Consumer Credit Reform and Behavioural Economics: Regulating Australia's Credit Card Industry

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1. Introduction

Australian credit card debt has grown rapidly over the last two decades[1] and, according to the latest statistics released by the Reserve Bank of Australia, there were, as at September 2011, 14.9 million credit card accounts in Australia with outstanding balances of $ 49.2 billion, representing an ownership rate of 87 % of the adult population.[2] Credit cards are the second largest type of household credit product provided by Australian banks, after household mortgages.[3] The majority of credit card users (by number) in Australia are 'transactors', consumers who pay outstanding balances in full on or before the

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[1] In May 1994, when the Reserve Bank of Australia first published statistics showing total numbers of credit card accounts, there were 6.5 million accounts with an aggregate outstanding balance of $5.1 billion. See also The Treasury, *National Credit Reform: Enhancing Confidence and Fairness in Australia's Credit Law*, Green Paper (July 2010). The ANZ Bank *Adult Financial Literacy in Australia: Full Report of the results from the 2011 ANZ Survey* (December 2011) reported an increase of credit card ownership of 6 points to 71%, compared with 65% of respondents surveyed in 2008, 41.

[2] Reserve Bank of Australia, *Statistical Table C1: Credit and Charge Card Statistics* (Last updated 14 Nov 2011). See also Australian Trade Commission, *Australia's Banking Industry* (Report) (Canberra, May 2011), 15.

[3] Australian Prudential Regulation Authority, *Monthly Banking Statistics Table 2*, September 2010 (issued 29 October 2010) cited in Australian Trade Commission, *Australia's Banking Industry* (Report) (Canberra, May 2011), 14.

time the minimum monthly repayments fall due and thus do not incur interest rate or penalty charges.[4] 'Revolvers', who make up the other category of credit card user (and who account for the majority of total outstanding balances on credit cards), pay the minimum monthly repayments or some larger fraction of the outstanding balance and are exposed to the typically high interest rates levied on the unpaid amount.[5]

When used responsibly, especially by transacting consumers, credit cards 'smooth' the irregularities in income and expenditure patterns[6] and can increase individual financial stability.[7] Moreover, through funding consumption, credit cards play an important role in Australia's economy. The Federal Government has recognised this explicitly, stating that any reforms to credit card lending should not compromise the competitiveness of industry or restrict consumer access to credit cards.[8]

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[4] The *number* of Australians paying their credit card balances in full every month has risen since the mid 2000s to over 63 % by 2009 according to statistics from the *Household, Income and Labour Dynamics in Australia* survey: see Ellis Connolly and Daisy McGregor, 'Household Borrowing Behaviour: Evidence from HILDA' (2011) March Quarter *Reserve Bank Bulletin* 9, 13. This is consistent with credit card use in other mature economies, including the United States: Robert J Mann, *Charging Ahead: The Growth and Regulation of Payment Card Markets* (2006, Cambridge University Press) 75. However, the Reserve Bank of Australia statistics indicate that revolvers account for a majority by *value* of the aggregate balance outstanding on credit cards: Reserve Bank of Australia, *Statistical Table C1: Credit and Charge Card Statistics* (Last updated 14 Nov 2011) (since August 2002, when the Reserve Bank first published this information, the aggregate amount of balances accruing interest has consistently accounted for a majority of the total balances outstanding).

[5] The 2011 Dunn and Bradstreet Consumer Credit Expectations Survey found that 34% of Australian households expect to face some level of difficulty meeting credit card repayments, with 8% of participants stating that meeting repayments would be 'very difficult': Dunn and Bradstreet, *Consumer Debt Expectation Survey* (June 2011) 34. The 2010 Australian Debt Study found that 12% of survey participants had missed a minimum credit card bill repayment: Galaxy Research, *Australian Debt Study Report*, March 2010.

[6] Mann, above n, 4, 42.

[7] Angelo Capuano and Ian Ramsay, 'What Causes Suboptimal Financial Behaviour? An Exploration of Financial Literacy, Social Influences and Behavioural Economics' (Financial Literacy Project Research Report, Centre for Corporate Law and Securities Regulation, Melbourne Law School, March 2011), 188, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1793502

[8] The Treasury, *National Credit Reform: Enhancing Confidence and Fairness in Australia's Credit Law*, Green Paper (July 2010), 32.

For a small but significant group of consumers (who fall into the category of revolvers), credit card use can lead to financial hardship,[9] including bankruptcy.[10] From a Government and consumer advocate perspective, although the percentage of consumers experiencing financial hardship is small, this group is significant because the impact of financial hardship is severe.[11] Family breakdown, violence, social exclusion, crime and a long term impact on the capacity to provide for housing, health, education and retirement are serious consequences of financial hardship.[12] This increases the demand on government and community agencies. The recent reforms to credit card lending are designed to alter credit card usage and thus consumer behaviour with the express purpose of reducing the rates of unmanageable credit card debt causing financial hardship.

This note explores the recent reforms enacted under the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011 ('Amendment Act')* and Regulations. The note links the reforms to behavioural economics by identifying how the reforms address two key consumer biases – optimism and imperfect self-control. The note examines how the reforms seek to alter the behaviour of consumers vulnerable to financial hardship as an alternative to uniform or 'blanket' disclosure. Increased blanket disclosure, which involves providing standardised, non-customer-specific information

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[9] There is limited evidence to conclude with certainty the number of Australian credit card consumers who carry unmanageable debt, in part due to the lack of consistent reporting by lenders. The recent ANZ Financial Literacy Report indicates that 13% of respondents paid only the minimum repayments on credit card balances, and 23% of respondents stated they had been charged interest on credit card debt in the last 12 months, above n 1, 46. It is difficult to determine, however, what percentage of these revolving consumers fall into the category of those experiencing unmanageable debt. RBA figures from 2001 analysed by the NSW Office of Fair Trading placed the figure as high as 10% of credit card holders, cited in Ministerial Council on Consumer Affairs, *Responsible Lending Practices in Relation to Consumer Credit Cards*, Consultation Regulatory Impact Statement, August 2008, 16. RBA data from 2004 suggested that 0.8% of outstanding balances were in default, after 90 days of non-payment: Reserve Bank of Australia, 'Box A: Credit Card indicators', *Financial Stability Review* (September, 2004).

[10] Data from the Insolvency and Trustee Service ('ITSA') 2009 Profile of Debtors Report shows that 21% of unsecured debt owed by bankrupts to financial institutions was credit card debt, and 53% of unsecured debt owed by debt agreement debtors to financial institutions was credit card debt: ITSA *Profiles of Debtors 2009* (Canberra, 2010), pp 14, 26. Ronald Mann has linked the increase in credit card balances in five developed countries (including Australia) with a rise in the number of personal bankruptcies: see Mann, above n, 4, 78-80.

[11] Ministerial Council on Consumer Affairs, *Responsible Lending Practices in Relation to Consumer Credit Cards*, Consultation Regulatory Impact Statement, August 2008, 15.

[12] Ibid, 17.

about the risks and benefits of financial products, is the predominant response to customer protection and the predatory sale of financial products by lenders. Vulnerable consumers often display low levels of financial literacy (which may undermine the utility of blanket disclosure for these consumers), and the increased vulnerability to financial hardship increases the need for regulatory intervention.[13] Behavioural economics and financial literacy research offers insight into how regulation can respond to sub-optimal financial behaviour through targeted disclosure as a regulatory alternative.

2. Behavioural Biases and Credit Cards

To understand how the recent Australian credit card reforms are linked to behavioural economics, it is necessary to explore certain behavioural economics concepts. Three developments have prompted a resurgent scholarly interest in the regulation of consumer credit: the sub-prime mortgage debt crisis in the United States and 2008 global financial debt crisis, developments in the credit card industry, and an increase in personal bankruptcy.[14] Recent legal and economic scholarship on the regulation of consumer credit utilises behavioural economics, which challenges the rational consumer orthodoxy underpinning disclosure-based regulation. Disclosure-based regulation is predicated on the assumption that, provided with sufficient information, consumers make informed, rational financial choices. Behavioural economics identifies behavioural biases exhibited by consumers that contradict assumptions about rational consumer behaviour. For the purposes of this note two behavioural biases are identified in relation to credit card use that can result in sub-optimal financial behaviour by causing consumers to underestimate their capacity to repay credit card borrowings.[15]

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[13] Capuano and Ramsay, above n 7, 27.
[14] Tony Duggan, 'Consumer Credit Redux' (2010) 60 *University of Toronto Law Journal* 687, 691. See also Marianne Bertrand and Adair Morse, 'Information Disclosure, Cognitive Biases and Payday Borrowing' (2011) 66 *Journal of Finance* 1865, for an empirical study of payday lending and consumer behaviour informed disclosure. See also Victor Stango and Jonathan Zimmerman, 'Exponential Growth, Bias and Household Finance' (2009) 64 *Journal of Finance* 2807 for an analysis of consumer biases and household borrowing, saving and expenditure patterns.
[15] Oren Bar-Gill, 'Seduction by Plastic' (2004) 98 *Northwestern University Law Review* 1373, 1375.

The first bias is optimism, which in certain contexts is a rational, normal process of human thinking but can affect adversely the ability to estimate future repayment capacity. Optimistic consumers underestimate or are blind to factors that can impede repayment of their credit card balances. The loss of a job or unexpected expenses can cause a 'liquidity shock' that the consumer did not contemplate at the time the credit card contract was signed.[16] The second bias is imperfect self-control. Consumers may initially plan to repay credit card balances in full and on time, but imperfect self-control (exhibited in behaviours such as incremental indebtedness, temptation and hyperbolic discounting[17]) over time leads to unmanageable debt.[18]

Disclosure-based regulation is insufficient to address these biases in part because providing information that is untargeted, complex and disseminated at the wrong time does not help vulnerable consumers.[19] Unlike fixed term loans or mortgages, credit card repayments fluctuate, determined by individual monthly purchasing and borrowing. Consumer behaviour over time can create a mismatch with initial intentions, and uniform information about repayment obligations given at the beginning of the credit card contract does not respond to later changes in consumer behaviour.

The assessment practices of lenders can contribute to credit card misuse. When an application is made, the consumer does not specify a loan amount, but instead receives the card with an approved credit limit after the lender has assessed their financial situation, which can result in a consumer having a credit limit in excess of what they initially wanted. Disclosure-based regulation does not target assessment practices of lenders that are geared to increasing credit limits. The pricing structure of credit

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[16] Ibid, 1376.
[17] Hyperbolic discounting with respect to credit card use refers to the discrepancy between a consumer's initial estimates and intention and the reality of future borrowing and transacting. These time and preference discrepancies mean the consumer 'will overestimate her willpower, and consequently underestimate her future borrowing': Bar-Gill, above n 15, 1396.
[18] Duggan, above n 14, 697.
[19] Ibid, 699.

card contracts can also be difficult for consumers to understand.[20] Lenders compete by aggressively marketing low (sometimes below cost) annual fees, offering consumers ‘ teaser’ interest-free periods, ‘free’ transfers of balances from other credit cards, and member reward schemes. To profit from credit cards, lenders offset the low short term costs provided to consumers with high interest rates charged on outstanding balances.[21] Credit card lenders ‘bundle’ these complex pricing structures in their marketing and product information and seek to attract customers via low introductory rates and annual fees. This makes the overall costs, including the long term costs (high interest rates), very difficult for the average consumer to understand.[22] For the revolving consumer, the optimism and self control biases can cause insensitivity to the repayment obligations over the life of the contract.[23] Disclosure-based regulation has not typically required lenders to provide targeted, plain language information that can assist consumers with low financial literacy to ‘unbundle’ the complex pricing structures of credit cards.

To best address these behavioural biases, Oren Bar-Gill suggests the following regulatory intervention:

1. Inserting individualised warnings in monthly statements, advising consumers about the real-time consequences of minimum repayments and informing them of the time to extinguish the debt at the current rate of interest if only minimum repayments are made.[24] This targeted information is effective because it is given at the critical time when consumers decide to pay in full, or only the minimum repayment amount.[25]
2. Stricter regulation of unsolicited credit increases[26] and requirements for lenders to ‘unbundle’ credit card information by highlighting high interest rates incurred by credit cards as opposed to

[20] Ibid, 700.
[21] Bar-Gill, above n 15, 1373.
[22] Choice, ‘Card games’ *Choice Magazine* (Sydney, October 2006) 15.
[23] Duggan, above n 14, 698.
[24] Bar-Gill, above n 15, 1417.
[25] Mann, above n 4, 160.
[26] Bar-Gill, above n 15, 1420.

emphasising low transaction costs or zero transfer fees.[27] This targets consumer insensitivity to the high long term costs of credit cards and addresses concerns about optimism biases that can result from inflated consumer confidence at the time the credit card is acquired.

3. Increasing the minimum monthly repayment rate for all credit cards.

3. The Credit Card Reforms

A significant consumer credit reform package was initiated by the Commonwealth Government in 2008.[28] The need for regulation of consumer credit by the Commonwealth Government,[29] the global financial crisis, domestic house price increases and high interest rates prompted the reforms.[30] Following the release of a Green Paper in 2008[31] and stakeholder consultation, the *National Consumer Credit Protection Act 2009* (Cth) ('NCCP Act') was enacted.

Key reforms contained in the NCCP Act included:

- The transfer of consumer credit regulation from the States to the Commonwealth[32]
- The creation of a Uniform Consumer Credit Code, including responsible lending requirements
- Increased powers for the Australian Securities and Investments Commission ('ASIC') for the licensing of credit lenders
- Increased consumer protection by raising the mortgage hardship threshold where factors such as illness, unemployment or other reasonable causes are present[33]

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[27] Ibid, 1421-1422.
[28] *National Consumer Credit Protection Act 2009* (Cth).
[29] Pao Yi Tan (Law and Bills Digest Section, Australian Parliamentary Library), *National Consumer Credit Protection Bill 2009*, Bills Digest No 30 of 2009-2010, 15 September 2009, 4.
[30] Ibid.
[31] The Treasury, *Financial Services and Credit Reform: Improving, Simplifying and Standardising Financial Services and Credit Regulation* (Green Paper, July 2008).
[32] Following a Council of Australian Governments ('COAG') agreement on 26 March 2008.
[33] Tan, above n 29, 14. The new Consumer Credit Code contains provisions for new mortgages up to $500, 000 enabling a consumer to apply to a lender to vary the repayment amount or contract term if they are reasonably

- The introduction of stricter civil and criminal penalties for lenders who breach the Code.

The regulation of credit card and home loan lending was left to Phase 2 of the reform process, which is now being implemented. The Government released a second Green Paper in July 2010 and the *Amendment Act* was enacted in July 2011. The *Amendment Act* sections dealing with credit cards were informed by the Ministerial Council on Consumer Affairs' (MCCA) 2008 Regulatory Impact Statement ('RIS') on responsible lending practices and credit cards. The focus of the RIS was those lending practices and current regulatory failures that contribute to financial hardship of vulnerable consumers. The RIS drew extensively on the reports and evidence of consumer groups and community organisations and used behavioural economics and recent surveys of financial literacy to support its proposals for reform.

The MCCA identified the following Australian credit card lending practices and their impact on vulnerable Australian consumers:

1. The timing of essential information. In particular there is no requirement to provide essential information about fees, interest rates and other charges at the time an application is made.[34] If a customer wants to reduce a credit limit they have been assessed for, they are unlikely to do so.[35] By the time the card arrives in the mail, consumers are psychologically committed to the contract, even one with a higher limit.[36]
2. Assessment practices of lenders resulting in increased credit limits. The MCCA was critical of lending industry assessment practices that ignore the intention of s 70(2)(I) of the now superseded Credit Code, designed to prevent consumers being given credit in excess of their

unable to meet their debt obligations due to illness, unemployment or substantial hardship: *National Consumer Credit Protection Act 2009* (Cth) Sch 1 Pt 4 Div 3 s 72.

[34] Ministerial Council on Consumer Affairs, above n 11, 26.

[35] Ibid, 29.

[36] Ibid, 23.

capacity to repay without causing financial hardship. A key failure is assessment practices based only on the capacity of consumers to meet the minimum monthly repayment.[37]

3. The impact of credit limit increases. Offers of credit limit increases by lenders can result in an increased credit limit well in excess of the consumers' ability to repay without causing financial hardship.[38] A study conducted by the Australia Institute in 2010 found 49% of those surveyed had received an unsolicited offer by their lender to increase their credit card limit in the last 12 months.[39] These offers were not limited to customers with 'substantial incomes'; in fact a majority of respondents who were either unemployed or in a household with a combined annual income of less than $40,000 had received a credit limit increase.[40] The MCCA states that while consumers are informed of the increase to monthly repayments following an increase in their credit limit, they are not informed regarding how this will impact on their long-term repayments.[41]
4. The practice of setting low minimum monthly repayments allows consumers to continue to purchase and borrow on their cards without discharging their monthly balance. The MCCA found that the majority of Australian lenders set very low monthly minimum repayments, often as low as 2% of the balance outstanding.[42] The danger is that consumers with low financial literacy, focused on immediate repayment obligations, do not appreciate the long-term consequences of paying only the minimum repayments.

The MCCA then set out the following six options for reform:

1. Changing the timing of essential information in credit card contracts

[37] Ibid, 28.
[38] Ibid, 29.
[39] Josh Fear, Richard Denniss and David Richardson, 'Money and Power: The Case for Better Regulation in Banking' (Research Paper No. 4, The Australia Institute, August 2010) 17.
[40] Ibid, 17.
[41] Ministerial Council on Consumers Affairs, above n 11, 32.
[42] Ibid.

2. Requiring lenders to allow consumers to nominate the credit limit sought
3. Prohibiting lenders from allowing customers to take on more credit than they are able to repay without incurring financial hardship
4. Making any debts incurred in excess of Option 3 unenforceable
5. Requiring warnings by lenders about the consequences of only making minimum repayments
6. Increasing minimum payments for new cards and credit limit increases on existing cards.

Underpinning these reform options was criticism by the MCCA of existing disclosure-based regulation of credit card lending. In particular, the MCCA questioned the efficacy of disclosure-based regulation to target vulnerable consumers in light of the findings of behavioural economics and financial literacy studies.[43]

The lending industry was unsupportive of the proposed reforms. The Australian Bankers Association ('ABA') rejected the need for targeted reforms to change consumer behaviour.[44] The submissions of three of the four major banks uniformly advocated increased disclosure as opposed to targeted intervention. For example, Westpac's submission stated there was no demonstrated systemic industry failure causing financial hardship for consumers.[45] Three of the four major banks emphasised their

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[43] Ministerial Council on Consumer Affairs, above n 11, 23.

[44] For example, the ABA stated that Ministerial Council on Consumer Affairs reform option 5 (requiring warnings on credit card statements) was untested in terms of altering consumer behaviour: Australian Bankers Association, Submission to July 2010 Green Paper (11 August 2010), 10. ANZ submitted that lenders play only an 'indirect role' in financial hardship: ANZ, Submission to The Treasury, National Credit Reform Green Paper (11 August 2010) 16. Westpac submitted that debt stress and financial illiteracy had no 'dominant role' in their customers financial distress or default, and rejected the need for any targeted reforms: Westpac, Submission to Consumer Credit Phase 2 Green Paper (12 August 2010) 6-7. National Australia Bank submitted that credit card debt was not a 'primary cause' of financial distress for consumers, and contested that targeted disclosures would alter consumer behaviour: Submission to The Treasury *National Credit Reform: Enhancing Confidence and Fairness in Australia's Credit Law* Green Paper (July 2010) Consultation Process (18 August, 2010) 14-15. There was no publicly released submission by the Commonwealth Bank.

[45] Westpac, Submission to Consumer Credit Phase 2 Green Paper (12 August 2010) 1, 16. NAB, Submission to The Treasury *National Credit Reform: Enhancing Confidence and Fairness in Australia's Credit Law* Green Paper (July

preference for disclosure-based regulation of credit card lending. This stands in stark contrast to the submissions of consumer groups and community organisations that supported the MCCA's statement that targeted regulation is superior to increased disclosure for addressing financial hardship of vulnerable consumers caused by credit card misuse.[46]

A comparison of the reform options proposed by the MCCA and those by Oren Bar-Gill demonstrates clear similarities. The MCCA reform proposals use behavioural economics concepts to address concerns about credit card lending practices and vulnerable consumers and those concepts are embedded in the recent credit card reforms.

4. The Reforms and Consumer Biases

The note now discusses those credit card reforms that address behavioural biases. Following consultation and hearing evidence of relevant stakeholders, the *Amendment Act* for the regulation of credit cards and home loan lending was enacted in July 2011, with most sections to commence operation on 1 July 2012.[47] Although the Government did not implement the MCCA recommendations in full, certain reforms have been implemented showing a direct response targeting consumer behaviour.

The *Amendment Act* requires that Key Fact Sheets (KFS)[48] are to be included for all new credit contracts. This responds to option 1 of the MCCA proposals by requiring lenders to provide information about costs, fees and repayments at the time an application is made. Option 2 was not implemented.

2010) Consultation Process (18 August, 2010) 14, submitted that it was rising interest rates and mortgage repayments that caused credit card delinquency or default, as consumers pay their mortgage debt first, 14.

[46] See e g, Brotherhood of St Laurence, Submission to the Treasury's National Credit Reform Green Paper (August 2010) 9-10; New South Wales Consumer Credit Legal Centre, Submission to the Responsible Lending Practices in Relation to Consumer Credit Cards Consultation Regulatory Impact Statement August 2008 (November 2008), 10.

[47] The form and content of Key Fact Sheets ('KFS') and the requirements about warnings were left to Regulations assented to on 3 November 2011. Treasury called for submissions from stakeholders after releasing draft Key Fact Sheets for credit cards and credit card contracts in March 2011.

[48] *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011* (Cth) Division 3, ss 133BB-133BD.

However, Regulation 28JA states that a lender must 'make reasonable inquiries about the maximum credit limit that a consumer requires'.[49] The *Amendment Act* responded to option 3 by banning lenders from issuing written credit limit increase invitations[50] except where a consumer has consented.[51] The *Amendment Act* also requires that lenders notify consumers when they have exceeded their credit limit[52] and provide warnings about the consequences of minimum repayments, implementing option 5. The reforms do not explicitly adopt option 3, but it is arguable that the ban on lenders offering credit limit increases unless the consumer has consented to receiving the offer and Key Fact Sheet disclosure requirements may address this issue by providing clearer information to consumers. Options 4 and 6 were not implemented.[53]

The following analysis of the new Regulations and the *Amendment Act* demonstrate how the reforms address behavioural biases. The ban on credit limit increase invitations except with the consent of the consumer addresses the optimism bias. Regulation 28LH gives further guidance to s 133BE(5) of the *Credit Act*, which bans written offers for credit limit increases except with the consent of the consumer. Written communication from a lender to a customer is banned if it includes an increase higher than the existing credit limit or a suggestion that a higher credit limit may be beneficial.[54]

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[49] *National Consumer Credit Protection Amendment Regulations 2011* (No 6) (Cth). No explanation is provided in the Explanatory Memoranda for not adopting option 2 but Regulation 28JA can be seen as a compromise as regards that option.
[50] *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011* (Cth) Division 4, Section 133BE.
[51] *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011* (Cth) Division 4, s 133BF.
[52] *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011* (Cth) Division 5, s 133BH.
[53] The Explanatory Memoranda for the Act and related Regulations do not contain an explanation for rejecting these reform options.
[54] However, written communication containing generic information about credit limit increases is not prohibited. Under Regulation 28LI a lender may seek permission from a consumer to receive credit limit increase offers if this communication solely concerns an increase offer and a reasonable person would conclude that the consumer was aware they were agreeing to receive offers. The Victorian Consumer Action Law Centre states that some lenders will subvert Regulation 28LI by exploiting 'inattentive' or 'impulsive' consumer behaviour: for example by providing a separate consent form along with applications: Victorian Consumer Action Law Centre, Submission to

Regulation 28LFA requires lenders to provide a KFS at the time an application for a credit card is made by a consumer. The KFS must be contained on the application form itself, or given to the consumer on a separate piece of paper with the application and the lender cannot merely refer to a website. Critically, credit card fees, charges and interest rates are unbundled with the specification of a plain language, large font table that separates fees, interest rates, minimum repayments and other charges. This 'unbundling' of fees and charges addresses the optimism bias by separating the short term low costs (teaser fees and introductory rates) from longer term interest rates applying to balances. The timing of disclosure occurs before the contract is signed, which may alter behaviour by prompting the consumer to assess realistically their capacity to repay.

Regulation 28LJ requires lenders to take reasonable steps to notify consumers within two business days if a card is used in excess of the credit limit. The Amendment Act also prohibits the lender imposing fees or charges for use in excess of the credit limit.[55] The warnings address poor self control at a critical time, providing targeted disclosure to the consumer that will alert them to behaviour that can lead to financial hardship because the limit is exceeded.

Lenders must also include a warning on monthly statements. Regulation 79B states that this warning must appear on the front page of a credit card statement and set out:

1. The amount of time it will take to discharge the closing balance if only minimum repayments are made at the current rate of interest
2. An alternative monthly payment amount that would allow the balance to be extinguished in two years at the current rate of interest
3. The difference in the total repayment amount between repayment options (1) and (2)

Treasury Exposure Draft - National Consumer Credit Protection Amendment (Enhancements) Bill 2011 and Draft Credit Card regulations (17 August 2011) 2-3.
[55] *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011* (Cth) Div 5, s 133BI.

4. Lender contact details if the consumer is experiencing financial difficulties.

These warnings target consumer thinking by communicating a real time, individualised warning about the effects of transacting. Oren Bar-Gill states that individualised warnings are less likely to be dismissed as an 'abstraction' by the consumer and he notes that warnings have been effective in changing consumer behaviour when inserted on cigarette packaging.[56] This targeted, individualised disclosure can change consumer behaviour over the life of the contract by regularly informing consumers about the consequences of minimum repayments and revolving debt and should, in contrast to blanket disclosure, have a material impact on consumers' optimism and imperfect self-control biases.[57]

5. Conclusion

The position of the MCCA, consumer groups and community organisations was that targeted intervention, and not increased blanket disclosure, was required to address concerns about credit card lending and financial hardship. Although the Government has not implemented the MCCA recommendations in full, this note has demonstrated explicit links between the reforms and key consumer biases. These reforms can be contextualised as part of a broader regulatory trend to modify behaviour through targeted, customised disclosure that is directed at specific consumer behaviours.[58]

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[56] Bar-Gill, above n 15, 1419-1420.

[57] Another reform applies any repayments to that part of the balance attracting the highest interest rate, if there are different interest rates attached to different purchases or amounts borrowed. The Regulations also clarify the sections of the Code banning written credit increase invitations.

[58] The recent Making Work Pay tax credit in the United States was designed to lift the economy by being spent quickly after receipt. The government used a behavioural economics rationale (small amounts given in paychecks as opposed to a lump sum) to design the tax handout: Drake Bennett, 'Behavioral economics foils an Obama Tax Cut' *Bloomberg Businessweek* (online), 10 November 2011 http://www.businessweek.com/printer/magazine/behavioral-economics-foils-an-obama-tax-cut-11102011.html. Cf the approach in the UK, where calls for credit lending reform by then Prime Minister Gordon Brown (see Alan Dooley, 'Aussie credit cards fail UK standards' (2010) August *Choice* 4, 4) were rejected after consultation by the UK Department for Business Innovation and Skills. Instead the UK has opted to confer five 'rights' on consumers and an agreement has been reached between the Government and lenders on responsible lending practices: see Department for Business Innovation and Skills, *A Better Deal for Consumers: Review of the Regulation of Credit and*

This can be contrasted with blanket disclosure as a regulatory response. The National Financial Literacy Strategy adopted by ASIC in 2011 acknowledged that to improve financial wellbeing it is necessary to recognise the limits of information and respond with regulatory initiatives that drive behavioural change.[59] Whether these reforms actually alter the way in which consumers use credit cards is an important step in assessing the efficacy of targeted disclosure (and, more broadly, behavioural economics) in improving consumer financial wellbeing.

Store Cards: Government Response to Consultation (March, 2010). This approach does not aim to modify consumer behaviour through targeted, customised disclosure.

[59] Australian Securities and Investments Commission, *National Financial Literacy Strategy* (ASIC Report 229, March 2011, 6.