



Australian Institute of
CREDIT MANAGEMENT

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The Treasurer
Langton Crescent
PARKES ACT 2600

(Via email patrick.mahony@treasury.gov.au)

Dear Sir

Proposed Non-ADI Amendments to Banking Act (called "the Banking Act") and Financial Sector (Collection of Data) Act (called "FSCODA") (called "the Amendments")

We apologise for the brevity of this letter, however we note that we have only late last week become aware of the Amendments.

AICM is the largest national body representing credit managers of organisations (and such businesses and other industry stakeholders), who provide trade and other credit to businesses and individuals in both retail, manufacturing and wholesale.

We have initially considered the Amendments and have grave concerns that the breadth of the meanings in the Banking Act and FSCODA will result in a substantial cost and burden of business being unintentionally placed upon our members.

At first blush (and given the limited time to review) the effect of the Amendments appears to be that they will unintentionally apply to many of our members (who do not either accept deposits or provide loans to buyers of real or personal property) as:

- 1 The terms "lending of money" and "financing" are not defined by the Banking Act (and given the common and ordinary meaning of such terms is very wide), the Amendments would appear to respectively add:
 - (a) invoice financing under recourse and non-recourse lending against invoices (eg P2P market and established businesses);
 - (b) trade credit (eg retention of title, consignment arrangements and instalment contracts);
 - (c) hiring of equipment and other goods, and
 - (d) other "in substance" financing transactions and other Non-ADI activities.

This concern is genuine and justified given this and the very wide definition of "provision of finance" contained at section 32 FSCODA and similar terms in related legislation (eg see case decisions under section 12(1) and (2) *Personal Property Securities Act 2009* as to the meaning of "in substance ... financing transactions").

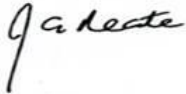
2. The corporations who carrying on financing will be "non-ADI lender" under the Banking Act and a "registrable corporation" for the purposes of the FSCODA, if its books debts are over \$50 million. Most of our members and their organisations are likely to be caught by such amount.

3. Such corporations will need to be registered with APRA as "non-ADI lenders" and be the subject of non-ADI rulings by the APRA, additional administration and potential substantial penalties.

We urgently ask that there be no passing of the Amendments in their current form, and for the opportunity for further discussions between you, AICM and our members at the earliest possible opportunity convenient to you.

I look forward to discussing this further with you.

Kind regards

A handwritten signature in black ink, appearing to read "J Neate". The signature is written in a cursive, slightly slanted style.

James Neate
Australian President

For further information on this paper please contact Peter Mills on 0400 718 428 or pmills@tglaw.com.au