

## Chapter 9

# Responsible Lending, Unjust Terms and Hardship

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### I The Setting

The *National Consumer Credit Protection Act 2009* (Cth) (NCCPA) is nationwide legislation applying in Australia in relation to the provision of consumer credit. The National Credit Code (NCC) appears in Schedule 1 to the NCCPA. The *Credit Contracts and Consumer Finance Act 2003* (NZ) (CCCFA) applies to consumer credit in New Zealand. Consumer credit is generally obtained by borrowers for financing the purchase of their home; funding short- to medium-term purchases for personal purposes, such as cars or overseas holidays; and as a financing mechanism for credit card purchases.

According to Australia's Productivity Commission (PC), the use of consumer credit has increased substantially over the last 20 years.<sup>1</sup> The real value of consumer loans has grown at an annualised rate of 5% since 1988.<sup>2</sup> The reasons for such growth arise from a combination of factors, including the facts that:

- credit has been cheaper and more accessible for many consumers in the last few decades; and
- average household incomes have been growing.

The PC also noted that financial market deregulation has played a key underlying role. It has facilitated a dramatic increase in the number of credit providers, which has promoted competition, in turn placing downward pressure on the cost of credit and encouraging the development of innovative loan products.<sup>3</sup> Given the size and growth of the market, it is in the interests not only of individual consumers, but also the economy more generally, that the consumer credit market operates fairly and efficiently. Ramsay describes the fast growth of the consumer credit market over the

1 Productivity Commission (PC), *Review of Australia's Consumer Policy Framework* (Inquiry Report No 45, 30 April 2008) Vol 2, pp 444-45 at <<http://www.pc.gov.au/projects/inquiry/consumer/docs/finalreport>> accessed 27 September 2012. See also Chapter 1 of this volume.

2 Ibid, p 444.

3 Ibid.

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