



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

NATIONAL CONSUMER CREDIT PROTECTION BILL 2009

NATIONAL CONSUMER CREDIT PROTECTION (FEES) BILL 2009

NATIONAL CONSUMER CREDIT PROTECTION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2009

Second Reading

SPEECH

Monday, 26 October 2009

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SPEECH

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Questioner
Speaker Eggleston, Sen Alan

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Senator EGGLESTON (Western Australia) (8.42 pm)—My comments to the Senate about the National Consumer Credit Protection Bill 2009 and associated bills are informed by the recent inquiry which the Senate Economics Legislation Committee held into the consumer credit reforms package. Basically, coalition senators believe that the reforms have merit. The heart of the package is a national scheme for the regulation of credit. That is obviously something which will be of assistance to people around the country and it is based on a decision of COAG to set up such a national system. However, I would have to say that the government's handling of the implementation of the package has left a lot to be desired. There were several delays before it was actually introduced and that made it very difficult for credit providers to meet the deadlines which were imposed.

The main provisions are a national scheme for licensing of credit providers, and obligations for responsible lending practices in relation to the suitability of credit for a particular applicant and the capacity of a potential customer to repay the credit sought. These are worthwhile objectives, and so too is the requirement under the legislation that holders of the new Australian credit licence must provide a dispute resolution mechanism so that aggrieved customers have somewhere to take any complaints they may have.

The government's vacillation over start dates is something we commented on in the report made by the committee. The exposure draft of the consumer credit package was released in April 2009, and during the consultation period the government announced a delay to the commencement of different requirements, followed by then bringing the commencement date forward—when the government understood that the states and territories were exiting the space and that there would be no coverage. Following the release of the economics committee's report, another deferral was announced by Minister Bowen, ostensibly to give more time to credit providers but in reality to cover the poor planning and the difficult position in which they had left the regulator, the Australian Securities and Investments Commission, in its need to gear up for these changes.

The economics committee heard from an organisation representing the interests of small to micro credit providers and their concern that this

legislation, which includes the requirement to pay a licensing fee and have a dispute resolution procedure in place, could drive some of their members out of the credit business altogether. I personally am concerned that the Rudd government's mismanaging of the implementation of the consumer credit reforms may cause problems for smaller credit providers who had already recognised that they would have difficulty meeting the financial or compliance burdens of the new credit legislation.

In moving to a national licensing scheme, the government is moving into an arena previously occupied by the states. If the states' existing schemes were simply to continue, there would be an additional compliance burden without any gains from harmonisation. So it has been important that the government work through this aspect of the credit reform package and deliver best practice licensing for credit providers. There is a capacity in the regulations for the streamlining of approvals of existing licensing regimes, such as the industry recognised rigour of the Western Australian scheme, and to streamline approvals for approved deposit-taking institutions, and presumably to address the duplication with the Australian financial services licence. But these groups have been left in the dark too long about how they will be treated under the consumer credit reforms.

Many stakeholders would view the government's consultation on the credit reforms as having been severely deficient and involving many problems. ASIC is the regulator for these reforms, charged with providing assistance to credit providers in gaining an understanding of, and complying with, the new credit provider obligations to hold a licence and to comply with the responsible lending obligations as they relate to disclosure requirements, the suitability of credit for a particular applicant and other provisions. But there is no guidance material set up yet on the ASIC website to assist credit providers, just a note that for the most part the guidance material will be published after the bill has been passed and the regulations made. There is no excuse for this information vacuum. Surely there is a capacity now for the regulatory guide on the general conduct obligations of credit licensees or the revised regulatory guide on dispute resolution to be provided.

The Senate Economics Legislation Committee heard evidence from the banks and ADIs that they faced

significant information technology hurdles, through their processes and documentation, in rolling out this legislation. Non-ADIs to the level of small providers need time to prepare their record keeping and other processes to comply with these reforms in an orderly manner.

That is really all I would like to say, except of course that in the case of companies like David Jones there was certainly some concern as to whether or not staff would be caught by the legislation as point-of-sale assistants in the credit provision process. Coalition senators drew attention to this aspect of the legislation in our comments on the inquiry into the package, and I hope that that particular concern is going to be addressed in the near future.