

# THE Financier

THE FINANCIERS ASSOCIATION OF AUSTRALIA LIMITED NEWSLETTER

www.financiersassociation.com.au

DECEMBER 2008

*Welcome to the Summer 2008 edition of The Financiers Association of Australia Limited newsletter.*

*As usual we try to keep up with any legislative changes in the credit code as well as inserting any interesting general business pieces gleaned from various sources.*

*A welcome is also extended to new members at this time.*

## **New obligations to soon take effect under Australia's anti-money laundering legislation**

New obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) take effect on 12 December 2008.

These obligations relate to reporting requirements and ongoing customer due diligence (OCDD). These new requirements extend the critical role reporting entities play in Australia's efforts to combat money laundering, the financing of terrorism and other major crime.

### **Reporting requirements**

From 12 December 2008 reporting entities will need to provide the following to AUSTRAC:

#### **1. Suspicious Matter Reports (SMRs)**

If a reporting entity forms a suspicion at any time while dealing with a customer (from the enquiry stage to the actual provision of a designated service or

later) on a matter that may be related to an offence, tax evasion, or proceeds of crime they must submit an SMR to AUSTRAC. Offences include money laundering, terrorism financing, operating under a false identity and include State and Territory, as well as Commonwealth offences.

#### **2. Threshold Transaction Reports (TTRs)**

If a reporting entity provides a designated service to a customer which involves the transfer of physical currency or e-currency greater than AUD10,000 (or foreign currency equivalent), they must submit a TTR.

#### **3. International Funds Transfer Instructions (IFTIs) reports**

If a reporting entity sends or receives an instruction to transfer money or property to or from a foreign country -- either electronically or under a remittance arrangement -- they must submit an IFTI report.

Reports can be submitted electronically in three different ways through AUSTRAC Online. Paper reports will only be accepted from reporting entities who submit

fewer than 50 reports (of any type) per year. If you have any questions, contact the AUSTRAC Help Desk.

Samples of the new reporting forms and their explanatory guides are available through AUSTRAC Online. Reporting entities not yet enrolled on AUSTRAC Online are encouraged to do so as soon as possible.

### **Ongoing customer due diligence**

From 12 December 2008 reporting entities (excluding Australian Financial Service Licence holders who arrange designated services) will also need to conduct OCDD on all their customers.

OCDD has three mandatory components:

1. collecting and/or verifying additional 'know your customer' (KYC) information,
2. monitoring all customer transactions, and
3. applying an enhanced customer due diligence program in certain high-risk or suspicious situations.

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Detailed information to help reporting entities understand and comply with the new OCDD obligations is available on the AUSTRAC website.

### **More information**

More information is available on the AUSTRAC website ([www.austrac.gov.au](http://www.austrac.gov.au)) and AUSTRAC Online ([www.austrac.gov.au/online](http://www.austrac.gov.au/online)) or by contacting the AUSTRAC Help Desk on 1300 021 037 or via email on [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au).

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## **National Consumer Credit Regulation**

Earlier this year, the Council of Australian Governments (COAG) agreed that the Australian Government should adopt responsibility for the national regulation of consumer credit.

At the 2 October meeting, COAG also agreed to the implementation plan for the Government to assume responsibility for all areas of consumer credit.

The Government will implement national credit regulation in two phases, to make the transition as smooth as possible.

Phase one will be in place by mid-2009 and phase two by mid-2010.

### **The Implementation Plan**

On 2 October 2008 the Government announced its two-

phase implementation plan for national regulation.

#### **Key elements of phase one:**

- Enacting the existing State legislation, the Uniform Consumer Credit Code (UCCC), into Commonwealth legislation.
- Establishing a national licensing regime to require providers of consumer credit and credit-related brokering services and advice to obtain a licence from ASIC.
- Extending the powers of the Australian Securities and Investment Commission (ASIC) to be the sole regulator of the new national credit framework with enhanced enforcement powers.
- Requiring licensees to observe a number of general conduct requirements including responsible lending practices.
- Requiring mandatory membership of an external dispute resolution (EDR) body by all providers of consumer credit and credit-related brokering services and advice.
- Extending the scope of credit products covered by the UCCC to regulate the provision of consumer mortgages over residential investment properties.

- Extending the operation of the Corporations Act to regulate margin lending.
- Regulation of trustee corporations.
- Phase One legislation in place by mid 2009.

#### **Key elements of phase two:**

- Enhancements to specific conduct obligations to stem unfavourable lending practices, such as a review of credit card limit extension offers, an examination of State approaches to interest rate caps; and other fringe lending issues as they arise.
  - Regulation of the provision of credit for small businesses.
  - Regulation of investment loans other than margin loans and mortgages for residential investment properties.
  - Reform of mandatory comparison rates and default notices.
  - Enhancements to the regulation and tailored disclosure of reverse mortgages.
  - Examination of remaining existing State and Territory reform projects.
  - Phase Two legislation in place by mid 2010.
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## **Member Note on EDR's**

As you will note one of the changes in the new regulations requires membership of an External Dispute Resolution (EDR) body.

We advise that we are in discussions with an External Dispute Resolution (EDR) Organization, with reference to obtaining a reduced joining fee for being a member of the FAA.

supervisor etc and that to stop your account being suspended immediately while they check it out at their end, they will enter some notes and your details into their system. They then ask you to confirm your Veda user ID and password. Several lenders have already handed over this information.

This is an Australia wide sting by the scammers, ringing lenders in every state.

They are using this information then to amend files in the Veda database.

Please ensure everyone in your organisation, including any accounts people are aware of this issue and not to give out your user name and password.

If this has happened to you, contact Gary Forrest at Veda 0419 664 884.

“tiny terms contracts” are brought within the scope of the Code.

A terms sale of land (a sale on ‘vendor’s terms’ or a ‘wrap loan’) is a sale of land under which the purchase price is payable by instalments. The vendor lets the purchaser into possession but retains title until conveyance following the final payment.

A conditional sale agreement (or ‘Romalpa agreement’) is a sale of goods under which the purchase price is payable by instalments. The seller delivers the goods to the buyer but retains title until the final payment.

Tiny terms contracts are contracts where the cost of credit is incorporated into the cash price and the transaction is represented as a sale of goods by instalment (without any credit charges).

Technical amendments have also been drafted to capture contracts containing instalment payments that exceed the cash price of the goods, which are related to the contract for the actual sale of the goods.

These practices are arguably already covered by the Code as it is currently drafted. However, due to doubts raised in the National Competition Policy Review of the Code, it was recommended the Code be amended through technical redrafting to put the situation beyond doubt.

## **VEDA ADVANTAGE SCAM/STING**

Just a heads up on what appears to be a very professional sting.

In summary, lenders are being contacted by someone who says they are from VEDA and that your direct debit or payment for last month’s Veda subscription did not go through. As a result, they tell you that your Veda account is about to be suspended today. Some very smooth talking – which gives you the lender the real impression the person knows a lot about what is going on. You of course tell them that the payment did go through etc. They then put you the lender on hold.

When they come back to tell you that they have spoken to a

## **Consumer Credit Code Amended**

Amendments were passed by the Queensland Parliament on 7 October to implement recommendations from the National Competition Policy Review of the Consumer Credit Code (the Code). These amendments are expected to commence next year.

The amendments have been brought about by the Justice Legislation Amendment Bill 2008 and ensures “terms sale of land”, “conditional sale agreements” and

## One-stop shop to help consumers

CONSUMERS in dispute with financial service providers have a one-stop shop after the launch of the national Financial Ombudsman Service.

The service has been established to resolve complaints involving banking, finance, insurance and superannuation, and merges three dispute resolution bodies.

Companies in the financial services sector will be able to sign up to be covered by the ombudsman, with the service free to consumers.

Launching the service, Minister for Superannuation and Corporate Law Nick Sherry said the body's independence was important and it should not become a consumer advocacy service.

"It's got to be able to independently adjudicate on disputes," he said. "I think the danger of moving into

consumer advocacy is that it could lose a perception of independence. It would have to be careful about that."

The service will cover about 80% of financial disputes, with most of the rest being state-regulated issues that will be transferred to the Commonwealth under a recent Council of Australian Governments agreement.

Among services being transferred are the regulation of mortgages and payday lenders.

Senator Sherry said he expected the transfer to be complete by the end of this year and the new regulatory regime - which is likely to lead to the services being covered by the new ombudsman - to be in place by the end of next year.

The decision to centralise consumer credit protection would help protect Australia from US-style subprime lending by Australia's approximately 12,000

mortgage brokers, Senator Sherry said.

"One of the critical weaknesses identified in the US subprime was the unfortunate lack of regulation and the dispersal of what regulation there was ... of mortgage broking."

Consumer groups welcomed the new office, saying it would make cost-effective dispute resolution accessible to more consumers.

"Industry-based external dispute resolution is one of the great success stories of consumer protection in the last 20 years," Consumers Federation of Australia chairwoman Catriona Lowe said.

"It provides critical access to justice to large numbers of consumers as well as important feedback to industry members about consumer concerns."

The chief ombudsman will be Colin Neave, formerly the banking ombudsman. Mr Neave said the simplified structure would suit consumers.

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