

5 June 2009

Manager  
Consumer Credit Unit  
Corporations and Financial Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Business  
Council of  
Australia

By email: [consumercredit@treasury.gov.au](mailto:consumercredit@treasury.gov.au)



Dear Sir / Madam

### **NATIONAL CONSUMER CREDIT PROTECTION BILL 2009**

The Business Council of Australia (BCA) welcomes the opportunity to make a submission on the exposure draft of the National Consumer Credit Protection Bill 2009 released on 27 April 2009.

We understand that submissions were due in respect of the exposure draft on 22 May 2009. Unfortunately we have been prevented from meeting that deadline as there have been a number of other regulatory consultation processes that have required submissions recently – all involving extremely short timeframes including the employee share plan and unfair contract proposals.

The BCA represents the chief executives of over 100 of Australia's leading companies. The BCA develops and advocates, on behalf of its members, public policy reform that positions Australia as a strong and vibrant economy and society. The businesses that the BCA Members represent characterise a substantial share of Australia's domestic and export activity.

In general, the BCA supports the position reached by the Council of Australian Governments (COAG) for the federal government to assume responsibility for the regulation of credit products and to create a national system in for example, mortgages, mortgage broking, margin lending and consumer credit (amongst other things).

Whilst the BCA is broadly supportive, there are a number of areas of the proposed legislation which are problematic. The broad consequences of these proposals are that:

- certain types of conduct and products which were not previously captured by these laws might now be captured; and
- existing credit arrangements may now attract additional costs and have additional burdens imposed.

We highlight in this submission, 'white label' or 'private label' card programs as an example of the types of existing products to which the proposed arrangements might apply. These are credit cards on which a retailer might have its 'label' but which are issued to a customer by a bank or other credit provider. The BCA is concerned that the consumer credit proposals may have unintended consequences by capturing the conduct of those retailers who act as intermediaries between credit providers and consumers.

Retailers active in private label credit card programs, generally provide only limited clerical and administrative support as intermediaries, for example by administering credit card application forms. Those large retailers use their 'brand' as a means of promoting the credit cards and distributing application forms. However, those retailers do not become contractually involved with credit card applicants.

The definition of credit activities under the proposals however, appears to be sufficiently broad as to capture a range of products and activities such as administrative activities under 'private label' credit card programs, and therefore may impose additional obligations on retailers.

For example, those obligations might include retailers having to be either licensed in their own right or needing to become Authorised Representatives of a licensee. Other possible additional requirements relate to a need to hold professional indemnity insurance, become a member of an external dispute resolution scheme and be compliant with the new National Credit Code. Additionally, it is likely that retailers or their salespeople will have to undertake significant education and training in order to:

- provide disclosure documents to individuals before providing assistance (including a credit guide, credit proposal and quote);
- assess and document a customer's objectives and financial situation;
- establish whether a product is "not unsuitable" for a customer having regard to the goals and objectives of the customer and their financial situation; and
- independently ascertain whether the customer can afford to repay, prior to offering the customer the product.

These types of activities are not within the existing scope of expertise or experience of retailers or their salespeople. If salespeople are required to provide needs based advice, this will undoubtedly increase time and cost to such an extent that the 'private label' card programs become unviable. Alternatively, increased costs will be passed directly on to the consumer.

It is important to consider the costs associated with capturing a range of products and activities through these laws where the proposals might impose unnecessary costs and burdens on business. For example, PricewaterhouseCoopers has estimated that:

- \$938 million per annum of retail sales are potentially affected by these proposed laws;
- 166,723 retail staff may need to be retrained, accredited, registered and licensed in order to comply with the new legislation; and
- 9,000 direct jobs could potentially be lost in response to an expected decline in sales.

The unnecessary burdens and costs associated with these obligations need to be assessed to determine whether they are justified, for example in the circumstances of the administrative roles that retailers play in respect of 'private label' credit card programs. The unintended consequences of these proposals could result in increased prices for consumers and even the cessation of certain worthwhile products and services being offered.

We understand that the legislation is intended to apply from 1 November 2009 (with some exceptions). The BCA considers that urgent attention to appropriate amendments to the Bill are required to ensure that the legislation is better targeted and more proportionate to the perceived problem at hand.

I have copied this letter and submission to the Treasurer, Wayne Swan MP, the Minister for Finance and Deregulation, Lindsay Tanner MP and the Minister for Small Business, Independent Contractors and the Service Economy; Minister Assisting the Finance Minister on Deregulation, Dr Craig Emerson MP for their information.

Please contact me or Leanne Edwards, Assistant Director – Regulatory Affairs on (03) 8664 2614 or [leanne.edwards@bca.com.au](mailto:leanne.edwards@bca.com.au) if you have any comments or questions.

Yours sincerely



**Katie Lahey**  
Chief Executive

cc. The Hon. Wayne Swan MP  
The Hon. Lindsay Tanner MP  
The Hon. Dr Craig Emerson MP