



American Express
Australia Limited
12 Shelley Street
Sydney NSW 2000
Australia

25 March 2013

The Manager
Consumer Credit Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: poscredit@treasury.gov.au

Dear Sir,

Re: The exemption of retailers from the National Consumer Credit Protection Act 2009 Discussion Paper

American Express Australia Limited ("American Express") appreciates the opportunity to comment on *The exemption of retailers from the National Consumer Credit Protection Act 2009 Discussion Paper* ("the Discussion Paper").

About American Express

American Express Company is one of the largest global payment providers, headquartered in New York. American Express has been operating in Australia for more than 30 years and is recognised as a leader in the cards, travel and financial services industry. We hold an Australian Credit Licence ("ACL"), an Australian Financial Services Licence ("AFSL") and subscribe to the external disputes resolution ("EDR") scheme managed by the Financial Ombudsman Service ("FOS").

Principally, our business consists of acting as an issuer of credit and charge cards and acquiring merchants to accept American Express cards as a method of payment.

We have operated under and complied with the various credit law regimes in Australia and almost every other credit law regime globally over time. We have previously commented on other phases of the National Consumer Credit Protection Act ("the NCCPA").

Our particular interest in this issue stems from the fact that we offer credit card products at the point of sale ("POS") through the David Jones American Express Strategic Alliance as a retail vendor introducer. We partner with David Jones exclusively and do not engage with any other retail vendor introducers in relation to our products.

The comments made in this submission are given in that context. Whilst we have not responded to every question, we have addressed the areas relevant to our experience. Our company is also a member of the Australian Finance Conference ("AFC") and generally supports the representations made by the AFC on this issue on behalf of its members.

General Comments

We acknowledge that the intention of the Discussion Paper is to seek public comment as to whether further regulation is required in this area. However, on review and in consideration of the alternatives raised in the Discussion Paper, we firmly believe the only practical option available to the Government is Option 1, retain the existing exemption in the Credit regulations for vendor introducers.

We are of the view that the existing regulations achieve the intentions of the NCCPA by more than adequately protecting the rights of consumers at the POS. Any additional regulation would be onerous and an unnecessarily expensive compliance burden for business, which would afford no greater protection for consumers.

We believe the current POS regulations are working well and we are not aware of any evidence to the contrary. It does not appear that any systemic or intentional harm has been caused to consumers by the existing retail vendor model, nor were any identified by the POS Working Group convened by the Government prior to the issuance of the Discussion Paper.

To the best of our knowledge, the examples of potential harm outlined in the Discussion Paper have not occurred within our alliance or in those of organisations with similar operating models. We contend that such situations are unlikely to occur in the retail vendor introducer model of larger organisations.

Ultimately the holder of the ACL would not accept any type of misconduct from vendors for a variety of legal and reputational reasons. Most critically, the holder of the ACL would ultimately not want jeopardise its licence through the inappropriate promotion of its regulated products by vendors.

We acknowledge the comments made in the Discussion Paper about the profitability of the retail vendor model, and we do not intend to debate those claims. However, we do not agree with the assertion that a consumer's decision to utilise POS finance is made without consideration of the cost and terms of such credit.

In fact we believe that the majority of consumers are very conscious of the costs involved in entering in POS contracts. Just as consumers shop around to compare the costs of goods prior to making a purchase, we believe consumers also shop around to ensure they get the best credit product for their needs. Consumers want products with the best available pricing, and the ability to take advantage of additional benefits like loyalty schemes offered by credit providers.

As a part of our acquisition strategies, the responsible lending disclosures required under the NCCPA are made to customers regardless of whether their credit application is made in store, online or by phone. We do this not just because of the regulatory requirements but because we believe it is good practice. There is no benefit to our company if an individual consumer takes on a credit facility that is not suitable for their needs and which will ultimately not be repaid.

We also dispute the view offered in the Discussion Paper that consumers do not have access to sufficient remedies when credit is obtained from retail vendors at the POS. As the credit provider and holder of the ACL, we have a vested interest in ensuring that consumers have access to both our internal disputes resolution procedures as well as our EDR scheme. Once again we do this not just because of regulatory concerns but because we think it is good business practice.

In operating the strategic alliance, both American Express and David Jones are acutely aware of the potential harm that could be caused to their respective brands by non compliant processes. We are also conscious of the damage that could be caused by the misconduct of the staff of our respective organisations, intentional or otherwise.

We would not jeopardise our ACL by accepting lower standards of conduct from David Jones employees under the POS model than what we demand of those whom we employ directly. All David Jones staff complete an annual training course on the responsible promotion of the Alliance's products. The content of the annual training is subject to American Express sign off.

We maintain oversight of their operations through robust monitoring and testing processes. The credit assessment process is owned and maintained by us in accordance with our credit assessment criteria, our responsible lending obligations as well as all other prevailing regulations. David Jones employees are not able to participate in or influence that process in any way.

To ensure David Jones employees remain at "arms length" from the process, their involvement is limited to ensuring that credit card applications completed by consumer are sent to American Express securely for processing.

We understand the concerns detailed in the Discussion Paper about commissions paid to retail staff to facilitate the credit card application process.

David Jones employees are eligible to receive a relatively small, fixed incentive for any application that is ultimately approved by American Express. However, commission payments are only made two to three months after a consumer's application has been approved. For privacy reasons, the employee is never told which specific applications are approved or declined. Commissions are not paid if an application is declined.

We are unaware of any examples of systemic harm caused to consumers by incentives offered to retail employees involved in vendor introducer POS credit. Further we believe that under our operating model, our management of the employee incentive programs ensures that no undue pressure is placed on consumers at the POS. In the absence of any serious compliance issues, we do not see the benefit in imposing additional regulation on this practice.

Conclusion

In the absence of any evidence of systemic harm, we urge the Government to maintain the status quo by retaining the existing exemption in the Credit regulations for vendor introducers.

The alternatives suggested would seem to us to be a heavy handed approach to a series of potential scenarios, rather than actual compliance issues. We do not believe that the risk to consumers has changed or increased since the introduction of the regulations some two years ago nor is there any evidence that consumers would benefit from additional regulation of POS credit.

We would appreciate it if these comments were treated as commercial-in-confidence and not published or circulated outside your office without our prior consent.

Should you have any questions in relation to this submission or otherwise wish to discuss the content any further, please contact Graeme Alexander on +61 2 9271 1754 or via email at graeme.w.alexander@aexp.com

Yours sincerely,

For and on behalf of American Express Australia Limited

A handwritten signature in blue ink, appearing to read 'Graeme Alexander', with a large, stylized initial 'G'.

Graeme Alexander
Head of Compliance and Ethics, Australia and New Zealand