Response to Consultation on the National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill 2012

AMP Group

March 2013

SUMMARY

We welcome the opportunity to comment on the exposure draft of the National Consumer Credit Protection (**NCCP**) Amendment (Credit Reform Phase 2) Bill 2012 (**the Bill**).

AMP has one of the largest financial adviser networks in Australia. In addition to providing financial advice, our networks provide credit services including intermediary and credit assistance services.

PROTECTED INVESTMENT CREDIT CONTRACTS – PROPOSED RESPONSIBLE LENDING STEPS

We appreciate the need for appropriate regulation of credit or credit assistance provided for investment purposes, especially where the consumer of the credit provides their residence as security for the loan.

Having said this, we have concerns about some of the concepts included in the draft new responsible lending provisions that apply to protected investment credit contracts. In particular, we consider that the proposed obligation to carry out responsible lending steps in respect of illegally offered financial products may have the unintended effect of legitimising the provision of credit or credit assistance for those purposes.

It is our view that credit licensees would risk breaching their general conduct obligations if they provided credit assistance to a consumer in circumstances where it was apparent the consumer wished to obtain an illegally offered financial product. As such, we think providers should simply decline to assist consumers in this situation.

As a separate issue, it appears that the draft new responsible lending obligations assume all credit licensees or their representatives will have a level of technical knowledge about financial products regulated under the Corporations Act 2001 (**Corporations Act**). Mortgage brokers who are not also licensed as financial advisers may be required to undertake further education simply to gain an understanding about which of the draft new responsible lending obligations will apply to their work.

Finally, we consider that the draft responsible lending obligations will create a double regulatory burden for licensed financial advisers in some cases. For example, in recommending that a client gear an investment in a share portfolio using the equity in their home, a financial adviser providing personal advice will need to have conducted an assessment as to the suitability of that recommendation against the consumer's personal circumstances. Under the draft responsible lending provisions, if recommending a particular credit facility with a particular lender, the adviser would need to carry out another assessment very similar to the type already conducted.

RECOMMENDATION

To address the issues discussed above, we recommend a combination of the following measures to regulate credit provided to consumers for protected investment purposes:

- Introducing a general prohibition on knowingly engaging in credit activities for the purposes of facilitating the acquisition of an illegally offered financial product. A prohibition of this type could act as a threshold test about whether credit or credit services can be provided, instead of a situation where credit licensees are required to take certain responsible lending steps where they have already identified that the consumer wishes to obtain an illegally offered financial product. This prohibition could be similar to draft section 133EM of the Bill.

- Relying on the existing responsible lending obligations contained in the NCCP Act 2009 to ensure credit licensees make appropriate inquiries before providing credit or credit services to consumers for any protected investment purposes. An amendment to the NCCP Regulations 2010 could be used to impose a requirement that where the debt is secured by a mortgage over the consumer's residence, credit licensees must inquire whether the consumer is prepared to lose ownership of their residence, should they be unable to meet the repayments under the contract.

- However, we would recommend that any responsible lending obligations applicable to protected investment credit contracts not apply to credit assistance providers who are also licensed to provide financial advice under the Corporations Act. We respectfully submit that the Corporations Act already offers substantial protection to consumers in terms of the suitability of advice about financial products. Financial advisers will also be subject to a higher regulatory standard with the introduction of a best interests duty, as one component of the Future of Financial Advice reforms.

Should you wish to discuss any of these matters further, please do not hesitate to contact me on (02) 9257 9024.

Yours sincerely

Sharon Higgins

Legal Counsel