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14 September 2012

Mr Christian Mikula
Manager – Consumer Credit Unit
Retail Investor Division
The Treasury
Langton Crescent
Parkes ACT 2600 By email: Christian.Mikula@treasury.gov.au

Dear Christian,

NCCP ENHANCEMENT AMENDMENTS – SHORT TERM CREDIT CONTRACT REGULATIONS & EMPLOYER DIRECT DEBIT AUTHORITY

Thank you for the opportunity to provide comment on the draft regulations to support the amendments to the small amount credit contracts (the SACC amendments) and relating to the employer direct debit authorisations contained in the Consumer Credit Legislation Amendment (Enhancements) Bill 2011 (the "Bill").

We understand that the Government's policy to be implemented through the SACC amendments was designed to address payday or fringe lending practices. We also note the exclusion of products offered by ADIs from these provisions. Further, as noted in the Government's *Discussion Paper: Strategies for Reducing Reliance on High-Cost, Short-Term, Small Amount Lending (April 2012*), it is keen to explore strategies to reduce the extent to which financially excluded consumers are dependent on high cost small amount short term loans provided by fringe or payday lenders. Small amount loans provided by non-for-profit organisations and Governments (eg NILS) were not intended to be detrimentally impacted by these reforms.

We submit that aligned with the Government's policy and strategy that AFC Members that are non-ADIs, that are holders of an Australian Credit License, and that are subject to and operate below the interest rate caps (either at the State level and/or under the proposed NCC 48% cap) should not be subject to the short term small amount credit contract provisions merely because they have chosen to offer a product which has features which will see it meet the definition of a "small amount credit contract"; namely, products that are non-continuing credit contracts for amounts of $2,000 or less and which may be for a term of 12 months or less, and consequently subject to the SACC amendments. Such products have been developed to give financially excluded customers an alternate to high cost loans offered by the fringe component of the market. To impose the SACC obligations on mainstream providers is likely to put at risk those providers continuing to operate in the market or looking to do so in the future. Or, it may see those providers in the market shift the term of the loan offered to exceed 12 months to remove them from further prescriptive regulation, an outcome that may not be in the customer's favour.

These consequences would appear to be at odds with the Government's intention to look for alternates. We therefore suggest the capture of these products offered by mainstream credit licensees was not intended and request that Treasury utilise the general regulation making power in the NCA to provide an appropriate exemption to allow our Members to continue to offer SACCs in compliance with the NCA as it currently stands together with the amendment to include the 48% cap.

More specific concerns with the draft Regulations highlighting the issues arising for AFC Members offering SACC products have been covered in the responses to the specific questions asked by Treasury in the Commentary/Question document included as an attachment to this letter.

Authorisation for Employer Deductions –Form 9

We note the intention of Form 9 is to be used for both the credit contract and consumer lease product. We suggest that the customer consent paragraph which commences "I consent to my employer.." needs to be amended so as to cover lessor in addition to credit provider. For example, "…..to meet repayments under a contract with the above credit provider **/ lessor**".

We would be happy to discuss our comments in further detail. Please feel free to contact me via email ron@afc.asn.au or our Corporate Lawyer, Helen Gordon, via email through helen@afc.asn.au or either by phone through 02 9231 5877.

Kind regards.

Yours truly,

Ron Hardaker
Executive Director

TREASURY – SACC DRAFT REGULATIONS - COMMENTARY & QUESTIONS – AFC RESPONSE

28XXA – Small amount credit contracts – requirements for warning on licensee's premises. Schedule 7 – prescribed notice

(1) Are there comments on the requirements in respect of the location of the notice?

We submit that it is not appropriate for this requirement to apply to a location that a licensee does not interact with customers on the premises. For example, if a SACC lender has two outlets where customers visit and one head office where no customers ever visit, we submit that the policy objective intended by this provision and supporting regulation would not require the SACC lender to be obliged to display the notice at the head office. We accept that this will turn on questions of interpretation (eg in performing head office functions, is the SACC lender "conducting business"?). However, in the interests of certainty, we recommend that Reg 28XXA be amended to make clear that notices will not be required to be displayed at locations where no customers will visit.

(2) Are there comments on the requirements in respect of the content of the notice?

AFC suggests that it is quite crucial that lenders who exclusively offer loans which comply with the NCA/NCC and are subject to interest rate caps (either under current State laws or under the amendments contained in the Bill) should not be required to display this notice. A principal reason is that that statement that "short term loans are expensive" may not be true for products offered by these mainstream lenders, when compared to products offered by those in the fringe market and also when considered in the context of alternate products for small amounts (eg $2,000 or less) offered by mainstream lenders but which are unregulated by the SACC provisions (eg credit card products). We submit the 48% interest cap controls proposed in the amendments coupled with the existing licensing, NCC disclosure and other obligations provide appropriate protection for consumers.

28XXB – Small amount credit contracts – requirements for warning on licensee's website. Schedule 8 – Prescribed notice

(1) Are there comments on the requirements in respect of the location of the notice?
(2) Are there comments on the requirements in respect of the content of the notice?

For reasons given earlier, we submit that these obligations should not apply to products offered by licensed mainstream credit providers offering products exclusively below the 48% cap.

Failing a general exclusion, we suggest that any website popup warnings should only be required to be displayed after it is clear that what the consumer is applying for will meet the definition of a SACC. For example, if a lender offers unsecured loans for amounts in the range of $1,000 to $5,000, for a term that may be less than 12 months, any warnings in relation to SACCs should only be required to be displayed AFTER it is clear that the consumer is applying for a loan with a balance of $2,000 or less and for a term of 12 months or less.

28XXC – Authorisation for deduction & Schedule 9 – prescribed form

(1) As deductions need to commence within one month of the form being signed by the lessee or the debtor, is there a need to provide a second form where the lessee or debtor may be in default?

Based on feedback, we understand that in some cases, with the contractual provisions a small interest free period may apply at the commencement of the contract term in order to line up deductions with a monthly payroll cycle. In this case the first deduction will need to be over one month from the time a customer may have provided payment consent. It should be possible for a customer to nominate the first date of payment or agree to a particular date where that date will be more than one month from signing an authorisation. Potentially editing the duration to 60 days rather than one month would deal with this concern and cater for setting up deductions which line up with payroll cycles.

In relation to a second form being provided, we suggest that this may only be of use where customers are easily contactable, likely to respond quickly and entirely aware that this is how the authorisation works. As with any payment authorisation, this form should be enduring until the customer instructs the debiting party to cease. Having to request multiple authorisations is likely to result in arrears for otherwise able debtors/lessors. There should be no requirement for a second form.

(2) Should the credit provider or lessor be able to combine the form with their existing payment authorisation deductions?

We submit that a credit provider or lessor should have the option of adopting a commercially reasonable process that allows streamlining their disclosure and other obligations or commercial requirements. We suggest that the general and specific obligations about clarity and legibility with forms and documents in the NCA/NCC are adequate to address any perceived concerns arising from streamlining disclosures by combining forms within one document.

28S – Licensee must not enter into a small amount contract if the repayments do not meet the prescribed requirements

(1) What are stakeholder's views on whether the regulations should apply to consumers who are eligible for a Pensioners Concession Card?

While we understand the basis for this proposed approach, we suggest that the obligations on mainstream licensed credit providers to assess whether a loan is not unsuitable should adequately identify any deficiencies in capacity irrespective of the customer's pension status or the percentage of their income they wish to commit to the repayment of a financial product.

Based on Member feedback, while the prescribed customer referred to in this proposed amendment is unlikely to be considered a prospect for finance in most instances, if under an assessment the loan is deemed not unsuitable, and following reasonable further enquiries the loan was found to meet the applicant's requirements and objectives, we question the basis on which the finance should be refused.

(2) What are stakeholder's views on the formula in the regulation for determining the maximum amount of the repayments?

(3) Do stakeholders consider an alternative formula would be preferable? And if so, why?

We submit that current obligations in relation to questions of suitability including capacity can customer needs/objectives are adequate and the high level of prescription proposed via introduction of the proposed or an alternate formula is not needed.

28XXD – Unsuitable Credit Contracts – Prescribed circumstances

(1) Is the regulation effective in addressing potential avoidance through loan-splitting?

We suggest that at times a customer may wish to have two (or more) products for valid reasons and that these reforms should not prevent that. In contrast, where the decision to split a loan appears to be at the instigation of the provider and without valid reason or justification, we agree some anti-avoidance approach in the regulation may be appropriate.

We submit, however, that what is being proposed may not deal effectively with workarounds (eg requesting a consumer confirm (for example) the requirement to receive the amount of $1750 on one day and then an additional amount of a further $1750 one day later). We note, again, that much of the prescription contained in the amendments including the draft regulations is designed to control organisations who design and adopt process to avoid the law and take advantage of consumers. For mainstream providers with processes developed in compliance with the NCA/NCC and other laws relevant to consumer credit, this merely adds to their compliance obligations without addressing the underlying cause motivating development of the regulation.

79AB – Credit provider or prescribed person must not require or accept payment or fee or charge in relation to small amount credit contract etc.

79AC – Prohibition relating to annual cost rate of credit contracts – later increases of annual percentage rate

We do not have any specific comment on this issue beyond our general comments about appropriately targeted regulatory solutions to address identified problems.

79C – Default in payment by direct debit under small amount credit contracts

(1) Is it sufficient to require a credit provider to contact the debtor to advise them the direct debit has been unsuccessful, or should the credit provider be under some additional obligation?

(2) Should the obligation apply after two unsuccessful attempts, or after a greater number?

We do not have any specific comment on this issue beyond our general comments about appropriately targeted regulatory solutions to address identified problems. We also suggest that any solution should not impede a credit provider adopting a manner of contact that is appropriate for its customer base or business model.

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