



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

01 March 2007

Dr Paul Lobban
Committee Secretary
Economics and Finance Committee
Parliament House
NORTH TERRACE SA 5000

Per email: paul.lobban@parliament.sa.gov.au

Dear Dr Lobban,

Inquiry into Consumer Credit and Investment Schemes

Abacus – Australian Mutuals appreciates the opportunity to respond to the South Australian *Economic and Finance Committee* inquiry into the provision of consumer credit and investment schemes and the extra time granted to make these comments.

Formed in July 2006 in a merger between the *Credit Union Industry Association* (a part of Cuscal Ltd) and the *Australian Association of Permanent Building Societies* (AAPBS), *Abacus* is the peak association for the majority of mutual building societies and credit unions in Australia.

We welcome the focus the *Economic and Finance Committee* has placed on consumer credit. The breadth of the inquiry does, however, traverse a number of matters relevant to other forums and regulatory spheres. For example, the Committee would be aware that the State-based template *Uniform Consumer Credit Code* (UCCC) is the primary law regulating consumer credit in jurisdictions around Australia, while the Commonwealth *Corporations Act 2001* deals with the licensing and supervision of investment schemes as well as product disclosure obligations.

This submission is confined to discussion on consumer credit; we defer discussion surrounding the regulation of investment schemes offered in South Australia to ASIC and other parties with a more direct interest.

About credit unions and mutual building societies

There are 143 credit unions and 9 mutual building societies across Australia – 10 of these are based in South Australia. Credit unions and mutual building societies play a critical role in the South Australian and national consumer and financial market, with more than 4.5 million members nationwide and over 600,000 members in South Australia.

Credit unions and mutual building societies are *Authorised Deposit-taking Institutions* (ADI) regulated under the Commonwealth *Banking Act 1959* and APRA supervision, which includes capital obligations and prudential controls. As *Australian Financial Services* (AFS) licenses, credit unions and building societies are also subject to the *Corporations Act 2001* and ASIC oversight, which includes an extensive disclosure regime covering

financial products and services. Our members also comply with other legislative and regulatory requirements covering fair-trading and privacy among others.

Unlike for-profit or private companies, our members operate with a clear focus on the interests of their customers, a self-help ethos and community involvement. As mutuals, credit unions and building societies are owned by their customers and have a strong record of acting in their members' interests while promoting financial independence and stability and access to affordable and quality banking services and credit.

Consumer credit – general observations

We note this inquiry duplicates a number of previous and concurrent activities where consumer credit has or is being subject to consultation and where we have provided submissions. These include:

- the *South Australian Office of Consumer and Business Affairs* (OCBA) is assessing payday lending;
- the *Queensland Office of Fair Trading* is assessing the cost of consumer credit (*Managing the cost of consumer credit in Queensland: Discussion Paper, 2006*);
- the *Standing Committee of Officials of Consumer Affairs* (SCOCA) is reviewing payday lending (*Fringe Credit Providers – Discussion Paper, 2003*);
- the *Ministerial Council on Consumer Affairs* (MCCA) and SCOCA have been reviewing unfair contract terms since 2004 and the *NSW Standing Committee on Law and Justice* explored unfair contract terms generally in 2006;
- the *Uniform Consumer Credit Code Management Committee* (UCCCMC) is exploring pre-contractual disclosure to include *Schumer Boxes* on financial and other information;
- *Consumer Affairs Victoria* (CAV) undertook a wide-ranging review in 2005 – 2006 on consumer credit, it canvassed responsible lending, credit reporting, over-commitment, financial literacy, interest rate caps, no interest loan schemes among many other credit matters;
- the NSW Minister for Fair Trading (the Hon Diane Beamer) is leading work on producing a discussion paper for MCCA on responsible lending practices;
- MCCA is due to release draft legislation to regulate brokers;
- the *Report of the Taskforce on Reducing Regulatory Burdens on Business* released the *Rethinking Regulation* report in 2006, which covered consumer protection generally and credit matters in particular; and
- the *Productivity Commission* is inquiring into Australia's consumer policy framework, which will address the regulatory landscape for consumer credit.

Consequently, our response does not particularise the commentary previously made in these forums; instead we highlight the following principles in relation to the regulation of consumer credit for consideration by the *Economics and Finance Committee*:

- uniformity of credit regulation is critical because it prevents forum shopping, delivers greater consistency and certainty;
- comprehensive and transparent consultation processes are necessary to engage all stakeholders on an equal footing;
- regulation should be targeted at consumer detriment that can be substantiated and any additional regulation should deliver significant extra consumer benefits;
- regulation should not adversely affect responsible and highly-regulated lenders;
- where necessary, regulation should balance lender efficiency and efficacy and should be subject to comprehensive cost assessment; and
- regulation should be preceded by exploration of other responses.

Uniformity of consumer credit regulation

We strongly endorse a continued focus on nationally consistent credit regulation. Uniformity across State and Territory jurisdictions is critical to the credit sector, which is very much a national industry. We also believe MCCA's role *"to consider consumer affairs and fair trading matters of national significance and, where possible, develop a consistent approach to those issues"* remains the most suitable forum for consideration of consumer credit. A national approach mitigates the risk of jurisdiction shopping, ensures consistency for consumers across the nation and reduces scope for expensive and duplicative processes in different States and Territories.

Although the *Uniformity Agreement* that upholds the UCCC is not absolute, credit unions and building societies would be concerned were South Australia to pursue reforms to deal with consumer credit matters outside the established national template and Ministerial Council format. Our industry is concerned at a trend for individual States and Territories to pursue separate credit reform initiatives, often over-lapping with each other or national reform proposals.

Recently, Dr Cousins, from Consumer Affairs Victoria, at the *Centre for Credit and Consumer Law's "Credit Matters"* seminar on 7 December 2006, observed that credit was a national market and therefore jurisdictions should strive for national market solutions, even where they pursued matters outside the *Uniformity Agreement*. Citing interest rate caps as an example, at the very least, Dr Cousins suggested, jurisdictions should consider the same thinking and arguments before making decisions to regulate.

Consultation process

A disparate and sporadic reform process is indicative of a wider concern we have about the engagement by some jurisdictions with industry and other stakeholders. Working together is critical to the development of a credible, robust, proportionate and effective regulatory framework for credit. We have and will continue to participate in the policy process by making considered and constructive submissions and representations. But in return, we count on the consultation process to actively include credit providers. The *Taskforce on Reducing the Regulatory Burdens on Business*¹ observed that business has a right to expect that good processes are followed when decisions are made that impact on it; this includes effective consultation processes and full impact assessment.

We are often asked to make contributions with very little lead time – thus diminishing our capacity to consult effectively with our members – yet these responses can largely go unnoticed. This undermines the consultative process and infers a regulate first ask questions later approach to credit reform. In terms of consultation, an effective engagement not only provides industry with an opportunity to come to terms with proposed changes, to assess their impact and to prepare for compliance obligations, it also provides regulators and Government with access to information and perspectives otherwise not available, including costs and alternative options.

As it stands, industry must rely on information provided on the Credit Code website or through a number of different regulatory departments or agencies to learn about developments in credit regulation. In this environment, it can be disconcerting when policy responses or regulatory proposals are released months and sometimes years after submissions have closed, with no forewarning of the release to industry or advice on issues and positions taken as a result of any prior consultation.

¹ Taskforce on Reducing Regulatory Burdens on Business, *'Rethinking Regulation'*, January 2006 at 148

Regulatory approach

We believe that clear consumer detriment should be established before embarking on regulatory responses. We also note that regulation is often a fixed cost, which has a disproportionate affect on smaller lenders. It should be a standing precondition for any regulatory intervention to first establish that a change to the existing credit regime would deliver not simply more information for consumers (which is the outcome of pre-contractual disclosure proposals or mandatory comparison rates for example) but deliver substantially more meaningful and relevant information having regard to the costs to credit providers in changing their existing systems and processes.

It should be clear that existing measures are inadequate and additional intervention by Government and regulators is necessary. Further, in an environment that is increasingly conscious of the cost of regulatory burdens, proposed regulatory reforms should be based on a careful cost and benefit analysis and targeted at clear and identifiable goals. Regulation is a fixed cost and involves additional expense for industry. The *Taskforce on Reducing the Regulatory Burdens on Business*² noted that in addition to one-off implementation and ongoing maintenance costs (which impact staff, systems and procedures) there are also costs associated with diverting management attention or stifling innovation.

For example, we have observed a growing concern among regulators about irresponsible practices among payday or fringe lenders and a desire to apply more rigid measures to address these concerns. In principle, we support this desire and the call for standardised and comparable lending criteria and regulatory controls applicable to all lenders in the consumer credit market. But in the effort to address fringe malpractice, we signal caution against imposing prescriptive measures that could have an adverse effect on responsible lenders like credit unions and mutual building societies.

Our members already apply robust assessment processes to their credit offerings. This is a requirement of UCCC and the credit quality standards required by APRA. Further, it is never in a credit unions' or building societies' interest to skip or avoid rigorous assessment processes before offering consumer credit. Recognising the different levels of regulatory scrutiny and responsibility in the credit market is an important component of any regulatory response. In this context, we have supported calls by the OCBA in South Australia to apply a registration and licensing scheme to all credit providers operating in South Australia, subject to relief for ADIs. In our response to the OBCA's paper on payday lending, we particularly welcomed the acknowledgment of the *"need to exclude the mainstream credit providers already licensed by the Commonwealth under other forms of regulation."*

Ultimately, whether in relation to payday lending or any other area of consumer credit, we believe that if a particular issue causes concern for regulators or other stakeholders then the credit providers associated with those issues should be targeted. Reform measures (whether regulatory or non-regulatory) should not inadvertently affect responsible market participants or those already covered by extensive consumer protection and credit regulation.

Additionally, we believe mechanisms like sunset clauses, such as in the case of MCRs, and testing of propositions, as in the case of pre-contractual disclosures, are necessary controls on regulatory growth and impact. Sunset clauses signal to all stakeholders that the regulation will be subject to ongoing review and assessment and carry a reasonable

² Taskforce on Reducing Regulatory Burdens on Business, *'Rethinking Regulation'*, January 2006 at 146

expectation that if the detriment no longer exists or has changed then the regulatory response must be amended or removed. Similarly, testing proposals before they are implemented offers Government and regulators an opportunity to make a proper assessment of the likely effect of regulatory proposals without subjecting industry to the expense of immediate implementation.

Even where a case for action is made, we believe a range of feasible options should be considered before adopting a regulatory response. The *Taskforce on Reducing the Regulatory Burdens on Business*³ suggests that the option that generates the best outcomes for the community, but taking into account the economic, social and environmental impact, should be adopted. This includes considering self-regulatory, co-regulatory and non-regulatory measures. For example, concerns around the practices of payday lenders can in part be addressed by raising education and awareness about credit products and providers as a complement to credit regulation.

Conclusion

Our members are committed to protecting the best interests of their members and will assist members facing financial difficulties. But credit unions and building societies also believe credit regulation must be equitable to both parties and support the operation of an effective and competitive market.

We believe sensible, proportionate and targeted credit regulation is characterised by:

- uniformity of credit regulation;
- engaged consultative processes;
- clear articulation of detriment being addressed;
- targeted regulatory responses;
- low-cost regulation based on comprehensive impact assessments; and
- a full exploration of alternative responses.

We look forward to being included in consultation and to learning the outcomes of the Committee's inquiry.

In the meantime if you would like further information about *Abacus* or the comments in this response, please contact me on (02) 8299 9033 or at jmoyes@abacus.org.au.

Yours sincerely,



JOSH MOYES

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³ Taskforce on Reducing Regulatory Burdens on Business, *'Rethinking Regulation'*, January 2006 at 147