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Mr William Devlin
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The Treasury
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13 July 2016

By email: CreditCards@treasury.gov.au
Cc: Will.Devlin@treasury.gov.au

Dear Mr Devlin

CREDIT CARDS: IMPROVING CONSUMER OUTCOMES & ENHANCING COMPETITION

The Australian Finance Conference (AFC) appreciates the opportunity to inform the Government's consideration of actions proposed to address concerns that have been raised about the credit card market.

Background

By way of background, the AFC was formed in 1958 as the national association of finance companies and has evolved into a non-institutionally-based financial services association. Our membership (list attached) includes financiers involved in the bank and non-bank sectors of the market. AFC credit provider member companies provide the full range of lending financial services in both the consumer and commercial markets. In the consumer context, this includes credit card products which are the subject of the proposed reforms. For some members the credit card product is the dominant product in their business.

Market Context

Credit cards are unique consumer finance products. As has been noted in the Discussion Paper, other products offer credit or provide a means to make payment. Credit cards do both.

The Australian credit card marketplace is vital. Credit cards are central to the lives of most Australian consumers and represent a key medium for consumer spending. With that unique profile, they serve as a means by which Australians spend billions of dollars every year and are consequently a key input to the continued strong performance of the Australian economy.

For example, in 2015, based on ABS reported data¹, on average some 188.5 Million purchases were made using credit cards or charge cards accounting for close to \$24 Billion in purchase volume. And while the aggregate approved available credit limit for the millions of credit card holders has increased in recent years (as at December 2011 from \$137B to \$147B in December 2015 up by 7.3%) the utilisation of available credit (aggregated balances) in that period has increased (but only by 3.4%). Further, the component of the aggregated balance that is accruing interest has significantly decreased (down 11%) in that period with repayments significantly increasing (up 24%). We also note the RBA reported data on the aggregate household saving ratio in Australia showing that in the latter half of

¹ RBA Statistics Credit & Charge Card Statistical Aggregates available from:
<http://www.rba.gov.au/statistics/tables/xls/c01hist.xls> and <http://www.creditcardfinder.com.au/credit-card-statistics#accruing-viz>

the 2000s savings increased markedly and remained close to 10%; though we acknowledge this has declined slightly over the past three years or so².

We also note this data also appears to be reflected in research work undertaken on behalf of ASIC for some years and its most recent update: [Australian Financial Attitudes and Behaviour Tracker \(Wave 4: September 2015-February 2016\)](#) when respondents were asked what repayment behaviour they had engaged in over the last six months. As noted in the Report:

“Of those Australians with a credit card, the majority reported paying the balance in full each month (64% Wave 1, 58% Wave 2, 63% Wave 3, 61% Wave 4)³, and around one quarter reported having paid some money in addition to the minimum amount due (21% Wave 1, 26% Wave 2, 24% Wave 3, 23% Wave 4)⁴.

All this data appears to support the view that has been expressed in the Paper that “*the majority of Australians are using their credit cards responsibly.*”

More broadly the credit card market in Australia is also a market undergoing rapid change. The entire credit card lifecycle is moving online with consumers increasingly use digital channels to apply for cards, to manage their accounts, and to make payments. Major security innovations are underway. Digital technology is bringing new forms of competition to an already competitive market⁵. And appropriately in a competitive market, participants are developing and launching to market innovative ways to differentiate their product offerings from their competitors which will have flow on consequences for the broader market without any need for government or regulatory intervention⁶.

Reform Context

The unique features of credit card products as continuing credit contracts has seen for some several decades their separate treatment from other consumer credit contracts (eg home loans or personal loans) in consumer protection laws. Parliament in enacting these laws has included provisions specifically designed to reflect the unique characteristics of the credit card product. This separation in regulation has been continued most recently in the July 2010 enactment of the Commonwealth National Consumer Credit & Protection Act (NCCPA) and National Credit Code (NCC) though noting this has largely replicated the separation in product regulation in the state-based Uniform Consumer Credit Acts and UCCC enacted from 1 November 1996 some two decades ago and on which the NCC was largely based.

Consumer protection has been a tenet underpinning government reform of these laws including the recent proposals:

“Consumers have wanted greater credit card protection and better transparency in their contracts. Now they have it. In one of the toughest stances taken on credit card reform, the federal government has ... key changes to contracts, which it says will empower consumers and give them a “fairer go with their credit cards”....The tougher rules for credit card providers should help card holders better understand their financial obligations for their credit cards....The changes to credit card laws should allow consumers to make better informed decisions.”⁷

² RBA Statement on Monetary Policy- Schedule B Household Savings Ratio (February 2016)

<http://www.rba.gov.au/publications/smp/2016/feb/box-b-the-household-saving-ratio.html> (Graph B1).

³ Wave 1 March 2014-August 2014; Wave 2 September 2014-February 2015; Wave 3 March 2015-August 2015; Wave 4 September 2015-February 2016.

⁴ Wave 1 March 2014-August 2014; Wave 2 September 2014-February 2015; Wave 3 March 2015-August 2015; Wave 4 September 2015-February 2016.

⁵ This is equally the case internationally including in the US as similarly reported in the US CFBA CARD Act Report (December 2015)

⁶ For example, Citibank Australia’s product outlined at page 24 of the Discussion Paper.

⁷ Consumers Win at Cards Katherine Jimenez The Australian Wealth (pg 5) June 15, 2011

These sentiments could reflect the expectation of outcomes from what has been proposed by the federal Government in its *Discussion Paper: Credit Cards – Improving Consumer Outcomes and Enhancing Competition*. They were, however, the sentiments reflected in media articles and government policy papers to champion reforms to consumer credit card laws introduced by the (then) federal Government to implement its pre-election commitment; namely, *Fairer, Simpler Banking – A Better Financial Deal for Hard Working Australians* which took effect in 2012. The outcome saw industry resources channelled at a significant cost to make the necessary changes specific to their credit card products with the primary objective arguably to improve consumer outcomes and enhance competition. Have the reforms worked and, if not, is further regulation the appropriate response? We raise this not to criticise or minimise the importance of the objectives underpinning the Government's consideration, but to give a context to them.

We also think it useful to note the background to the 2012 credit card reforms which were preceded by reforms based on recommendations made by the Productivity Commission on culmination of its *Review of Australia's Consumer Policy Framework (No. 45 30 April 2008)*; A key recommendation of the Commission and one we understand has also been adopted by the federal Government, was that for the future development of consumer policy:

"The overarching objective should be to improve consumer well being by fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith."

It was also recommended that responsibility for consumer credit regulation should be transferred from the states to the federal Government, with ASIC the primary regulator.

This was progressed as part of the COAG *National Partnership Agreement to Deliver a Seamless National Economy*. More particularly, the National Consumer Credit Protection reform package as outlined by the federal Government in the National Consumer Credit Implementation / Action Plan released in September 2008. In announcing the reform package, again we note the (then) Government's clear intention:

"This plan will significantly boost consumer protection, cut red tape for business and deliver on our commitment to modernise Australia's key financial services with the provision of single national regulation and oversight."

The plan was annexed to the agreement entered into, the National Credit Law Agreement, that committed COAG participants to the package and proposed timeframes.

The result has been the 2010 transfer of consumer credit regulation from the States to the Commonwealth together with the introduction of a broad licensing framework mandating EDRS membership, imposing a statutory framework badged responsible lending accompanied by a framework of significant criminal and civil sanction in the event of breach. Significant resources were consumed to ensure industry was compliant within narrow, statutorily- set timeframes.

A little over two years later our industry saw that primary framework amended by two significant amendments designed to either implement (former) Government's pre-election or broader policy commitments (eg home loan key fact sheet reforms – effective 1 January 2012 and credit card reforms – effective 1 July 2012) or Phase 2 Stage 1 components of the package (eg Enhancements Act – effective 1 March 2013 / 1 July 2013) with the flow on consequences for industry to implement.

We outline this to highlight the commitment given through COAG participants in the National Credit Law Agreement to commence a review of the operation of the National Credit Law no later than 2 years from commencement.

We understand that the basis for this commitment was for the Government through market testing and resultant evidence to determine whether the policy objective underpinning

enactment of the NCCPA is being achieved; namely, consumer well-being has been improved through the fostering of effective competition thereby enabling confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith.

Some six years post-commencement, we continue to await commencement of this review process⁸. In this regard we note commentary in the Paper (at page 4) in relation to the decline in the balance of credit card debt vs. approved limit (some 10% decrease since 2011) and the postulation that “*reforms enacted under the NCCPA in 2009 and 2011 may have [AFC emphasis] contributed to improved repayment behaviour*”. We encourage the Government to implement this commitment and raise this in the context of the current reform proposals as we see the outcomes of this post-implementation consideration as critical to decisions by the Government to extend the current obligations imposed on credit card providers under the NCCPA. In our view we question whether consideration of amendments to the current credit card protections and potential impacts to the broader market might be premature in the absence of the conduct and findings of a review that indicates more than consumers and competition **may** have benefitted from the enactment and amendment of the NCCPA. Such a Review should provide evidence to substantiate a view that there has been beneficial outcomes supporting the foundation that underpins the design of the current NCCPA framework from which any additional proposed developments is to be built. If the foundation is flawed; this will likely flow to or detrimentally impact proposed extensions.

AFC Recommendation: *In line with the COAG agreement, we recommend that the federal Government should as a priority conduct a holistic post-implementation review of the NCCPA to inform consideration of further regulation of consumer credit card products. That this should include the proposed behavioural research (similar to what has been proposed to be conducted for the Table 1: Phase 2 credit card reform proposals) to inform regulatory design architecture; in particular for future disclosure obligations. And take into account the exponential growth in technological developments and the Government’s commitment to technological neutrality and encouraging innovation to drive economic growth in Australia.*

We further note that a separate stream of consumer protection and competition enhancement work in the last few years has seen our credit card issuer members engage in the RBA consultation on the regulation to interchange fees and surcharging standards and have input in reform to remove access restrictions to open the credit card market. Again, this work builds from consultation between the AFC, other stakeholders and RBA which commenced back over a decade ago in 2002 with the outcome of a package of reforms developed in response to RBA concerns that:

“the spectacular growth of credit cards was at odds with the fact that, for the community as whole, they are an expensive way of making payments”.

Back then, three major reforms introduced to address this concern were:

- 1) a standard on interchange fees so that the fees charged did not exceed a cost-based benchmark for each scheme with the objective of saving merchants cost which could be passed on to consumers,
- 2) merchants permitted to surcharge customers who chose to pay with credit cards designed to encourage consumers to use cheaper payment methods (eg debit cards or cash); and
- 3) lessening restrictions on access to the schemes to open up the market to new entrants and provide competition.

The outcome of recent consultation will largely see a new standard of interchange fee introduced, new rules around surcharging and removal of the final restrictions to open access to schemes. These are to take effect shortly.

⁸ Though acknowledge work underway in the SACC-regulated market in response to the more specific statutory review obligation.

AFC Recommends: *In line with our comments earlier, we encourage the Government to allow the RBA 2016 payments systems reforms to take effect and following a reasonable period from commencement (eg two years) be tested against their underlying policy objectives to determine whether they have been achieved. And if not, what, if any, further reform may be warranted to protect consumers from identified risk or to further enhance competition.*

Further, we understand what has been proposed by the Government, at least in relation to the Table 1: Phase 1 elements, is policy development. Therefore, in line with the Government's commitment to best practice regulation and red-tape reduction principles⁹, any proposed reform would require evidence-based research to clearly establish:

- the nature of the problem (including how significant it is); and
- why actions additional to existing measures are needed,

recognising that not all 'problems' will justify (additional) government action.

Recourse to a regulatory response (eg further responsible lending prescription) would only occur where an evidence-based market failure (including consumer risk) had been identified. Then, after considering all feasible options (non-regulatory and regulatory) to address the shortcoming and achieve the Government's policy objective, a regulatory response has been determined as justifiable and appropriate despite potential additional compliance costs or other impacts for business, including our members (eg restriction of competition).

This background has framed the AFC's response. General comments follow. Feedback on specific proposals is detailed in an attached table.

Government Objective in Consultation

The Government is soliciting feedback from the AFC and other stakeholders to:

- Ensure that the reform package best balances the objectives of improving consumer outcomes and enhancing competition, whilst minimising the potential for unintended outcomes and unnecessary compliance costs for industry.”

Input is specifically sought on:

- Whether the proposed reforms are commensurate with the magnitude of the problems identified and the potential for any unintended consequences not already identified;
- The Government's assessment of the regulatory benefits and costs outlined in the paper.

Nature + Significance of Problem

Based on information included in the Discussion Paper, we understand:

WHAT: “The **majority** of Australians use their credit cards responsibly.

There is, however, **a subset** of consumers incurring very high credit card interest charges on a persistent basis because of the:

- inappropriate selection and provision of credit cards; and
- certain patterns of credit card use.

For this subset of consumers, credit cards **may** impose a substantial burden on financial wellbeing”.

^{9 9} http://www.finance.gov.au/obpr/proposal/gov-requirements.html#_Principles_of_good - 2006 Banks Taskforce on Reducing the Regulatory Burden on Business – Principles of Good Regulatory Process – Australian Government Requirements & COAG

AFC Comment:

Reflecting the Government's findings, the AFC recognises that there is likely a group of customers that have existing credit card accounts that have outstanding balances the repayment obligations of which may impose a substantial burden on their financial well-being.

But the challenge for government and industry is to clearly determine the magnitude of this issue to be in a position to determine an appropriate response. We submit that relevant metrics to determine significance will include factors like:

- clarification of the concept of "financial well-being" and what constitutes a "substantial burden" - as a minimum we suggest that the concepts would cover a credit card customer who is unable to meet his or her ordinary day-to-day living expenses from income remaining after paying what is due and payable on their credit card account (eg the minimum monthly repayment); and
- the number of credit card holders that have these characteristics with a clear causal link between the credit card product as a dominant factor or cause of risk to financial well-being of the customer.

In that we are not suggesting that where a causal link has been established that a response by government is not appropriate; more that in line with the Government's commitment to best practice regulation-making and a proportionate response that the magnitude of the consumer harm or risk to be addressed has been identified by evidence-based research and a targeted and proportionate solution can be designed and implemented.

We also acknowledge that the driver for the development of the credit card product was consumer demand. Consumers were looking for a payment method that was flexible, convenient and removed the need to carry cash. A means of payment that could be easily and readily utilised including to meet day-to-day expenses (eg bill payments) or purchases. Competition facilitated innovation which over time saw products launched to market with features attractive to consumers (eg lengthy interest free periods; rewards programs). In turn, as the market has matured, programs have been developed and launched to enhance consumer-choice among providers by making change to a new provider more attractive (eg cards offered with nil or a nominal APR% balance transfer). A further development which has cemented the value of the credit card product is the exponential growth in the on-line market, and the use of credit cards to pay for online sales. And also product innovation as noted earlier.

The market is mature and significant. We note information that has been included in the Discussion Paper in this regard. Key elements have been included in the Paper and include:

- Reliable data on the numbers of consumers that are in credit card distress is not publicly available.
- Default rates and losses on credit card loan portfolios give a sense of the % of credit card balances that are in severe distress. Total annualised losses on the major banks' credit card loan portfolios (which make up approximately 85% of the total market) are approximately 2.5%.
- There are 16 million credit and charge cards for our adult population with most having more than one credit card.
- We note our earlier comments on volumes of purchases by number and \$, and balances approved vs. limits utilised.
- Credit card balances have reduced recently and repayments significantly increased on an aggregated basis. The exact reason has not been identified. The reason proposed in the Discussion Paper is that the decline "*reflects that credit cards are an expensive form of credit and relative price increase*" as has been suggested in the Discussion Paper (at pg 4). However, our members have suggested that the decline

may indicate that customers have sufficient capacity to reduce their debt levels; an equally feasible explanation.

- Credit limit aggregates - we also note the demographics of the aging population with those in, or approaching, retirement having the capacity to repay the monthly balance but still as a precaution may maintain their credit limit.

In summary, there is limited evidence to determine the number of current credit card account holders that are “at risk” from interest-bearing debt they hold as a result of use of their credit cards. We also note relevant metrics in relation to credit card repayment behaviours including in reports recently produced by ASIC and the ABS (referred to in our response at Table 1 Phase 1 Proposal 1). All but an indeterminate portion of the consumer credit card holder population in Australia appear to be appropriately protected by current regulation. In the absence of evidence determining the magnitude of the problem we submit it is difficult to determine what solution is appropriate let alone whether any proposed solution is proportionate. In our view, the Government has not yet produced evidence that clearly identifies the magnitude of the problem.

WHY? The Government finds that these outcomes reflect:

- a relative lack of competition on ongoing interest rates in the credit card market (arising partly because of the complexity with which interest is calculated); and
- behavioural biases that encourage card holders to borrow more and repay less than they would otherwise intend leading to higher (than intended) levels of credit card debt.

AFC Comment:

We note the findings included in the Discussion Paper but make the following observations based on feedback from members and general market information available publicly:¹⁰

- Credit card issuers include a diverse and significant range of ADIs and non-ADIs; recent removals of access inhibitors by the RBA that took effect in January 2015 has further enhanced the environment for other market entrants to provide further competition. We acknowledge that there is market concentration with a few major players, including the major banks and a couple of others within our membership – but note the significant number of other entities that currently provide products and compete in this space. And commentary in the Paper that indicates the 2015 changes is also having a market impact of enhancing competition.
- There are a broad range of credit cards available in the market with a variety of features.
- Credit cards consumers have never been better informed about the risks and benefits associated with their product. Credit card providers are statutorily obliged to disclose key elements of the credit card product and do so in a way that is transparent and facilitates consumer understanding (eg to comply with the NCCP Act / NCC requirements and the ASIC UCTB2C requirements). Disclosure obligations have been enhanced including as recently as July 2012 with, for example, credit card providers statutorily mandated to give customers a Key Fact Sheet to facilitate their shopping around to compare like-for-like products and a requirement to include Minimum Repayment Warning (MRW) to be calculated taking into account the individual's particular usage and to be included on the front page of periodic statements.
- Not all products have a high APR%. In fact some are set as low as 4.15% pa¹¹. This does not take into account the myriad of offerings for a zero or nominal interest balance transfer.

¹⁰ Including from online product comparison websites like Infochoice (www.infochoice.com.au)

¹¹ Data obtained from Infochoice (www.infochoice.com.au)

Real issue – a social issue and relevance of financial literacy

AFC supports a regulatory outcome that facilitates financial inclusion of financially vulnerable consumers. However, we also note that in the AFC view, the real policy issue with financial vulnerability is one of social and income inequality; rather than lack of competition or behavioural biases influencing consumer behaviour. This is because some consumers are forced to borrow to meet pressing basic needs, not because the poorest consumers pay more for credit or face the prospect of over-commitment through the use of credit as often alleged. Consumers with limited income and resources have no choice other than to borrow to meet basic needs.

No amount of regulatory responses to credit or other finance product provision will change this situation. The unintended outcome of regulation to appropriately targeted to address consumer risk or market failure will be to make credit or any other finance product more difficult or expensive to get, thereby resulting in the exclusion from the consumer finance market of low income earners or those with poor credit ratings. As a result, these consumers may resort to other sources of finance, including unregulated sources. In effect, the outcome of the regulation will be to harm rather than protect consumers and to cause a market failure.

As has been noted by the Government a key contributor to risk of financial vulnerability or over-commitment is a lack of understanding or appreciation of financial matters, including budgeting basics. As noted in the Centrepay Review Report¹²:

“Financial literacy, in turn, is about understanding money and finances and being able to apply that knowledge confidently to make effective decisions. Good financial literacy skills help individuals and families make the most of opportunities, meet their goals and secure their financial wellbeing, as well as contribute to the economic health of society.

“Improved financial literacy can increase economic participation and social participation, drive competition and market efficiency in the financial services sector, and potentially reduce regulatory intervention. As noted in the submission from the Department of Families, Housing, Community Services and Indigenous Affairs (FHCSIA), there are currently a range of government-funded programs and services for those on low incomes at risk of financial exclusion to improve their financial literacy and build self-reliance. These include Indigenous Community Links and the Financial Management Program, offered through over 750 non-government organisations nationally”.

We acknowledge the Government’s efforts and encourage and are supportive of further work in this regard and would be happy to engage with the Government, including through ASIC, to facilitate this.

HOW to be FIXED?

The Government proposes a set of reforms that it considers **are proportionate** to the **magnitude of the identified problems**.

The proposed measures form part of a wider package of reforms that should improve competition and consumer outcomes in the credit card market.

Others:

- FSI recommendations Treasury / RBA / Productivity Commission work in progress including measures to:
 - 1) improve the efficiency of the payments system – interchange fees + surcharging;

¹² Available from: <http://www.humanservices.gov.au/spw/corporate/publications-and-resources/centrepay-review/resources/report-of-the-independent-review-of-centrepay.pdf>

- 2) support access to and sharing of credit data.
- Treasury / RBA reforms (January 2015) to open up the credit card market to a wider pool of potential card issuers
- SACC / CL Review – further NCCPA regulation (eg caps, enhanced responsible lending compliance, disclosure, anti-avoidance).

In considering the content of the paper and questions posed, a fundamental issue for the AFC and its members remains unclear and unanswered; namely, why is the Government engaged in consultation on an issue the magnitude of which has failed to be clearly identified and also given the range of recent reforms to equally achieve the consumer protection and enhanced competition objective sought to be achieved in the further reforms proposed. We submit that what has been proposed for the Phase 2 reforms in relation to consumer testing may equally be of value for both the current requirements (eg a post-implementation review) and any further proposed. This Review should also take into account other and equally relevant market developments that interface and potentially shape consumer exposure or risk to credit; including greater participation in the comprehensive credit reporting system.

PHASE 2 Further Disclosure Proposals

We note additional disclosure proposals contained in Phase 2 elements of the Discussion Paper. The AFC considers that disclosure requirements are important; however, the amount of information required, its relevance at the time and the way it is regulated are of concern. The process of applying for and obtaining a credit card product is illustrative of our argument that the amount (rather than the form) of information is too great in the context of all the material a consumer receives, resulting in the information not being sufficiently assimilated at the pre-contractual stage.

While simplification of the summary of financial information may assist (eg as has been promoted through the mandating of the Credit Card KFS), what is missing from the disclosure requirements is the education of consumers on how to use the information.

We note work that has commenced in relation to financial literacy referred to earlier (including ASIC's MoneySmart website), and encourage the continued development of relevant education programs by the Government, with input from industry, as the most appropriate means to address perceived consumer risk areas within the context of assisting consumer's better understand what they are committing themselves to by obtaining consumer credit to acquire goods or land or for other purposes.

In our view and in line with earlier thinking within Officers of Treasury:

*"effective consumer financial protection requires a holistic consideration of four main areas: disclosure, advice, product regulation and financial literacy. Potential synergies between these four can have a multiplier effect on the effectiveness of individual components, enhancing the overall efficiency of the policy framework"*¹³.

AFC Recommendation: *As noted earlier, in line with the COAG agreement, we recommend that the federal government should as a priority conduct a holistic post-implementation review of the NCCPA to inform consideration of further regulation of consumer credit card products. This should include the proposed behavioural research (similar to what has been proposed to be conducted for the Table 1: Phase 2 credit card reform proposals) to inform regulatory design architecture; in particular for future disclosure obligations. It should also take account of the plethora of material that a credit card provider may be statutorily obliged to provide under the NCCPA and other relevant laws (eg Corporations Act Chapter 7 for AFSL holders and transactions that may include a FSR-regulated product together with the credit card product).*

¹³ Consumer Financial Protection: Future Directions Dr Richard Sandlant (2011)

Conclusion

The AFC and its credit card provider members appreciate the opportunity to inform consideration of the proposed reforms. We look forward to the opportunity for continuing engagement on these important reform measures. As occurred in the past with the engagement of industry including the AFC and its members through the Treasury Credit Card Working Group, we submit that operational input at the earliest point is critical to any government achieving consumer policy or competition objectives and the appropriate architecture to implement the policy. We therefore encourage the Government to ensure operational considerations are taken into account in the development of the reforms that have, through evidence-based research, been determined to require a regulatory solution to address in a proportionate manner that evidence-based consumer risk. AFC and our credit card members would welcome opportunity to participate.

We are happy to discuss our comments in further detail. Please feel free to contact me either by phone 02 9231 5877 or email helen@afc.asn.au. Recognising the current political challenges following the 2 July election, we nevertheless suggest it may be useful to meet in person with the relevant Government Minister and Treasury. And will be in contact to progress this.

Kind regards

A handwritten signature in black ink, appearing to read 'Helen M. Gordon', with a horizontal line underneath.

Helen Gordon
Regional Director

Attachments:

1. AFC Response – Proposed Actions & Problems Addressed
2. AFC Membership List



PROPOSED

TABLE 1: Phase 1 Proposed Reform – Draft Legislation

The Government seeks stakeholder feedback on the following reform proposals with a view to developing and releasing associated exposure draft legislation to implement in the near term.

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
<p>1. Tighten responsible lending obligations to ensure card issuers assess suitability based on a consumer’s ability to repay the credit limit within a reasonable period</p>	<p>Problem Addressed: Over borrowing contributing to financial distress</p> <p>AFC Response: The AFC does not support the proposed reform. Our reasons follow:</p> <p>Case for Reform? The Government does not appear to have suggested limiting the proposed reform and it would likely impact ALL existing customers (in relation to assessments of credit limit increases on existing facilities) and new customers (for new credit card application assessments going forward). It will impact compliance obligations of our members and other credit card issuers in the market without evidence of magnitude to support or justify this outcome as proportionate.</p> <p>Compliance obligations would bring cost (in changes to systems, processes, documentation and staff training) though we acknowledge these will largely be borne up-front. It is likely these costs will be reflected in product pricing with the outcome that ALL consumers will pay more for a credit card product post-commencement. And we note that, the proposal will likely bring with it new and potentially significant criminal and civil sanction in the event of breach (similar to the current responsible lending obligations) exposing our members to further potential regulator activity and significant pecuniary outcomes.</p> <p>An additional compliance burden would also impact new entrant decisions impacting the potential for further providers and enhanced competition in the Australian market (the second key policy objective). The recent efforts of the RBA to remove inhibitors to scheme access with the objective of attracting new participants in the Australian market and therefore increasing competition may consequently be undermined.</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>As noted in our covering letter and as reflected in the data included in the Discussion Paper, the majority of customers of our members (or the market more broadly) are using credit cards as valuable tools for managing their financial affairs. This majority do not appear to be in “financial distress” from having credit card account(s). In fact recent ABS data showing a decrease in the balances outstanding (by 10% from 2011 to 2015) and increased repayments (up 24% in the same period) indicates customers are proactively working to meet their credit card out-standings. And for those that are transactors and financially able to fully meet the balance outstanding each statement period and that represent a significant portion of the overall customer-base, they have the added benefits of lengthy interest free periods on purchases or expense payments and reward outcomes.</p> <p>We appreciate that for revolvers the outcomes may be different. But again note that not all revolvers fit within the characteristics of customers that are “substantially at risk of having the unpaid balance of credit card debt on which they are accruing interest detrimentally impact their financial well-being”.</p> <p>In the absence of data from the Government, we are challenged with determining the exact number of customers that might meet these characteristics and are therefore “at risk” and warrant further investigation of cause and potentially a regulatory solution to address. We note attempts in the Paper to give some granularity around this including using default rates as a proxy for credit card accounts in severe distress and total annualised losses on the major banks’ credit card loan portfolios (eg around 2.5%).</p> <p>What has been presented in the form of anecdotes from consumer advocates, while concerning unfortunately do not give a clear idea of how widespread across the credit card industry are the problems faced by the case-example individuals.</p> <p>And while industry data appears to indicate that a small portion of holders of credit card accounts may be financially stressed, what still remains uncertain is other relevant metrics to assist determine cause (or identification of contributing factors) and therefore assist with the design of an appropriate solution including: the actual number of financially distressed customers, whether they hold a single or multiple credit card accounts, whether they also have exposure to other forms of consumer credit (including debt owing to telecommunication or utilities providers), or any analysis of these customers’ literacy / educational level, primary language, location of residence, employment, income-source, physical or mental health, change in relationship-circumstances or other demographic that might also be relevant to an assessment of the causal link between holding a credit card and being in financial distress.</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>In this regard we note work undertaken on behalf of ASIC and the most recent update: Australian Financial Attitudes and Behaviour Tracker (Wave 4: September 2015-February 2016) and note the following (from page 43):</p> <p>Reported repayment behaviour over the last 6 months (%) <i>The chart below shows the reported repayment behaviour of surveyed Australians across Waves 1 to 4 of the research. For each financial product owned, respondents were asked what repayment behaviour they had engaged in over the last six months.</i></p> <p><i>Of those Australians with a credit card, the majority reported paying the balance in full each month (64% Wave 1, 58% Wave 2, 63% Wave 3, 61% Wave 4), and around one quarter reported having paid some money in addition to the minimum amount due (21% Wave 1, 26% Wave 2, 24% Wave 3, 23% Wave 4).</i></p> <p><i>More likely to report in Wave 4 that they paid the minimum amount due each month on their credit card</i> NON-PROFESSIONALS Wave 1: 10% Wave 2: 10% Wave 3: 5% Wave 4: 10%</p> <p><i>Professionals were more likely to report they had paid some money in addition to the minimum amount due, but not the full amount on their home loan/mortgage in Wave 4</i> PROFESSIONALS Wave 1: 61% Wave 2: 62% Wave 3: 52% Wave 4: 64%</p> <p><i>Females were more likely than males to have paid some money in addition to the minimum amount due (but not the full amount) on their credit card</i> FEMALES Wave 1: 22% Wave 2: 30% Wave 3: 25% Wave 4: 27% MALES Wave 1: 20% Wave 2: 22% Wave 3: 23% Wave 4: 20%</p> <p><i>Those living with children were less likely to have paid the amount due in full each month on their credit card</i> LIVING WITH CHILDREN Wave 1: 54% Wave 2: 55% Wave 3: 60% Wave 4: 53% NOT LIVING WITH CHILDREN Wave 1: 69% Wave 2: 59% Wave 3: 63% Wave 4: 65%</p> <p><i>Renters were more likely to have missed one or more minimum payments due on their credit card</i> RENTERS Wave 1: 6% Wave 2: 4% Wave 3: 5% Wave 4: 8% HOMEOWNERS Wave 1: 2% Wave 2: 2% Wave 3: 2% Wave 4: 3%</p> <p>Further, we have also extracted and included below some relevant information produced by the ABS in its 4159.0 - General Social Survey: Summary Results, Australia (released 29 June 2015):</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>BEING IN WORK LIKELY TO SHIELD PEOPLE FROM FINANCIAL STRESS</p> <p><i>The level of financial stress a household experiences is strongly influenced by the employment status of the people who live there. The GSS provides information on differences in the financial status of households where the responding person was employed, unemployed, retired or not in the labour force for other reasons (such as not working due to caring responsibilities or own health issues). In 2014, people who reported they were unemployed (27%), retired (29%) or not in the work force for other reasons (26%) were much more likely than those who reported they were employed (4.3%) to live in households in the lowest weekly household income quintiles (Table 14).</i></p> <p><i>One indicator of financial stress is whether a household has experienced a cash flow problem in the last 12 months, such as being unable to pay bills on time or seeking help from family and friends. Nearly half of unemployed people lived in a household with at least one cash flow problem, as did almost a third of people not in the labour force for reasons other than being retired. In contrast, about one in five employed people lived in a household with at least one cash flow problem in the last 12 months (Table 14 and Graph 2).</i></p> <p><i>Another indicator of financial stress is the inability to raise \$2,000 within a week for something important. About a third of unemployed people and a quarter of people not in the labour force for other reasons lived in a household with this source of financial stress. Employed people and retired people, however, were much less likely to live in households unable to raise \$2,000 quickly (Table 14 and Graph 2).</i></p> <p><i>Unemployed people were also more likely to live in a household that took a dissaving action in the last 12 months, compared with people not in the labour force for other reasons and retired people. Dissaving actions include drawing on savings, increasing a credit card balance by \$1,000 or more and taking out a personal loan (Table 14 and Graph 2).</i></p> <p><i>Although retired people often relied on government payments and many lived in households in the lowest income quintiles, they tended to show signs of greater financial security. More than four fifths (83%) of retired people lived in a household with no consumer debt - such as credit or store cards that are not paid off, car loans or personal loans - and they were up to five times more likely than other groups to live in a household where the mortgage had been paid off (Table 14).</i></p> <p>On this basis the evidence to support a regulatory solution of further responsible lending obligations that would potentially impact ALL customers (existing and future) regardless of the range of metrics that appear to be relevant is unclear and, in our view, unsustainable. As a consequence, the solution designed would not appear to be targeted and proportionate to address the evidence-based consumer risk that has been</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>identified by the Government. If enacted, it would therefore potentially put in jeopardy the Government's objective of a proportionate response and its commitment to best-practice regulation making and red-tape reduction.</p> <p>Further, as noted in the Discussion Paper credit card issuers must comply with the NCCPA responsible lending obligations. If they do not, they risk significant outcomes. For example, as reflected in The Cash Store Case, ASIC has the legislative power, capacity and appetite to successfully pursue enforcement action in the courts and have credit card providers face significant pecuniary sanctions if found in breach of the NCCPA responsible lending provisions (eg for the entities found in breach in this case close to \$19M).</p> <p>In addition, our members take into account guidance provided by ASIC to support their responsible lending compliance design; in particular ASIC RG 209 Credit Licensing: Responsible Lending Conduct. While not legally binding, RG 209 is nevertheless seen as a "safe-harbour" compliance standard by industry; in short, if compliance is set to meet RG 209 the risk of ASIC-enforcement activity, or findings of wrong-doing, is minimised.</p> <p>Since initial release, ASIC has revised this publication to take into account legal developments (eg The Cash Store Case), the findings and recommendations of thematic market research conducted by it (eg ASIC Report 445 Review of Interest-Only Home Loans) and enforcement activity undertaken. And pending revision, it publishes outcomes providing detail of its concerns and appropriate action for the guidance of NCCPA-regulated providers.</p> <p>For example, as reported in ASIC Media Release 16-009MR, in response to ASIC's concerns about reliance on automated processes in potential breach of its NCCPA responsible lending obligation to make reasonable inquiries about an individual customer's financial circumstances before increasing a credit card limit a major bank has committed to:</p> <ul style="list-style-type: none"> • changing its credit limit increase processes to ensure that, at a minimum, reasonable inquiries are made about a customer's income and employment status to ascertain their financial situation before the limit is increased; • Implementing a remediation program involving a review of credit limit increases previously provided where a cardholder experiences financial difficulty, with consumer refunds paid where appropriate; • engaging an independent external expert to provide assurance of the effectiveness of the remediation program; and

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<ul style="list-style-type: none"> • making a \$1 million payment to support financial counselling and financial literacy initiatives. <p>The published outcome in practice sees credit card providers review their compliance and, where required, to revise them to adopt or modify requirements to minimise the risk of ASIC engaging with them and facing similar outcomes (or more severe on the basis that ASIC had published earlier guidance to the market with the expectation that it would shape compliance frameworks across the regulated-industry segment).</p> <p>And quite separately from regulatory risk, reputational risk is a significant motivator for our members. Particularly for those that are publicly listed companies, risk of breach or even publicity about engagement with ASIC has the potential for broader and significant consequences.</p> <p>And while obvious we nevertheless see value in highlighting that central to the sustainability of our members remains an ongoing engagement with their customers in a highly competitive market. Contrary to statements in the Discussion Paper, in our view consumers have never been as spoiled for choice as they currently are taking into account diverse product offerings, providers and channels of distribution (including digital / on-line channels which have even recently included facilities that enable transacting using a phone rather than a card). The costs to identify and on-board a new customer far exceed the benefits and cost of maintaining a relationship with an existing customer. Further, should a provider find that a customer is not able to meet the debt owing on a credit card, for example of \$10 000, and have to write it off; to off-set the loss or detrimental impact to its bottom-line, the provider would have to write a significant volume of new business. Based on current margins one member has indicated this would need to be close to \$1M.</p> <p>We also note that for any of our members' customers that find post-approval should their circumstances change that may see them experiencing financial hardship in meeting their credit card repayments that there are significant statutory rights available under the NCCPA for these to be considered and payment obligations adjusted. These were also amended effective from 1 March 2013 to improve customer access and utility. Based on feedback from our members, customers in financial difficulty are utilising these rights, as they should. Our members have responded by resourcing teams dedicated to managing hardship requests with flow-on benefits for customers and credit card providers alike with both parties able to arrive at an outcome that facilitates a repayment pattern that meets the customer's needs while ensuring the credit provider is repaid.</p> <p><u>AFC Recommendation:</u> Based on the above, in our view, in the absence of more data to clearly identify otherwise, the current NCCPA obligations together with ASIC oversight, prudent lending and good</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>customer relationship management practices represent a proportionate obligation to address the subset of consumers for which credit cards may impose a substantial burden of financial well-being. In our view, based on data included in the Discussion Paper and feedback from our members' experience in the credit card market there is no case established to support additional responsible lending obligations.</p> <p>We note the Government's suggestion that for the majority of credit card consumers the proposed change is unlikely to have any effect. We therefore question why a credit card issuer should be put to the compliance cost of mandatory assessment across their portfolio? A better approach may be to identify the "at risk" customer demographic and tie any proposed additional obligation to applications for credit cards or credit limit increases from consumers that meet these (akin to the SACC protected earnings prohibition for Centrelink recipients).</p> <p>Regulatory Design at Odds with Underlying Product We understand the objective in proposing to introduce and mandate a not unsuitable assessment that assumes the credit card product has a fixed "reasonable" term; namely minimising the potential for commitments to adversely impact a consumer's financial situation and ability to make payments as they fall due or within a reasonable time. However, the regulatory design appears at odds with the unique characteristics of the underlying product as a continuing or revolving credit contract that differentiates it from other credit contract products (eg an unsecured fixed-term loan). Both forms are currently regulated under the NCCPA, but in recognition of the different features, in enacting the law, the Parliament included a regulatory framework that operates differently for each and appropriately maintains the distinction. Our members are opposed to a regulatory approach that would operate to effectively blur what Parliament has recognised as an important distinction.</p> <p>Operational Effect – Restriction of Access to Credit In practice, the outcome of the proposed reform will have impacts for consumer access to credit card products. For example, while the "reasonable" timeframe will be heavily potentially case-specific, for the purposes of operationalising the proposal, we have considered its implications for a credit card application for a \$10 000 limit based on a variable APR% and assumed an assessment as if it were a variable unsecured loan with principal and interest repayable within 3 years assuming the same APR%.</p> <p>However, we have also understood that the Government does not intend to turn the credit card product into an unsecured fixed term loan. In consequence, the credit card product will be used as currently designed; in short, assessment would be based on a customer's capacity to make minimum monthly payments over</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>the 3 year period. It is assumed that the assessment would require a higher capacity than is currently assessed in order to ensure there is repayment capability within the timeframe.</p> <p>On this basis, our members have indicated that:</p> <ul style="list-style-type: none"> • their approval rates would drop; and • credit limits at origination would also drop. <p>They have also indicated a likely similar outcome for credit limit increases.</p> <p>A further possible adverse financial impact that has been identified is the potential for the psychological view of the customer of a credit card product to be detrimentally impacted when the limit sought was not approved and this may flow into his or her use behaviour. If a customer has had a negative experience this will colour their future use of the facility.</p> <p>Should our understanding be incorrect, and there is a suggestion that the proposal would also bring with it obligations to change minimum monthly payments; the impact would be significantly larger and would also fundamentally change the character of a credit card treating it as if it were a personal unsecured loan. For reasons outlined above, we do not believe this is intended and would strongly oppose such an outcome.</p> <p>Reasonable Period?</p> <p>For reasons given above, in the absence of evidence to determine magnitude of the problem seeking to be addressed by the proposed regulation, an outcome that would impact ALL customers applying for a credit card or an increase of their credit limit would not appear proportionate and should not be pursued by the Government. Therefore, in our view, there is no need to consider how the concept of “reasonable period” should be defined.</p> <p>Should Government pursue this proposal, we recommend restricting the application to the “at risk” customers and suggest an approach to capacity or over-commitment similar to the current SACC protected income prohibition for Centrelink recipients may be appropriate. In short, if an applicant for a credit card or an increased credit limit receives more than 50% of his / her income from Centrelink benefits then a credit card provider is prohibited from approving the application if it would result in the customer using more than 20% of their income to meet the minimum monthly repayment. This avoids the challenges of defining “reasonable period” which arguably is variable on a customer-by-customer basis.</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
<p>2. Prohibit issuers from making unsolicited credit limit increase offers including the ability to seek prior consent</p>	<p>Problem to be Addressed: Over-borrowing contributing to financial distress</p> <p>AFC Response:</p> <p>Case for Reform? We re-iterate our comments about the lack of evidence to substantiate the magnitude, (ie the nature and size) of the potential problem being sought to be addressed in contrast with what will be a significant potentially adverse outcome for the greatest majority of consumers flowing from the proposed “one-size fits all” reform solution. In the absence of an identified need to warrant this response, we again note it would be at odds with the Government’s commitment to a proportionate response and its commitment to best practice regulation and red-tape reduction.</p> <p>Further, as noted in the Discussion Paper a key protection for consumers that was included in the NCCPA in the (then) Government’s 2011 FSB package of amendments to the NCCPA was the prohibition on unsolicited credit limit increase invitations that was accompanied by significant strict liability criminal and civil sanctions for breach.</p> <p>We note the Government’s suggestion that <i>“it is aware that:</i></p> <ul style="list-style-type: none"> <i>some card issuers circumvent the spirit of the legislation by making unsolicited offers by other means, such as over the phone or via online banking portals;</i> <p>We again observe that no data has been provided to indicate the extent of what Government has indicated is inappropriate behaviour of the credit card issuing industry in relation to the first concern. In this regard we note that the concept of “writing” included in the prohibition appears broad enough to encompass electronic means of writing (as defined in the Commonwealth Acts Interpretation Act) and therefore invitations offered through digital channels would appear not only to be against the spirit of the NCCPA but potentially in breach. However, we acknowledge the potential adverse outcome that a technical legal interpretation may result if one focusses on the fact that the prohibition only deals with “written” communication.</p> <p>AFC Recommends: In the interests of compliance certainty and to assist the prohibition reflect the consumer protection policy that underpinned it, we support amendment of NCCPA s. 133BE(5) definition of “consumer credit increase invitation” to omit “writing” with the effect that the manner of communication will</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>no longer be relevant so all forms (written or oral) would be captured.</p> <p>We also note the further Government comment that:</p> <ul style="list-style-type: none"> • <i>consumers are often unaware that they have granted their prior consent to receiving the offers because of the way in which consent is sought at the time of applying for a credit card</i>'. <p>A lack of data appears equally true of the assertion in the second aspect.</p> <p>And in relation to potential concerns with credit card issuers not obtaining the “informed” consent of consumers, we note that ASIC has again shown the breadth and strength of its enforcement powers under current provisions of the ASIC Act in action taken in the Federal Court against a credit card issuer in relation to the manner in which it obtained the consent of customers to enable it to overcome the NCCPA prohibition against CCLIs in breach of provisions prohibiting the making of false and misleading representations or from engaging in misleading and deceptive conduct and the substantial pecuniary penalty (\$1.5M) that was awarded against the credit card provider¹⁴. In our view, the current substantial powers available to ASIC under the various laws (eg NCCPA; ASIC Act; Corporations Act) together with its public stance on corporate culture provide it with a significant arsenal of tools to ensure credit card providers behave in a way that achieves technical compliance and also compliance with the policy that underpins the law. We also again reiterate other drivers that exist for our members including minimisation of damage to reputation that aid this outcome.</p> <p>We also note the regulatory response proposed devalues both the cost and effort that our members and others have expended in implementing compliance processes to obtain and record customer consent including for their extensive portfolio that existed in the lead up to the commencement of the FBS amendments and since. They have and continue to make credit limit increase invitation to customers who have consented. Consent may be obtained from the customer at the time of application or in response to marketing campaigns designed to capture such consent.</p> <p>The reform proposal represents a material change to the current practices with the effective outcome that no credit card provider, will be permitted to:</p> <ul style="list-style-type: none"> • market to customers to get their consent to then offer credit limit increase invitations, and;

¹⁴ ASIC v GE Capital Finance Australia [2014] FCA 701

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<ul style="list-style-type: none"> relying on consent previously obtained to invite the customer to apply for a credit limit increase which would still see the credit card provider obliged to assess in accordance with the responsible lending obligations that ASIC has continued to enhance before it could actually approve the request. <p>We have been advised that this will have significant outcomes for customers and providers. For providers in particular it will have significant revenue implications with likely flow-on outcomes to off-set with reduced expenses or increased cost to retain current levels of profitability.</p> <p>We further note, that under the current NCCPA requirements, even if a credit provider has the customer consent to outbound credit limit increase invitations, they are prohibited from a process that would see the offer being made on a “preapproved” basis. In short, the responsible lending obligations would need to be complied with in the assessment of any extension of a customer’s credit limit regardless of whether the request for the increase was initiated by the customer independent of the credit card issuer or in response to an approach initiated by the provider in reliance on the prior obtained informed consent of the customer. Should the credit card provider fail to comply with these obligations the outcomes potentially are significant as noted in our response to Proposal 1 (above).</p> <p>We therefore fail to understand the justification for the proposed reform and oppose its introduction on the basis that we are not aware of evidence of significant consumer risk that would appear to warrant a customer no longer having the ability to give consent to be invited to apply for an increase in his or her credit limit. Further, we suggest that if the majority of consumers, particularly transactors were apprised of the proposed reform that they would vehemently object on the basis that they gain benefit from a process that operates to remind them of the opportunity to apply for an increase in their credit limit (subject to the provider’s responsible lending compliance and assessment process) while maintaining control of its availability through providing or withdrawing consent.</p> <p>We also note that the Government should be concerned that in taking forward such a proposed reform that it does not unintentionally prevent a credit card issuer from being able to proactively market product offerings and their features. In short, it is important for Government to distinguish between solicitation to obtain consents to invite credit limit increase invitations being extended and the ability of a provider to communicate product features to customers, such as the ability to manage limits (up or down). By providing product functionality information customers should be able to easily identify how they can voluntarily provide their consent to receive future marketing offers regarding limit increases.</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>AFC Recommends: In the absence of clear evidence to substantiate a regulatory reform that would result in the complete removal of the current process that enables a credit provider who has obtained the informed consent of its customer (which is available to be withdrawn by the customer at any time) to be able to proactively make credit limit increase invitations, reform should not be pursued and this process should be retained.</p> <p>There is currently adequate protection in the application of the responsible lending provisions that oblige a credit card provider to obtain and verify financial circumstance information of the particular individual (including employment and income) as part of assessing an application to increase a credit card limit which when coupled with ASIC’s significant enforcement powers for breach operate to appropriately protect consumers from over-borrowing contributing to their financial distress.</p>
<p>3. Prohibit issuers from backdating interest charges and charging interest on the portion of the balance that has been paid off</p>	<p>Problem to be Addressed: Complex application of interest charges</p> <p>AFC Response: We note that in 2011 a proposal to amend the NCCP laws to standardise how interest was charged on credit card products that offer an interest-free component included in the (then) Government’s FSB package of proposed reforms was not finalised or implemented. The reasons for that remain relevant and should equally see the current Government decide not to take forward this reform proposal.</p> <p>In short, the complexity of the application of interest charging is not a reason to standardise on the basis of what is perceived as “fair” or “unfair” to a consumer. For many of us that are not numerate, the methodology used to calculate interest on any credit product, including for example a home loan or personal unsecured loan is equally complex. The complexities increase given the diverse way in which interest might be charged on finance obtained – for example, for a home loan, interest calculations may be based on a variable APR% or an APR% fixed for a given term; with repayments might include both principal and interest or interest only; with interest payable in advance for a given term or interest payable in arrears on a cyclical basis.</p> <p>For credit card products, the complexity arises to a large degree from the different methodologies used across the industry in relation to products that have an interest-free component offered. We agree that the</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>application and charging of interest is complicated including in relation to these products. We also understand how the interest-free period operates with various products offered varies across the industry. However, this variation reflects a competitive market which is a good customer outcome. We also understand that in considering this issue that the Government, industry and consumers are aligned in their understanding that the funds drawn on a credit card limit are funds owned or advanced by the issuing institution and the institution is able to recover what it has lent to the customer to facilitate the purchase or meeting of an expense on a commercial basis (ie are able to charge interest for funds that a customer has borrowed when the customer does not pay the entire borrowed funds within the required time period).</p> <p>It is also important to note that changes to the interest methodology might also impact the payment allocation or hierarchy rules that apply and were introduced and took effect in 2012 in the NCCPA as a result of the 2011 FSB reforms.</p> <p>The proposal to standardise interest charging for products with an interest-free component would necessitate significant cost to re-design and implement interest raising, application and processing systems for our members. One has guesstimated that the cost for implementation alone would be in the vicinity of \$2M to \$4M. They have further suggested that quantifying the actual interest yield impact beyond acknowledging that it would have a material impact is too difficult at this stage because of the extensive nature of work required and the current lack of detail and ambiguity of the proposed reform.</p> <p>Our members have also highlighted that the Government needs to keep in mind the clear distinction between when interest is applied (ie charging – which is what the Government has focussed on in its policy) vs. when interest is incurred. In line with the Government policy, how interest is charged is relevant at the point the customer is looking to compare products; namely at the outset of the arrangement – giving them the ability to compare apples with apples. As we understand, the mandated credit card KFS is intended to assist in this regard. What (if any) interest is actually incurred, becomes apparent at a later point in the transaction and is largely individualised, dependent on a customer’s particular behaviour, which is beyond standardisation (and comparison) on a credit card issuer’s customer portfolio basis let alone an industry-basis, and for both practical and policy reasons outside the parameters of the Government’s proposal to improve consumer outcomes.</p> <p>All new customers should be given the benefit of maximising their interest free days. If, however, the customer does not repay the entire balance then interest should be applied and billed to the customer for the amount still owing and interest should continue to be charged until the customer repays both the</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>outstanding principal and any accrued interest. This does necessitate the retrospective application of interest to the transaction date but this only occurs when the payment status / behaviour of the customer is known. The proposed reform will bring about standardisation, however, it goes too far (in the fact that it potentially would grant a borrower access to free money agnostic of their repayment behaviour).</p>
<p>4. Require issuers to provide consumers with online options to initiate a card cancellation or reduce their credit limit</p>	<p>Problem to be Addressed: Over borrowing through accumulation of multiple cards</p> <p>AFC Response: In principle our members are supportive of a digital option for a customer to initiate a card cancellation or reduction of credit limit. However, as has been acknowledged in the Paper, account closure may require a range of outstanding matters to be met as a pre-cursor to the final act. This may also be true of a proposed reduction in credit limit. Therefore, while these actions could be initiated online, interaction with the customer including through a telephone conversation are likely to continue to be required. We also note that an appropriate transition time should be considered to facilitate the ability of our members to build the digital initiation option into their schedules for other IT-maintenance to enhance efficiencies and reduce cost.</p> <p>Should we have misunderstood and the Government is proposing a reform that is intended to see a customer being given the ability to close the account or reduce the credit through a digital means this would have significantly different outcomes for our members and we would again question whether such a response would be proportionate to the magnitude of evidence-based consumer need.</p>

TABLE 1: Phase 2 Proposed Reform – Responses informed by Consumer Behavioural Testing + / or self-regulation by industry

Government plans to shortly commence behavioural testing with consumers to determine efficacy in the Australian market and to ensure they are designed for maximum effect. Testing will be led by the Behavioural Economics Team of the Australian Government.

Decision to implement these measures will be subject to the results of:

- (1) consumer testing and
- (2) the extent to which industry presents solutions of its own accord.

The Government intends to commence consumer testing in the near term and will report on the outcomes of that testing and make a final decision on implementation in due course.

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
<p>5. Require that issuers provide information on the annual cost of a consumer’s credit card use and to prominently display annual fees</p>	<p>Problem to be Addressed: Lack of competition on ongoing interest rates; consumers in unsuitable card products; over borrowing and under repayment</p> <p>AFC Response: We note and reiterate our comments about the value of disclosure in our covering letter. We also note the FSI Report findings, recommendations and Government response to disclosure as a consumer protection.</p> <p>And on a practical consumer behavioural level, we also note for this and other reform proposals below promoting additional disclosure an extract from a Report¹⁵ published in December 2015 from the US Consumer Financial Protection Bureau (with AFC emphasis):</p> <p><i>“ A substantial and growing number of consumers are managing their financial lives electronically and online, and credit cards are no exception to this development. A majority of active credit card accounts are now enrolled in online service portals, and a growing number are enrolled in issuers’ mobile applications. A significant minority have now elected not to receive paper statements. The Bureau’s data suggest that many of these consumers are likely not accessing their statements online either, in which case they would never see mandatory disclosures, including certain CARD Act disclosures intended to provide important information to consumers.”</i></p>

¹⁵ [USA Consumer Financial Protection Bureau – Consumer Credit Card Market Report](#) (December 2015) (at pg 13)

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
	<p>For those customers that demand and utilise electronic channels of communication with our credit card provider members we also reiterate previous concerns raised with your Government by our members in relation the review of the Electronic Transactions laws and interface with the NCCPA and recommendations to remove current legislative inhibitors to enable full utilisation of digital means of communicating with customers. For example, at present our members are statutorily obliged to post paper-statements for credit card accounts to meet the NCCPA requirements unless the customer opts-in to electronic delivery. There would be demonstrable cost savings to business by changing the ET Regulations to enable electronic delivery to be the default channel (eg so that a customer that provides an email address can have statements sent electronically) without detracting from consumer protection. Based on feedback from one Member, covering 1.3 million customers, the postage costs alone for sending mandatory monthly statements of account to credit card holders:</p> <ul style="list-style-type: none"> • for the 2015 financial year totalled \$10,327,577 (i.e. \$7.94 per customer) • for the 2016 financial year is estimated to reach \$13,407,009 (\$10.31 per customer), with higher postage cost attributable Australia Post price increases to enable statements arrive within the same time as previously. <p>These amounts do not include the mail house costs for printing, paper and enveloping, as they were too hard to segment for those processes from overall stationery costs. This supports the AFC position that the cost to business to prepare and send statements of account is high and reinforces our position that these costs could be saved if the same information could have been sent electronically with the attendant flow on benefits for customers in the pricing of consumer credit products.</p> <p><u>AFC Recommends:</u> To facilitate a move to allow credit card providers (or other consumer credit providers) to meet customer demands and streamline processes and be able to use digital channels as the default channel for statement-delivery or delivery of any other document disclosure requirement, we recommend the Government repeals:</p> <ul style="list-style-type: none"> • ET Regulations Part 3, and all documents listed in Items 86 and 86A of Schedule 1; and • National Consumer Credit Protection Regulations 2010 Regulation 28L which is comparable to ET Regulations Part 3.

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
<p>6. Require issuers to clearly disclose in advertising and marketing material a card's interest rate and annual fee</p>	<p>Problem to be Addressed: Lack of competition on ongoing interest rates; consumers in unsuitable card products; over borrowing and under repayment</p> <p>AFC Response: We note the current level and prescription of disclosure obligations imposed on our credit card provider members including under the NCCPA and the ASIC Act, in particular the UCT B2C consumer protections. This includes the obligation to have implemented processes to be able to generate and issue a credit card KFS since 2012; a document intended to summarise in a simple 1-pager key elements of the credit card product including headline interest rate and annual fees. Do consumers use or gain any benefit from this?</p> <p>We fully support the Government's proposal to test the value of any additional disclosure obligations including through utilisation of consumer testing as a pre-cursor to mandating further disclosure. And that this testing should also include of consumer testing of material that credit card providers are currently obliged to disclose (eg CC KFS and pre-disclosure key elements).</p>
<p>7. Require issuers to provide information about potential savings from switching to lower cost products</p>	<p>Problem to be Addressed: Lack of competition on ongoing interest rates; consumers in unsuitable card products; over borrowing and under repayment</p> <p>AFC Response: We are concerned that what is being proposed as a solution may not address the underlying objective of addressing borrower over-commitment and under-repayments. Also that our credit card provider members would potentially be placed in an appropriate position of "financial adviser" that does not sit comfortably with the market or regulatory perceptions which clearly differentiate between financial advice and credit provision.</p> <p>We look forward to having the opportunity to discuss this proposal more fully with the Government through the second phase process to assist clarify with the Government what is intended and how it is likely to operate in the different business models across our membership and for different product offerings. This operational feedback should facilitate determination of the specifics of the concern to better enable a targeted and appropriate solution to address the identified harm.</p>

PROPOSED ACTION	OBJECTIVE + AFC RESPONSE
<p>8. Require issuers to provide consumers with timely electronic notifications regarding the expiry of introductory offers and credit use</p>	<p>Problem to be Addressed: Over borrowing and under repayment</p> <p>AFC Response: We note and reiterate our comments in relation to proposal 7.</p>
<p>9. Require issuers to provide consumers with alternative payment tools, and proactively contact consumers who are persistently making small repayments</p>	<p>Problem to be Addressed: Under repayment; consumers in unsuitable card products</p> <p>AFC Response: We note and reiterate our comments in relation to Proposal 7.</p>

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AFC MEMBER COMPANIES

AlliedCredit	Nissan Financial Services
American Express	Once Australia t/as My Buy
ANZ t/as Esanda	On Deck Capital
Automotive Financial Services	PACCAR Financial
Bank of China	Pepper Australia Pty Ltd
Bank of Melbourne	Qudos Bank (formerly Qantas Credit Union)
Bank of Queensland	RABO Equipment Finance
BMW Australia Finance	RAC Finance
Branded Financial Services	RACV Finance
Capital Finance Australia	Ricoh Finance
Caterpillar Financial Australia	Selfco Leasing
Classic Funding Group	Service Finance Corporation
CNH Industrial	Sharp Finance
Commonwealth Bank of Australia	St. George Bank
Credit Corp Group	Suncorp
Custom Fleet	Suttons Motors
De Lage Landen	Thorn Group/Radio Rentals
Dun & Bradstreet	TL Rentals
Eclix Group	Toyota Financial Services
Experian Asia Pacific	Veda
Finance One	Volkswagen Financial Services
FlexFleet	Volvo Finance
FlexiGroup	Walker Stores
Genworth	Wells Fargo International
HP Financial Services	Westlawn Finance
Indigenous Business Australia	Westpac
John Deere Financial	Wex Australia
Komatsu Corporate Finance	Wingate Consumer Finance
Kubota Australia Finance	Yamaha Finance
Latitude Financial Services	
Leasewise Australia	<u>Professional Associate Members:</u>
Liberty Financial	CHP Consulting
Lombard Finance	Clayton Utz
Macquarie Equipment Rentals	Dibbs Barker
Macquarie Leasing	Henry Davis York
Max Recovery Australia	Sofico Services
McMillian Shakespeare Group	White Clarke
ME Bank	
Mercedes-Benz Financial Services	
MetroFinance	