

17 April 2013

Mr Christian Mikula
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Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent via: christian.mikula@treasury.gov.au

Dear Christian

Exemption of retailers from the *National Consumer Credit Protection Act 2009*

Thank you for the opportunity to make a submission on *The exemption of retailers from the National Consumer Credit Protection Act 2009* (the Credit Act) discussion paper released in January 2013. We apologise for the delay in lodging this submission.

Mutual banking sector

Abacus-Australian Mutuals is the industry association for Australia's customer-owned banking institutions, representing credit unions, mutual building societies and mutual banks. Collectively, our members have assets of \$85 billion, and provide important competition and choice in the consumer credit market.

Abacus members are Authorised Deposit-taking Institutions (ADIs) regulated by the Australian Prudential Regulation Authority under the *Banking Act 1959*, credit providers licensed under the Credit Act, and Australian Financial Services Licensees regulated under the *Corporations Act 2001*.

Abacus member ADIs provide the full range of retail banking services and products to 4.5 million Australians. The mutual sector's customer-owned business model focuses entirely on the needs of its customers and their communities.

Recommendation

Abacus supports Option 3 in the discussion paper as an appropriate way of better regulating the conduct of vendor introducers and enhancing consumer protections.

We support the regulation of vendor introducers under the Credit Act according to the functions they perform. Retailers that perform the functions of credit representatives should be regulated in the same way as credit representatives under the Credit Act.

However, where retailers limit their conduct to a referral role only, we believe the existing exemptions under the *National Consumer Credit Protection Regulations 2010* (Credit Regulations) are appropriate and should continue to apply to such arrangements.

Current mutual banking distribution arrangements

Abacus members primarily establish and maintain direct relationships with borrowers.

However, authorised credit representatives are an important distribution channel for some Abacus member ADIs, particularly for those members seeking to actively grow their home and car loan books. These members use credit representatives to expand their market presence beyond their home markets, delivering growth and risk management benefits.

Credit representatives engaged by Abacus members either hold an Australian credit licence in their own right, or are appointed as a credit representative of the ADI. The relationship between ADIs and credit representatives is regulated by ASIC and consumers have recourse for loss or harm through access to external dispute resolution schemes.

Other Abacus members maintain relationships with retailers under “mere referrer” exemptions in the Credit Regulation 25.

Case for regulatory reform

The case for regulatory reform is persuasive on competitive neutrality and consumer protection grounds.

While vendor introducers can perform the functions of credit representatives, they are exempt from the obligations imposed on credit representatives under the Credit Act. Vendor introducers have no legal obligation to act in the interests of the consumer when undertaking the functions of a credit representative. This is a clear gap in the Credit Act.

Given vendor introducers benefit from the absence of compliance obligations and associated reduced costs, there is a clear lack of competitive neutrality between vendor introducers and authorised credit representatives. Abacus members are subject to higher costs and compliance burdens when they distribute their loans through credit representatives compared to lenders that distribute loans through unregulated vendor introducers.

We agree with the discussion paper’s observation that preserving the status quo would put consumers at continued risk of suffering financial damage in the following circumstances:

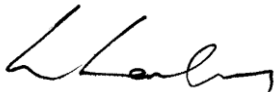
- They may not be provided with a product that would be suitable if the vendor introducer was required to undertake a suitability assessment.
- They may be inappropriately steered towards a product by vendor introducers where that choice is based upon commissions or remuneration structures (and will not receive disclosure that would inform them about those payments and alert them to their potential impact on product selection).
- They may not have access to a remedy unless they commence court action where the financier can deny liability for the conduct of the vendor introducer.

- They may enter into contracts arranged by persons who cannot be excluded from the industry, even in the case of demonstrated or repeated fraud, misconduct or incompetence.

For these reasons Abacus believes the exemptions for retailers who perform credit assistance services from the Credit Act should cease, and that such retailers should be regulated in accordance with the functions they perform as set out in Option 3 of the discussion paper.

Please contact me on 02 6232 6666, or Jim Aliferis, Senior Policy Adviser, on 02 8035 8442 or jaliferis@abacus.org.au to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Lawler', written in a cursive style.

Luke Lawler
Senior Manager, Public Affairs