



1 July 2008

Corporations and Financial Services Division
Treasury
Langton Crescent
PARKES ACT 2600

Via email: financialservicesgreenpaper@treasury.gov.au

Dear Sir/Madam

The following submission is made on behalf of the National Australia Bank Group in response to the Federal Government's Financial Services and Credit Reform Paper

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 business include: the National Australia Bank, MLC, the Bank of New Zealand, and *nabCapital*.

This submission has been written to align with the approach taken by the Green Paper, which canvassed the potential reforms conceptually against the broad principles favoured by the Government: - reduced regulatory burden, national consistency and better consumer protection.

The National Australia Group commends the Federal Government for leading the debate in this policy field and acknowledges that further detailed consultation will be required once draft legislation and regulatory instruments are released for consideration. The company looks forward to participating in the next phase of the reform process.

For inquires relating to his submission, please contact Dallas McInerney on 02 9237 9206.

Yours sincerely

Steven Münchenberg
Group Manager, Government Affairs and Public Policy





National Australia Bank Group

Submission in response to
the Federal Government's
Financial Services and
Credit Reform Paper

July 2008

For ease of reference, this document will use the same numbering and headings as the Green Paper; NAB reserves the right to make subsequent comments on the proposals considered in this Treasury process.

1. Mortgages, Mortgage Broking and Non-Deposit Institutions

NAB's interest in mortgages and mortgage broking is as one of Australia's major lenders as well as through NAB Broker, our specialist distribution business within our retail bank that provides services and products to third party brokers.

NAB and NAB Broker operate across state and territorial boundaries and are therefore subject to those jurisdictions with respect to credit, in particular the Uniform Consumer Credit Code (UCCC) and mortgage broking, and their regulatory and licensing inconsistencies. NAB believes there is scope for Commonwealth regulation and supervision to ensure uniform higher professional broker standards across all jurisdictions and greater consumer protection consistent with that provided by other Commonwealth regulated financial products.

Recommendation

NAB supports the introduction of a consistent national approach to all consumer credit products, including mortgages.

Currently we operate under the UCCC; however over time, notwithstanding the many effective provisions of the UCCC for regulating credit products, the effectiveness has been impacted by inconsistencies that have arisen across the States and Territories. As a result, the business is faced with increased compliance costs, multiple jurisdictional licensing obligations for both state and commonwealth regulated products and legal uncertainty. As a national operator, it is inefficient and onerous to develop products and monitor compliance differently, according to the jurisdiction. In our experience, consumers' needs and expectations are fairly uniform, whether for secured or unsecured products. Differing regulatory requirements also, potentially, exclude customers in certain States or Territories from benefiting from new and innovative products.

Recommendation

NAB supports a national licensing regime for mortgage brokers.

In terms of mortgage broking, NAB has identified a gap where national regulation could play a vital role to ensure all brokers meet the same professional standards of conduct, specifically via a national licensing scheme while at the same time enhancing consumer protection and redress. A national licensing regime, in our view, should require similar obligations to be

met as those of an Australian Financial Services Licensee (AFSL) particularly with respect to competency to deliver the service and consumer compensation obligations.

Further, we recommend that the introduction of a national licensing scheme be undertaken as a **dedicated project**, with careful consideration against the learnings from the introduction of the Financial Services Reforms contained in Chapter 7 of the Corporations Act 2001 (Cth), including taking into account the current work of the Financial Services Working Group.

As with legislation for consumer credit products, a further review and consultation is required about the national licensing scheme to resolve where it should be set out. We can see that it might be contained:

- in separate legislation;
- together with legislation for consumer credit products; or
- in chapter 7 of the Corporations Act.

We note the observations in the Green Paper on the potential for commission structures to lower broker standards. We would support this view. That is why NAB Broker has recently announced plans to further steer brokers towards quality criteria and longer-term client servicing while at the same time reducing the potential for conflicts of interest. Commonwealth regulation that would require increased transparency around fee structures for consumers would inevitably enable the market to deliver greater consumer protection.

Recent developments

NAB agrees with the observations the Green Paper cites from the Productivity Commission report into the consumer policy framework on the UCCC and on regulating credit, including mortgage brokers.

We note the intention in the Green Paper to use the proposed National Finance Broking Bill, released by the NSW Government on behalf of the MCCA, to assist in the development of national regulation for finance and mortgage brokers. NAB's response to the draft Bill is attached (Annex I).

As you will note in our submission on the Bill, whilst we supported the intentions of the Bill, we have concerns in a number of areas (not only those that should naturally be addressed by a Commonwealth approach), which we would caution against repeating in any Commonwealth legislation. We have concerns that the measures proposed will not be workable and are disproportionate to the problem they attempt to address.

These include: the obligation on a broker to assess capacity to repay, verification of loan purpose and the undermining of the business purpose declaration in the Uniform Consumer Credit Code, comparisons of credit proposals and information requirements that do not reflect the chronology of the broker transaction.

Recommendation

NAB broadly supports Option Two (pg 12 of the Green Paper) for reform, namely that the Commonwealth regulate all consumer credit, with ASIC as the sole regulator. Further, any reform should have regard for concerns regarding the implementation process and accompanied by extensive and meaningful industry consultation.

The Green Paper explicitly proposes mortgages and associated advice be regulated under Chapter 7 of the Corporations Act, but commits to further analysis of whether other credit instruments be regulated through a single national regime.

We welcome careful consideration of how consumer credit would move to the Commonwealth, but propose that this could be achieved by re-enacting the UCCC as a Commonwealth statute, with the necessary changes required for it to operate effectively at this level. This would reduce transitional costs transferring from State to Commonwealth regulation and ensure regulatory certainty for business and consumers who currently operate under the UCCC, whilst overcoming current problems of inconsistency.

Regarding mortgage products and advice, we advise caution of simply including either mortgages or all consumer credit in Chapter 7 of the Corporations Act for a range of reasons:

- Consumer credit products are essentially different from investment products, since the former involve borrowing funds from a lender, whereas financial products are individual investor-funded.
- This is reflected in the relative risks. The Financial Services Reform (FSR) model was designed around investor risk and associated disclosures and conduct whereas with consumer credit the ultimate risk is borne by the credit provider.
- Disclosure requirements for financial products reflect the greater complexity of investment products, compared to pre-contractual disclosure for credit products under the UCCC.

It should also be borne in mind that the FSR is undergoing continual refinements and changes. Incorporating consumer credit into this evolving and changeable legislation may exacerbate any problems of integrating the two regimes.

Consultation

A further and more extensive review and consultation process is needed to assess:

- whether the new legislation should include proposed amendments to the UCCC (e.g. those relating to fringe credit);
- how to resolve the inconsistencies between the current State and Territory legislation;

- the administrative changes that will be required to make the new legislation work as Commonwealth legislation;
- whether the legislation should be a standalone Act or included in chapter 7 of the Corporations Act; and
- whether this new legislation for consumer credit products should be coupled with mortgage broking licensing legislation.

2. Trustee Corporations

National Australia Trustees Limited is a wholly owned, but independent, subsidiary of National Australia Bank Limited. It is licensed as a statutory trustee company in every Australian mainland state and territory. National Australia Trustees has total AUM of \$6 billion dollars, including more than \$320million in discretionary trusts. It provides a broad range of services, including estate planning, powers of attorney, trust and estate administration, business succession planning, asset custody and portfolio management.

NAB welcomes COAG's decision that the Commonwealth be responsible for the regulation of trustee corporations with the potential for reduced cross jurisdictional compliance costs. Further, we note that ASIC has existing expertise and capability in licensing financial service providers.

Recommendation

NAB supports Option One of the Green Paper, a consumer protection supervisory model with ASIC responsible for licensing of trustee corporations.

3. Margin Lending

NAB Margin Lending has been in operation since 1999, during this time, it has consistently grown its business faster than the market and has received many industry awards recognising our product innovation and price competitiveness

NAB acknowledges the data contained in the Green Paper noting the growth in margin lending facilities in recent years; the popularity of this investment tool is no doubt linked the many advantages of this facility in building and generating wealth for Australians.

In considering options for the future regulation of margin lending, NAB notes that Green Paper does not favour the maintaining of the status quo; given the absence of clarity in the current arrangements and the desirability of consistency, NAB agrees with Treasury on this point.

However, NAB does not support the creation of a new and separate regime by the Commonwealth (Option Two). It believes the potential for future inconsistencies and compliance burdens would outweigh any benefits of a stand alone regulatory regime.

NAB acknowledges the theoretical benefits of including margin lending as a financial product under the Corporations Act, however, this alone should not

be reason enough to proceed with this option. There are strong arguments for margin lending to remain outside of the purview of the UCCC, importantly, on a related point; it would be detrimental to the consumer if the existing problems with the current FSR disclosure regime were to be visited upon margin lending activity and generally a negative outcome for all parties.

That considered, given the prevalence of margin lending in the financial planning process of AFS licence holders, this further strengthens the case against creating a separate regime (Option Two).

Recommendation:

NAB supports margin lending activity being subject to a more a complete and consistent regulatory framework. It further recommends the Government consult industry and commit to undertaking rigorous cost– benefit analysis of any model which envisages margin loans as a financial product for the purposes of the Corporations Act

Debentures

NAB is supportive of Treasury’s aim to seek a better regulatory framework for debenture products and deliver more integrity to their operation in the market place. However, efforts to deliver these outcomes should not be solely focussed on recent experiences of retail participation in the debenture market and acknowledge Australia’s well functioning wholesale debenture practices.

Recommendation:

NAB supports the extension of licensing requirements to debenture issuers and trustee companies undertaken by ASIC

3. Property Spruikers

Through its MLC business and its financial adviser network, NAB supports Australians receiving proper financial advice to better plan for their future. Regulated, professional advice can inform customers, provide financial security and offer broad protection to the customer. Good advice must consider all of the customer’s circumstances, asset classes, savings, investments, insurances and retirement needs.

The Green Paper rightly identifies activities by property spruikers that operate without regulation, using high pressure tactics and remain unaccountable for promises and representations. Such practices are an anathema to sound financial advice and pose a risk to less sophisticated investors.

On a related point, NAB is supportive of the recent measure announced in June by the Assistant Treasurer, the Hon Chris Bowen MP, and the launch of the web based portal for property owners to be administered by the ACCC.

Recommendation:

NAB recommends the Government revisit the Parliamentary Joint Committee on Corporations and Financial Services 2005 report into Property Investment Advice and gives consideration to the ACCC's submission that offers a solution in the form of closer collaboration between the ACCC and ASIC and the use of their existing powers

Other Credit Products

In line with NAB's earlier recommendation relating to Chapter One of the Green Paper, NAB's sees merit in a model that has the Commonwealth responsible for all credit regulation. However, as the Green Paper intimates, the transfer of powers to the Commonwealth should be phased, first addressing mortgage products and advice before the remainder of consumer credit products.

Recommendation

NAB supports further consideration being given to the Commonwealth assuming regulatory responsibility for all credit products and services