

# National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020

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Submission to the Economics Legislation Committee  
February, 3, 2021

## Introduction

ACCI supports the draft amendments proposed in the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020. The proposed amendments will provide greater flexibility for lenders while maintaining strong consumer protections for borrowers. The effectiveness of the primary financial dispute resolution body, the Australian Financial Complaints Authority (AFCA) has not, but should be, considered as part of maintaining consumer protections.

The proposed Bill will also remove regulatory duplication for ADI lenders and enhance competition. The responsible lending obligations (RLO's) are no longer fit for purpose and the proposed risk-based approach should provide lenders with greater flexibility in exercising their rights to credit provision. However, it is not determined the full extent to which these reforms will increase the volume of lending to small business or the extent to which lending will be based on more competitive terms. APRA guidance and clarity is needed to the benefit of lenders and borrowers.

## Responsible lending laws no longer fit-for-purpose

ACCI is supportive of the Government's effort to simplify regulations relating to credit decisions as these will have flow on benefits to consumers, particularly small businesses. We also support the simplification of the Responsible Lending Obligations (RLO's) as they have become burdensome and inefficient for both lenders and borrowers. The RLO's are no longer fit-for-purpose as significant regulatory changes have occurred since the introduction of the National Consumer Credit Protection Act 2008.

## Added flexibility and removing regulatory duplication

The prescriptive and duplicative nature of how credit decisions are made has led to unnecessary lengthy, burdensome lending practices. The proposed 'risk-based' approach, will provide lenders greater flexibility to exercise credit decisions based on the characteristics of the borrower and the type of credit sought. In various instances, a bank may be required to take fewer levels of verification steps and inquiries for an existing customer with a positive repayment history and declared information in line with expectations of their credit profile. This will simplify Australia's lending framework to ensure consumers and small businesses can get timely access to credit.

The recently introduced [comprehensive credit reporting regulations](#), in association with the consumer credit protections reforms contained in the proposed bill, will act to provide further transparency to financial intermediaries over the factors determining consumer credit risk profiles. We anticipate the benefits of these reforms to be passed through to SMEs via timely, tailored and more competitive loans that are better suited to business customer needs. The reforms will be critical to supporting the velocity and appropriate allocation of credit to where it's needed in the Australian economy.

## APRA guidance and clarity required

The proposed reforms should be implemented alongside amendments to APRA guidance to reduce red tape, streamline the credit approval process and provide both lenders and borrowers with further clarity on the requirements and responsibility of credit standards. Our members are anticipating further advice regarding the development of systems, policies and processes to this regard.

It is not determined how the laws will affect the way APRA currently applies a single risk weight (of 100%) to all SME lending not secured by a residence, with no delineation allowed for the size of borrowing, the form of borrowing or the risk profile. As a consequence of this, for an SME loan that is not secured by a residence, Australia's smaller banks need to hold up to twice as much capital as the major banks. This means that small banks in effect, are required to pay up to twice as much to be able to offer loans to their customers.<sup>1</sup> This competition issue is not addressed by these reforms and we will continue to observe small lenders actively restricted in the market.

## Banking competition is a persistent issue

The ability of SMEs to access the necessary finance to establish and grow their business has been an ongoing issue for policymakers, particularly since the GFC. The continued reliance on having a home as security for a business loan is increasingly inhibiting SME growth. Around one third of major bank SME loans, and a higher proportion of small lender SME loans, are secured by a home.<sup>2</sup> The issue is exacerbated in an era when home ownership in the key entrepreneurial period of life is at a historic low, and the COVID operating environment has increased risk appetite of lending. The reforms proposed in this Bill will go some way to address the ongoing issue of provision of credit to SMEs on terms that are commercially viable. However, it will not resolve the centrality of the issue.

For SME loans, APRA currently applies a single risk weight (of 100%) to all SME lending that is not secured by a home, with no flexibility allowed for the size of borrowing, the form of borrowing or the risk profile of the SME borrowing the funds. This has affected competition in bank lending to SMEs as most lenders are generally required to hold more regulatory capital than are lenders using IRB models and more than what is required under the internationally agreed Basel Accord requirements.

## Access to capital a persistent issue

Access to capital is an ongoing issue for small businesses. Improved access to capital will help small businesses to access credit as needed through the life cycle of their business. ACCI supports the draft amendments to the consumer credit framework that relate to small businesses. Credit reforms are necessary to help address the 'one-size-fits-all' approach. It is anticipated that more competitive lending terms will be achieved for businesses looking to grow, expand and create jobs.

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<sup>1</sup> Productivity Commission, Competition in the Australian Financial System No.89, 29 June (2018) p32

<sup>2</sup> *ibid*

It is not determined to what effect these reforms will have on businesses experiencing choppy cashflow or temporary payment issues that would require a business to seek emergency/temporary cash flow assistance through their bank. ACCI would be concerned if the reforms led to perverse effect of credit providers limiting emergency cash flow to businesses requiring this type of funding. The way in which these reforms are applied by financial intermediaries should address rather than penalise the irregular and uncertain revenue streams of small business.

## Improving consumer protections for small business

ACCI endorses the Government's proposal to retain protections for consumers including licensing and conduct requirements of the National Consumer Credit Protection Act (NCCP Act), ARPA lending standards, the ABA Banking Code of Practice.

However, the Government should review the effectiveness of the Australian Financial Complaints Authority (AFCA) as the primary dispute resolution body to alleviate the administrative burden on the judicial system. AFCA is limited by its mandate and approach in resolving small business financial disputes. The Australian Financial Complaints Authority (AFCA) and the Australian Banking Association Banking code of practice is required to help inform small businesses about their rights helping small business operators to increase their awareness of their options if they are treated unfairly by a lender.

The recently introduced Comprehensive Credit Reporting legislation should deliver speedier and more tailored/innovative lending products for small business customers and we expect that the ease of administrative burden proposed via these reforms will flow through to more competitive products to small business customers. We don't expect however, these reforms to be a panacea for the banking competition issue (explained earlier).

## Conclusion

ACCI is supportive of the proposed National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020. The reforms will remove regulatory duplication, overlap, while replacing RLO's that are no longer fit for purpose. The reforms will maintain consumer protections for small business. However, the effectiveness of the primary dispute resolution body, AFCA, should undergo review. The reforms will not substantially improve banking competition and access to capital remains a persistent issue. We caution over any preserve impact to small business emergency cash flow management, or in instances where unfavourable business conditions, temporary or otherwise, may significantly impact a business borrower's capacity.

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