



GE Money

Mel Honig
Deputy General Counsel
GE Money Australia & New Zealand

572 Swan Street
Richmond VIC 3121
Australia

T +613 9425 4066
F +613 9921 6584
E melinda.honig@ge.com

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Fringe Credit Project
Fair Trading Policy Branch, Policy Division
Department of Tourism, Fair Trading and Wine Industry Development
GPO BOX 3111
BRISBANE QLD 4001

BY EMAIL: consumercredit@dtftwid.qld.gov.au

**Consumer Credit Code Amendment Bill 2007
Consumer Credit Amendment Regulation 2007
Consultation Package**

GE Capital Finance Australasia Pty Ltd ACN 070 396 020 of 572 Swan Street Richmond, Victoria, trading as GE Money, welcomes the opportunity to make the following submission in relation to the Consumer Credit Code Amendment Bill 2007 and Consumer Credit Amendment Regulation 2007.

Consumer Credit Amendment Bill 2007

1. Section 5: Amendment of s 11 (Presumptions relating to application of Code)

GE Money is of the view that the current drafting of section 11 is sufficient to meet the aims of the Code and that amendment is not necessary.

Evidence of this section working can be seen in the recent case of *Hamafam Pty Ltd & Ors v Saadullah & Anor [2007] NSWSC 818*. Accordingly, further amendment of section 11 is not necessary in order to achieve the aim of stopping improper use of and reliance on business purpose declarations by fringe credit providers.

2. Section 6: Amendment of s 15 (Matters that must be in contract document)

The proposed subsections mirror the current requirements of section 10B of the *Consumer Credit (New South Wales) Act 1995*, accordingly GE Money has been subject to these provisions in New South Wales since 1 December 2001.

It is the view of GE Money that the amendment is unnecessary and that it may raise future uncertainty as to the classification of certain fees presently properly treated as credit fees or charges.

3. Section 11: Replacement of s 72 (Court may review unconscionable interest and other charges)

It is the view of GE Money that the scope of the amendments proposed is too broad. In most cases, market forces are sufficient to control the setting and application of fees and interest and it was not the intention at the introduction of the Consumer Credit Code ("Code") to relate every fee to a particular cost. GE Money has set out its views below with regard to the potential implications for fees and interest.

3.1 Fees

GE Money would propose that a distinction be drawn between fees that apply in a default (or exceptional) situation and those that apply in the usual performance of the loan contract.

In the latter case, the setting of fees that apply in the usual course of the loan contract should be left to the credit provider. Market forces should then operate as credit providers try to design products that are commercially viable, differentiated from competitors' products and appealing to customers.

Further, to limit fee recovery to "reasonable" costs may limit future product development or innovation. For example, a low use credit card holder may prefer a higher upfront fee and a lower interest rate. In addition, the recommendation does not take into account so called "reverse mortgage" products.

Under "reverse mortgage" products, lower interest rates may be offered for a share in the equity of the property when sold. An agreement to share the equity or capital gain in a property is potentially a credit fee or charge, but it is not a "cost" or a "loss" of a credit provider. Further, a share in the equity or capital gain of a property would not be a return that would be related to the principal lent. Accordingly, it may not be properly classified as interest as that term is normally interpreted.

With regard to default fees, it is proposed by GE Money that those fees be justified by the credit provider on a cost basis and be subject to enhanced disclosure within the Financial Table to ensure customers are aware of what will trigger such a fee. This will encourage customers to better manage their financial affairs and avoid such fees. This also will require accountability and provide rigour in the charging of those fees by credit providers.

The proposal to make every type of fee subject to review by a Court will give rise to significant uncertainty as to the manner in which different courts and different jurisdictions will interpret the "underlying reasonable cost" or a "reasonable estimate" of a cost or loss. This uncertainty and potential inconsistency will make day to day business for credit providers more complicated and expensive.

Further, it is unreasonable that credit providers be exposed to the uncertainty of having all fees open to challenge by both borrowers and the regulator.

In addition, GE Money would suggest that the requirement that a borrower/regulator or Court enquire into and determine:

- (a) the actual costs of a credit provider (at any time);
- (b) what the reasonable costs of a credit provider should be at any time;

- (c) what is meant by "the standards of commercial practice generally" and what they are,

is not a realistic approach to the issue the regulators are seeking to address.

The cost of conducting such an enquiry will usually be beyond the resources and competence of any borrower. In addition, the cost to a credit provider and/or a regulator of conducting such an enquiry would be substantial. A set methodology to calculate cost recovery is not simple to design and implement, particularly for large credit providers.

GE Money wishes to draw the attention of MCCA to one potential result of its focus on the costs of the credit provider, which could be to promote a disconnection between the credit provider and the performance of a credit function or service. For example, a credit provider could outsource some of its credit functions and services, in which case, credit providers will then have a clear cost and any profit element earned on the provision of the function or service will be earned by an unregulated service provider.

Separately, if a service is provided by the credit provider for a fee, that fee should properly be able to include a profit element as this is part of the operating overhead through which the service is provided. Currently, third party fees, which are passed on to consumers, generally include profit for the third party provider. The proposed changes will give rise to an inequity between internal fees and external costs.

3.2 Interest

GE Money would submit that the use of the phrase "in a manner that is unreasonable" in the proposed subsection (2) creates an unnecessary uncertainty as to the intent and implementation of the proposed changes in relation to variations of interest rates.

With regard to the specific matters to which a court may have regard, in deciding whether a relevant change was made in a manner that was unreasonable, a Court is specifically directed that it may have regard to "the standards of commercial practice generally". GE Money would submit that standards of commercial practice generally vary enormously depending on the various sectors of the market and the particular debtor, such that in practice, it is likely that the proposed provision will be of little assistance to a court.

Further, if it is alleged that the combination of the annual percentage rate and any credit fee or charge is unreasonable because of excessive interest charges, the Court may have regard to the annual percentage rate payable under comparable credit contracts. This is likely to be problematic for a court in terms of determining what is a comparable credit contract given the vast array of credit contracts available and the different combinations of fees and interest that credit providers seek to offer to customers to differentiate their products from those of competitors. Further, the applicability of this provision will be limited as new products evolve.

GE Money would propose that the intent and scope of the review provisions in relation to changes in interest rates should be better articulated. The provisions should not affect or curtail the ability of a lender as to how it may set, review and change its rates in response to changes in market conditions and consumer demand from time to time.

Absent unconscionable behaviour, it is GE Money's view that the legislators should avoid any interference in the discretion of a lender to set its level of return from time to time. That discretion should be available not only when the loan is written, but also through the course of the loan as market conditions vary.

4. Section 72A Applications under div 3 by Government Consumer Agency

It is the view of GE Money that it is not appropriate for a Government Consumer Agency such as Consumer Affairs Victoria to represent individual debtors. GE Money considers that this may conflict with the need of a Government Consumer Agency to also be able to represent the public interest.

If it is the view of MCCA that a Government Consumer Agency should be empowered to bring applications under section 72 as amended, applications should not be allowed unless the Government Consumer Agency has clear *prima facie* evidence that a credit provider is applying unreasonable charges. Alternatively, it should at least "appear to" the Government Consumer Agency on the available evidence that this is "likely to be the case". Further, a Government Consumer Agency should not be empowered to conduct potentially lengthy and costly "fishing expeditions".

Further, if the Government Consumer Agency is to have power to represent debtors, it needs power to negotiate and compromise on behalf of the debtor. Any power to represent a debtor should not be exercisable once the debtor has directed the Government Consumer Agency that the debtor no longer wishes to continue in relation to the particular matter.

Please contact me on 03 9425 4066 or at melinda.honig@ge.com with any queries.

Yours sincerely

Mel Honig
Deputy General Counsel
GE Money Australia & New Zealand