

July 1, 2008

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

Via email: financialservicesgreenpaper@treasury.gov.au

Financial Services and Credit Reform – Green Paper

The Australasian Compliance Institute (ACI) would like to take the opportunity to thank the Department of Treasury and the Minister for Superannuation and Corporate Law for providing an opportunity for ACI to make a submission in respect to the Financial Services and Credit Reform Green Paper.

ACI is the peak industry body for the practice of compliance in Australasia. Our members are compliance, risk and governance professionals actively engaged in the private, professional services and Government sectors within Australia, New Zealand, Singapore, Thailand and Hong Kong.

By way of general comment ACI fully supports the aims of the paper which are to clarify and simplify the regulation of credit provision across state jurisdictions as well as ensuring adequate consumer safeguards also exist. Specifically, the Green Paper addresses six key areas. This submission will comment upon five of these areas in turn.

Mortgages, Mortgage Broking and Non-Deposit Taking Institutions

ACI has made a number of submissions on this issue and appeared before the House of Representatives Standing Committee on Economics, Finance and Public Administration. In each of these submissions ACI has supported the position of the Committee which is;

“...that credit be included in the definition of a financial product for the purposes of the Corporations Act as ‘providers of credit products and services would then be subject to rules about quality of advice and disclosure, and would be required to hold an Australian financial services (AFS) licence’. The Act would then regulate all home lenders and all mortgage brokers. Predatory lenders and brokers providing inappropriate loans or advice would be subject to sanctions from ASIC and may face the loss of their AFS licence.”

Principal Members



ZURICH



Blake Dawson



ACI also supports the recommendations made by the Productivity Commission that the regulation of credit and its provision should be transferred to the Commonwealth.

ACI has taken and maintained this stance as the provision of credit (particularly in the form of mortgages, personal credit, credit cards reverse mortgages and margin lending) is provided by either national or multi-national organisations that are required to compete and source funds on a global scale. The existence of different state based legislative regimes is inefficient and provides opportunities for regulatory arbitrage. In addition, the current consumer protection safe guards established by ASIC are easily transferred to the provision of credit via an amendment to Chapter 7 of the Corporations Act.

Specifically, ACI believes that the existing regime established by ASIC in respect to the provision of financial advice and obtaining an Australian Financial Services Licence (AFSL) is both appropriate and transferable to the credit provision sector. As stated above, given the national and international basis in which this business is currently being conducted, ACI believes this approach would be well received by existing AFSL holders as they already have the compliance systems and frameworks in place to operate under this regime.

ACI wishes to highlight its concern regarding the proposal to exclude the regulation of smaller credit items such as consumer credit, personal loans, credit cards, car loans and pay day loans from the Commonwealth transferral and maintain regulation at a state level via the UCCC and state based regulation.

This proposal raises concern on two fronts. Firstly, a number of these 'financial' products are provided by national and international financial institutions who are also current AFSL holders. As a consequence, they would still be exposed to differing state based regulations and therefore additional compliance costs for these credit products.

Secondly, there is anecdotal evidence that predatory lending practices are on the rise in respect to these products. Particular reference is made to personal and car financing. If these credit products remain outside the provisions of Chapter 7 of the Corporations Act, providers of these products will not be required to meet the advice requirements established by ASIC. Therefore consumer confusion as to what *is* and what is *not* financial advice will remain. To enable consumer confidence in all credit products available both now and in the future, ACI supports the complete transfer of responsibility for regulating all credit products from the states and territories to the Commonwealth.

Trustee Corporations

ACI advocates the approach by Treasury to minimise the regulatory burden faced by Trustee Corporations by the current regulatory framework, in particular, ACI believes there is a need to remove restrictions placed upon Trustee Corporations from operating across state boundaries.

In terms of the two reform options put forward by Treasury, ACI believes that Option One, (a consumer protection and disclosure regime regulated by ASIC) will be more effective in meeting the industry needs. Firstly, ACI is concerned about the extra regulatory burden that may arise under the proposed APRA based model and secondly, ACI believes that ASIC will be better placed to deal with licensing and supervision in line with its current oversight of Responsible Entities.

Margin Lending

Support is provided for Option Two as outlined in the Green Paper. In taking this approach, ACI believes many of the arguments made above in respect to the transferral of credit regulation to the Commonwealth is also applicable to the regulation of margin lending. ACI believes that both consumer protection and greater efficiencies would be created for current AFSL holders by including margin lending as a financial product under Chapter 7 of the Corporations Act. From a consumer perspective, safeguards will be created through the extension of AFSL requirements to non-AFSL holders who currently offer margin lending products. ACI believes that if Treasury sought to adopt either of the other two options presented in the Green Paper, there would be a significant possibility of creating regulatory overlap and increases in compliance costs for financial services organisations that provide margin lending services.

Property Spruikers

In respect to the regulation of property spruikers, ACI's main area of concern is in respect to the general public's ability to distinguish between what does and does not constitute financial advice. Under the current arrangements, there are very real consumer protection risks as consumers are unable to distinguish between what is financial advice for investment purposes, what is general information, or what constitutes a sales pitch or marketing puffery.

While at this point in time Treasury has not set out any preferred regulatory options, ACI is of the view that use should be made of existing regulators and legislative instruments rather than creating new regimes. It is on this basis that ACI believes that investment property, (property purchased for purposes other than a primary place of residence) should be defined as a financial product under Chapter 7 of the Corporations Act. Under these circumstances, firms engaged in the selling of investment properties would then be required to obtain an AFSL, people engaged in the selling of these products would be required to meet minimum training based upon an established education criteria, and both firms and their employees would be regulated by ASIC.

Other Credit Products

ACI is of the view that the transferral of regulation for all credit products to the Commonwealth would achieve three objectives:

- Improve consumer protection
- Reduce costs to business
- Simplification of the regulatory landscape

Once again ACI would like to thank the Department of Treasury and the Minister for extending this opportunity to comment upon the Green Paper. Finally, should you require any additional information or seek clarification on the comments that appear in this submission, please do not hesitate to contact ACI on +612 9290 1788.

Yours sincerely



Martin Tolar
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