SUBMISSION TO THE PRODUCTIVITY COMMISSION - MARCH 2013
ISSUES PAPER - REGULATOR ENGAGEMENT WITH SMALL BUSINESS

The writer thanks the Productivity Commission for the opportunity to make a submission to the regulator engagement with small business project. If the Commission seeks extrapolation of any points contained in the submission, or comment on other issues, the writer would welcome the opportunity to be of further assistance.

WRITER'S BACKGROUND AND EXPERIENCE

The writer is a lawyer with 20 years experience in the credit industry (including 14 years post-admission experience). For the past 11 years, he has been employed full time as a corporate legal counsel and director of a range of private companies - predominantly Fast Access Finance Pty Ltd.

The major duties engaged in during this time include:

- Overseeing and instituting lending compliance and processes, as well as precedent creation;
- Representation in board positions on state and federal industry bodies;
- Instituting and running dispute resolution programs; and
- Preparing submissions on behalf of industry to government agencies.

In respect of the board positions, the writer was:

- the representative member for the Microlenders Association of Australia, an unincorporated association to represent the interests of the microlending industry to media and government (now defunct);
- the inaugural president of the National Financial Services Federation (Qld) Inc, an incorporated association to represent the interests of the payday lending and micro lending industries to media and government (now defunct); and
- the inaugural vice-president of the National Financial Services Federation Ltd, a company limited by guarantee, which took over the operations of various state based bodies (including the NFSF (Qld) Inc) due to the change from state based to federal legislation.

During this work history, the writer has overseen a range of regulatory changes and regimes; including taking part in industry consultation and representation to state and federal government - both in private and by participation on consultative panels.

THE SMALL AMOUNT LENDING INDUSTRY

The small amount lending industry has existed in its modern form in Australia since the mid 1990s. Prior to this time, the legitimate small loans market was mostly the domain of the pawnbroking "loan". Fast Access Finance is one of the earliest participants in the industry, commencing operation in 1996. At the time and for the ensuing years, the industry was self-dubbed the "micro lending" industry. Various other references have been applied, including the "fringe credit industry" and "lenders of last resort".

Over time, the micro lending industry has been joined by the payday lending industry, an import in terms of both operation and some operators from North America where that industry is well established.

It is important to note that there are historically fundamental differences between the two industries:

- Payday lending had an average loan size of $200 to $300, operated on a term of predominantly 1 to 4 weeks, and had a fee for loan provision without an interest component; and
- Microlending had an average loan size of $1,000 to $1,500, operated on a term of predominantly 6 to 12 months and had an interest component with or without an application/establishment fee.

Despite these differences, government, regulators and consumer advocates have shown an inability to differentiate between the two industries and have jointly referred to them both as payday lenders. Recent legislative development, commencing in March 2013, has introduced a new descriptor to cover both industries - the small amount credit contract industry.

OVERVIEW OF STATE AND FEDERAL REGULATORY HISTORY

Until 2009, consumer credit was a sector falling under state regulation. In 1996, national uniformity of consumer credit was attempted by instituting the *Consumer Credit Code* ("State Code"). Developed by accord between the states, the State Code was legislated in Queensland as a schedule to the *Consumer Credit (Queensland) Act 1994(Qld)*. With the exception of Tasmania and Western Australia, each state and territory passed legislation which mirrored the State Code automatically (Tasmania automatically mirrored the Code subject to acceptance of changes, and Western Australia agreed to enact its own Code and make uniform changes as necessary).

The various State Codes did not provide the uniformity that was desired as certain powers were held back for individual decision by the states - predominantly price capping and industry licensing. This resulted in a number of different regimes throughout the country:

- New South Wales, Victoria, Australian Capital Territory and Queensland had instituted price caps, through three different models; and

- Victoria, Australian Capital Territory and Western Australia had instituted licensing regimes, also through three different models.

This situation was identified as being problematic for the provision of credit, to both regulators and business, as the State Code that applied was dependent on the residential location of the borrower. Altogether, five different methods of operation existed immediately prior to the referral of power to the federal government. The attempt at uniformity was a failure.

Citing this situation as a primary reason, COAG instigated a referral of power from the states to the Commonwealth in 2009. The *National Consumer Credit Protection Act 2009 (Cth)* ("NCCP Act") was enacted with the *National Credit Code* ("National Code") as a schedule to it. While the National Code was largely the same as the State Codes, plus certain amendments that had already been slated prior to referral, the Federal Act was significantly more expansive than any of the state acts.

However, even though there is now a Federal act in operation, uniformity has yet to be delivered to industry. While the states that had licensing regimes gave them up to make way for the Federal registration and licensing processes, those states with capping provisions retained them. It has been intimated (rather pointedly) that they have only agreed to give up those powers on the implementation of a satisfactory nationwide cap[1]. The Commonwealth has passed legislation which will bring a tiered range of caps into operation on 1 July, 2013 (*Consumer Credit Legislation Amendment (Enhancements) Act 2012*). It remains to be seen if and when the states with caps will revoke them. A failure to do so will not only mean another failure for national uniformity but also an untenable situation for industry as it may find itself having to comply with two competing capping regimes simultaneously in each applicable state.

Aside from the primary regulatory environment in terms of the Credit Code, the industry is further subject to three other regulatory climates: privacy, personal property securities and anti-money laundering and counter-terrorism financing (AMLCTF). Both privacy and AMLCTF have been under federal oversight since inception, while personal property securities has recently transitioned from state to federal responsibility.

Credit providers are specifically covered by the requirements of Privacy Act through the legislation itself and the Credit Reporting Code of Conduct, which was incepted by the (then) Privacy Commissioner under the powers in the Act. Practically, this area covers the obtaining, use and disclosure of private information of applicants and borrowers; primarily in the uses of conducting searches of individuals' credit histories, listing default information on their credit files and disclosing information to third parties under written authority (for example, providing a statement of payout to a refinancing lender).

Personal property securities relates to the taking of security and the registering of interests over almost all forms of personal property (ie not land - real property). The *Personal Properties Securities Act*, enacted in 2009, saw the amalgamation and assumption of authority from a wide array of state based registers that dealt with such items as motor vehicles, crops, plant and machinery and stock in trade, each in disparate format, and the homogenising of these into a

[1] For example, Mr Anthony Roberts, then Minister for Fair Trading, NSW, on introduction of the *Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011*, "The Government proposes to extend the operation of the maximum annual percentage rate beyond 12 months in order to maintain consumer protection and certainty in New South Wales until assured that the Commonwealth's regulatory and enforcement measures in respect of short-term small-amount lending are appropriate and adequate", NSW Legislative Assembly Hansard, 27 May 2011, page 1321.

single register - the Personal Properties Securities Register. As a necessary adjunct, this has changed the method and form of most securities, and the rights of the parties thereto.

The anti-money laundering and counter-terrorism financing area is relatively new, in its current guise, having been incepted in 2006 under the *Anti-Money Laundering and Counter-Terrorism Finance Act* as an evolution of a range of compliance and reporting requirements on certain industries. If businesses conduct regulated activities (such as loan provision) they are subject to the provisions of the act in respect of such areas as record keeping, due diligence, evidence investigation and verification and reporting.

SPECIFIC CHALLENGES FACED BY THE INDUSTRY, BY AREA

Credit Regulation

The legislative history of the *Consumer Credit Code* is discussed generally in the preceding section. Within that overview, industry has encountered certain issues in the state regulated period and others in the federally regulated current system. While some preliminary overlap between the two can be seen, closer inspection makes it apparent that the similarities are only surface deep.

State Regulation - Historic

1. Despite the reciprocal nature of the State Code legislation certain powers were retained for state by state determination, predominantly licensing (further set out in 2) and price fixing (interest rate capping - further discussed in 3). This meant that lenders which operated in more than one state often found themselves having to develop alternate procedures to those they were used to in their "home" state. Because these would then need to operate concurrently, certain systems, resources and labour required duplication. During state regulation, the term "Uniform Consumer Credit Code" was a misnomer.

2. Victoria, the Australian Capital Territory and Western Australia implemented licensing of credit businesses. These differed greatly between themselves in terms of scope and complexity:

    - Victoria's system was the most simplistic, consisting of a basic notification to government of the conduct of consumer credit lending;

    - the Australian Capital Territory's system was more complex in requiring a range of information to be provided by the lender; and

    - Western Australia's licensing regime was the most comprehensive and involved, as well as information about the lender itself, certifications and evidence with regards to financial information and understanding of the laws applicable to conducting business.

    Of these, we only had direct involvement with the Western Australian regime. We can confirm that obtaining and keeping this licence required proactive involvement and not insignificant cost – the licensing fee was $425 per annum, and was determined by the dollar amount of loans provided.

    Worth noting in regards to licensing is the effect that the *Code* itself had on the requirement to hold a particular licence. The requirement did not stop with a consideration of the jurisdiction in which the lender was situate. The *Code* provided that the particular state laws which applied in any particular circumstance were the state laws of the usual place of residence of the borrower (ie if a Queensland lender extended consumer credit to a resident of Victoria, the Queensland lender required the Victorian licence).

3. Victoria, New South Wales and Queensland brought in capping provisions under their state acts (as an aside, these caps are still in place despite the referral of power over consumer credit to the Commonwealth). The form of these caps were:

    - In Victoria, no cap on fees but a cap on the amount of interest that could be charged - 48% per annum for unsecured loans and 30% per annum for secured loans;

    - In New South Wales a cap of 48% annualised percentage rate ("APR"), calculated pursuant to a complicated formula, was controversially introduced; and

    - In Queensland a cap of 48% APR was introduced on the same terms as New South Wales, the regulation being copied almost exactly and using the same formula.

In regards to the New South Wales cap there is no apparent evidence that a regulatory impact statement was produced prior to introduction, and the then Fair Trading Minister Diane Beamer promised that a review of the effect of the cap would be conducted at some stage after the cap's initial introduction in 2001 by the *Consumer Credit (New South Wales) Special Provisions Amendment (Pay Day Lenders) Regulation*. Freedom of information documents obtained in late 2007 reveal that no such review was ever conducted[2]. This lack of follow through was conjoined with a blanket government stance that their cap was effective - despite overwhelming evidence that lenders were evading the cap by using alternate means of operation.

This stance continue despite amendments being made to the NSW cap in 2010 to extend the cap to include any amount paid to any person in connection with the credit contract within the formula calculation. This was done primarily (on reasonable inference, as the NSW government has always maintained that their cap was working completely effectively) to shut down the main method of getting around the restrictive cap - the brokerage model.

The Queensland government legislated the 48% APR cap without conducting their own review of its impact. Despite protest from industry (the author included) that NSW had failed to follow proper procedure, the Queensland government relied on the ability to disperse with a regulatory impact statement where the proposed regulation was substantially the same as an existing regulation in another Australian state.

The Queensland and NSW (both versions) caps were unfairly restrictive on business. Initially, this view was only held by the small loans industry itself. It was often derided by government and consumer groups in the media, who both claimed that industry was only interested in protecting "huge profits" (an unfounded claim[3]). It was not until the release of the National Australia Bank's report "*Do you really want the hurt me? Exploring the costs of fringe lending – a report on the NAB Small Loans Pilot*"[4], publishing their findings in conducting their Small Loans Pilot, that industry's view was collaborated. The Small Loans Pilot set out to:

"*...explore the viability of a lending model that could operate within the fringe credit market and offer small loans over twelve months at a break-even rate."*[5]

The Pilot determined that:

"The upfront administrative costs associated with providing a loan mean that you cannot lend below an APR of 48% for a loan portfolio of less than $5 million and an average loan size of $2,900 or less."[6]

While letting this statement sink it, it should be remembered that:

- The Pilot was conducted largely prior to current regulatory regime, which involved less compliance and cost to lenders;

- Small business is eminently unlikely to have a loan portfolio of $5 million, considering the average loan amount is $1,000; and

- The Pilot's identified average loan size of $2,900 is not only well above the industry average, it is inconsistent with the new capping legislation to being on 1 July, 2013 (discussed later).

Despite this information, it did nothing to abate the view of the consumer advocates or the Queensland and New South Wales governments. The report, to our knowledge, was largely ignored despite the advisory board for the pilot including some of these very parties[7]:

- CHOICE;

- Consumer Action Law Centre;

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[2] See Annexure 1, being a file note dated 2007 showing the review was not conducted as at that date and no date for it had been determined.

[3] Only one study in the country on the profitability of small loans has been commissioned to the writer's knowledge, by the Department of Consumer and Employment Protection in 2008, entitled "*Review of the Viability of Interest Rate Caps on Consumer Credit Providers"*. This study has not been released and would not be released under freedom of information laws. See Annexure 2 for copies of the correspondence refusing access to the findings.

[4] National Australia Bank, March 2010. Available at http://www.nab.com.au/wps/wcm/connect/nab/nab/home/about_us/7/4/3/6

[5] NAB, Small Loans Pilot report, page 4.

[6] NAB, Small Loans Pilot report, page 40.

[7] NAB, Small Loans Pilot report, Acknowledgments.

- Griffith University;
- NSW Office of Fair Trading; and
- Queensland Department of Justice and Attorney-General (which incorporates Queensland Fair Trading).

It is an understatement to say that it is insulting that these parties, which demonised the industry publicly and vociferously, should ignore their own pet project when it turned out to prove them wrong.

Federal Regulation - Current

Federal Treasury is the department responsible for the drafting and implementation of the NCCP Act. ASIC is the agency responsible for the monitoring and enforcement of compliance. Unless specific identification is required, for the sake of ease of reference they will be jointly referred to as "Regulator" in this section.

a. The referral of power over consumer credit from the states to the Commonwealth has been protracted and has not gone according to the publicised schedule. The intended aim for a seamless, national consumer credit industry was detoured from the beginning with the states which had implemented interest rate caps being unwilling to remove them and leave the decision to Federal parliament. As a consequence, the referral acts contained provisions preserving interest rate caps[8].

   Industry, who had been enticed with the promise of the "seamless, national consumer credit industry", found that they were in a worse position than before the referral - they continued to be subjected to the state caps and also now had to contend with increased regulation under the Federal regime (see below).

b. The NCCP Act, and its associated transitional enactment[9] (referred to together for sake of ease), introduced a wide range of new compliance requirements for the consumer credit industry. Most of these requirements were completely new to businesses, which required expensive and extensive changes to internal structures and methods of operation. A non-exhaustive list of requirements is attached as Annexure 3.

   This was especially problematic for small business who were now expected to conduct themselves in a manner more akin to that of a large corporate entity. Small lenders, which were largely self funded, family run businesses and form the bulk of the industry, were now in a position where they had to implement and run evidence based procedures. Many of the requirements were not only completely novel, but required specialist knowledge beyond the average reach of most operators. Preparation and provision of tailored compliance packages was estimated at costing between $10,000 and $50,000 - excluding compulsory licensing, memberships and insurances. Because the requirements for compliance were dependent on the particular nature of the business itself, the Regulator had stated that business could not expect to obtain an "off the shelf" package and consider that they were compliant[10].

c. In addition to complying with the legislative requirements, lenders must also bear the external expenses that append to those mandatory requirements:

   - ASIC licensing fee[11] - $450 for a 'sole trader' or $1,000 otherwise, per annum. We actually paid $1,049 for our renewal, upon invoice from ASIC.
   - External Dispute Resolution ("EDR") scheme membership - minimum Credit Ombudsman Service ("COSL") membership fee for lenders is $600 per annum, and minimum $275 per annum for Financial Ombudsman Service ("FOS") (plus application fee, and dispute fees). Credit licensees must be a member of an ASIC approved EDR scheme as a condition of their licence, and only these two are approved.
   - Compensation arrangements - Credit licensees must have adequate compensation arrangements in place as a condition of their licence. "Pure lenders" are not required to have professional indemnity insurance, but this is the simplest and cheapest way for small businesses to ensure compliance[12]. Professional indemnity insurance to the level required by ASIC costs around $750 annually. Our last premium was $860.75.

[8] For example, ss21 and 32 of the *Credit (Commonwealth Powers) Act 2010 (Qld)*, and Schedule 3, Division 2 of the *Credit (Commonwealth Powers) Act 2010 (NSW).*
[9] *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*
[10] As evidenced by paragraph 205.22 of ASIC RG 205 "*Credit licensing: General conduct obligations*"
[11] ASIC RG 204 "*Applying for and varying a credit licence*", Table 4 at page 18.
[12] ASIC RG 210 "*Compensation and insurance arrangements for credit licensees"*.

Taking the bare minimum of these amounts, and applying them to the 'average' small business who employs at least one other person in a professional role, the annual cost to simply hold the requisite authorisations to conduct business is $2,000 - and this does not include the costs on ensuring compliance with the requirements to hold those authorisations.

d. To add to the costs indentified in (c), both the EDR membership and professional indemnity insurance hold hidden costs and pitfalls for business:

(i) A requirement of EDR membership is that all complaint costs of the scheme must be borne by the member lender regardless of ultimate fault - the complaint process must be free for consumers. While the end cost of a complaint depends on the stage at which it is finalised, it can range into the thousands of dollars (plus any compensation orders). In COSL, which most small lender licensees belong to, the member is charged $165 for the scheme to simply look at a complaint - regardless of merit. FOS does not publish their fees.

Any decision made by the member's EDR scheme is binding against the member, but not against the consumer. If the member fails to abide by the scheme's decision, they may be excluded from the scheme. Because EDR membership is a standard licence condition, exclusion could lead to loss of the lender's credit licence. Accordingly, credit licensees are held ransom to the decisions of their EDR schemes - which are not legally constituted courts or tribunals.

Consumer advocates are wise to this situation, and advocate that instances of small amount lending should be referred to the lender's EDR scheme "in every circumstance". This view was emphatically made by a consumer advocate addressing a group of financial counsellors at an information session in 2012[13]. That such referrals would cost the lender money and possibly form a binding decision on them was, without doubt, known by the advocate - she is a past board member of COSL.

(ii) Professional indemnity insurance, as well as being a significant cost to small business, is largely worthless in terms of protection. Barring exceptional circumstances, lenders will not make a claim under the insurance for the simple reason that the policy will only cover loans with a maximum principal amount of $5,000 - and the excess payable on any claim is $5,000. It is highly unlikely that any prudent lender would allow a situation to occur where the potential liability under any claim would exceed that amount[14]. Also, with the advent of the capping provisions coming in on 1 July, 2012 (discussed below), it is unlikely that any lender will have a loan above $2,500 - further removing the likelihood of a claim being made.

e. The Regulator has not been content to stop reform at this point, and has continued to make changes to the legislative requirements – including amendments to the NCCP Act and its regulations, as well as ASIC regulatory guides. The latest example of reform is as contained in the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*. This Act contains two tranches of reforms specifically relating to the small loans industry.

The first tranche began on 1 March, 2013, and requires such things as:

- Mandatory warning statements on premises, websites and spoken over the telephone which inform potential customers that they should go elsewhere;

- Restricting the number of loans that may be given to consumers within a certain period*; and

- Restricting the ability to provide a loan to a consumer where they have a missed payment on a current loan*.

**The restriction is actually a presumption of unsuitability unless the lender can prove the consumer will be able to comply with the loan without incurring substantial hardship. The Regulator will not define "substantial hardship" let alone give guidance on how to overcome such a presumption. Any lender seeking to overcome the presumption does so at their own risk, such as loss of their credit licence, if they get that determination wrong.*

The second tranche begins on 1 July, 2013 and introduces the following national interest rate caps on loans:

[13] The video of this presentation was openly published on the internet in late 2012, and subsequently removed. A copy, obtained for purposes of "fair dealing" is available on request.
[14] If it did, the increased premiums that would result would give pause for further consideration.

(i) 48% APR on loans, inclusive of all amounts payable in relation to the contract, to any person for an introduction to the lender, to any person introduced to the debtor by the lender or to the lender for any service relating to the provision of credit - a direct equivalent of the current New South Wales cap;

(ii) As an exception to (i), a loan under $2,000 for less than 12 months (but more than 15 days) which is not 'continuing credit' or secured, and not provided by an authorised deposit taking institution, may charge an establishment fee of 20% of the amount given to the consumer and a flat fee of 4% per month of the amount given; and

(iii) As an exception to (i), a loan between $2,001 and $5,000 for a term of 16 days to 2 years which is not 'continuing credit' and not provided by an authorised deposit taking institution, may charge a $400 establishment fee in addition to the 48% APR maximum.

f. The caps referred to in item (e) will be implemented despite the Regulator still having little to no understanding of the cost base of lenders, especially given the imposition of compliance detailed above. This lack of understanding is highlighted, glaringly, by reference to:

(i) Treasury's *Regulation Impact Statement: Regulation of Short Term, Small Amount Lending*[15] ("RIS") released in June 2011. This statement considered the regulation of the industry by way of interest rate capping. However, it shows the dearth of information considered:

- The "Sources of Data on Short Term Lending" (page 11) states that the RIS refers to "*data and analysis from a number of academic papers, reviews and submissions"*. Table 2 lists the primary papers referred to which include papers from acknowledged anti-industry advocates and fails to include any documents from industry itself;

- Financial positions of consumers;

- Data on charges levied by some lenders;

- Some isolated points from industry (including ourselves), but in a disjointed fashion; and

- Some information pertaining to Cash Converters, the largest market participant,

None of these give any actual indication that Treasury looked at the cost of providing the service of loans provision – especially since the representations about costing that were used related to information provided prior to the inception of many of the increased regulatory reforms (which increased the cost of provision); and

(ii) Treasury's evidence given to the Joint Parliamentary Committee on Corporations and Financial Services[16] ("Committee"). In the Hansard of the Committee's hearing:

- At page 74, a Treasury official acknowledges that the NSW cap (being the default cap described at (e)(i)) "*is a problem for small-amount loans"*; and

- At page 76, the same Treasury official states "*the issue with the New South Wales cap was that it applied across the board... Under this model, it only applies to loans over $2,000 or for a term of two years or more. We think that that probably resolves the issue..."* [emphasis added].

Looked at overall, it is clear that Treasury has had little to no consideration of the effect of the caps on the small loan industry. It realises that the 48%APR, all inclusive, cap does not work for small loans, so it has legislated a cap which they "think" will resolve the issue. If Treasury had produced modelling or data to make a reasoned determination of commercial viable, we doubt that the official would have stated that he "thinks" it will be viable. When conjoined with the complete absence of any engagement with industry to demonstrate any modelling, or figures, or even to acknowledge the effect that the newly imposed regulations may have, we can only conclude that there is no adequate investigation done by the Regulators into the cost of providing small amount loans or the levels of return necessary to ensure they are commercially viable.

[15] Available at ris.finance.gov.au/files/2011/09/RIS-Short-term-small-amount-finance.pdf

[16] Parliamentary Joint Committee on Corporations and Financial Services, Monday 24 October, 2011, hearing regarding the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*. Hansard Transcript available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=@JointHansard/j398.pdf

Privacy

Historically, and compared with other areas, there has been little regulator engagement with industry in terms of privacy. For the most part, there has been self-regulation in a manner resulting from the credit reporting agencies' oversight of the credit providers.

Current pending amendments to the Privacy Act will drastically change that situation. At the moment, the situation is what is referred to as a "negative credit reporting" regime - the information appearing on a consumer's credit file is largely restricted to information concerning enquiries about credit and defaults made, without information about the way their accounts are being regularly conducted or even which accounts they actually have. The amendments will seek to change to a "positive credit reporting" regime, meaning that lenders will be able to access up to date information about what accounts a consumer actually has and how they are being conducted.

While on one hand the positive credit reporting regime will give lenders access to more information to make a decision about credit provision, it will also require that they upload their information to the individual's files. At the current moment, the exact form and requirements of that action is unknown. However, it is expected that there will be a financial impost on business to transition their systems and procedures in accordance. Further comment on the extent of these cannot currently be made.

Personal Property Securities

State Regulation - Historic

Prior to 2009, each state regulated the taking of security over property, both real and personal. This power had an overlap under the Corporations Act in respect of property owned by companies (which related to the taking of company charges "fixed" against nominated property, or "floating" over all company assets).

For lenders operating within one state only this meant that they had to deal with a specific range of legislative instruments depending on the items they chose to take security over, and whether they lent to corporations. For example, a lender in Queensland would possibly have had to deal with the following:

- For security over land (real property) - the *Land Title Act (Qld) 1994*
- For security over motor vehicles - the *Motor Vehicles and Boats Securities Act (Qld) 1986*, incorporating the Register of Encumbered Vehicles ("REVS")
- For security over non-road registered equipment - the *Bills of Sale and Other Instruments Act (Qld) 1955*
- In respect of corporations - the *Corporations Act (Cth) 2001*

Difficulties arose where lenders operated in more than one state, or took security over items which were easily transported (eg cars) across state boundaries. As soon as a state line was crossed, three of the four acts listed above ceased to have authority. This necessitated lenders having individual compliance and procedure for each individual state.

Determining this situation to be problematic, the Commonwealth took over regulatory authority for personal property. We are unaware of any current status or plan to do similar in regards to real property.

Federal Regulation - Current

With the advent of the *Personal Properties Securities Act 2009* ("PPSA"), and the Personal Properties Securities Register ("PPSR"), taking security over almost all forms of personal property came under one act. In terms of a lender operating in one state (and referring to the example given above), their requirements under the *Land Title Act* remain the same while the other acts were subsumed by the PPSA (including the *Corporations Act*, which relinquished the taking of charges to the machinations of the new act). All up, not a huge difference.

However, in terms of a lender operating in more than one state, this greatly reduced the number and range of compliance issues that they had to deal with. No matter where they operated, they only had to deal with their state's requirements for real property and the PPSA.

In theory, this would ease the workload for business considerably. However, the practical effect has been less beneficial. Specifically, some examples of the detriment being caused are:

- The PPSA introduced new and, at the time, alien concepts that were inconsistent with established practices. The situation now arises where an owner of goods may have to take security over them because of the removal of title retention clauses (Romalpa clauses) in contracts.

- With the dissolution of the charges register, it is now impossible to create a company charge over real property. The Commonwealth Attorney-General's department, who administered the PPSA before it was handed off to the Insolvency Trustee Service ("ITSA"), were questioned on this point by the writer in the lead up to the implementation of the PPSA. Their response was that "lenders don't take company charges over land", despite the writer pointing out that it was common practice in his experience dealing with both lenders and corporations as a lawyer and he had created or released such charges hundreds of times.

- Registration proves to be cumbersome in respect of certain items, predominantly motor vehicles. Such registrations may only be made according to the vehicle's Vehicle Identification Number ("VIN") which is a unique identifier. It is also a rather lengthy one coming in at 17 digits. Any error in entering the VIN when either searching or registering an interest can lead to an ineffective transaction. In the case of a registration this includes a loss of security where the error goes unnoticed, because a search of the correct VIN would not disclose the interest. Under the previous REVS , interests were entered against three identifiers - VIN, registration number and engine number. This was a much more robust method which, through the redundancy, countered a simple error in data entry as a match in any of the identifiers would disclose the appropriate interest.

- As an addendum to the above, having the PPSR only allow attachment to the VIN means that the lender now either has to separately register an interest against a vehicle's engine or risk loss (such as in the case where an engine is removed and placed into another vehicle). This was raised with the Commonwealth Attorney-General's representatives who stated that this situation would not happen, despite the writer pointing out that it had happened on a number of occasions to the companies he represents.

- Despite the PPSR allowing registration and notice to the world of an interest in an object, the PPSA allows that interest to be extinguished in circumstances where the security is disposed of "in the ordinary course of business". The specific example that relates is where an encumbered vehicle is bought and sold by a motor dealer. As soon as the dealer sells the vehicle, the lender loses all right in the vehicle - despite the "security" of registration and the requirement that the motor dealer conduct appropriate searches of the register prior to purchase and sale. Government has stated that lenders may chase the proceeds of the sale, but this is cold comfort to the lender as the proceeds may no longer be realisable and, in the event of insolvency, they would rank as unsecured creditors - assuming that the lender can even find the correct party against which to take action as there is no apparent power to require that information be disclosed.

- On inception, the various state security registers were uploaded to the PPSR (where possible). However, no filtering or duplication checking took place. Lenders are now in the situation where ghost registrations or multiple registrations in respect of certain securities are causing problems - in some instances to the complete surprise of business. This is caused, for example, where lenders have had to register their interests in multiple jurisdictions over a vehicle with the various state REVS, or automatic reciprocal registration has occurred. A common example is that it appears most or all Queensland REVS registrations were automatically duplicated in the New South Wales REVS, and both interests were uploaded to the PPSR. This has created instances of two PPSR registrations arising out of a single security, unknown to the lender and "ghost" PPSR registrations of securities long since released. Sorting out these instances is an ongoing and daily issue to lenders, ours included, in having to ascertain the existence and status of interests and arranging their release.

Anti-Money Laundering and Counter-Terrorism Financing

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ("AMLCTF") set requirements for a number of industries in relation to information collection and integrity, event reporting and document retention; the lending industry included. Previous to the AMLCTF, most financial transaction reporting requirements had been looked after by APRA regulated entities (eg banks).

With the Act's inception, lenders were required to:

- register themselves with AUSTRAC;

- create compliance programs in compliance with the legislation;

- monitor and report on suspicious and threshold level transactions;

- submit to regular compliance reporting and irregular auditing; and

- retain records for a minimum of seven years.

Each of these requirements have incurred extra cost for business.

In 2011 a supervisory levy was introduced by AUSTRAC to fund its operations. This levy is payable annually by reporting entities. While most of the levy is paid by "big business", it still costs small lenders such as ourselves several hundred dollars per year (the exact figure is set by AUSTRAC annually by apportioning the cost of its operations amongst the number of leviable entities). Our last paid annual levy, in late 2012, was $300.

In isolation this amount is not especially high, but it comes on top of other regulations and costs such as those discussed in this paper.

RESPONSES TO QUESTIONS SET OUT IN THE COMMISSION'S ISSUES PAPER

Note: There is little to no regulator involvement in terms of privacy regulation. We have divided comments between credit regulation ("ASIC") and anti-money laundering and counter-terrorism financing ("AUSTRAC").

1. **What, if any, regulatory problems arise from the absence of a consistent definition of small business?**

There is no predominant problem in our industry in terms of the range of definitions of small business. The requirements placed on credit businesses do not differ based upon their size but, rather, upon the activities in which they engage. No concessions are made to small businesses.

2. **If a single definition of small business was considered appropriate, what factors would need to be taken into account in its development? Should it be based on a measure of firm size or the organisational characteristics of the business?**

Determining the mark of small business is not appropriately done by reference to one set of circumstances (such as employee numbers). This is because the nature of business in each industry may be widely disparate. For example, some industries are labour intensive and require many employees inherently (such as manufacturing and telemarketing), while others do not (such as IT and finance broking).

It is not considered appropriate to have individual definitions of small business for each industry, since this would be cumbersome and problematic for the purposes of clarity in reference.

Instead, the following ideas could help to universally define small business:

(a) A certification available through the Australian Taxation Office based upon the taxation returns of the business. By comparing the amount of revenue of the business to key expenses (so as to remove artificial amounts), a factor could be determined. Having that factor below a certain amount could be determinative of small business status.

(b) Identifying a number of areas that are intrinsic to business, such as number of employees, gross revenue, length of operation, its relationship to other businesses (ie related corporations, franchise relationships) or size and number of physical premises. For each area, a threshold value is set. Then, if any particular business is below the threshold in a certain number of areas (which could be preset for basic classes of industry) they would qualify as a small business.

3. **Are there any benefits from having definitions of small business that are specific to particular regulatory purposes?**

It is no doubt useful to particular regulators to have definitions that fit according to their particular sphere of influence. However, this is problematic since each regulator will have a different objective and rationale in their decision making , potentially causing a widely disparate set of definitions to arise. This could be further complicated as definitions are changed over time to keep pace with regulatory reform.

Ultimately, the answer to this question is yes. But when it is considered in terms of an overall situation and not just the particular regulators, there are problems with numerous definitions when reference is made to "small business" in third party situations.

4. **What are the key factors that influence how regulators engage with small business and in what manner are individual factors influential?**

We have not seen any evidence of regulators changing the way in which they deal with industry based on whether it is with small business or not. In fact, the only real indication we have seen of any attempt to identify that a regulator is dealing with small business lay in standard forms where the regulator (such as ASIC, for example) asked the party completing the form to disclose how long it took to complete the form if they met "small business" type conditions.

5. **What are leading regulator practices in relation to:**
- **monitoring of business awareness and understanding of regulation?**

ASIC: Requires annual certification statements to be submitted. Have issued statutory notices to provide information to businesses, but have not provided feedback on these as far as we are aware (and we have been the subject of such statutory notices).

AUSTRAC: Requires annual certification statements to be submitted. Will proactively contact business based on certifications if an area of further information is required.

- **ensuring regulatory decisions and advice are clear, accessible, consistent and timely?**

ASIC: Does not engage with business to provide advice on regulation past what is published in their regulatory documents and information sheets, which are non-specific and principle based. Does not automatically provide information to licensees, but requires them to proactively subscribe to a newsletter (which is not advertised) to be able to receive information about updates.

AUSTRAC: Is willing to engage with business on an individual basis to assist with particular difficulties (and seek particular information). Prior to implementing the AMLCTF Act, they sought specific advice from particular industries into how the regulations would practically affect them. Provides a newsletter obtained by proactive subscription, but does not advertise it.

- **addressing the information needs of small businesses including those located in regional areas or those with owners/managers of a non-English speaking or Indigenous background?**

ASIC: Unknown.

AUSTRAC: Unknown.

- **ensuring the information businesses provide is necessary and that feedback about the impact of such requirements is taken into account?**

ASIC: The information required from businesses is set out in mandatory format by ASIC. We have been the subject of repeated mandatory requests by ASIC and they have shown little to no regard for the impact that the timing or quantity of information requested has on us. Typically they require physical production of documents within a one week time frame.

AUSTRAC: The AMLCTF Act requires report submission by business in certain circumstances. The level and complexity of the submission does not differ according to the size of the reporting business. However, since the report is about their business, it is inherent that the complexity scales commensurately. No response regarding the impact of the requirements has been seen.

6. **Do compliance and enforcement approaches and the decisions of regulators appropriately reflect the likelihood and consequences of non-compliance?**

ASIC: ASIC are heavily involved in monitoring our industry for perceived non-compliance. From our industry's point of view, their approach to enforcement is overbearing and out of proportion. There appears to be no scalability with respect to the level of business they are dealing with, or the particulars of the conduct itself. Since ASIC refuses to give any insight into their enforcement processes and procedures beyond bland basics, it is impossible to tell if they internally apply consideration of these factors.

We have seen, from our own experience, that ASIC shows little propensity to engage with business or seek to understand the particulars of the business conduct, its motivations or aims. It is particularly worrying that they do not appear to have a grasp of realism in the marketplace, due both to the lack of

time in which they have been involved and an apparent inability or interest in distinguishing between the various sectors of the finance industry.

AUSTRAC: We have not seen any need for a compliance or enforcement approach by AUSTRAC into the small loans industry. The extent of involvement that we have any knowledge of has been restricted to the completion and submission of compliance reports. In such cases where they have sought further information or clarification in respect on these, they have generally made direct telephone contact and clearly explained the requirements necessary.

- **What systems and approaches do regulators use to inform themselves about risks, including emerging risks? Do regulators have a good knowledge of the areas they regulate that are high risk?**

ASIC: It appears that the primary means by which ASIC informs itself are:

(a) Issuing statutory notices to produce documents and answer questions. There is little to no communication or discussion regarding these notices, and little lead time. ASIC will simply serve a notice with a number of requirements and questions, and business is expected to provide that data by the required date at the required place, in physical format.

To date, the writer has responded to around 30 such notices in the preceding two year period, the majority of which require physical production of documents to ASIC officers within a one week period. No feedback has been received in respect of any of these productions, despite occasional request (at which time, the writer was simply told that ASIC does not comment on ongoing matters).

(b) Receiving complaints about business conduct. ASIC has a readily accessible complaints referral mechanism where consumers and their representatives may provide complaint information about industry conduct. It has come to our attention that this process is being misused by certain consumer advocates, who are referring every instance of business activity as a complaint to ASIC, regardless of merit (and apparently without making any attempt to determine if a breach exists). ASIC's response to this phenomenon is unknown.

Of further note, ASIC's investigators appear to show no interest in engaging with business for the purposes of streamlining their activities. At one point, the writer requested the opportunity to meet with an ASIC investigator to provide information that may be of assistance in respect of an investigation and was immediately rebuked, with a comment to the effect of "when we want to know something, we'll ask you a question."

AUSTRAC: AUSTRAC conducted focus groups and sought feedback from interested parties prior to inception of the regulatory framework. The nature of the AMLCTF Act is that registered entities must comply with reporting requirements of specific conduct, and AUSTRAC uses these to inform themselves of the conduct of those entities. Entities are required to self-assess their risk level by reference to the services they provide. It is unknown the extent to which AUSTRAC monitors this as extensive investigation was undertaken in the mentioned focus groups, so that industry and AUSTRAC both had detailed knowledge of the requirements and appropriate levels. It is therefore assumed that since no great changes have been experienced within the industry that would affect their AMLCTF reporting requirements, there has been no need for further investigation.

- **Do regulators respond proportionately to compliance breaches? Do they have enough flexibility in terms of how they respond?**

ASIC: To date, we have seen no evidence that ASIC responds to any indentified compliance breach in any way except by the prosecution of business. This information is only garnered by reference to ASIC's media releases regarding their activity[17].

ASIC has a range of options available to it to deal with perceived breaches:

- Enforceable undertakings;

- Denial and revocation of licence;

[17] Primarily via the Media Centre on ASIC's website, found at www.asic.gov.au/asic/ASIC.NSF/byHeadline/Media%20centre

- Banning orders;

- Civil prosecution; and

- Criminal prosecution.

AUSTRAC: AUSTRAC have been seen to be proactive in helping business identify innocent breach in compliance, particularly because of the relative inexperience of many operators in these requirements. At such times, AUSTRAC have taken a conciliatory approach and encouraged business to rectify the fault (albeit under threat of penalty for non-compliance). There appears to have been little need for AUSTRAC to take further action but, when they have, it has for the purposes of ensuring continued compliance with the regulatory requirements[18].

AUSTRAC has a range of options available to it, including enforceable undertakings, civil and criminal prosecution.

- **Which regulators most effectively manage risk and what particular strategies have worked well?**

ASIC: ASIC do not effectively manage risk and are not proactive in engaging with industry to ascertain or ameliorate any risk of compliance breach. To make matters worse, in circumstances where ASIC has allegedly identified a breach it has not explained what conduct has been singled out, how it is claimed to have breached the legislation or what actions are expected of the business in rectification.

AUSTRAC: AUSTRAC's strategy of engaging with business and making efforts to understand their methods of operation has worked well. Despite the imposition of the annual charge, most businesses see little problem with compliance under the AMLCTF Act and have managed to integrate the Act's requirements into their business models.

7. **What factors cause individual officers to diverge from appropriate behaviours?**

The answer to this is unknown. The only protracted regulator involvement we have had has been with ASIC, and we are unable to ascertain what is appropriate behaviour as ASIC refuse to comment or identify their behaviour. And, when questioned about behaviour that is apparent, they continue to refuse to provide comment.

8. **What are the relative risks presented by small business compared to larger businesses? How does this relationship vary between regulatory areas?**

Small business, generally, is not able to cope with extensive regulation as well as larger business due to having less resources (both in terms of compliance with the requirements themselves, and the ability to source the particulars of law change with sufficient lead time to implement them). This is an endemic issue across most industries.

From the regulators' perspective, indentifying and reaching small business to engage with them may be problematic due to their inherent size and spread. Even when contact can be made, their lack of resources can further confound things by not having a dedicated compliance person to engage with regulators.

However, as long as those issues can be overcome, there should be little relative risk between dealing with small business and large business. While big business may be better placed and resourced to manage risks, small business is less complicated and could be argued to place a greater degree of importance on self-responsibility and accountability (whether this is because of "pride" in their business or because the potential ramifications for breach of the law could be disastrous to the business owners is most likely the subject of further debate).

Ultimately, it is perhaps not the level of compliance that needs to be changed when shifting from dealing with big business to small business but, perhaps, the method and approach.

9 **What coordination occurs between and within regulators to share business data and avoid overlap and duplication in forms and data requirements?**

This is unknown, and largely due to a lack of engagement by the regulator. For example, the writer has dealt with at least six ASIC representatives to date, in two states, with no apparent communication between them or identification of the relationship they bear to each other or our business. Overlap and duplication has been identified but the extent to which it

[18] For example, by taking an enforceable undertaking that an external consultant would be engaged to assess compliance - www.austrac.gov.au/12july2012.html

is apparent is unclear – simply because the data requests have become so extensive and convoluted that it is difficult to impossible to unravel them for scrutiny.

10. **To what extent do regulators use emerging technologies, such as online tools, to improve access to information and increase compliance?**

All regulators we are aware of use website and email as the primary means of informing industry of developments.

11. **Which regulators have appropriate mechanisms for handling complaints and resolving disputes? Are they tailored for small business?**

ASIC are largely unresponsive to communication about their conduct, regularly citing that they do not comment on ongoing matters. Further, no assistance is provided in how to make further query or complaint. It is apparent that they are unable or unwilling to respond to such matters.

AUSTRAC, by its very nature and the requirements of the AMLCTF's requirements, is unlikely to receive any complaints.

12. **How do regulators' engagement approaches affect the nature and impact of compliance costs on business? What are some examples of regulators' engagement approaches that impose excessive or unnecessary costs on business?**

ASIC's non-communicative approach in the face of the nature of the legislation itself (being that it is principles based and apparently "scalable") makes for a particularly problematic situation for business. Little to no guidance is given on the level of compliance that is expected from business in practice, with constant reference to key terms which are undefined - such as "reasonable inquiries", "assessment of unsuitability" and "substantial hardship". The regulator has shown no willingness to give clarity to these terms, instead referring the onus back on to business to be determinative of what is needed to comply.

Unfortunately, from business' point of view, this is not a tenable position due mostly to the potential ramifications if they get it wrong. Breaching the NCCP Act, for example by getting the determination of these phrases incorrect, can lead to a range of terminally damaging consequences for business as ASIC has a wide range of powers (as discussed above in 6).

This leads business to become over compliant lest they run afoul of the regulator, since the breach will only be identified retrospectively. Not only does this increase the cost to business in attempting to obtain specialist advice, it also costs in the loss of business through being overly conservative in operation. Potential avenues to cut excessive compliance are going untouched, causing business to be possibly overspending in this area.

13. **Which regulators monitor and/or seek to measure the regulatory compliance costs their administration and enforcement practices impose on business? What regulators do this most effectively?**

None that we are aware of.

14. **In what ways can regulators improve their current engagement approaches and compliance practices to better achieve regulatory objectives and reduce unnecessary compliance costs on business?**

ASIC needs to have some involvement with small business and must at least make an attempt to understand their situation. The credit reforms have largely thrown small business to the wolves in terms of ability to deal with massive changes in compliance. This, coupled with the "big stick" of penalties for non-compliance, is beginning to see the exit of many small operators from the marketplace. Legislators and regulators are seen as largely uncaring, unapologetic and failing to understand the consequences of their actions on business or its customers while, all the time, overstating the need for stringent control of the small loans industry. It is unfortunate, to add insult to injury, that the majority of the information that has been relied upon to justify this stance is tainted by bias and selective removal of relevant fact.

We are happy with AUSTRAC's minimal approach.

15. **In what ways do regulators currently provide special assistance or employ a different engagement approach for small business?**

ASIC: None whatsoever.

AUSTRAC: Employ a one on one engagement approach with small business, which is welcomed.

16. **Under what circumstances, if any, is it appropriate for regulators to adopt a different engagement approach for small business?**

All regulators should have the ability to tailor their approach for small business, as their focus, operation methods and structures are often vastly different to those of big business. Regulators' primary aim should lie in the fostering of compliance with the legislation, not the punishment of transgression. Failing to be able to engage with small business to further that aim of compliance is therefore a failure on the part of regulators to conduct themselves in accordance with their purpose.

17. **What aspects of a regulator's performance and, in particular, their engagement practices, should be monitored and/or subject to review? What key aspects of regulator's performance might it be possible and informative to measure and compare?**

We are particularly concerned with ASIC's performance and practices. They appear to largely operate on a "star chamber" basis and have what appears to be no direct ministerial oversight into their activities. In our case, we are unaware of the identity of officials scrutinising our industry past the individual officers who contact us.

We are not even aware of exactly what ASIC is doing, to be able to make comment of their performance aspects.

ANNEXURE 1

New South Wales file note released under Freedom of Information:

07/012377

File Note – 3December 2007

- As indicated in the Commissioner's Invitation to Comment, this review was conducted in accordance with the requirements under the Subordinate Legislation Act 1989 and is not the review of the cap as indicated by former Minister Beamer.
- The Invitation to Comment informed stakeholders that the submissions received as part of this current review will be considered at the time the cap is reviewed.
- File closed pending the commencement of the cap review at a date yet to be determined.

[redacted]

Consumer Protection Policy
3 December 2007.

ANNEXURE 2

Western Australia refusal of access to lender profitability review, requested under freedom of information.

Government of **Western Australia**
Department of **Commerce**

Consumer Protection

Our Ref: CP02271/2009
Enquiries: [redacted]
(08) 9282 0624

22 June 2009

Mr Robert Legat
National Financial Services Federation
PO Box 1443
NERANG QLD 4211

Dear Mr Legat

FREEDOM OF INFORMATION APPLICATION

I refer to the Freedom of Information application made by you on 21 October 2008, and the notice of decision issued to you on 16 December 2008 stating that an edited copy of the report 'Review of the Viability of Interest Rate Caps on Consumer Credit Providers' would be provided to you in response to your application. The report contained an analysis of data collected from short term lenders in Western Australia.

The decision to provide you with an edited copy of the report was based on initial legal advice received by the Department of Commerce (the Department). However, since the notice of decision was issued, new information has come to light regarding the processes by which data was collected from the short term lenders.

Further legal advice obtained in regard to this issue confirms that the Department has a legal obligation to hold the data received from the short term lenders in confidence. Therefore, in accordance with clause 8(1) of Schedule 1 of the *Freedom of Information Act 1992*, the Department cannot disclose this information and is therefore unable to provide you with a copy of the report.

I understand that a cheque for $85.00, made out to Fast Access Finance (Cairns) Pty Ltd, was issued on 16 June 2009 and has been sent to you. This is a refund of the $30.00 application fee and the $55.00 paid for photocopying and time spent by the Department in dealing with your application.

Enclosed is an information sheet regarding your rights of appeal, should you be aggrieved by the Department's decision to refuse access to the report. An application for internal review must be lodged within 30 days of the date of this letter. You also have the option of applying for an external review by the Information Commissioner. An application of this nature must be lodged within 60 days of the date of this letter.

If you have any queries arising from this letter, please do not hesitate to contact [redacted] or via email at [redacted]@commerce.wa.gov.au.

Yours sincerely

[redacted]

A/Manager
Finance and Valuation Industries Branch

Forrest Centre 219 St Georges Terrace Perth Western Australia 6000 Locked Bag 14 Cloisters Square Perth WA 6850
Telephone Administration (08) 9282 0777 Call Centre 1300 304 054 Facsimile (08) 9282 0850
Email: online@commerce.wa.gov.au Internet: www.commerce.wa.gov.au

Rob Legat

From: [redacted] <[redacted]@commerce.wa.gov.au>
To: "Rob Legat" <fafral@tpg.com.au>
Cc: [redacted]" <A[redacted]@commerce.wa.gov.au>
Sent: Monday, 20 July 2009 12:18 PM
Subject: RE: Freedom of Information

Hi Rob

I refer to your email of 23 June 2009.

Legal advice obtained by the Department of Commerce confirms that the report cannot be released in any form, even if all identifying particulars have been removed. The reason for this relates to the processes by which data used in the report was collected from short term lenders. Please refer to the letter dated 22 June 2009 for further information.

Regards

[redacted]

From: Rob Legat [mailto:fafral@tpg.com.au]
Sent: Tuesday, 23 June 2009 8:48 AM
To: [redacted]
Subject: Re: Freedom of Information

Hi [redacted]

Has consideration been given to my request, ages ago, that all identifying particulars be taken out of the document before provision? In essence, our main interest is in the conclusions drawn.

Regards,
Rob

> ---- Original Message ----
> **From:** [redacted]
> **To:** fafral@tpg.com.au
> **Sent:** Monday, June 22, 2009 2:30 PM
> **Subject:** Freedom of Information
>
> Hi Rob
>
> Please refer to the attached letter. The original is being sent in today's mail.
>
> As of today, I have started a new position. However, I am retaining responsibility for this FOI application and will be available to deal with any further issues that arise. If you need to call me, my new number is
>
> Regards
>
> [redacted]
> This email is from the Department of Commerce and any information
> or attachments to it may be confidential.
> If you are not the intended recipient, please reply mail to the sender
> informing them of the error and delete all copies from your computer system,
> including attachments and your reply email. As the information is confidenti
> you must not disclose, copy or use it in any manner.

ANNEXURE 3

Partial list of requirements for credit licensees under the *National Consumer Credit Protection Act 2009*:

- Responsible managers to pass the "fit and proper person test"
- Membership of an approved external dispute resolution scheme
- Compliance plan for general licence conduct
- Compensation policy
- Conflict of interest policy
- Internal dispute resolution policy
- Financial resources plan
- Hardship policy
- Intellectual property plan policy
- Risk management policy
- Staffing resources policy
- Compulsory professional development training compliance plan
- Credit representative management plan
- Credit guide
- Credit assessment
- Lending documents
- Default documentation