

# CORRS IN BRIEF

JUNE 2008

## FINANCIAL SERVICES AND CREDIT REFORM: FEDERAL GOVERNMENT GREEN PAPER

The Federal Government has released a Green Paper proposing significant reforms to financial services and credit regulation. Responsibility for much of the remaining state based financial services laws is likely to be transferred to the Commonwealth and licensing and disclosure requirements will be tightened.

The Government is keen to implement the reforms quickly, so submissions are requested by 1 July 2008. All credit providers, financial services companies, debenture issuers, property developers and investment advisors, companies involved in margin lending and trustee companies should urgently review the Paper and consider making a submission. We can assist you with this.

The Green Paper outlines reform options in a number of key areas.

### 1. MORTGAGES, INCLUDING MORTGAGE BROKERS AND NON-DEPOSIT TAKING INSTITUTIONS

- The Commonwealth proposes to assume responsibility for mortgages (ie home loan mortgages) by treating them as financial products and adopting the approach in Chapter 7 of the *Corporations Act*. This will mean that mortgage advice, mortgage brokers and non-deposit taking institutions involved in home loan mortgages will also be regulated.
- New licensing, conduct and disclosure requirements would be imposed which will require financiers and brokers to change their documents, systems and procedures.
- ASIC would be the new regulator for home mortgages.

### 2. TRUSTEE CORPORATIONS

- The Commonwealth would assume responsibility for the regulation of trustee corporations. There are two options canvassed.
- Option 1 is to implement a regime with a consumer protection focus. This would include disclosure obligations, licensing and ongoing oversight by ASIC and a cost effective mechanism for beneficiaries to address problems with a trustee's performance.
- Option 2 is to adopt prudential regulation. This would involve licensing and ongoing prudential supervision by APRA. APRA would implement certain standards designed to ensure effective management and the preservation of trust assets.

### 3 MARGIN LENDING

- The Paper canvasses three options for reform: maintaining the status quo, including margin loans as financial products under Chapter 7 of the *Corporations Act* and designing a new regulatory regime for margin loans.
- If margin loans are brought within Chapter 7, the Paper flags the possibility of additional disclosure requirements which are more relevant to loans and gives as an example, the disclosure obligations of s.15 of the *Consumer Credit Code*.
- If a new regime is introduced, it would include licensing, disclosure and conduct requirements which are tailored to margin loan products. Financiers should consider in their submissions whether the benefits of the more tailored regulation outweigh the inefficiencies in potentially having to obtain both an Australian financial services licence and a margin lending licence and to comply with two sets of disclosure and conduct rules.

## 4 DEBENTURES

- It is proposed that all promissory notes issued to retail investors will be treated as debentures under the *Corporations Act*.
- Licensing requirements would be revised to ensure that all issuers carrying on an investment business which regularly offer securities to retail investors where those issues constitute their main source of funding would need to be licensed. Also, all trustees of debenture issues would need to be licensed.
- The *Corporations Act* list of trustee's duties would be expanded.

## 5 PROPERTY SPRUIKERS

- The Paper calls for submissions on options for the regulation of property investment advice.

## 6 OTHER CREDIT PRODUCTS

- The Paper canvasses the possibility of transferring responsibility for other forms of consumer credit (eg credit cards, car loans, personal loans) as well as mortgages to the Commonwealth.
- Despite the Productivity Commission's recent recommendation for a single national consumer credit law, the Paper cites regional differences which may require more local regulation.
- Financiers involved in providing both home loan and other consumer credit may wish to make submissions highlighting the cost and compliance difficulties involved in being subject to an additional regulatory regime.

- Non mortgage financiers will need to consider whether the benefits of a single national scheme might outweigh the additional compliance burden of being subject to Chapter 7 style regulation.

## NEXT STEPS

All credit providers, financial services companies, debenture issuers, property developers and investment advisors, companies involved in margin lending and trustee companies should evaluate the effect of the proposals on their business and be in a position to make submissions before 1 July 2008. If you would like any further information about the proposed reforms or assistance in preparing your submission, please speak to your usual Corrs' contact or:

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A copy of the Green Paper dated 3 June 2008 is available at:

**Financial Services and Credit Reform – Improving, Simplifying and Standardising Financial Services and Credit Regulation – [www.pc.gov.au](http://www.pc.gov.au)**

A copy of the Productivity Commission's Report dated 8 May 2008 is available at:

**Review of Australia's Consumer Policy Framework – [www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1381](http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1381)**

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