

FUNDAMENTAL REFORM OF AUSTRALIA'S FINANCIAL SERVICES AND CREDIT REGULATION

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Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law, has today released the Rudd Government's first major step in reforming Australia's financial services and bringing Australia's regulation of credit into the 21st century.

The Green Paper outlines a way forward for the Commonwealth and states to transfer the remaining financial services regulation from the State level. Under the plan, financial services, including mortgages, mortgage brokers, margin lending, non-bank lending and trustee companies, will move to the Federal level.

"This is about better protection of the Mums and Dads who take out a mortgage and deserve to know that the brokers selling it to them are reputable and upfront with their fees and charges."

"The Financial Services and Credit Reform Green Paper provides a plan for change – to benefit the consumer, while reducing red tape and compliance costs for business, and ensuring Australia stays ahead in the international financial services market," Minister Sherry said.

Minister Sherry said that taking action now would pay dividends well into the future and bring Australian financial services and credit regulation back to global best practice.

"The current regulation in these areas is either duplicated, patchy, confusing, very hard to change or even non-existent. As a result, some consumers receive poor or inadequate advice, while opportunistic product promoters use gaps in existing regulation to take advantage of vulnerable investors. The Commonwealth and the States agree that this is just not good enough in the year 2008."

"Australia needs a financial services regulatory structure for the 21st century, one which provides the highest standards of disclosure, advice and prudential supervision, and does so at a national level."

"For years these issues languished while the former Government received report after report highlighting the need for action. The Rudd Government is listening to consumers, businesses, stakeholders and the States and we're taking early action to streamline the regulation of financial services," Minister Sherry added.

"On mortgages, it's absolutely critical that the advice new borrowers receive is top quality and that they are not getting into debt they can't service. I am also concerned about reverse mortgages and the number of people taking them up without a clear understanding of the implications."

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The Green Paper also seeks input on the regulation of other credit products, such as credit cards and personal loans. COAG has agreed further analysis of how these additional forms of credit are regulated is needed and the Rudd Government will progress this additional work rapidly over coming months.

In addition to financial services subject to COAG action, two further important areas are included in the Green Paper – debentures and property spruikers.

"The rules around investments like debentures and promissory notes are fragmented and open to abuse as shown by recent high profile cases, such as Westpoint. I believe we can act to better protect investors through a streamlined approach. On property spruikers, the Government wants to hear from the community as we know people have been hurt by some operators and we'll take action to fix that."

"This consultation will be followed by action and reform," Minister Sherry added.

The Green Paper can be found at: <http://www.treasury.gov.au>.

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OPTIONS HIGHLIGHTED IN THE GREEN PAPER INCLUDE:

Credit and mortgages:

Maintain the status quo; or regulate all credit; or regulate mortgages (and consequently mortgage lenders and brokers).

There would be uniform rules for mortgages, including reverse mortgages, across all jurisdictions with a single body responsible for licensing brokers and a single body responsible for policing and enforcing standards. By taking over this area of financial services, the Australian Government would cover the most important forms of consumer credit, accounting for over 86 per cent of consumer credit on issue by amount.

Margin lending:

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Maintain the status quo; or include margin loans as a product under the Corporations Act Chapter 7 regime; or develop a separate Commonwealth regulatory regime for margin loans.

Defining a margin loan as a financial product will make the Chapter 7 disclosure regime applicable to margin lending products and make them subject to disclosure requirements such as Statement of Advice (SOA); and Product Disclosure Statements (PDS) requirements.

Trustee companies:

Consumer protection supervision; or prudential regulation.

The Commonwealth would implement legislative amendments to the Corporations Act 2001 to provide for licensing and supervision of trustee corporations by ASIC.

Debentures/Promissory notes:

Harmonise regulation of promissory notes, regardless of value; extend licensing rules for debenture issuers; require debenture trustee companies to be licensed; and review duties of trustees.

There have been a number of high profile corporate collapses of property development companies, starting with Westpoint and followed by Fincorp, ACR and Bridgecorp. It is proposed to harmonise regulation of promissory notes so that all promissory notes issued to retail investors fall under the definition of debenture and therefore the regulatory regime applicable to debentures.

Property spruikers:

Investigate issues relating to property investment advice, including property spruikers.

Other credit products

Regulate all credit products and services; or regulate only mortgages (and consequently mortgage lenders and brokers) and margin loans.

By regulating mortgages, the Australian Government will cover the overwhelming majority of the consumer credit market. It appears there may be a legitimate and ongoing role for the States and Territories to continue regulating other forms of consumer lending.