



Debra Kruse
Government Affairs & Policy Leader
GE Capital

572 Swan Street
Richmond VIC 3121
Australia

T +613 9921 6859
F +613 9921 6584
E debra.kruse@ge.com

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Mr Christian Mikula
Senior Adviser
Disclosure and International Unit
Retail Investor Division
The Treasury
Langton Crescent
Parkes ACT 2600

BY EMAIL: Christian.mikula@treasury.gov.au

**National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill 2012
(Exposure Draft)**

GE Capital welcomes the opportunity to make this submission in response to the Exposure Draft of the *National Consumer Credit Protection Amendment (Credit Reform Phase 2) Bill 2012* (the "EDB") issued by the Treasury in December 2012.

GE Capital's operations in Australia began in 1995. GE Capital is now one of Australia's leading financiers. We provide a range of commercial and consumer lending products that are offered both directly to customers and via intermediaries, such as our major retail partners.

We request the opportunity to participate in any industry roundtables or any other consultation forum that is part of the consultation process with respect to the EDB.

We would be happy to discuss any aspect of this submission with you. Please contact Debra Kruse, Government Affairs & Policy Leader, GE Capital A&NZ on 03 9921 6859 or debra.kruse@ge.com

Sincerely

A handwritten signature in blue ink, appearing to read 'Greg White', with a long horizontal line extending to the right.

Greg White
Chief Operating Officer
GE Capital
Australia & New Zealand

Executive Summary

1. We commend the Government's decision to defer proposed reforms (as set out in the EDB) to lending and leasing to small businesses. However, we urge the Government to provide financiers, lessors and small businesses with certainty with respect to these reforms as soon as possible.
2. We do not support the proposed reforms that affect lending to individuals and strata corporations for investment purposes. Our view is that the relevant provisions in Schedule 3 of the EDB are not targeted to address the stated policy objective and may have unintended consequences. Our recommendations are set out at the end of this submission.

The need to stimulate productivity is currently a key pillar of Government policy. Given the potential for regulation to impact on productivity, we urge the Government to ensure that it has identified a real problem that can only be addressed by regulation before determining that additional regulation of credit is necessary.

1. Lending and leasing to small business

GE Capital commends the Government's decision to defer the proposed reforms to lending and leasing to small business, as announced by Treasury on 15 February 2013. We note that the Government does not intend to seek passage of these reforms during the tenure of the current parliament and that the EDB will be revised to excise Schedule 2 prior to any Bill being introduced into parliament.

We remain concerned about the ongoing uncertainty that this "deferral" creates for industry and for small business customers. Reforms to small business lending and leasing have been the subject of numerous discussion papers, commented on by a diverse stakeholder group during the course of the last two years. The *Regulation Impact Statement: Small business credit* has been produced relatively recently. The proposed reforms, in the form set out in the EDB, are not supported by the Regulation Impact Statement.

In light of this, we urge the Government to confirm that it does not currently intend to progress reforms to lending and leasing to small business.

2. Lending for investment purposes

With respect to the proposed reforms to lending for investment purposes (as set out in Schedule 3 of the EDB) the *Regulation Impact Statement: Credit for investment purposes* sets out the Government's objectives.

As we understand it, those objectives are to:

- Prevent excessive detriment to consumers;
- Where credit has been used to invest in products associated with misconduct in providing that product, address financial harm resulting from an investment that has been tainted by that misconduct; and

- Improve borrowers' understanding of risks associated with leveraged investments, in a way that allows consumers to make their own informed investment decisions (based on their own risk appetite) and minimizes the impact on industry.

On that basis, regulation that is targeted to facilitating the minimization of harm that could flow from misconduct associated with the supply of investment products would be designed to meet Best Practice Regulation guidelines. Regulation that:

- is not targeted specifically to achieving the policy objectives;
- goes beyond that which is required to achieve the policy objectives;
- fails to achieve the policy objectives, or
- has unintended consequences,

is not likely to be effective or efficient under Best Practice Regulation guidelines.

In our view, the relevant provisions of the EDB do not meet Best Practice Regulation standards for the following reasons:

Excessive and has unintended consequences

The investment lending provisions would introduce a level of compliance complexity that is unnecessary and goes beyond that which is required to achieve the stated policy objectives. The responsible lending obligations set out in the EDB differ depending upon the underlying investment that is financed. Moreover, the responsible lending obligations set out in the EDB differ from those that currently apply to lending to individuals and strata corporations to finance or refinance investments in residential property.

The much simpler approach of bringing all investment lending to individuals or strata corporations into the scope of existing regulation seems to have been overlooked as an option. In our view, this option should be explored to determine whether existing responsible obligations would be sufficient to achieve the stated objectives of minimizing detriment to consumers and addressing misconduct. Adopting this simpler approach would also go some way to achieving the stated objective of minimizing the impact on industry.

Item 2 of Schedule 3 of the EDB refers to the "use" of the credit for investment purposes, as opposed to the intention in providing the credit. Commentary provided by Treasury on this provision also focuses on the actual use of the credit by the borrower.

We have a significant concern that where credit is not intended by the lender to be provided for investment purposes, as is the case with GE Capital's credit card and personal loan products provided to individuals, the borrower's subsequent use of the credit to purchase for example an original artwork (with the expectation that it will increase in value) may be determinative of whether or not the credit contract is regulated by the investment lending provisions.

In our view, this is an unintended consequence in respect of products that are not intended by the lender to be used to purchase investment assets specifically, nor is the lender involved in

any scheme that suggests the lender knows that the credit will be used by the customer to purchase investment assets.

If the investment lending provisions were to apply where credit is provided for general, unspecified purposes, this would exceed the measures required to achieve the stated policy objective of regulating credit associated with investment schemes and may have unintended consequences.

Recommendations

1. To avoid doubt, the relevant provisions of the EDB should be amended to make it clear that the actual use of the credit by the borrower is not determinative of whether the credit contract is regulated by the investment lending provisions. Another method that might be adopted to clarify this would be to include commentary in the Explanatory Memorandum that would accompany a Bill that is introduced into parliament. However, our strong preference is that the EDB be amended.
2. The different regime of responsible lending obligations set out in the EDB should be abandoned in favour of simplicity and consistency, which could be achieved by imposing the responsible lending obligations under existing law to the protected classes of investment lending set out in the EDB.