Australian Government

The Treasury

TREASURY LAWS AMENDMENT (BANKING MEASURES NO. 1) BILL 2017

SUMMARY OF CONSULTATION PROCESS

Schedules 1 and 2: Non-ADI lender rules

The Government announced on 9 May 2017 that it would provide the Australian Prudential Regulation Authority (APRA) new powers over the provision of credit by lenders that are outside the traditional banking sector (non-ADI lenders) to address financial stability risks. The Government also announced that it would enable APRA to collect data to monitor the sector and determine if and when to use these new powers.

This measure was included as Schedules 1 and 2 in the *Treasury Laws Amendment (Banking Measures No.1) Bill 2017*, which was introduced into Parliament on 19 October 2017 and received Royal Assent on 5 March 2018.

Consultation process

Consultation on draft legislation containing this measure was conducted between 17 July 2017 and 14 August 2017 and a one week extension was granted to a number of stakeholders at their request. Twenty-two written submissions were received, twenty public and two confidential. During and after this period, Treasury and APRA also held a number of consultation meetings with stakeholders.

Submissions can be viewed on the Treasury website www.treasury.gov.au.

Summary of key issues

Three submissions expressed support for the measure in its entirety. The remaining public submissions supported the data collection component of the measure, but raised issues with the rulemaking power. The primary issues raised by stakeholders included:

- The draft legislation did not reflect the ‘reserve power’ intent of Government, as there was insufficient limitation on how and when APRA may use the power. Stakeholders advised this was causing concern for their investors and may put their funding at risk.

- The class of entities which may be subject to rules was too broad. Stakeholders requested that only the entity engaged in the ultimate act of lending (the origination of the loan or financing) should potentially be subject to a rule, and that other entities that handle the same dollar of financing should not be caught.

- The directions power was not appropriately limited in scope to the breach of the rule itself. Stakeholders were concerned that APRA could issue a direction totally unrelated to the

specific lending activity contributing to the risks and that such a direction could take the form of an instruction to cease lending (effectively putting a non-ADI lender out of business).

- The class of entities which may be required to register and report data was too broad.

These views were also consistently put forward by the majority of stakeholders in their meetings with Treasury and APRA.

To address stakeholders' concerns, the legislation was amended in a way that addressed these concerns while still meeting the Government's policy intention. This included clarifying:

- the 'reserve power' nature of the proposal by narrowing the circumstances in which APRA may use the rulemaking power (for example, by restricting APRA such that it can only make rules in respect of the specific lending or financing activity that is contributing to the risks identified);

- the class of entities that may be subject to the rule – so that only the originator of the loan or financing, and not any other entity which may handle the same dollar of lending or financing, is potentially the subject of a rule;

- the directions power to ensure directions can only be issued in respect of the particular activity that is the subject of a rule and remove APRA's ability to direct a non-ADI lender to cease lending; and

- the EM's description of the 'reserve power' purpose of the rulemaking power – this included making clear that the power is only to be use in exceptional circumstances – that is, when the activities of non-ADI lenders are materially contributing to risks of instability in the Australian financial system.

No significant changes were made to the data collection component of the legislation as stakeholders had indicated they were broadly comfortable with this element. Under the legislation, APRA retains the necessary powers to better calibrate registration and data reporting, if deemed necessary.

The above changes were developed in collaboration with stakeholders.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Patrick Mahony on 02 6263 3237.

Thank you to all participants in the consultation process.

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Schedule 3: Lifting the prohibition on the use of the word 'bank'

The Government announced on 9 May 2017 that it would lift the prohibition on the term 'bank' by authorised deposit-taking institutions (ADIs) with less than $50 million in capital to allow them to benefit from the reputational advantages of the term.

This measure was included as Schedule 3 in *the Treasury Laws Amendment (Banking Measures No.1) Bill 2017*, which was introduced into Parliament on 19 October 2017 and received Royal Assent on 5 March 2018.

Consultation process

Consultation on a Bill containing this measure was conducted between 17 July 2017 and 14 August 2017. Eight submissions were received, seven public and one confidential.

Submissions can be viewed on the Treasury website www.treasury.gov.au.

Summary of key issues

The seven public submissions were highly supportive of the reform. Submitters generally agreed the lifting the prohibition on use of the term 'bank' would reduce barriers to entry and increase competition and innovation.

The Customer Owner Banking Association (COBA) raised a minor concern with the measure. COBA supported APRA continuing to have a discretionary power to restrict the use of the terms, but suggested decisions made under this power should continue to be reviewable by the Administrative Appeals Tribunal (AAT).

The legislation was accordingly clarified to ensure that decisions made by APRA to restrict the use of the terms for ADIs under this discretion are AAT reviewable.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Patrick Mahony on 02 6263 3237.

Thank you to all participants in the consultation process.

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Schedule 5: Credit cards

The Government announced on 9 May 2017 that it would implement reforms to improve competition and consumer outcomes in the credit card market.

This measure was included as Schedule 5 in *the Treasury Laws Amendment (Banking Measures No.1) Bill 2017*, which was introduced into Parliament on 19 October 2017.

Consultation process

Consultation on the proposals, as outlined in the consultation paper *Credit cards: improving consumer outcomes and enhancing competition*, was conducted between 6 May 2016 and 17 June 2016. 17 submissions were received.

Consultation on the draft legislation was conducted between 14 August 2017 and 23 August 2017. No consultation meetings were held. Ten submissions were received.

Submissions can be viewed on the Treasury website www.treasury.gov.au.

Summary of key issues

Industry stakeholders broadly supported the reform to require affordability assessments to be based on a consumer's ability to repay the full credit limit within a reasonable period but raised concerns about the potential for this tightening of responsible lending obligations to restrict the availability of credit for some consumers.

In response to these concerns, and to provide greater flexibility around the definition of the reasonable period, the Government provided the Australian Securities and Investments Commission (ASIC) with the power to determine the reasonable period. It is intended that ASIC will adopt a principles-based approach when determining the reasonable period including balancing the need to maintain reasonable access to credit with the requirement to prevent consumers from being in unsuitable credit card contracts.

A number of submissions to the consultation paper raised concerns about the proposal to require credit card providers to provide online options for consumers to initiate a credit card cancellation. In particular, credit card providers were concerned that they would be required to provide consumers with the ability to immediately cancel a credit card online, and that this would prevent them from communicating to consumers that they must re-direct any outstanding authorisations (e.g. direct debits) and be required to repay any outstanding balance.

In response to this concern, the Government clarified that the intention of the policy was to allow consumers to initiate the cancellation of a credit card contract but would not require credit card providers to immediately terminate the contract if there are any outstanding balances or authorisations on the credit card. Credit card providers are required to communicate with consumers to obtain any information required to complete a credit card cancellation request.

Many industry stakeholders indicated that the proposals would involve substantial system changes that would require a lengthy implementation period. Industry indicated that these costs are likely to be greatest for the changes to the way credit card interest can be calculated and the provision of online options for a consumer to request a credit card cancellation. In addition, a number of stakeholders indicated that it would not be possible to implement the prohibition on unsolicited credit limit increase invitations within the timeframe specified in the exposures draft.

In response to these concerns, the Government increased its estimates of the regulatory costs to industry as a result of these reforms to better reflect feedback from industry. The Government also delayed the implementation date to 1 July 2018 for the prohibition of credit card increase invitations to allow industry time to meet the requirements of the legislation.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Ms Ruth Moore on 02 6263 3626.

Thank you to all participants in the consultation process.