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Towards a National Credit System

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Mr MORRIS (Mornington) — We are again dealing with a bill which will pass some of Victoria's legislative powers to the commonwealth. Once again the role of the state Parliament is being handed away — handed away on an issue that can have a very significant impact on the day-to-day lives of many people. The reality is that in the 21st century if you have credit problems, the opportunity you have to live a useful life, reach your potential and have a decent standing of living is substantially diminished.

We have heard in the debate that this measure is part of a national business and regulatory reform agenda agreed to by the Council of Australian Governments. This portion of the agenda in part stems from the Productivity Commission report delivered in early 2008 which proposed that the regulation of credit be passed to the Australian Securities and Investment Commission (ASIC). I want to make it very clear that I support the intent of the reform. We have a national economy. We have national bodies like ASIC which are more than capable of administering it. We have in most cases national market operators, and we have national markets.

As the minister noted in the second-reading speech, those involved in the provision of credit will under this proposal be subject to a single system of regulation. The Productivity Commission proposed that the regulator should be ASIC, but is it going to be the best regulator? Quite frankly, I do not know, but I am prepared to accept the view advanced by the Productivity Commission that that is the appropriate body.

My concern with the bill is a more general one — that is, about the impact of the process, particularly the cumulative impact of the process on the federation. The Productivity Commission report was delivered in April 2008, yet this government was elected in November 2006, and the Rudd government in October 2007, well before any of this information was in the public domain. So these proposed national reforms have not been the subject of any discussion in the community; they have not been argued in the context of an election campaign; they have not been tested by a public vote.

If you compare the process that has been undertaken in this case with the process that led to the federation of the colonies and the determination of powers, which were eventually identified under section 51 of the constitution, you see that that process probably took far longer — it went on for well and truly over a decade, probably closer to two decades. The powers that were identified in section 51 of the constitution were clearly known to most of the participants in the public debate.

I have no doubt that even if this proposal were tested in the way that the section 51 powers were tested, it would be supported because it makes sense.

The question really is whether the way we are going about this is an appropriate way to reshape our federation, because at the moment we are reshaping millimetre by millimetre, issue by issue, power by power, without any reference at all to the impact those changes have on the whole framework and without any reference to the impact on budgets, whether it is the state budget or the federal budget. There has been no discussion about who is regulating these matters at the moment and what the impact of these changes will be, because clearly those employees are probably not going to wind up going to the Australian Securities and Investments Commission. I simply raise that as an example, not as a matter that I am seeking a response to. Is this is the best way to deal with changes to our federation? I think not!

I also want to make it clear that I am not someone who wants to turn the clock back. The specific powers that were conferred on the commonwealth in 1900 to commence operation in 1901 were appropriately limited powers.

Mr Jasper — Limited powers.

Mr MORRIS — As the member for Murray Valley interjected, they were limited powers and appropriate for the time. We need to accept — in my view it is a good thing — that Australia is a totally different place from the days when the House of Representatives sat in this chamber. I would not want to go back to that extremely limited framework.

We have moved on, and I suspect that is why subsection 37 was built into the constitution, but referrals were always intended to be optional, and my understanding is it was always intended that they be capable of being reversed. There is a view — I understand it is untested, but there is considerable backing for it — that the commonwealth could successfully oppose any move by the state of Victoria to recover these powers. That is something that we cannot answer now; that is something we do not know, and I suspect if we find that the answer is not to our liking, it will be too damn late to do anything about it.

Why is it necessary to pass the bill? What is the impetus? It is clear that the Uniform Consumer Credit Code is not working as well as it perhaps could. It is working in the context of a national market and national institutions and so on. It also probably has a fair bit to do with the structure we have in place.

If you have a look at the details of the bill, you see that, apart from establishing the national framework, we are amending the Consumer Credit Victoria Act, the Credit Administration Act, the Business Licensing Authority Act, the Duties Act, the Fair Trading Act, the Goods Act, the Interpretation of Legislation Act, the Motor Car Traders Act, the Partnership Act, the Supreme Court Act and the Victorian Civil and the Administrative Tribunal Act. In all 40 clauses of the some 60 clauses in the bill deal with amendments to Victorian acts.

There has been no shortage of opportunity to streamline the system before today, and there has been no lack of opportunity to streamline in turn rather than handing over powers.

Is the system that is proposed going to work any better? Certainly the Scrutiny of Acts and Regulations Committee indicated in the report it tabled this morning that cooperative regimes like the national credit legislation may undermine the operation of the Charter of Human Rights and Responsibilities. It expressed concern about the lack of appropriate parliamentary scrutiny, and it has identified two specific aspects of the National Consumer Protection Credit Act 2009, section 295 and section 151(1), with which it has considerable concerns. It refers to the Parliament, as it frequently does, for its consideration the question of whether these issues and the minister's claims in the statement of compatibility are in fact appropriate.

These are significant issues, if not problems, with this bill. There are questions about the process. There are questions about the impact of this legislation on the citizens of Victoria. There are questions about the impact of the cumulative effect of this bill and similar bills on the health of our federation. There are real concerns about the impact of the commonwealth legislation on the rights claimed for all Victorians by this government under its Charter of Human Rights and Responsibilities.

Despite these known flaws, the government appears to have made little effort to address them because they remain in the bill that is before us.

I acknowledge the nature of the reforms themselves are not in dispute. The reforms are supported but the process is not. If we are to succeed in modernising our federation, it is not the ministerial councils and the Council of Australian Governments that we need to bring with us; we need the participation and the endorsement of the people of the federation, not only the people of Victoria but the people of all the states. To date that participation has not been sought nor has it been welcomed.