



Association of Building Societies and Credit Unions

3 July 2008

Financial Services and Credit Reform Green Paper  
Corporations and Financial Services Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

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

Dear Sir/Madam

#### **Financial Services and Credit Reform Green Paper**

*Abacus – Australian Mutuals* welcomes the opportunity to comment on the proposals in the Green Paper on the reform financial services and credit regulation and congratulates the Government on its efforts to improve the effectiveness and equity of credit regulation in Australia.

#### **Abacus recommendations**

Abacus strongly endorses a Federal model of credit regulation and supports the Green Paper's proposals to regulate mortgage products, brokers and non-Authorised Deposit-Taking Institution (non-ADI) lenders.

However, credit unions and mutual building societies urge the Government to go further. Specifically we recommend the following principles:

- The Federal Government assume responsibility for all consumer credit (including non-ADI lenders) and associated broker regulation;
- The UCCC be enacted as stand-alone Federal legislation, rather than credit being regulated under Chapter 7 of the Corporations Act, and
- The Australian Securities and Investment Commission (ASIC) should be the sole regulator responsible for supervision and regulation of consumer credit.

#### **About Abacus and Mutual ADIs**

*Abacus – Australian Mutuals* is the industry association for all of Australia's credit unions and mutual building societies. All credit unions and mutual building societies are licensed and regulated as Authorised Deposit-Taking Institutions (ADIs) under the Banking Act. Mutual ADIs are also all Australian Financial Services Licence holders under the Corporations Act.

There are 139 mutual ADIs in Australia with more than 4.5 million members and \$65 billion in assets. Mutual ADIs have around 12 per cent of the household deposits market (second only to the Commonwealth Bank) and around 7 per cent of the owner-occupied home lending market.

Credit unions and mutual building societies have extremely high customer satisfaction rates: the latest Roy Morgan Research Survey, in May 2008, found that 90.4 per cent of credit union

and 86.1 per cent of building society members are satisfied compared to 72.4 per cent of customers of the four major banks<sup>1</sup>.

These satisfaction levels reflect the fact that mutuals do not have to put shareholders ahead of customers. Our customers are our shareholders, and by not having to pay shareholder dividends we can focus on providing members with affordable and quality financial services.

#### **Discussion of Reform options**

Abacus supports the Federal Government's intention to transfer the regulation of mortgage products, brokers and non-ADI lenders from the States to the Commonwealth. This will create a level playing field for mortgage providers and boost consumer protection by bringing unregulated lenders and brokers into an appropriate regulatory regime.

However, whilst the significant proportion of lending falls within mortgage products, such a limitation would neglect the largest portion of credit consumers in the non-mortgage area.

As noted earlier, Abacus urges the Government to regulate all consumer credit products, as outlined in Option 2 of the Green Paper and recommended by the Productivity Commission's *Review of Australia's Consumer Policy Framework*, rather than adopt the piecemeal reform approach set out in Option 3.

Option 2 would establish a uniform and consistent national regulatory framework covering all lenders and protecting all borrowers, preventing fringe lenders and brokers from continuing to operate outside a robust regulatory system. Collapsing seven regulatory jurisdictions into one for all credit products would also minimise consumer confusion about redress options and reduce business compliance costs; outcomes unlikely to be achieved under a fragmented system such as Option 3.

Option 2 clearly fits the Green Paper's policy rationale, which is to establish a national regime for products operating in national markets where there is evidence of regulatory failings and significant consumer harm.

Abacus echoes the comments of the Minister for Superannuation and Corporate Governance, Senator the Hon Nick Sherry on ABC Lateline on 16 June 2008, regarding a fringe lender:

*It's very important that we do have national regulation, because many of these providers are providing loans across state boundaries, and it's very difficult then to get effective regulation at a state level. No criticism of the states. The world's just moved on.*

The same statement could equally be applied to non-mortgage credit providers, intermediaries and property spruikers.

Option 3 creates the potential for linked consumer credit products to be regulated under different jurisdictions. This would be a poor outcome for consumers with different and confusing disclosure requirements and potentially different dispute resolution regimes. It would be a poor outcome for financial institutions, most notably those operating across more than one State jurisdiction and it would be a poor outcome for public policy in relation to consumer credit generally, given the difficulties experienced in reforming consumer credit through the existing multi-jurisdictional framework that currently applies. These difficulties have been clearly identified by both COAG and the Productivity Commission.

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<sup>1</sup> Roy Morgan Research, May 2008, Satisfaction ratings for main financial institutions

## Legislative Framework

Abacus believes that there is considerable risk that the move to national regulation could impose additional and unnecessary regulatory burdens, particularly on institutions like mutual ADIs that are responsible lenders and highly regulated.

We strongly oppose the proposal in the Green Paper to bring credit under Chapter 7 of the *Corporations Act 2001* (the FSR regime) and require providers and intermediaries to obtain an Australian Financial Service (AFS) licence.

Considering credit poses different risks to consumers than other financial products - and, as a consequence, has different disclosure and advice requirements - we propose that the Uniform Consumer Credit Code (UCCC) be enacted in its own right as a Federal statute with appropriate changes to reflect the proposed role of ASIC as the sole regulator and to reflect the different court and tribunal arrangements at the Federal level.

Some years after the introduction of the FSR regime by the former Government, industry and the current Government are still trying to unwind some of the ill-fitting and ineffective regulation contained in the FSR regime – a regime that was extremely costly to industry to implement, without necessarily achieving the goals of protecting consumers.

Accordingly, we propose that credit come under a separate licensing scheme, similar to that proposed by Recommendation 5.2 of the Productivity Commission's *Review of Australia's Consumer Policy Framework* and the Ministerial Council on Consumer Affairs (MCCA).

Having a simple licence scheme outside Chapter 7 of the Corporations Act would achieve the Government's aim of nationally consistent regulation without burdening credit markets and consumers with costly and complex FSR-style regulation. The regulated industry sector – which includes credit unions, building societies and banks – has existing disclosure and other documentation in place to comply with the UCCC. Moving to the Corporations Act and FSR style disclosure would require significant administrative and system changes for the ADI sector without delivering any benefit to consumer – we urge the Government to abandon its proposals to place the UCCC within the Corporations Act FSR regime.

Abacus supports the PC Review's position that a priority is to establish an interim ASIC licensing scheme for finance brokers to 'give credit consumers some early additional protections.' Such a scheme should require brokers to comply with the same consumer protection obligations as ADI lenders, including: being members of an external dispute resolution (EDR) scheme, meeting minimum disclosure requirements, and satisfying ASIC as to their probity, qualifications and skills. We also believe the licensing regime should be extended to all non-ADI credit providers and intermediaries and that all these groups should be required to have approved EDR schemes as a protection for consumers.

We also believe ADIs should be exempt from the new licence system; in line with the relief ADIs currently receive under a number of state and territory credit licensing schemes. ADIs already face stringent regulation: each is prudentially regulated by APRA under the *Banking Act 1959* and subject to the Corporations Act 2001 and the ASIC Act 2001 as AFS licensees. As such, ADIs are subject to rigorous licensing and conduct supervision, and are required to adhere to an ADR scheme and make numerous disclosures.

Mutual ADIs also practice strong self-regulation, and Abacus has just released a new code of industry practice. In our view, the revised *Mutuals Code of Practice* leads the market on product information, fair terms, responsible lending, and customers in financial difficulty.

### **An industry-specific regulator**

Abacus believes that it is important for financial services to continue to be primarily regulated by an industry-specific regulator such as ASIC, which is familiar with the needs and challenges of our sector, has experience in consumer protection and has appropriate deterrence and enforcement powers.

While we recognise there may be a role for the ACCC as part of their enforcement of a new generic consumer protection regime across Australia, any blurring of the boundaries with ASIC will produce regulatory duplications and uncertainty in the market; potentially leading to poor targeting of areas of consumer detriment.

### **Conclusion**

Abacus supports the establishment of a national regulatory system for all credit products to protect consumers from unacceptable practices by fringe credit providers and intermediaries. However we urge the Government to ensure that the new framework is simple, targeted and properly funded in order to deliver net benefits for consumers, business and the community as a whole.

We also urge the Government to consult further with the ADI sector once more detail on the proposals is known. Mutual ADIs share the Government's aims of providing a simple and easy to understand consumer credit regulatory system that is applied fairly to all lenders and associated intermediaries and which delivers real protection to consumers of credit products.

Thank you again for the opportunity to comment. If you have any questions, please contact Mark Degotardi, Head of Public Affairs, Abacus on (02) 8299 9053 (or [mdegotardi@abacus.org.au](mailto:mdegotardi@abacus.org.au)) or myself on (02) 8299 9034 ([lpetschler@abacus.org.au](mailto:lpetschler@abacus.org.au)).

Yours sincerely,



**LOUISE PETSCHLER**  
Chief Executive Officer