

Financial Services and Credit Reform Green Paper
Corporations and Financial Services Division
The Treasury
Langton Crescent
Parkes ACT 2600
Email: financialservicesgreenpaper@treasury.gov.au

Dear Sir or Madam,

Financial Services and Credit Reform Green Paper

I have pleasure in enclosing a submission which has been prepared by the Financial Services Committee of the Business Law Section of the Law Council of Australia in response to the Financial Services and Credit Reform Green Paper issued by The Treasury.

Please note that the submission has been endorsed by the Business Law Section. Owing to time constraints, the submission has not been reviewed by the Directors of the Law Council of Australia.

Yours faithfully,



Bill Grant
Secretary General

30 June 2008

TREASURY GREEN PAPER: FINANCIAL SERVICES AND CREDIT REFORM 'IMPROVING, SIMPLIFYING AND STANDARDISING FINANCIAL SERVICES AND CREDIT REGULATION' JUNE 2008

Summary of submission

The Financial Services Committee of the Business Law Section of the Law Council of Australia (the Committee) strongly supports Option 2 in Chapter 1; and Option 1 in Chapter 6: that the Commonwealth regulate all credit.

The Committee does not support the proposal for a split of regulation between the Commonwealth (mortgages including mortgage broking and lending) and the States and Territories (personal loans, credit cards, car loans) (Option 3 in Chapter 1; and Option 2 in Chapter 6)

Basis of submission

1. The proposed split will be inefficient and add to business costs, including documentation, compliance systems and legal costs.
2. It will add to the current inefficiencies, as it will retain the current inefficient State-based regulatory framework for some credit products, and add a further, Commonwealth, layer.
3. In particular, the proposal is contrary to the recommendation of the Productivity Commission [Review of Australian Consumer Policy Framework, Final Report May 2008] that the Uniform Consumer Credit Code be re-enacted as Commonwealth legislation. The Committee supports that recommendation: the current legislative framework for consumer credit is unwieldy and difficult to amend in a time-efficient manner.
4. Although credit products can be split into mortgage lending and other forms of lending, as in Table 1 on page 2 of the Green Paper, the credit market in terms of providers and consumers is so not readily split. Many credit providers offer both secured and unsecured lending products to a national market, and also offer combination products. Packaged products may include a home loan and a credit card, with sweeping facilities to pay the credit card, and the card being secured by a mortgage.

Customers choose packaged products such as offset loans, due to the savings that they can make in terms of interest and fees, and the convenience associate with these products. Having the different elements of these packaged product offerings subjected to different regulatory regimes will increase the cost and complexity for banks in offering packaged products, with the likely result of this being increases in the fees on packaged products for consumers, increasingly complex disclosure documents, and a reduction in the availability of packaged products in the retail market.

For those credit providers who offer combination products, two regulatory regimes will add to their regulatory burden, outweighing, we believe, any benefit from streamlining the regulation of mortgages and potentially stifling innovation.

5. The market, in terms of consumers is also difficult to split; consumers may seek advice or information about credit products without having decided whether secured or unsecured credit would be most suitable; for example, a consumer over 60 may seek a personal loan but be advised to consider a reverse mortgage. To have two different advice and disclosure regimes potentially applying to the one interaction would be inefficient and add to the concerns reported by ASIC and referred to on page 4 of the Green Paper.
6. The advice and disclosure requirements for unsecured credit may not need to be as detailed as those for mortgage lending [page 13 of the Green Paper] but they should be similar in terms of purpose, policy-basis and regulatory language used. This can be achieved most efficiently by including them in the same, national legislation.
7. The difficulty in maintaining uniform credit regimes under the current framework is not, in our view, evidence of differences in the markets between the States [page 13] but rather evidence of State differences in regulatory approach and responsiveness.
8. The Green Paper expresses the concern that moving all credit to the Commonwealth would exclude State consumer agencies and tribunals from consumer credit. It is important that existing expertise and infrastructure be retained if possible. This might, however, be more efficiently achieved by a national regulatory framework under which certain activities are referred back to or undertaken by the States than by a split regulatory regime.

9. A single, Commonwealth, regime for credit would also increase efficiencies in dispute resolution. In particular, coverage by approved dispute resolution schemes would be more consistent and coherent, and provide desirable protection to credit consumers. Leaving unsecured secured credit out of a national licensing regime, including a requirement for the provider to belong to a dispute resolution scheme, would be a significant disadvantage for affected consumers. A single, Commonwealth, regime also offers the potential for more efficient use of the Federal Magistrates' Court.
10. Option 2 in Chapter 1 will address significant gaps in consumer credit regulation. Option 3 has the potential to add significantly to those gaps.