1 March 2013

Manager
Disclosure and International Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: creditphase2bill@treasury.gov.au

Dear Christian

Credit reform phase 2 - proposed regulation of small business credit

The below signatories to this letter (the Joint Accounting Bodies) acknowledge that while the Government is no longer seeking feedback on the proposed reforms to small business finance at this time, we would like to record our serious concerns over the proposal to extend the National Consumer Credit regime to small business lending.

We strongly recommend that further consideration of this proposal not proceed and it be removed from the current COAG agenda. This would align with the Productivity Commission initiative to undertake a benchmarking study into regulator engagement with small business.

As we have stated to Treasury on a number of occasions, we believe the proposed extension to the regulatory regime is not currently appropriate as:

- **There is a lack of evidence that a problem exists.** While the exposure draft legislation identifies a number of potential mischiefs in relation to predatory lending to small business, no evidence was presented on the extent of these practices. While we acknowledge that it may be difficult to collect such evidence, we recommend that as a next step, Treasury undertake research to identify the extent to which the problems they have identified, actually occur.
- **Alternatives to regulation have not been explored.** It is of concern to the Joint Accounting Bodies that non-regulatory responses to the identified mischiefs were not considered as an alternative to regulation. If there is evidence that the problems identified actually exist in a material way, then we recommend as a follow up that Treasury and ASIC develop non-regulatory responses. Examples of such a response includes creating products that educate small business of the risks of seeking finance from predatory lenders. If education and enforcement of current law proves ineffective at addressing the mischief, then and only then, should the Government reconsider a regulatory response. The members of the Joint Accounting Bodies are the primary advisers to the small business sector in Australia and are well placed to support and assist such alternatives to regulation.
- **The unintended consequences would have been detrimental to small business**. The proposed regulations, we believe would have:
    - reduced the supply of credit to small business from mainstream as well as so-called predatory lenders,
    - increased the cost of borrowing for small business lenders (as lenders would have passed the cost of compliance with this regime onto lenders),

- increased the time it takes for small business to access finance as lenders would have to go through processes to determine whether the regime applied to each small business lending application or not, and
- it would have limited the range of people small business could seek advice and assistance on in relation to financing matters (while 'accountants' were to be largely excluded from the regime, there are many other non-accountants that provide advice and assistance to small business in relation to accessing finance, including bookkeepers, management consultants, etc.).

- **The proposed regulation was not sufficiently targeted at the mischief.** We recommend that if regulation is to proceed, that it be re-drafted to target the specific mischief. For instance, the exposure draft legislation was written so that every class of adviser was captured in the regime unless they were specifically excluded. This may be easier for a regulator, but it would have lead to a range of advisers being caught within the law for no reason.

- **It would do little to deter predatory lending.** We assume that predatory lenders are very much outside the normal lending system and are therefore likely to largely ignore the regulations or structure their products to avoid the legislation (for instance, seeking security over business assets or premises, not the family home). In essence, the law would therefore only have an impact (and a cost) on mainstream lenders.

In short, we believe that the proposed regulation of small business credit was a significant over-response to a problem that we are unsure exists. Further, the legislation if enacted would have unintended consequences for small business lending and the small business sector generally.

Should you have any queries on this submission, please do not hesitate Gavan Ord of CPA Australia (gavan,ord@cpaaustralia.com.au), Hugh Elvy of the Institute of Chartered Accountants in Australia (hugh.elvy@charteredaccountants.com.au) and Reece Agland of the Institute of Public Accountants (reece.agland@publicaccountants.org.au).

Yours sincerely

Gavan Ord
Business Policy Adviser
CPA Australia Ltd

Hugh Elvy
Head of Financial Advisory Services
Institute of Chartered Accountants in Australia

Reece Agland
Senior Policy Adviser
Institute of Public Accountants