requirements are disproportionate for a credit limit increase as these are essentially based on customer’s payment history and credit history with the licensee. Re-assessment of financial status including income and expenses is not always the best indicator of capacity to pay in these circumstances.

The credit assessment provisions and unsuitable credit contract requirements have the potential to undermine contract certainty and may give rise to APRA re-assessment of a credit provider’s whole mortgage book with a consequential down-grading of the mortgage book risk rating. This would have significant flow-on effects. This is a disproportionate outcome and is at the mercy of the customer providing frank, consistent and accurate disclosures about their financial situation and objectives – but without any liability for distorting the credit process when they seek recourse against the licensee.

Section reference	Comments	Solution
Parts 3-1 and 3-2	Refer to earlier comments under DEF7 regarding role of credit providers being carved out from definition for credit assistance.	
Disclosure documents		
Credit guide for credit provider and credit assistance provider	Refer to timing issues above under comments on DEF7	

R330 - Credit guide for credit representatives	<p>This is unnecessary duplication because ultimately the customer wants information about the principal. So the principal's credit guide should be handed out by the credit representative.</p> <p>The content requirements of the credit representative's credit guide do not reflect industry practice. The fees referred to in R330(2)(b)(i) to (iii) are not ordinarily charged. It is usually the principal that pays the credit representative for their services.</p>	Rely on credit guide of principal to be given out by the credit representative. This should flag the relationship with the credit representative. This avoids multiple disclosure documents where one is sufficient. This also supports our submission regarding disclosure to address conflicts.
R430 – credit guide for debt collectors	<p>Debt collectors are significantly regulated by the ACCC guide to debt collecting. If the credit provider's credit guide flags the relationship this should obviate the need for a separate guide from the debt collector.</p> <p>The main objective with the debt collector's credit guide given the content requirements is for identification to the debtor. However, this is already addressed by due process and subject to the ACCC guidelines.</p>	The credit provider's credit guide should cover these relationships. Remove requirement for debt collector's guide.
R232 – credit guide for assignees	<p>Refer to comments above under DEF9 regarding removal of assignees from regulation.</p> <p>In addition, regulation of assignees would require compliance with the responsible lending obligations in Chapter 3. This would give rise to uncertainty around enforceability of contracts created by the responsible lender obligations – which do not include a safe harbour for reasonable conduct by lenders or SPVs. Failure to comply with the responsible lender requirements can result in the loan contract being deemed void. This uncertainty will impact on the ratings for these types of transactions leading to increased costs.</p>	Exemption of assignees from regulation.
R130(2)(c) – content of credit assistance provider's credit guide	<p>Clarification is needed regarding the difference between R130(2)(c)(i) and (ii)? For example, what is the difference between 'any fees' and 'any charges' and between 'for the licensee's credit assistance' and 'associated with providing the credit assistance'?</p> <p>As the industry moves towards fee for service model rather than commission based – disclosure of the amount should be sufficient as the method of calculation of a fee for service is not appropriate.</p>	Simplify references to fees payable for the credit assistance. Remove requirement to state method of calculation.
R130(2)(e)(i) Commissions disclosure	This will prove to be impossible to comply with because it is not always the case that the principal knows up front what the credit representative will receive as commission.	Make consistent with UCCC section 15M disclosures
R130(2)(e) –	This imposes broader commissions disclosure requirement than exists	Adopt NCC disclosure requirement to state that

commissions disclosure in credit guide	<p>under the UCCC section 15 obligations and therefore raises an inconsistency within the legislation.</p> <p>Subsection 2(e)(i) and (ii) are inconsistent and repetitious. Similarly, subsection 2(e)(ii) and (iii) are inconsistent because if a range is provided that is the method of calculation.</p>	a commission is payable and only disclose an amount if ascertainable and not be required to show a method of calculation of an unascertainable commission.
R130(2)(e)(g)	Refer to comments above at LIC170(1)(j).	
R135 – Quote	<p>Refer to introductory comments above for Chapter 3.</p> <p>Also the content requirements are repetitious with the credit assistance provider’s credit guide content. For example, what real difference would there be between R130(2)(c) and R135(2)(a)?</p>	Remove this requirement/consolidate with credit guide requirement.
R180 – credit proposal document	<p>Refer to introductory comments above for Chapter 3 and also our comments on commissions disclosure under R130(2).</p> <p>There is uncertainty about the actual content requirements. What fees are contemplated under R180(2)(a)? Do these relate to the fees set out in the pre-contractual document? Or do they apply to other fees in ‘relation’ to the credit contract – if so, the credit assistant may not even know conclusively what these are? Do they include only ascertainable fees or extend to contingent fees?</p> <p>R180(2)(c) and (d) provide further examples of fees of which a credit assistant is unlikely to know and these would be covered in the loan contract.</p>	The fees in the pre-contractual loan document should be the sole place of disclosure of the fees for the credit contract. Multiple disclosure will confuse consumers and licensees trying to prepare these documents.
R180(2)(a) & (b) - credit proposal disclosures	The fees and commissions disclosures are inconsistent with the UCCC requirements as they require the total amount, dollar value and the method of calculation. By contrast the UCCC gives greater flexibility by requiring disclosure of the amount or method of calculation in the alternative. If the dollar value is known this is disclosed first up and only if the amount is subject to variables is the method of calculation required.	Change disclosure requirements to the alternative of method of calculation to be consistent with UCCC disclosures.
R180(2)(e) - credit proposal disclosures	There is an inconsistency between the net amount to be disclosed in the credit proposal document (amount of credit after fees and charges) and the gross amount which will appear in the credit contract (i.e. total amount of credit apart from the fees disclosed).	This requirement should be removed from the credit proposal document as it will be difficult to provide an accurate figure at the required stage of the credit process and will confuse customers who read this in conjunction with their credit contract.
R280	Refer to comments above on R180 relating to commission disclosures.	Make disclosure consistent with s15M of UCCC.

<p>- commissions for credit providers</p>	<p>Disclosure needs to be consistent with section 15M in UCCC to facilitate compliance with R280 by way of disclosure in the credit contract – pre-contractual statement.</p> <p>It wouldn't be possible to roll the R280 disclosures in the pre-contractual statement if the requirements are different from the s15M requirements. For instance, s15M doesn't require disclosure of commissions payable to a supplier under a merchant agreement or the employees of the credit provider.</p> <p>For unascertainable commissions the UCCC doesn't require disclosure of an amount or method. The R280 obligation to disclose commissions 'likely to be received' is inconsistent with section 15M of the UCCC and would be difficult to comply with accurately.</p>	
<p>Credit assessment</p>	<p>Refer to comments above regarding timing issues for assessments for both credit providers and credit assistance providers under DEF7.</p>	
<p>R150 – preliminary assessment</p>	<p>The criteria for a preliminary assessment uses identical wording to the credit assessment requirements of a credit provider. So on the face of the section an intermediary would need to be able to assess the capacity of the consumer to repay but doesn't have access to tools to undertake this assessment.</p>	<p>There should be a carve out of the verification requirements for the credit assistance provider. So long as this is done once by the credit provider before the credit contract is entered into by the customer – there is no need for the duplication of this obligation across the participants.</p> <p>The 'preliminary assessment' criteria should reflect a 'know your customer' type test which seeks to match the customer's financial objectives with the customer's stated financial capacity. This can be evidenced by the application form. This places some onus on the customer to provide accurate financial information rather than the credit assistance provider bearing liability for information over which they have no control.</p>
<p>R165(2) - remaining in credit contract</p>	<p>This provision is not duplicated for credit providers under R265. Assume this is because this is regarded as an 'advice' piece done by credit assistance providers. However, as credit providers should be removed from application of definition of credit assistance, this will need modification.</p>	<p>Refer to amendments required to remove application of DEF7 from credit providers.</p> <p>In applying this to credit providers only, need to modify so that it doesn't apply in cases of periodical monitoring reviews and only where</p>

		customer initiates and there is a positive recommendation.
R165(2) - remaining in credit contract	This provision is too onerous for intermediaries and really has application to credit providers given the nature of the existing debtor relationship. Credit assistance providers would not have access to the relevant information to be able to properly make this assessment.	Refer to comments on 'know your customer' type assessment for credit assistance providers.
R150 and R250 - credit limit increases	These sections should not apply to credit limit increases.	Remove credit limit increases from this Phase of regulation. Alternatively, modification of assessment requirements to tailor to existing account relationship and based on payment history of existing account.
R190(2)(c)&(4) & R192(4) & R290(4) - unsuitable credit contracts	We have concerns about the scope of regulation to prohibit types of contracts or classes of contracts.	As this will be addressed in the Unfair Contract terms legislation, these provisions in the Credit Bill should be removed.
R190 and R290 - Unsuitable credit contracts	The licensee (credit provider or credit assistance provider) should not be liable for giving an unsuitable product, in circumstances where a customer has capacity to pay under a credit contract and is a product which they specifically request and insist on, after the licensee clarifies that the particular product doesn't actually match their objectives.	Include a defence for licensees under R190 and R290 where customer overrides indications that product does not match their objectives, but customer insists on proceeding with that credit contract.
R260(3) - reliance on credit assistant's preliminary assessment	While this provision on the face of it may be helpful in certain circumstances in practice credit providers seldom rely on assessments made by intermediaries because it conducts its own inquiries. What is important is for credit providers to only be required to conduct the assessment once – on an application for credit and not again at entry into contract or drawdown. This latter period should be the consumer's responsibility to update the credit provider of changes in the financial position on which credit was approved and before it is accessed by the consumer.	Collapse the duplication of credit assessment requirements for credit providers under R250 and R290.
R265 - Unsuitable credit contracts	There needs to be a safe harbour provision incorporated in these sections which safeguard the actions of diligent and prudent licensees so that they are not made culpable for the conduct of less scrupulous consumers.	Include safe harbour for inquiries, verification and assessments of a diligent and prudent licensee. Make verifications proportionate to

	<p>The reasonable inquiries and verifications and reliance on these at the time of entering into the credit contract need to be subject to the standards of a diligent and prudent licensee. There should not be prescriptive guidance notes to be issued which become inflexible and attempt to apply a one size fits all model to a very tailored and sensitive risk assessment process. Verification checks should further be made proportionate to the size of the credit contract.</p> <p>Refer back to comments on DEF7 regarding duplicated timing of credit assessment and reasonable inquiries – i.e. both at the time of credit application assessment and again at entry into credit contract/drawdown. This is impracticable in practice and will lead to consumer inconvenience and increased costs. There should be only one credit assessment which is operative from credit application to draw down.</p> <p>Customers need to bear some liability and responsibility for informing licensee of relevant changes to circumstances disclosed earlier in the process, similarly under insurance contracts. Ascribing constructive notice to the licensee is disproportionate particularly for large licensees that operate through multiple centres and with automated systems.</p>	<p>size of credit contract.</p> <p>Collapse duplication of assessment liability to operate at credit application.</p> <p>Remove licensee liability for constructive notice of consumers' changed circumstances after disclosure. Customer to be responsible to fully disclose relevant information before entry into credit contract.</p>
R165 and 265 - financial circumstances	<p>References in the Commentary require clarification regarding types of expenses to be included in assessment of consumers financial circumstances. Prescriptive methods of assessment need to be avoided.</p> <p>Similarly, for residential investment property credit a common source of capacity assessment is the value of equity in the property.</p>	<p>Clarification by Treasury regarding comments in its Commentary to avoid prescriptive rules around credit assessment criteria.</p>
Regulation 6.2(5) of National Consumer Credit Protection Regulations	<p>Like Chapter 7 in FSR there needs to be capability for a 'No advice' model so that parties may be able to give application forms and promotional collateral online and otherwise without having to be licensed and without having to give advice.</p>	<p>So long as the credit provider conducts a credit assessment, the intermediary should be exempted from this requirement.</p> <p>Exemption 6.2(5) is too narrow – subsections (d) and (e) mean that if you hold a licence or you review the contents of the material you couldn't benefit from the exemption.</p>
Copies of assessments	<p>This requirement for credit providers should be removed from Chapter 3 altogether and should only be accessible by the consumer in circumstances of dispute. If the consumer enters into the credit contract there is no need to view the credit assessment until and only if a dispute arises down the track.</p>	<p>Credit providers should not be compelled to disclose commercially sensitive information regarding credit assessment criteria. Apart from this the credit assessment outcome will be obvious to the consumer.</p>
R170 – credit	<p>The timing of this requirement to produce the credit assessment within 2</p>	<p>This should be increased to 5 business days at</p>

assessment	business days of request is unnecessarily onerous.	a minimum. As credit assistance providers should only be subject to a 'know your customer' type assessment, the credit assessment criteria should be limited in scope to 'product suitability' assessment rather than capacity to repay type assessment criteria.
R270(2) – credit assessment	The timing of this requirement is unnecessarily onerous – especially in the case of a 30 year home loan. A 2 day response time in these circumstances does not account for system archiving constraints.	Remove this requirement on the basis that such information should only be produced in the circumstances of a dispute to be produced in evidence.

Chapter 4 - Sanctions and remedies

The provisions in this chapter are far too punitive against credit providers and intermediaries and do not give account for the fact that there is recourse under the NCC for consumers (against credit providers). For example REM125(2) provides a range of actions some of which are similar to the re-opening provisions under s72 of the UCCC.

Combined with the tenor of the Credit Act being all responsibility with the lender in advancing credit these sanctions and penalties will prove crippling especially in the case of consumers who take advantage of the unbalanced protections. This black letter law does not take account of actions of less scrupulous consumers who may take advantage of a regime which places undue onus and liability with the lender. The rigid restrictions in obtaining financial information, consumer objectives and trying to verify these in order to advance monies to consumers who are less than fulsome in their disclosures will unduly penalise providers seeking to comply with the legislative regime.

For prudent lenders and intermediaries who try to comply with the legislation, the consequences of unintended deviations (due to general practicalities of conducting business) are imbalanced. The whole tiered approach to sanctions and penalties are overly layered and create prudential risk.

It is the fact that the penalties (and consumer remedies) apply at every stage throughout the Act and therefore licensees' compliance, rather than addressing the key operational conduct and contract contraventions.

In the UCCC an attempt was made to cap liability for civil penalties because of the associated prudential risks. Further thought needs to be given to capping liability under this legislation (in a similar way to Part 6 of the UCCC).

Section reference	Comments	Solution
REM30(3) - pecuniary penalty	It is not clear that where there is repeated contraventions for similar conduct in similar circumstances, that there would be a limit to the civil penalties incurred by the licensee. This has dire APRA prudential	Address a limitation of civil penalties where the contravention is of the same type affecting more than one contract.

	consequences.	
REM30(3)	This provision does not appear consistent with its counterpart in the Corporations Act – section 1317G(1A) which includes a materiality threshold.	This provision should include a similar materiality threshold to that included in its Corporations Act counterpart.
REM65 - involvement in contravention	What is the scope of this provision considering the ambit of REM110 for injunctions? What constitutes “involvement”? This seems unduly broad particularly if credit representatives are engaged. For example, a mail house may be ‘involved’ in sending out non-compliant materials. They would be unintentionally involved in facilitating the offence. Have they committed an offence?	This provision needs to be removed as it is too broad in its application.
REM90 - criminal proceedings	This is administratively cumbersome and costly. The Regulator should be required to raise all issues at the same time.	Modifications required to facilitate contemporaneous raising of all issues.
REM120 & REM125 - compensation orders	There needs to be an exemption from this provision for Credit Providers on the basis that there are already adequate provisions for compensation under the UCCC (NCC). Similar reasons were given above in relation to relief from the Compensation arrangements for credit providers as a licence conduct requirement.	Exempt credit providers.
REM120 & REM125(3) - compensation orders	This provision regarding ASIC representative actions is similar to the new provision under section 72 of the UCCC (NCC) and is therefore duplicated for credit providers.	Exempt credit providers.
C100 – small claims proceedings	Concerns are raised to consider retaining flexibility and cost efficiencies of tribunal hearings for current Credit Code cases. Under Credit Bill alternatives for claims outside small claims proceedings will be formal and costly for consumers.	Retaining expertise of tribunal officers and mirroring flexible processes in court forums for claims above small claims proceedings.
M510 – infringement notices	The infringement notice regime should be subject rights of the licensee to question the scope of the notice, the alleged contravention and the penalty to be imposed.	Modify infringement notice provisions to provide for scope for licensee to clarify contents and scope of notice before penalty is imposed.

Schedule 1 – National Credit Code

There are a range of changes (referred to below) required including those necessary to change documentation to comply with Commonwealth legislation. This will necessitate a detailed review of all contracts, forms, collateral, manuals, websites and systems/technology changes, processes and training requirements. Due to the comprehensive and detailed work required to transition to the new requirements a minimum of 12 months from commencement of the NCC is required for implementation. Significantly, will be the whole new documentation and processes required for Residential Investment Loans.

Section reference	Comments	Solution
Technical changes	<ul style="list-style-type: none"> - changes to make references consistent with Commonwealth drafting style - changes to the way sections are described - changes to prescribed forms - new forms and new processes (e.g. direct debit default notice and more extensive disclosures in the default notice) - residential investment loan compliance 	At least a minimum of 12 months transition from commencement of the Credit Act i.e. from 1 November 2010.
s6 – jurisdictional test INT25(4) & (5) and DEF86	Absence of the previous residency test means that the NCC will apply if the credit provider is carrying on business in Australia whether or not the borrower is obtaining funds in Australia. This scope is too broad and will have unintended consequences. For example, if an Australian credit provider provides a home loan to a Chinese citizen in Hong Kong it appears to be regulated on the basis the lender carries on business in Australia.	To reintroduce a residency test where the borrower needs to be ordinarily resident in Australia.
s7(1) – definition of short term credit	<p>Requires expansion to specifically exclude operation of “buffers” to transactional and/or savings accounts issued by ADIs. These buffers operate to facilitate electronic banking services at ATMs and EFTPOS and periodical payments. They generally operate for small temporary amounts and are behaviourally scored and without specific customer consultation. Fees may apply and these are disclosed to customers.</p> <p>Similarly, accommodation in the form of temporary excesses requested by customers for their transaction/savings accounts should also be excluded from regulation because they are in the nature of short term accommodations usually only for 30 days.</p> <p>Both accommodations are distinguishable from an Overdraft which is a credit contract and would be subject to this change in regulation.</p>	To include in the short term credit exemption a specific reference to exclude from regulation accommodations which operate as ‘buffers’ or temporary excesses to transaction and savings accounts issued by ADIs.
s26 - interest only loans	Doesn't contemplate in advance interest payments because the section assumes that there is an unpaid daily balance used in the calculation.	Need regulation to exempt residential investment loans.

s79A direct debit default notice	The 10 day time from for this requirement is too onerous. In all practicalities a minimum of a month would be required.	Change '10' day reference to a minimum of '30' days at least.
s80 new default notice requirements	There is a possibility that because of all the additional information the customer may find it hard to identify the overdue amount and the key date for remedying the default.	Formatting of this notice will be important to section of up front the key default details from the explanatory information about the debtor's rights and obligations in default.

Attachment to Treasury submission on Credit Reforms

Attached to this submission are 2 slides which were part of a presentation package to members of the Treasury team on 24 April 2009 during a visit to NAB at Docklands.

These 2 slides illustrate the steps involved in the credit process for home lending in 2 cases:

1. for credit arranged by NAB's own employee staff (i.e. mobile bankers) - this is the credit provider process
2. for credit arranged by intermediaries who refer applications on to NAB to provide the credit – this is the credit assistance process.

Credit provider process

This slide highlights the key submission points set out in the attached table and executive summary:

- consultation takes place with the consumer in tandem with taking the consumer's credit requirements and particulars;
- the credit provider process is a seamless operation and involves a one stop for discussing the credit needs of the customer and conducting the credit assessment;
- the credit assessment is made in conjunction with the credit application and approval (or decline);
- documentation of the credit contract takes place subsequent to credit approval and there is a role for the consumer to update the credit provider if their financial circumstances have substantially changed such that it would not be prudent for them to draw down on the credit.

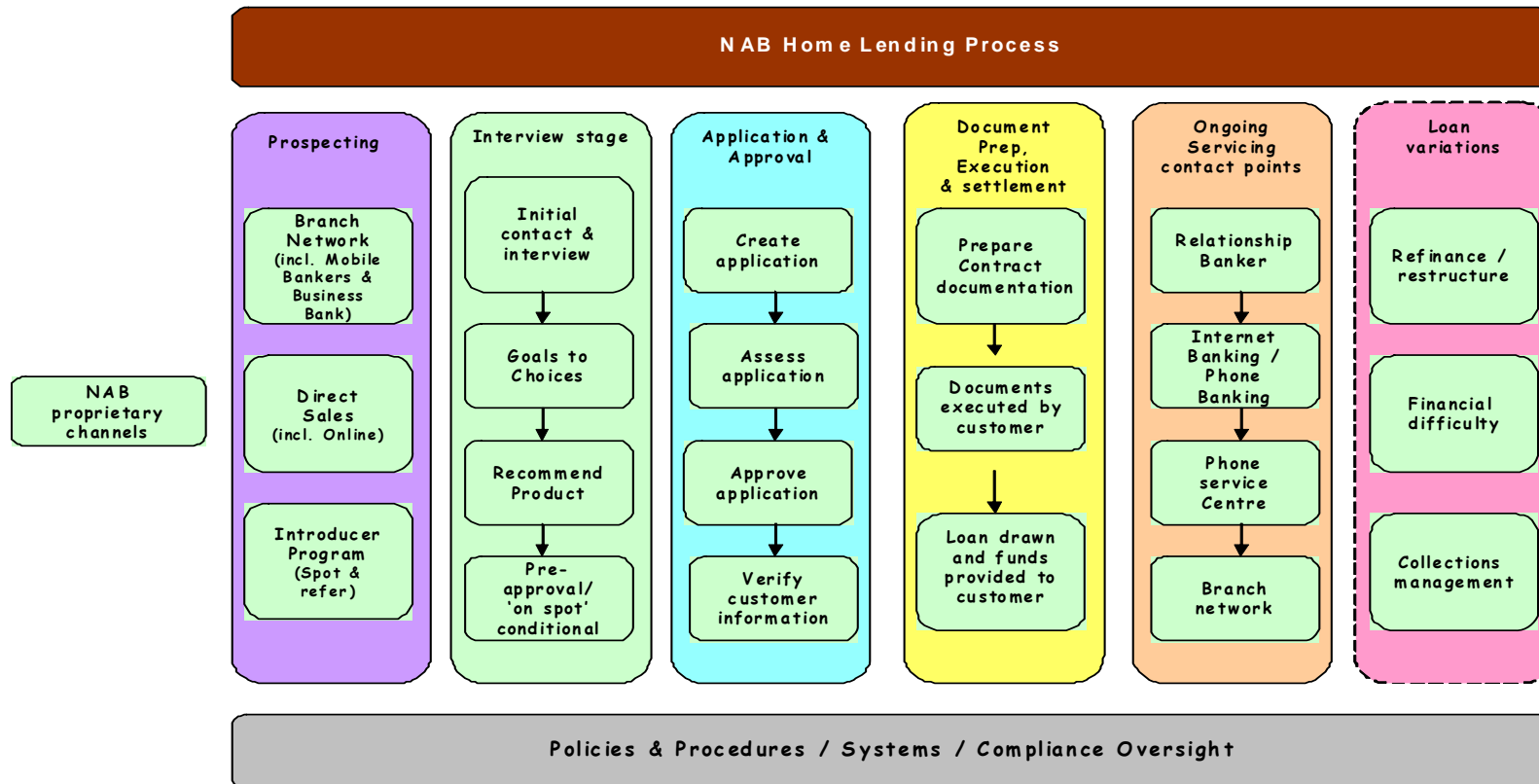
Credit assistance process

This slide highlights the key submission points set out in the attached table and executive summary:

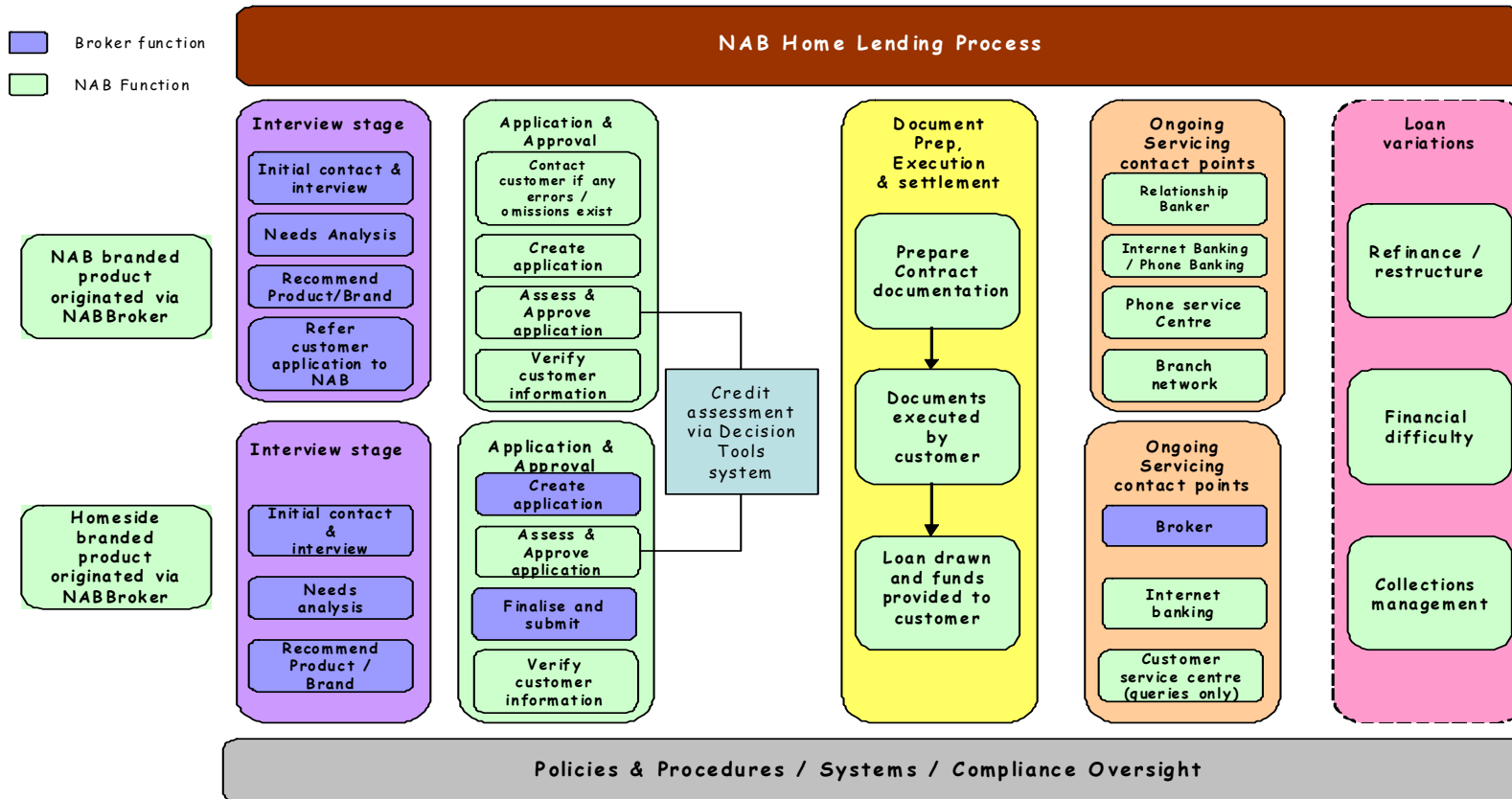
- the intermediary conducts a 'needs analysis' type assessment rather than a full credit assessment;
- the credit assessment is done by the credit provider based on its own systems and logic;
- the credit assessment flows after the credit application is made and discussions are conducted with the consumer about their requirements;
- at this early stage in the process it would be difficult and not always accurate for the intermediary to identify all the fees/charges and commissions required in the credit proposal document. The type of fee and commission disclosures (apart from their own) required are best made in the credit contract itself when this can be done on the basis of the approved credit amount to be documented in the loan contract.

As can be seen from these slides the lending process is a fluid and dynamic chain of events and activities which does not lend itself to arbitrary segmentation. The main factors are that the credit provider will conduct its own credit assessment and this is done at the time of credit application. The intermediary does a "know your customer" type assessment to narrow the range of products which may be available to the customer but refers the customer to the credit provider who performs the checks and verifications as they bear the liability of advancing the credit.

Home Lending



Home Lending



Australian Credit Aggregates

12 mths to %, Actual and Forecasts

