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Our reference
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Dear Sir/Madam

Changes to disclosure requirements under the *National Consumer Credit Protection Act 2009 (NCCP Act)*

1. Introduction

- 1.1 We are pleased to provide our comments on the discussion paper '*Changes to Disclosure Requirements under the National Consumer Protection Act 2009*', released April 2013 (**Discussion Paper**). We note that the Discussion Paper sets out possible changes to the format, content and timing of the disclosure requirements currently prescribed by sections 16 and 17 of the *National Credit Code (NCC)* (Schedule 1 to the NCCP Act).
- 1.2 Our submissions do not respond to all the questions raised by Treasury but focus specifically on the following:
- (a) timing of the pre-contractual disclosures;
 - (b) information to be included in Financial Summary Table; and
 - (c) drafting amendments to the NCC.

As the Discussion Paper only provides a preliminary view of the proposed changes, we have kept our submissions brief. Once draft legislation or further information is provided, we will be able to provide a more detailed submission.

2. Timing of the pre-contractual disclosure

- 2.1 The Discussion Paper introduces a proposition requiring credit providers to provide pre-contractual disclosures at an earlier stage than the current practice of providing consumers with the relevant disclosures at the time when consumers enter into the credit contract. Specifically, the Discussion Paper sets out the following alternative timings for pre-contractual disclosure:

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- (a) pre-contractual disclosure to be provided within a reasonable time before the contract is entered into; or
 - (b) pre-contractual disclosure to be provided as soon as practicable once the provider has determined on the terms on which it is prepared to enter into a contract with the consumer.
- 2.2 A reference to pre-contractual disclosure is a reference to the Financial Summary Table which would set out the amount of credit, the relevant interest rate, cost of credit and other specific details of the credit contract. We note that Treasury has requested the industry to comment on the costs of providing the pre-contractual summary before the contract is entered.
- 2.3 Our submissions relate to the benefit a consumer may obtain by receiving such pre-contractual disclosure at an earlier stage. We express no opinion as to the accuracy of the conclusion that the consumer is likely to choose a lower risk product with a lower overall cost of credit if provided with disclosure at an early stage of the transaction. We do not have the expertise to verify this. Assuming its truth, we query if the consumer's decision to enter into a credit contract will be affected by receiving the Financial Summary Table at an earlier stage.
- 2.4 A consumer will only be able to receive a Financial Summary Table after it has had detailed discussions with the credit provider. Such discussions are likely to take place after a consumer has investigated the options available within the market. It could be the case that a consumer's decision to proceed with the credit contract is not impacted by receiving a Financial Summary Table (even at the earlier stage) due to the time invested in organising the credit contract.
- 2.5 A requirement that credit providers provide the pre-contractual disclosure within a reasonable time ('the flexible approach') is not sufficiently certain in and of itself. Treasury states that the flexible approach will have a greater impact on home loans and loans for large amounts of credit as there is a longer gap between approval and the borrower entering into the contract. Conversely, it is suggested that there would be minimal impact in cases where loan amounts are smaller or the difference in time between applying for credit and the consumer entering into the contract is shorter. A mere requirement to provide the pre-contractual disclosure at a 'reasonable time' is not sufficiently certain to produce the desired regulatory effect - especially as it is likely to be different for different types of credit products.
- 2.6 We also consider that the terminology should be changed from 'within' a reasonable time to 'at' a reasonable time. The term 'within' may be mistakenly interpreted with respect to the date that a consumer enters into the contract and may suggest that a reasonable time to provide the pre-contractual disclosure begins at a time determined to be 'reasonable' and ends on the date the contract is entered into. However, this is not the effect Treasury is trying to achieve.

We query whether the benefit is likely to outweigh the costs to industry, a concern that Treasury has noted. If Treasury assesses that the benefits of changing the timing of pre-contractual disclosures outweigh the costs to industry, we suggest Treasury consider the factors that it would take into account to achieve the desired regulatory effect.

Treasury may wish to further investigate the benefit a consumer can obtain by acquiring a more detailed key facts sheet for the different products. These disclosure documents can be produced directly by the consumer (on the internet) and can allow the consumer to compare products before having detailed discussions with the credit provider.

3. Information to be included in Financial Summary Table

3.1 If the changes to the disclosure requirements in section 17 of the NCC as set out in the Discussion Paper are accepted, credit providers will not be required to disclose the following in the Financial Summary Table:

- (a) information about the default rate of interest in the Financial Summary Table, and
- (b) details as to credit-related insurance contracts that are financed by the credit contract.

We note that these details will still be required to be disclosed elsewhere in the contract.

3.2 The purpose of the Financial Summary Table is to set out the important matters about the credit contract / consumer lease in a manner that is high-impact for the consumer.

The default rate can be an important consideration for a consumer when making a decision to enter into a credit contract. In particular, the default rate can be very important if there is a large disparity between the default rate and the standard interest rate. We consider that the default rate could be considered 'key pricing information' and should be included in the Financial Summary Table.

The Discussion Paper notes that in relation to car loans, it is not uncommon for the amount borrowed to also finance insurance products such as comprehensive insurance, gap insurance, tyre and rim insurance, and consumer credit insurance etc. The Financial Summary Table does not require credit providers to set out if the details of the insurance contracts financed by the credit contracts including the cost of the insurance contracts.

We would appreciate if Treasury is able to provide further guidance as to reasons for excluding disclosures under section 17(11) and 17(15) from the Financial Summary Table.

4. Drafting amendments to the NCC

4.1 Sections 16 and 17 of the NCC are the main documentary provisions as they set out the information that must be disclosed in a credit contract. Care should be exercised in drafting any amendments to these sections as they will impact all credit providers and small changes can be misinterpreted.

For example, the Financial Summary Table at Model A.1 refers to 'known fees and charges'. The NCC provides a definition of 'credit fees and charges'. We also note that this term has been considered by the Courts at some length. Any amendments to the current drafting of the NCC will increase the risk that the provision is intended to have a different meaning in the future compared to the current NCC.

In view of above risk, we would appreciate if Treasury exercise caution in amending the existing wording of the NCC. We can provide further comments following release of the draft legislation.

We would like to thank you again for providing us the opportunity to provide comments on the draft legislation. We will be pleased to provide further comments if required to do so.

Yours faithfully

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