

Banking & Finance Alert

Do new consumer credit reforms impact on you?

October 2012

Consumer Credit Legislation Amendment (Enhancements) Bill 2012

Recently the *Consumer Credit Legislation Amendment (Enhancement) Bill 2012* (**CCL Bill**) was passed through both the House of Representatives and the Senate.

The CCL Bill amends the *National Consumer Credit Protection Act 2009* (**NCCP Act**) and *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

Key reforms

The key reforms introduced by the CCL Bill include the following:

- Improvements to the operation of the NCCP Act;
- Product specific obligations;
- Statutory protection against negative equity;
- Improved disclosure requirements;
- Limitation on credit charges for credit contracts; and
- Responsible lending obligations.

The substantive obligations in Schedules 1, 2, 3 and 5 of the CCL Bill will take effect on 1 March 2013.

The CCL Bill aims to provide protection to consumers in relation to the provision of credit contracts and consumer leases. It amends the *Australian Consumer Law* (as set out in Schedule 2 of the *Competition and Consumer Act 2010*) by replacing references to 'consumer goods' with 'goods' or 'goods supplied to a consumer' in lay-by and repair notice provisions.

The new reforms will:

1. Provide protection to consumers by:
 - a. making hardship variations easier for debtors;
 - b. requiring credit providers to respond to any outstanding hardship variation prior to commencing proceedings;
 - c. prohibiting the use of particular words or phrases;
 - d. introducing a remedy for unfair or dishonest conduct;
 - e. enhancing remedies available to consumers; and
 - f. improving ASIC's enforcement abilities.
2. Introduce new obligations for those engaging in credit activities including reverse mortgage contracts;
3. Introduce new requirements for credit providers and persons who provide credit assistance in respect of 'small amount credit contracts', which amongst other things include the following:
 - a. website disclosure requirements for licensees;
 - b. prohibiting repeated and continued use of credit via small amount credit contracts (the multiple contract prohibition); and

- c. introducing additional responsible lending requirements (i.e. by including displaceable presumptions).
4. Introduce new obligations by capping costs chargeable under the following credit contracts:
 - a. contracts which are not continuing credit contracts;
 - b. where the credit provider is not an Authorised Deposit-Taking Institution;
 - c. the credit limit is \$2,000 or less; and
 - d. the term of the credit contract is 15 days or less.
5. Introduce new requirements for those engaging in credit contracts in respect of consumer leases.

The CCL Bill aims to ensure that short term lenders will remain commercially viable whilst preventing small family owned businesses being adversely affected.

What to look for

As the CCL Bill provides protection to consumers, it is important for short term lenders to be aware of their obligations when engaging in credit activities.

Under the new reforms, debtors will have a greater ability to seek changes to their contracts on the grounds of financial hardship.

If you are currently involved in credit contracts and/or consumer leases, it is imperative that you are mindful of your obligations to consumers and your disclosure requirements.

Thomsons Lawyers can assist in providing advice to those currently engaged in credit activities, or those who are about to commence business in this field.

For more information, please contact Thomsons Lawyers.

Written by:

Jessica Bevacqua

Associate

+61 3 8080 3631

jbevacqua@thomsonslawyers.com.au

Julie Callea-Smyth

Partner

+61 3 8080 3625

jcallea-smyth@thomsonslawyers.com.au

For further information, please contact:

Sean O'Donnell

Partner

+61 2 9020 5770

sodonnell@thomsonslawyers.com.au

Julie Callea-Smyth

Partner

+61 3 8080 3625

jcallea-smyth@thomsonslawyers.com.au

James Daniel

Partner

+61 7 3338 7519

jdaniel@thomsonslawyers.com.au

Michael O'Donnell

Partner

+61 8 8236 1396

modonnell@thomsonslawyers.com.au

Michael George

Special Counsel

+61 2 9020 5793

mgeorge@thomsonslawyers.com.au

Armando Scenna

Partner

+61 3 8080 3632

ascenna@thomsonslawyers.com.au

Ron Eames

Partner

+61 7 3338 7523

reames@thomsonslawyers.com.au

Stephen Lyons

Partner

+61 8 8236 1336

slyons@thomsonslawyers.com.au

www.thomsonslawyers.com.au