Review of Australia's Consumer Policy Framework

Draft Report

Submission to the Productivity Commission

February 2008

INTRODUCTION

Australia and New Zealand Banking Group Limited (ANZ) is pleased to provide a submission to the Productivity Commission's (PC) Draft Report on its Review of Australia's Consumer Policy Framework (Draft Report).

The recommendations made by the PC in relation to improving Australia's consumer policy framework are broad ranging, and this submission covers those themes raised in the Draft Report in which ANZ has a particular interest.

1. REGULATION OF FINANCE BROKERS AND OTHER CREDIT PROVIDERS

ANZ supports, in principle, the Draft Report's recommendation that responsibility for regulating finance brokers and other credit providers be transferred to the Australian Government (Recommendation 5.2). But ANZ notes:

- greater clarity is required about which powers would be vested in which Commonwealth authority and
- all relevant stakeholders should very clearly identify the consumer benefits which would result.

ANZ also notes that recent significant financial services consumer regulation, in particular the Financial Services Reform Act (FSRA), consumed considerable time and expenditure for limited consumer benefit. It would be unfortunate if the protracted FSRA 'experience' were repeated in relation to consumer credit.

Regulation of Credit

The current regulation of credit by the States and Territories under the Uniform Consumer Credit Code (UCCC) has proved to be relatively effective at ensuring jurisdictional consistency in the regulation of credit under the template model.

However, some jurisdictions have individually sought to regulate some aspects of credit outside of the UCCC through the Fair Trading Acts which, as discussed in ANZ's previous submission, in some instances has not only been ineffective, but imposed additional jurisdictional specific compliance burdens on what is essentially a national market. This issue is discussed further in Section 3 below.

The UCCC has also been criticised for its inability to adapt to changes in the market place in a timely manner. Examples of this include responding to issues such as bills of exchange, the regulation of finance brokers (discussed further below) and addressing problems in the fringe lending market.

Of particular concern to ANZ has been not only the delay, but also the proposed way in which the Ministerial Council of Consumer Affairs (MCCA) intended to respond to the identified gap in the fringe lending market.

ANZ acknowledges the significance of the problems in the fringe market and agrees that these must be addressed. ANZ has itself taken steps to assist those on low incomes to access the mainstream credit market and to improve their financial literacy.

ANZ's actions are aimed at making a contribution towards correcting the market failure, however, ANZ understands that in the short-term, regulatory intervention is necessary to protect vulnerable consumers. For this to be effective, the intervention needs to be targeted directly at the market failure.

In late August 2007 the MCCA released a consultation draft of the *Consumer Credit Code Amendment Bill 2007* and *Consumer Credit Amendment Regulations 2007* (Consultation Draft). However, the proposals put forward rather than being targeted at the fringe lending sector are instead to be applied to the entire mainstream credit sector.

Under the proposed MCCA legislation any credit fee or charge would be unreasonable where it was more than the credit provider's reasonable underlying costs or losses that gave rise to the fee or charge. As this contains no allowance for profit or return on capital this could mean that profit would have to be derived purely from interest on credit.

ANZ, like many other lenders, makes a return for its shareholders through revenue from both fees and interest charges. The proposed legislation creates uncertainty for financial institutions because a court could effectively be able to set prices in a competitively functioning market. In a competitive market it is appropriate that fees and charges be set by the market, with competition providing the discipline on levels.

The proposal put forward by the MCCA is also inconsistent with the existing interest rate cap, factoring in both interest charges and fees, of 48 per cent legislated by the New South Wales Government. This cap has been effective at regulating clearly egregious lending practices while at the same time providing a legislative 'safety net' as the fringe credit market develops. This legislative intervention was put in place where the market failure is present and not across the entire mainstream credit sector. Both Queensland and South Australia have indicated that they too will legislate for an interest rate cap on credit.

The transfer of the regulation of credit from the States and Territories to the Commonwealth should aim to address these issues. The MCCA process currently underway ostensibly to address problems in the fringe credit market should be curtailed or limited in scope on the grounds that the approach is inconsistent with existing and proposed interest rate caps and it would intervene unnecessarily in the mainstream credit market that is operating in a competitive manner.

The PC recommended in its draft report that the UCCC and related credit regulation, 'appropriately modified', should be retained with details to be determined by the Commonwealth in conjunction with States and Territories. It would be useful for the PC to give further specific guidance on what is meant be 'appropriately modified'. Once that has occurred, it is important that stakeholders be given an opportunity to consider and respond to specific proposals prior to the finalisation of the Commission's position.

ANZ is concerned that the industry, and therefore consumers, do not incur additional compliance costs, with unclear consumer benefit, as a result of a transfer of regulation to the Commonwealth Government. While it would not appear to be the PC's intent, a broadening of the scope of regulation to, for example, include individual investors and small business credit could result from a Commonwealth – State negotiation process.

Regulation of Finance Brokers

The regulation of finance brokers currently varies markedly across the States and Territories. WA, Victoria, NSW and the ACT have passed legislation specifically regulating finance brokers. South Australia, Tasmania, the Northern Territory and Queensland are yet to legislate.

The regimes of NSW, Victoria and the ACT are similar and focus primarily on the disclosure requirements for brokers and only apply to brokers dealing in consumer credit. However, in WA, there is also a licensing regime, a code of conduct, and a function for a 'regulator' which has an ongoing industry oversight role. It also captures intermediaries who deal in commercial as well as consumer credit.

These variations across jurisdictions pose difficulties for a financier like ANZ with a national network of finance brokers. While ANZ does not have direct compliance responsibility under the various laws, it provides compliance training and support for many brokers and has an obvious interest in ensuring its brokers are competent, appropriately qualified and law abiding.

It is much easier for ANZ to set standards for the good character and conduct of its brokers if those standards can be based on one nationally uniform legislative regime and one set of licensing, conduct and disclosure requirements. The difficulties of inconsistent legislation are compounded for national broking companies, which do have direct responsibility for compliance with this legislation.

It is vital for such regulation to be nationally uniform to avoid the current piecemeal nature of finance broker regulation in Australia. ANZ believes the implementation of national finance broking regulation will improve the overall standard of finance broking services and ensure the finance broking industry remains a reliable and sustainable business sales channel for both consumers and credit providers.

2. UNFAIR CONTRACT PROVISIONS

The PC has recommended a prohibition of unfair terms in standard form contracts where they result in consumer detriment (Recommendation 7.1). ANZ is concerned about the impact this will have on the banking industry.

As noted above ANZ believes that regulatory intervention in a market should occur only where a clear market failure has been identified and the costs and benefits of any proposed regulation have been established. The banking sector is acknowledged as a competitive market and it is unclear that any market failure exists.

ANZ has enhanced competition in the banking sector with the introduction of Australia's first integrated account switching service in July 2004 (www.anz.com/switch). This online account switching service allows customers to enter all their relevant details (including old and new account details and all of their regular payments set up on their old account) and then automatically generate all the necessary written advice to third parties.

The service streamlines the process for changing to ANZ and is provided free to customers. In February 2005 we extended this service to small business accounts.

ANZ has also advocated in industry forums for further measures to be introduced to further enhance competition. For example ANZ's submission to the Australian Payments Clearing Association's (APCA) *Aspects of Account Switching—Consultation Paper* in November 2007 argued for the introduction of a listing service which would assist customers switch their banking by helping them identify their direct debits and credits. Our submission can be found at http://www.apca.com.au/Public/apca01_live.nsf/ResourceLookup/AccountSwitching_ANZ.pdf/$File/AccountSwitching_ANZ.pdf.

While some concern may exist with regard to standard contracts and unilateral variation clauses, ANZ believes these to be imperative to the business environment in which we operate. Due to the sheer number of contracts that we enter into, and the significant (and in the case of revolving credit, open-ended) periods that they operate for, ANZ needs the ability to write and change standard contracts. In the event that ANZ were not able to include unilateral variation clauses we would be required to renegotiate contracts with all customers every time circumstances changed, for example in the event that the Reserve Bank of Australia increased the official cash rate.

We note the PC's recommendation that there be 'safe harbour' provisions for standard form contracts. We see this as an additional layer of regulation and bureaucracy in an already highly regulated environments.

In the banking sector significant regulation already exists to protect consumers from unfair contract provisions. For example, the Uniform Consumer Credit Code contains provisions to reopen unjust transaction and to review unconscionable interest and other charges associated with a credit contract.

Consumers are also protected through specific disclosure requirements under the UCCC and the Code of Banking Practice (CoBP). These require ANZ to provide customers with copies of the terms and conditions of our banking products, including disclosure of all fees and charges, the interest rate and its method of calculation. The UCCC and CoBP also require ANZ to provide sufficient notification to customers of changes in interest rates and fees and charges. Provided terms are clear and the market operates competitively a term should not be seen as 'unfair' even if it is not able to be separately negotiated by a consumer.

3. REVIEW AND REFORM OF EXISTING UNNECESSARY REGULATION

Draft Recommendation 5.1 that CoAG instigate and oversee a review and reform program for industry-specific consumer regulation is welcomed.

The development of inconsistent State and Territory laws is contrary to the existence of national markets, such as in financial services, and has the potential to impact on companies in these markets. This can lead to additional compliance costs and complexities but may also result in companies applying the more onerous State or Territory law in all jurisdictions as a 'fail safe'.

ANZ's submission to the PC's Issues Paper of May 2007 highlighted two examples of where States and Territories had implemented, or were attempting to implement, legislation relating to credit limit increases that were inconsistent with other jurisdictions. The amendment to the ACT's Fair Trading Act concerning the offer of credit limit increases has added cost and reduced efficiency but for no discernable customer benefit.

4. INFORMATION DISCLOSURE REQUIRMENTS

The PC recommended that the Australian Government should reform information disclosure requirements to ensure that:

- Information is comprehensible, with the content, clarity and form of disclosure consumer tested, and amended as required
- Complex information is layered, with businesses initially required to provide only agreed key information necessary for consumer to plan or make a purchase, with other more detailed information available by right of request or otherwise referenced

Consistent with these principles, it was recommended that reform of the mandatory disclosure requirements in financial services be progressed as a matter of urgency.

ANZ supports the simplification of the disclosure regime as straightforward and meaningful disclosure will assist consumers in understanding the products that they are purchasing, and the terms and conditions that apply to them.

ANZ would be pleased to provide any further information about this submission as required, and can be contacted as follows:

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