Min-it Software

Submission –

Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (version 2): Technical Dynamics pertaining to Maximum Annual Cost Rate

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Background Information

This submission is made by Min-it Software in collaboration with the Financiers Association of Australia (“FAA”)/ Industry / Smiles Turner Delegation, hereafter referred to as ‘the Delegation’.

We welcome this additional opportunity to contribute to Treasury’s consultation on the proposed enhancements to an amending Bill to the National Consumer Credit Protection Act 2009 (‘the Act”) legislation.

We have participated in the development of the Delegation’s submission which generally addresses the issues considered in this submission. However, using our expertise as lending system developers, the issue is so important and critical to the non-ADI sector’s compliance that we deemed, with the support of the Delegation, a separate and more detailed submission on this one issue might be useful.

Foreword

This submission will focus only on the proposed new amendments that surround non-short term, small amount credit contracts created by non-ADI lenders.

This matter was raised in the Delegation's submissions to both the Parliamentary Joint Committee on Corporations and Financial Services and the Senate Economics Committee.

Whilst we are pleased a further extension of time was granted to make submissions on the proposed draft regulations following the release of version 2 of the Enhancements Bill, the short period of consultation allowed for this very complex subject is grossly insufficient to allow the industry to properly respond to yet another attempt by Government to change the way it operates without clearly understanding the ramifications and unintended consequences.

We repeat what we stated back in our original October 2011 submission, the concept of applying a maximum interest rate that encompasses both contingent and non-contingent credit fees and charges and the lender being forced to remain under it over the entire length of the term is an

entirely new provision. Despite extensive worldwide searching, we cannot find a similar provision in any other jurisdiction.

This submission has been written in total uncertainty because we do not know what fees and charges will or will not be included in the regulations pertaining to the credit cost amount to enable the Annual Cost Rate to be calculated pursuant to the formula in s.32B. Consequently, we have had to consider that fees such as default fees may be included because we cannot rely on any interpretation based on the old ascertainable and unascertainable criteria. We must assume that, until the final decisions are made, any fee or charge emerging during the term of the contract may have to be included in the 48% calculation. This submission is, therefore, written on the basis that *any* fee or charge might be included in the final regulation defining what has to be taken in account in determination of the credit cost amount.

More Broken Promises

Despite repeated Government and Treasury promises to the industry that we would not have a NSW-style rate cap mechanism using a formula designed to compare long term (25 year) home loans and with acknowledged distortions in relation to short term loans, this is little more than a disguised revision but with added complexity. Just as one does not use a metre rule to measure a kilometre, the Comparison Rate formula should equally not be abused to measure short term loans. Treasury's understanding that the formula would not impact on large loans with low interest rates, unfortunately, is incorrect. As we will demonstrate, it impacts on all loans, regardless of size.

We believe if it is so worthwhile and necessary, we challenge Government to apply this requirement to all lenders rather than it being a gross cost imposition on just the non-ADI sector of the industry.

We would take this opportunity of reminding Government that when Senator Nick Sherry, the former Minister for Superannuation and Corporate Law responsible for the release of the National Consumer Credit Protection Bill 2009, its Regulations and Explanatory Material released his Media Release No 037 on 29 April 2009, it said this legislation and regulation would deliver "on the first phase of our comprehensive plan for a national regime for consumer credit to better protect all

Australians" that included "a significant cut in red-tape for business" and that it will " 'save business money and will protect all Australian consumers', said Minister Sherry." [1] We suggest in the vast majority of the population's eyes:

- 'national' means it applies to everyone and every organisation within the nation;
- 'a significant cut in red-tape' means we will have less not more regulation; and
- 'protect all Australian consumers' means it will cover every Australian consumer, not just some.

As we will clearly show, none of this is achieved by this legislation.

Comparison Rate v Annual Cost Rate formulas

When a loan is currently created, a lender may calculate its Comparison Rate. The Comparison Rate assumes the loan will run to maturity and all payments will be made exactly in accordance with the initial repayment frequency. The Comparison Rate uses the repayment amount(s) calculated by applying the nominal interest rate to the loan amount together with all known ascertainable credit fees and charges that will be applied over the term. Although the formula is highly complex and hardly understood by almost anyone, even those within the industry, solving it is far easier than what is being proposed in implementing the Annual Cost Rate.

We do not dispute the Annual Cost Rate is ultimately capable of solution. What we do state, though, is as no one will have built a calculator that can calculate the Annual cost Rate in accordance with the proposed formula set out in s.32B, we don't know if it's possible.
The ramifications of exceeding an annual cost rate of 48% are severe. Section 32A (1) states that it is a criminal offence. It also carries a penalty of 50 penalty units for entering "into a credit contract if the annual cost rate of the contract exceeds 48%" and a new sub-section, 1A, has been added that requires "[a] person must not be a credit provider under a credit contract if the annual cost rate of the contract exceeds 48% at any time". This new sub-section attaches a further penalty of 50 penalty units.

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[1] Sherry, N., Australian Government, The Treasury, 2009. *Ministerial Media Release No 037* by "Public Exposure of National Consumer Credit Protection Bill 2009" issued 27 April 2009. Available online

When a loan is created, the legislation allows the lender to legitimately recover a cost incurred at the time by way of a credit fee or charge. This is inherent and implicit in the way interest is applied on the outstanding daily balance pursuant to s.28 of the Code. Where any fee or charge is from a third party, the lender is not allowed to make any profit on it whatsoever pursuant to s.32 of the Code. Whilst some of these costs may be taken into account under the Comparison Rate where the costs are ascertainable credit fees, the amended Annual Cost Rate formula now included in version 2 of the Enhancements Bill may well see the lender being denied this ability.

This is because the formula and draft legislation demand the lender is able to calculate the Annual Cost Rate *at any time,* meaning **at any single point in time**, by taking into consideration:

- all the repayments made on the loan, together with
- the ascertainable fees and charges, plus
- any further, at this stage unknown rather than unascertainable, credit fees and charges, perhaps added irregularly that may be based predominantly on contingent events,

as specified in unseen regulations that have never been discussed in any Industry Working Group meeting.

This is not merely recalculating the Comparison Rate for any given loan from a point in time to the original or a new maturity date as some might think. The system must now be able to calculate the Annual Cost Rate instantaneously, not just for best practice but to keep the lender from committing a criminal offence. It is indeed fortunate the offence has not been made one of strict liability.

We remain most concerned that having made submissions to remove the original draft clauses from the Bill because of a number of concerns and then discussing it further in the Treasury Industry Working Group where we were given the distinct impression that this type of requirement would not be pursued further and the alternative option we proposed would be examined instead, the re-introduction of an amended formula requiring lenders not to exceed 48% at any time is damning evidence that industry concerns are clearly being ignored in the consultation process.

Government may have been hearing but it has obviously not been listening properly, at least to industry concerns, despite Treasury accepting all the consumer group claims with alacrity. Having

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http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/037.htm&pageID=003&min=njs&Year=&DocType= viewed 05-05-2012

spoken to other industry stakeholders who attended the Treasury Industry Working Group meetings, they are in agreement on this matter and feel as equally betrayed by this ‘consultation’ process.

Parliament should be under no illusion as to what it's been asked to do in passing the amendments to s.32. This is a serious messing around with universal, internationally-applied, centuries-old interest calculation methodology embodied in s.28 of the Code that is to be applied purely to those non-ADI loans that fall outside of the small amount, short term loan definition. Putting this in to current context, this is akin to demanding spreadsheet developers (such as Microsoft) amend a formula within Excel ® purely for one Australian industry sector that uses it but leave it exactly 'as is' for the rest of their world-wide users.

Regulatory Control

Unlike the original version of the formula contained in the draft Bill, modeled entirely on the NSW capping legislation, which essentially stated which fees would be included though with some additional ones also included in the regulations, this new version now has all the inclusions or exclusions determined entirely by regulation. Aside from considering this totally inappropriate, as it amounts to price control by bureaucracy, this adds further to the complexity of calculations for system developers. As Government has not seen fit to release the draft Regulations yet, we are completely unaware as to which fees and charges may or may not be included in the calculations. It is therefore extremely difficult to properly comment. We question why there should be an issue with any lender recovering a cost or fee if the cost is legitimate and reasonable? More importantly, why should lenders be singled out from any other industry sector and not be allowed to recover their costs?

As a result of what is proposed, system developers are being asked to build a calculator that can not only do all this but also cope with any future bureaucratic whim that would amend the parameters of the calculations at possibly a day's notice. It must be remembered industry would not necessarily be given any length of time required to implement changes simply because of the way regulations are implemented. Given how this consultation process has proceeded, industry could not rely on any assurances offered by Government this would not occur.

We and other stakeholders have absolutely no confidence that any formula not enshrined in legislation, as opposed to regulation, would not be changed over time. It gives no certainty to either the developer or the lender. Most systems cannot calculate a comparison rate even now. Assuming an annual cost calculator could be built, we suggest most developers would either have great difficulty in building one or simply elect not to build one because of the added complexity. As a result, they may exit the market leaving the lender with a major issue if they cannot find developers who can build one or find they have to change systems altogether. The new system, whilst being compliant, may or may not even be suitable for their system needs.

As we expressed in the Treasury Industry Working Group meeting late last year where this was further discussed and we understood dispelled completely, as indicated earlier in this submission, we have serious doubts as to whether such a calculator can even be built. If it can, then there is the issue of how does the developer even check it for accuracy? Having been advised by a number of mathematics and actuarial professors that the Comparison Rate formula is technically unsolvable unless one makes a number of assumptions, what assumptions must be made to make this formula solvable? Is Treasury going to provide appropriate mathematical guidance?

A Small Detail – the Credit Cost Amount

As stated above, the new proposed formula in s.32B of the Enhancements Bill to calculate the annual cost rate is yet another tinkering with the Comparison Rate formula. Whereas the original version of the Enhancements Bill stated the definition of "credit cost amount" as

> "the sum of the following amounts if they are ascertainable:
>
> (a) the amount of credit fees and charges payable in relation to the contract;
>
> (b) the amount of a fee or charge payable by the debtor (whether or not payable under the contract) to:
>
> > i. any person (whether or not associated with the credit provider) for an introduction to the credit provider; or

ii. any person (whether or not associated with the credit provider) for any service if the person has been introduced to the debtor by the credit provider; or

iii. the credit provider for any service relating to the provision of credit, other than a service referred to in subparagraph (ii);

(c) any other amount prescribed by the regulations."

this has now been revised in version 2 of the Enhancements Bill to

"the amount calculated in accordance with the regulations".

We already had serious issues with the first version but our concerns have been heightened after viewing the amended version.

Section 204 of the Code defines "credit fees and charges" as being:

"fees and charges payable in connection with a credit contract or mortgage, but does not include:

(a) interest charges (including default charges); or

(b) any fees or charges that are payable in connection with a credit contract in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available (not being annual fees or charges in connection with continuing credit contracts under which credit is ordinarily obtained only by the use of a card); or

(c) government charges, or duties, on receipts or withdrawals; or

(d) enforcement expenses."

Whilst the definition of credit fees and charges appears to exclude unascertainable fees based upon contingent events such as default fees (including dishonour letter and Default Notice fees, missed and dishonoured payment fees) as these may be classed as default charges, with no draft regulations available to review, we must remember the Minister and ASIC both have the power to include these fees in any regulation passed relating to this section. This would have the effect of overriding the definition in s.204 of the Code as to what constitutes a "credit fee or charge" but <u>only</u> for the non-ADI sector of the lending industry.

Examples demonstrating the formula's stupidity

To show the devastating effect of this imposition and how little thought has been put into its actual use, let us consider two examples that show that this will affect every type of loan from non-ADI lenders and not just small(er) value ones.

The first is a typical car loan. For the purposes of the example, the principal borrowed is $20,000 and the only credit fee applied is a $600 establishment fee. The nominal interest rate is 18.75% over a loan term of 2 years means 103 fortnightly repayments of $237.54 and a final repayment of $234.56. The Comparison Rate of the loan is 21.8089%. Now let's assume that the borrower strikes it lucky and wins Lotto and wants to pay out the loan 4 days later. The payout figure is $20,631.75. As there has been no repayment made, we can use the Comparison Rate calculator for the same loan parameters but with a term of 4 days to emulate what, in effect, would be the Annual Cost Rate calculation. It amounts to a rate of 384.5778%. This means the lender could not and cannot apply the initial $600 credit fee because we already know that using these parameters, at a point in the future, however illogical that date might be to some, the Annual Cost Rate is exceeded. In order not to commit an offence, the lender would need to reduce the establishment fee down to a point where on day 1, the worst case scenario, the rate will not exceed 48%. That would mean the maximum establishment fee the lender could apply is not $600 – which represents his true costs – but only $16.00.

Now let's consider a home mortgage by a non-ADI lender. The loan has a principal of $400,000, an initial establishment fee of $1,100 over a term of 15 years at 7.75%. Paid monthly, that means the repayments are $3,777.06. The Comparison Rate for this loan is 7.802%. To ensure that this loan stays under the 48% Annual Cost Rate the following day, being the worst case scenario, the $1100 establishment fee must be reduced to $440.

If either of these two borrowers had used a broker on a paid fee-for-service basis and broker fees are not excluded from the credit cost amount under regulation (this will be discussed further), if the fee paid to the broker exceeded either $16.00 for the car loans and $440 for the home loan, this means the lender cannot enter into the loan due to s.32A (1). Brokers that do engage in fee-for-

service will certainly charge more than either of these amounts and so if the broker is to be paid even these miniscule amounts, any costs the lender has incurred cannot be recovered. If, under proposed Future of Financial Advice ("FoFA") rules, fees paid by lenders as commission back to brokers are also included as credit fees, the entire broking industry could be wiped out overnight. Already, almost 30% of all brokers have already exited the industry according to Martin North in an Australian BrokerNews article[2].

In our earlier submission to Treasury in October 2011, we stated the motor vehicle sector of the finance industry uses brokers extensively and this provision will impact heavily on it. In our view, if the intention is to prohibit lenders using brokers in certain circumstances, there are alternative ways of doing so to satisfy any regulatory intent of avoidance. We believe there is no justification requiring the lender subsidise another party's revenue or profit at its expense. For the lender, it is a valid reason for not entering into the loan in the first place and even if it did occur, one would suggest this would not continue for long. If this were to proceed as drafted, we know of no such other commercial business subject to such a practice.

These examples dispel Treasury's belief that those lenders using a low interest rate would not be affected. All it means is those using higher interest rates are just more affected, to the point that they may not be able to collect any other fee, including their dishonour and other contingent fees should the regulations prescribe them be incorporated in the credit cost amount.

It shows why this section will be a significant barrier to entry into the industry unless some form of exemption is obtained, such as the one proposed covering ADI's. More importantly, it demonstrates why either no-one or everyone should be exempted from it. Allowing the ADI's to be exempt from complying with it provides a huge unfair competitive advantage to them. When almost all competition has been driven from the non-ADI sector of the market over the past 10 years, any inability to calculate the Annual Cost Rate at any instant will result in less consumer choice as they will have no option but to exit the market or face criminal conviction.

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[2] Smith, A, 2012. "*Broker numbers could shrink by 30%*", Australian Broker News 10 April 2012 citing Martin North, Fujitsu Australia and New Zealand executive director. Available online http://www.brokernews.com.au/article/broker-numbers-could-shrink-by-30-128042.aspx viewed 10 April 2012

We will now consider some of the underlying issues in detail after having discussed this matter with the National Financial Services Federation's actuaries, Bendzulla Actuarial Pty Ltd who kindly paid for their consultation with the author.

Credit Cost Amount Issues

Without knowing what the regulations may or may not contain, as we have said, it is difficult to respond to this in a manner we would prefer. This has been a consistent issue for industry with the piecemeal release of various parts of the legislation and regulations in the consultation process. If, as many within industry anticipate, that the enacted s.204 definition will be overridden by the regulations to effectively redefine default fees and charges as being a credit fee or charge due to inclusion in the credit cost amount in order to appease Consumer Group advocates, we suggest this will lead to decimation of the non-ADI sector and Senator Sherry's statement will have been a gross mis-representation of the Government's intentions.

We will repeat, however, that in relation to any upfront fees not physically paid by the lender by way of disbursement, it is more than likely that such amounts will not be recorded in the lender's loan management system as they will not do it now; there is no need. As we previously stated in our earlier response to Treasury on this subject, this instantly requires software developers to create new fields and tables in which to record such amounts purely for the purpose of calculating the credit cost amount. We remain undecided in regard to any contingent default fees applied during the course of the loan as we simply don't know, as yet, if they may or may not be excluded from the calculation by the regulation(s).

Unfortunately, not knowing what is or is not to be included presents a problem. Given that interest is calculated on the outstanding daily balance, if the fee is added to the loan balance and interest accrues on it in accordance with the contract and s.28 of the Code, how exactly are these fees and the accrued interest that's been applied to the loan to be then treated if one of these fees or charges is excluded under the Annual Cost Rate formula? We contend Parliament should be the only body allowed to have the ability to amend any formula if it is considered so important and the provision to amend it by regulation or by the Minister largely avoids Parliamentary scrutiny.

Should, as is feared, additional contingent fees, representing costs incurred by the lender over and above the initial credit fees and charges such as default fees and charges cannot be recovered in full by lenders (regardless of whether they charge interest at or near the maximum nominal percentage rate), this is a further disincentive for these lenders to lend at all. In fact, some would regard it as a crude attempt to apply an anti-competitive measure designed to force some lenders out of the industry by statutory means, as the exemption for ADI's favours them over any other lender. This begs the question "Is Government trying to tell the industry something it doesn't want to state publicly?"

We remind Treasury we raised the issue in both our previous submission and in the Industry Working Group meeting that enforcement fees should be specifically excluded. Excluding any fee, however, creates an issue because of s.28's requirements. We have suggested how this could be achieved with the actuaries but from a system developer's perspective, it presents somewhat of a nightmare as far as calculations are concerned.

Finally, we question whether the value of n, as given in the formula, can ever be applied except on perfectly run contracts. Any number of dishonours, significant or otherwise, for instance, will distort the result, a fact confirmed by the actuaries. Although the formula allows for this because whilst the value of n is be taken as either 52.18 for weekly payments, 26.09 for fortnightly or derived from the definition of j in s.32B(2), it may cause an issue for many system developers in how to apply it.

System Development issues

As stated above, the formula must be calculated instantaneously before any amount is added or subtracted from the loan's ledger. The system must be able to calculate the Annual Cost Rate at that instant **before** any amount is added to or subtracted from the ledger and then ascertain what amount, if any, can be added so that it remains under the 48% prescribed maximum. Essentially, if the system were to do this, it would have to occur by something akin to goal seeking, starting at some nominal high amount and reducing incrementally until the amount able to be added could be established. Alternatively, for systems incapable of doing this, they would have to have a field box

where the operator could add an amount and amend it *ad infinitum* until the value was found or use an external calculator to calculate the amount able to be entered. Many lenders might consider this a waste of valuable operator time but given the criminal offence, it would be the only option.

In addition, it must be remembered that the order of timing of the debit or credit being added or subtracted to the loan account is of critical importance as this affects the result.

Just as we can already demonstrate the effect of minor movements in the Comparison Rate calculator, we would suggest there will be similar manipulations possible to the final amount payable under this new formula. Due to the current uncertainties and the fact that no one has yet built the necessary calculator, we cannot be definitive but from experience, suggest the result may not be as intended. This will particularly be the case where an early repayment, whether in total or in part (such as a large lump sum being paid but which is insufficient to pay out the loan) is made. Consequently, the formula not only has the ability to disallow lenders from being able to recover their initial credit fee costs (such as establishment fees) but also any other contingent costs that may have already been applied, depending on the actual payout date, the nominal interest rate being applied to the contract and what is included in the regulations.

It is noted that under Part 5, section 21Aof the draft Enhancements Bill that s.32A(1A) applies only to credit contracts entered into on or after the commencement date of that Schedule. This is all very well but we suggest software developers will be unable or simply find it too difficult to implement a calculator that can cope with the before and after regimes. It amounts to a Coder's nightmare.

In reality, this likely means that lenders will:

1. have to have two systems, at a not insubstantial cost - their existing one and a new one for loans entered into on or after 1 July 2013; or
2. apply the new regime to existing loans with a consequent considerable financial loss; or
3. decide to exit the industry by collecting their existing debts and not write any new loans under the new regime.

Last month, the Prime Minister Julia Gillard sat down with 26 business chiefs and state and territory leaders for the inaugural Council of Australian Governments (COAG) Business Advisory Forum at Parliament House in Canberra. As Assistant Treasurer David Bradbury told ABC radio on 12 April 2102, "(this forum aims) to give business the opportunity to advise government directly ahead of those important COAG discussions in relation to key issues such as how to reduce regulation and red tape." [3] We strongly suggest that when Government is publicly stating it wants to reduce red tape and promote small business, it is ludicrous for Treasury and the Minister to continue to try and apply this type of provision when the existing responsible lending and loan suitability obligations have yet to be fully bedded down and seen to be working and there are easier options to achieve regulatory outcomes.

As we have previously advised, the formula cannot be solved by Microsoft Excel® or other such spreadsheet software and the mathematics involved are well above the ability of most mathematicians. It took Min-it Software almost 18 months to find a way to solve the formula. Despite the draft Bill giving industry until 01 July 2013 to have the ability to calculate the Annual Cost Rate according to s.32B, given its complexity and what is demanded, even though we have an intimate knowledge of its workings as far as a Comparison Rate calculator is concerned, we would not guarantee we could have a working solution fully operational by that date. For those that currently don't understand the formula or can't calculate it now, they are at a serious disadvantage and there is little assistance available.

Alternative Options

As the consumer groups stated in the Treasury Industry Working Group meetings, their main issue was with the application of early termination fees and deferred establishment fees. Where other contingent fees are applied over the term, Treasury stated it expects the majority of lenders would not be significantly affected because the interest rate charged, particularly by larger lenders such as ADI's, is well below the maximum proposed rate of 48%. As we have clearly demonstrated, this is simply untrue.

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[3] AAP, 2012. "*Government, business to discuss cutting red tape*", Herald Sun, 12 April 2102. Available online http://www.heraldsun.com.au/business/your-business/government-business-to-discuss-cutting-red-tape/story-fn7ve51s-

When this matter was last discussed, the Delegation proposed in the Industry Group meeting that in lieu of implementing a complex and untried formula, Treasury should **simply ban these fees as it has done with home loans**. This is far easier for both lenders and the regulator to apply and more importantly, leaves existing methodologies untouched. In addition, ASIC already has the power to investigate any credit provider if it believes the fee is unfair or excessive.

Common sense anyone?

In forcing non-ADI lenders to adhere to an artificial formula that could limit their ability to collect all reasonable and legitimate fees and charges under the credit contract, it amounts to no more than applying a statutory debt moratorium to their borrowers or limiting their profitability. The capping formula seeks to apply a one-size fits all notion to every non-ADI and non- Small Amount, Short Term Credit Contract lender and this is ridiculous. Economic theory immediately suggests this favours larger lenders who can apply economies of scale over smaller lenders. No business, however, should be denied the opportunity and ability to collect debts properly owed to it under the contract. After all, it must be firmly remembered no one forces the borrower to borrow money from any particular lender.

In addition, depending on what is or is not included in the regulations, the formula may also penalise those brokers that charge the borrower an upfront fee if the lender has to take into account the value of any payments made by the debtor to the broker for the borrower's introduction to the lender. Whilst this may be an attempt to stamp out the use of the broker methodology currently used in at least in NSW for small amount, short term loans, what the formula does is reduces the amount the lender can earn at the expense of another party. As we have shown, it is possible, depending on the value of any payment so made and the amount, interest rate and terms of the loan that the lender could not legitimately recover in full any costs it incurs as a result.

Genuine brokerage should not be prohibited. We would also suggest the vast majority of instances will involve secured loans. In our view, if the intention is to prohibit lenders using brokers in certain circumstances, it would be relatively straight-forward to draft a clause that does not permit the use of a credit assistance provider (i.e., broker) whose fees are paid by the borrower unless the

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loan is for the purchase of mortgaged goods or unless the loan amount exceeds a specific value. This would seem to satisfy any regulatory intent of avoidance and again, this is a much easier way to police than what is being suggested.

We suggest common sense should prevail so that lenders are not encouraged to find alternative ways of revenue raising, such as artificially not discharging contracts even where all the payments due have been met so that they can collect all their fees later.

Conclusions

As we said before, the ideology behind the formula may well be seen by consumer group advocates and some within Government as another well-intentioned move to assist consumers. Unfortunately, as we have repeatedly stated, if the regulations contain what we believe they will, the non-ADI lenders:

- will be effectively barred from charging the maximum or even close to the maximum interest rate even if contingent default fees and enforcement fees are excluded from the regulations;
- may not be able to recover legitimate establishment fees and charges;
- may not be able to legitimately collect all fees and costs they incur if default fees are included in the credit cost regulations;
- possibly forego some of their own profitability to satisfy a debt incurred by a borrower to a credit assistance provider or a third party supplier of services in order to enter into the loan contract; and
- impose increased software costs for lenders as they face the imposition of having to contract IT experts to build a second system which will be essential as a result of the proposed regulation.

None of this is likely to benefit competition or decrease costs to the consumer.

Given these facts, assuming system developers can even successfully build the Annual Rate Cost calculator and having voiced our concerns this may not possible, the formula can only be seen as a further anti-competitive impediment measure to force legitimate non-ADI lenders, who are no different to any other small business, out of business.

We reject this poorly-designed price fixing methodology and demand that Government listen to what industry has been saying and implement a better, easier and far less-complicated alternative. If Government wants to stop lenders charging certain fees that consumer group advocates want axed, as we have proposed, there is a far easier way to do so by specific provisions directed at specific lender behavior. We urge Treasury to reconsider this matter and remove the relevant sections from the draft Enhancements Bill.