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9 September 2009

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

By email consumercredit@treasury.gov.au

Dear Ms Gallo,

ANZ would like to offer the following comments on the National Consumer Credit Protection Regulations. We have worked with the Australian Bankers' Association on its submission and we support the issues raised in that submission.

1. POINT OF SALE RETAILERS EXEMPTION

Regulation 22 provides an exemption from licencing for providers of point of sale credit assistance. ANZ provides motor vehicle finance to consumers through car dealers. It appears that Car dealers will be exempt from licencing for this type of credit.

We are not opposed to an exemption for point of sale retailers to enable the Government to gain a better understanding of the market before deciding whether and how to regulate that part of the market. However, it raises a number of issues for ANZ in relation to motor vehicle finance.

Credit providers will be subject to the responsible lending and other licensing obligations when providing credit through point of sale retailers, such as car dealers. However, car dealers will not be subject to responsible lending obligations, despite the fact that their role is more than that of a referrer. It is unclear to what extent the credit provider will be responsible for the conduct of the car dealer when they are exempt. We would like further clarity on this issue.

It is common for car dealers to maintain relationships with two, or sometimes more, finance companies to provide them with a range of options to assist them with the sale of their new and used cars. This is probably quite different from a point of sale retailer where there will be a single finance provider. Furthermore, whereas finance provided at the point of sale by a retailer such as Harvey Norman will typically convey some advantage to the customer such as deferred payments or subsidised interest rates, the vast majority of finance sold by car dealers is provided at market rates, with the dealer negotiating the rate to the customer, for which the dealer receives a commission from the credit provider.

In some cases car dealers provide finance to their customers for cars which are in the stock of another car dealer (generally known within the industry as third party finance). When a car dealer engages in third party finance they are acting as a broker. It is not clear whether this activity is covered by the exemption or not. This raises issues for car dealers who may have a large proportion of exempt business and a small proportion of non-exempt business. They would need to obtain a licence for the non-exempt part of their business or may decide not to undertake that business.

A credit provider is prohibited from dealing with an unlicensed entity in the provision of credit. Clearly, this will not apply in relation to car dealers engaging in exempt credit activities. However, it will apply if a car dealer is required to be licensed to undertake broking. This places an additional burden on ANZ to determine whether the person needs to be licensed for a particular transaction before determining whether they are licensed.

We believe there needs to be further thought given to the operation of the exemption for point of sale retailers as it applies to car dealers. We would be happy to work further with Treasury to discuss this.

2. REFERRERS EXEMPTION

Regulation 23 provides an exemption for credit activity which would commonly be known as referrers or introducers. Currently, the regulation is drafted so that such an activity is exempt if:

- Person 1 informs Person 2 that a credit provider is able to provide a particular credit product or service; and
- Person 1 gives Person 2 information about how Person 2 may contact the credit provider, and in the same form discloses any benefits (eg commission) Person 1 will receive.

Through ANZ's Mortgage Introducer Program, we work with organisations such as community groups, accountants and lawyers who refer prospective customers to ANZ. Introducers receive a commission if the person enters into a credit contract with ANZ. Introducers may either provide the prospective customer with information on how they can

contact ANZ, or provide ANZ with the person's details so we can contact them. In some cases they may also arrange an appointment with an ANZ staff member on behalf of the prospective customer. However, their role would extend no further.

The conditions in Regulation 23 do not appear to encompass a situation where an introducer provides a prospective customer's contact details, with their permission, to a credit provider. Provided the prospective customer has consented to that referral and any benefit or commission is disclosed then the outcome is the same. The introducer has provided no more assistance in the credit contract than they would have if they merely gave the information to the prospective customer. We believe the exemption should be expanded to explicitly include this type of referral business.

3. DOCUMENTS TO INCLUDE AN ACL NUMBER

Regulation 14 provides a list of kinds of documents which must include an ACL number. In our view, there are a wide range of documents which could fall under this definition, including documents provided during the credit contract such as periodic statements. It is unclear why these documents would need to cite the ACL number. ANZ would prefer Regulation 14 include a specific list of documents, which is limited to advertising, precontractual disclosures and the credit contract.

4. ANNUAL COMPLIANCE CERTIFICATE

Regulation 14 requires the annual compliance certificate to be signed by the CEO of the licensee. We agree that for accountability purposes the compliance certificate should be signed by a senior employee of a licensee. The training requirements have established the notion of a key person. We believe that the annual compliance certificate should be signed by the most senior key person identified in the licencing application. The implications of an erroneous compliance certificate are presumably loss of the credit licence, and therefore business which should be sufficient to encourage a high level of accountability within an organization.

5. DIRECT DEBIT DEFAULT NOTICE

Section 87(3) of the National Consumer Code requires a credit provider to give the debtor, and any guarantor, a direct debit default notice within 10 business days when a direct debit request fails for the first time. The notice must include the information in Form 11 in the Regulations.

In our view, this can only apply in situations where the credit provider has established the direct debit request. Currently, when this occurs, ANZ notifies the customer (in many cases by SMS within 2 days of the default). This frequently results in self-correction by the customer. We will continue that practice and will provide the information in Form 11 within 10 days on the first time the request is declined if the customer does not

self-correct. For future defaults we will continue to undertake our existing notification process.

It is impractical for s 87(3) to apply in situations where an automatic periodic payment is established with a financial institution, which is not the credit provider, to make a payment to a loan account with the credit provider. In those cases, the credit provider would not know that the payment was made via an automatic arrangement. Equally, the financial institution providing the transaction account would not necessarily know that the automatic payment arrangement was to repay a credit facility.

Our concern with respect to the Regulations is that Form 11 does not appear to be written from the point of view of the credit provider. It seems to be written from the point of view of the financial institution which provides the debited account. Form 11 should be redrafted to be clearly written from the credit provider to the customer where the credit provider has established the direct debit request.

6. DEFAULT NOTICE

Under s 88 of the Code and Regulation 81 a credit provider must provide a debtor with a default notice before any commencement action can be taken. The form for this notice is prescribed in Form 12 of the Regulations. We are concerned the wording of Form 12 may imply to the customer that a credit provider will make changes to help them repay the debt. While this is quite often the case, each customer's application must be assessed based on their circumstances.

The Form indicates that the credit provider should provide the name of the person dealing with hardship applications.

We suggest the following changes to the text of Form 12:

Contact ~~(insert name of person dealing with financial hardship applications and telephone number or email address)~~ *(insert telephone number and email address to contact in relation to financial hardship applications)* to discuss your situation. *Depending on your circumstances, we may make changes to help you repay the debt. If so we will put this agreement in writing. If so, we will put this agreement in writing.*

Changes we may make are: ~~You can ask us to:~~

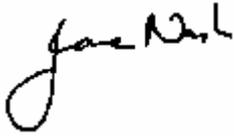
...

~~If you want us to delay legal action against you, you must contact (insert contact name and telephone number)~~ *do not contact us **before** (insert default notice period end date) we may commence legal action against you.*

...

ANZ would be pleased to provide further information about this submission as required and I can be contacted on 03 9273 6323 or jane.nash@anz.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jane Nash". The signature is written in a cursive style with a large initial "J" and "N".

Jane Nash
Head of Government and Regulatory Affairs