



## GE Money

Andrew Smith  
General Counsel

572 Swan Street  
Richmond Vic 3121

T 61 3 9921 6186  
F 61 3 9921 6584  
Andrew.smith2@ge.com

Review of Australia's Consumer Policy Framework  
Productivity Commission  
Attention: Mr John Papadimitriou  
PO Box 1428  
Canberra City ACT 2616

By Email: [consumer@pc.gov.au](mailto:consumer@pc.gov.au)

22 February 2008

Dear Mr Papadimitriou

**GE Capital Finance Australasia Pty Ltd ("GE Money") submission on the Productivity Commission's draft report on its Review of Australia's Consumer Policy Framework ("Draft Report")**

GE Money welcomes the opportunity to comment on the Draft Report. GE Money's comments focus on the recommendations and discussion in the Draft Report relating to financial services and the regulation of credit.

GE Money is the consumer finance division of General Electric, a company that has provided financial services for 70 years. GE Money is one of Australia's leading consumer finance companies, offering an extensive range of consumer finance products, including personal loans, auto loans, credit cards, mortgages, insurance and promotional retail finance. GE Money has over 3 million customers across Australia and New Zealand and its financial services are distributed through numerous sales channels, including over 12,000 retailers, 2300 accredited auto dealers, 5,500 brokers, 400 branches, a direct sales channel, and the Internet. GE Money therefore has significant interest in the Draft Report.

### **1. Introductory Comments**

By way of introductory comment, GE Money emphasises the overarching need (regardless of whether regulation is at the State/Territory or Federal level) for:

- consistency in, and simplification of, the current patchwork of consumer protection regulation;
- a regulatory system which is able to respond quickly to national and local practices and needs (including enforcement needs);

- speedy implementation of required legislative change;
- well funded, adequately resourced and experienced regulator, backed by governments with the political will to take appropriate enforcement action;
- timely and effective communication between government, regulators, industry and consumers regarding issues that affect financial services;
- appropriate funding for objective and rigorous research into consumer issues and the most appropriate form of regulation; and
- competitive neutrality – (that is, ensuring that regulation does not create a competitive bias in favour of any particular products or financial services providers or distribution methods within any market).

## 2. National regulation of credit (and finance brokers) (Draft Recommendation 5.2) and key overarching issues

GE Money is not opposed as a matter of principle to a move to national regulation of credit. However it is not necessarily a panacea for the issues discussed below and, before moving to national regulation, alternative means of dealing with these issues should be considered within the existing regulatory framework.

Shortcomings in existing State and Territory-level arrangements relating to credit regulation include the following as well as those mentioned in the Draft Report:

- 2.1 *A lack of frank, vigorous debate amongst the States and Territories before the form and content of reform proposals is agreed to:*** There is at least a perception in industry that specific reform initiatives are left to one jurisdiction to formulate and implement, without thorough ongoing debate amongst the jurisdictions. GE Money submits that a strength of a State/Territory system should be the opportunity for a diverse range of viewpoints to contribute to frank, informed regularly convened, inter-governmental debate which in turn, generates effective solutions which take account of the legitimate interests of all stakeholders.
- 2.2 *Insufficient involvement by senior/experienced representatives of State and Territory governments in the ongoing administration of credit regulation arrangements:*** There is a perception in industry that such involvement is not present to an adequate extent when reform proposals or issues are being debated, depriving the process of valuable experienced views as well as reducing the visibility of credit regulation issues at senior government levels.
- 2.3 *A lack of effective forums where industry can provide ongoing feedback to government departments and regulators about product developments, compliance issues etc:*** Public submission/comment processes are useful but not always the best conduit for feedback to government and regulators. By their very nature, they often involve a one-way flow of information and tends to be available in the context of an official inquiry or specific reform proposal.

GE Money suggests that the public, government and industry participants would all benefit from the establishment of a permanent forum for industry participants, consumer groups, regulators and government to consider and discuss industry issues, share experiences and exchange information on a regular basis for example, on matters such as new product initiatives and potential issues as well as new regulatory proposals.

Information provided through such arrangements might be provided on a “without prejudice” and confidential basis.

**2.4 *Inability of credit providers to access credit-worthiness information:*** Permitting access to a broad range of data about a customer’s current and past credit status would enable credit providers to more accurately assess a customer’s capacity and willingness to repay. Thus, credit providers could make better lending decisions, leading to increased competition between credit providers (with a corresponding net benefit to consumers).

**2.5 *A lack of funds and other resources for objective and rigorous research into consumer issues:*** GE Money believes there is an urgent need for resources to be made available for a rigorous analysis of the effectiveness of existing and any proposed new regulation, the analysis should take into account:

- costs and benefits;
- consumer needs; and
- overlap with other regulation.

For example, it is not clear there has been sufficient research into how credit disclosures in documents can be made more effective, what information drives consumer choice and whether recent reforms (such as the Australian Capital Territory’s reforms on unsolicited credit limit increases) have been effective to achieve their stated goals. This is in contrast, for example, to the extensive consumer research GE Money understands the UK Financial Services Authority undertakes. This is not only an issue at the State/Territory level. Financial services regulation at the Federal level would also benefit from additional resources for objective and rigorous research into consumer issues.

As the Commission is likely to be aware, aspects of the Fringe Lending - Proposed Consumer Credit Code Amendments proposed recently have been the subject of significant criticism. In GE Money’s view, the development of such proposals would have benefited greatly from improvements in the matters discussed above. The more rigorous assessment and debate would have made for a more balanced and focused set of proposals.

GE Money also notes with interest the recently reported debate regarding potential further regulation of switching fees/break costs. GE Money notes that the Consumer Credit Code already provides mechanisms for addressing the issue - what may be needed is clear discussions between regulators and financial services providers about compliance with existing laws and, where appropriate, regulatory action.

Against this background GE Money considers that all these issues should be thoroughly debated and tested before a final decision is made about national regulation of credit. In particular, GE Money believes it is worth further assessing whether the State and Territory-level regime can be improved, such as through better coordination, a renewed, stronger agreement on full uniformity of the Consumer Credit Code and more effective processes for formulating and debating proposed changes and seeking industry feedback on issues generally.

Further, transferral of responsibilities for the regulation of credit to the Federal legislature and Federal regulators may also have challenges - such as:

- the ability of a Federal regulator to be sufficiently responsive to purely local issues; and
- the potential for the loss of expertise and knowledge of local regulators.

If national regulation of credit is nevertheless pursued, GE Money:

- agrees that legislation based on the Consumer Credit Code (with some improvements - see section 3 of this submission) should be retained rather than seeking to replace it with the conduct and disclosure requirements under Chapter 7 of the Corporations Act or any other new regime. To change the credit regulation system so radically is likely to result in significant implementation and compliance burdens and costs without an obvious compensating benefit for either credit providers or their customers. Further such a change is likely to mean a significant delay in implementing any move to a national system;
- agrees with the need for uniform licensing and registration of finance brokers;
- agrees that there should be an appropriately resourced single national regulator (such as ASIC) but believes there should be a requirement to consult with relevant State and Territory regulators on local issues to the extent they remain active in this area.

The final recommendation in Draft Recommendation 5.1 (that separate registration be implemented for credit providers that are not holders of Australian financial services licences) is not clear to GE Money. If it is envisaged that those that hold an AFSL can provide credit under that licence, but others should obtain a separate credit-specific licence, it is important that differing obligations relating to credit do not arise depending on which licence is held. It is important that a level playing field is maintained between AFSL holders and other participants.

### **3 Modified Consumer Credit Code - Draft Recommendation 5.2**

GE Money notes the Commission's proposal that an "appropriately modified" version of the Consumer Credit Code and related credit regulation should be retained as part of a national law.

GE Money submits that it is important that prescriptive requirements under the Consumer Credit Code and their effectiveness be assessed further before it is included in any national legislation. To do so would be consistent with the new Federal Government's proposals to streamline overly prescriptive and ineffective disclosure requirements under Chapter 7 of the Corporations Act.

In addition, it is the view of GE Money that more regulation, or transferring the regulatory responsibility from the States to the Federal Government is not the solution to all consumer issues and that some issues would be better tackled by programs that improved the financial literacy of consumers

### **4 One general trade practices law and regulatory fragmentation generally - Draft Recommendations 4.1, 4.2, 4.3 and 4.4**

GE Money agrees that having one Trade Practices Act-style law applying to both financial services and non-financial services activities seems logical and more efficient, especially when the consumer protection provisions of the TPA and ASIC Act generally mirror each other.

GE Money also agrees that ASIC should remain as the regulator for financial services given its expertise and other areas of responsibility. However, this should be expressly recognised in the legislation rather than being left to administrative arrangements between ASIC and the ACCC.

GE Money agrees that having a unified Trade Practices Act-style law is a good first step towards creating a nationally coherent consumer policy framework. However, this would only go some

way towards addressing the current fragmentation, and potential inconsistencies, faced by financial services providers in Australia.

GE Money submits that there needs to be greater effort (whether or not legislative responsibility for such matters is at the State/Territory or Federal level) to ensure more consistency in consumer protection regulation. There are numerous different pieces of consumer protection regulation that currently apply to a financial services business, including (but by no means limited to) the Consumer Credit Code, Chapter 7 of the Corporations Act, the ASIC Act, the Trade Practices Act, State Fair Trading Acts, the Privacy Act, the Spam Act, the Do Not Call Register Act, the EFT Code and the Code of Banking Practice.

Ideally, the current patchwork of regulation could be simplified by reducing the number of laws. At the very least, greater efforts should be focused on achieving consistency in the concepts used, and requirements imposed, in the range of legislation and codes. For example: different concepts of consumer and non-consumer and the meaning of small business are used in different regulatory items; different requirements for giving notices to customers (eg notices of contract variation) apply under the Consumer Credit Code, Chapter 7 of the Corporations Act and industry codes of practice; different requirements apply for statements of account under the Consumer Credit Code and the EFT Code.

Current inconsistencies are the source of considerable expense and inefficiency for industry, with no demonstrated net benefit for consumers. Inconsistencies should be removed and should have to be expressly identified and justified in the future when amendments or new legislation are proposed.

## **5 National unfair terms provision - Draft Recommendation 7.1**

In GE Money's view, there are a number of key issues affecting the proposed new provision that would void unfair terms in standard form contracts:

- the concept of an "unfair" term can be nebulous and, when overlaid with the existing range of other restrictions that can apply (for example, CCC-regulated contracts), it can be overly burdensome. In addition, any proposal to regulate unfair contract terms must have due regard to the inherent differences between different types of contracts, for example, what may be considered unfair in the context of a mobile phone contract, may not be unfair in a 25 year home loan agreement. Given the Commission's acknowledgment that the evidence of abuse of "unfair" terms is not clear, GE Money submits that more research is necessary before such a restriction is adopted nationally;
- it is important that such a provision recognise factors such as a customer's ability to switch to a different product or service or provider and also the practical necessities that may make such a term appropriate (eg compliance with a variety of laws, the need to maintain uniformity to ensure efficient delivery of products and services and having regard to the fact that some contracts necessarily have long terms which suggests that it is reasonable for credit providers to have the right to unilaterally change certain aspects of contracts);
- excluding from the provision's application only upfront prices of goods or services may not be sufficient. GE Money submits that it is critical that there be a thorough assessment of other types of terms it may be appropriate to exclude (such as a right to alter interest rates in variable rate contracts); and

- a "safe harbour" mechanism is important and GE Money submits that the threshold for obtaining approval for terms to gain the benefit of safe harbour should not be unduly onerous.

## **6 ADR schemes for financial services - Draft Recommendation 9.2**

---

Various GE companies are members of a number of financial services ADR schemes:

- GE Money is a member of the Banking and Financial Services Ombudsman (BFSO);
- Hallmark General Insurance Company Limited and Hallmark Life Insurance Company Limited (insurance companies in the GE group) are members of Financial Industry Complaints Service Limited (FICS);
- Hallmark General Insurance Company Limited is also a member of the Insurance Ombudsman Service; and
- several other GE group companies, such as GE Mortgage Solutions Limited and AFIG Wholesale Pty Ltd, are members of Credit Ombudsman Service Limited.

GE Money agrees with the proposal for further integration of such ADR schemes. This would assist consumers by providing them with, ideally, a single port of call for their financial services-related complaints, making it easier and more efficient for them to seek resolution.

Financial services providers would also be better served by having to deal with fewer or one resolution scheme, avoiding repeat handling of complaints and reducing inconsistency of approaches.

GE Money will be pleased to discuss this submission with you. Please contact me on (03) 9921 6186 with any queries.

Yours sincerely



**Andrew Smith**  
**General Counsel**