



SUBMISSION TO TREASURY

FINANCIAL SERVICES AND CREDIT REFORM GREEN PAPER

Wesley Community Legal Service is a N.S.W. community legal centre that has provided a specialist gambling legal service for consumers since 1998.

Our role is:

- To provide legal advice, information and support to problem gamblers, families and others affected by problem gambling;
- To provide court representation for persons charged with gambling-related crimes;
- To provide education and training to relevant service providers such as RGF-funded problem gambling services on legal issues relating to problem gambling;
- To provide advice and advocacy on regulatory issues relevant to problem gambling.

Notes: Financial assistance for this Project was provided by the New South Wales Government from the Responsible Gambling Fund.

The views expressed in this publication are solely those of the author/s and do not represent the views of the Responsible Gambling Fund or of the New South Wales Government.

This submission comments on issues raised in Chapters 1 and 6 of the Green Paper.

Mortgages, Mortgage broking and Non-deposit taking institutions

Consumers will greatly benefit from a national system of consumer credit law.

We strongly support the proposal that the Australian Government take responsibility for the regulation of mortgages and mortgage brokers. Whilst Australia did not endure a financial crisis in mortgage lending similar to that experienced in the United States, there is no guarantee that it would not occur in the future without the protection of a strong, centralised regulatory system.

We believe that the Commonwealth should also regulate other forms of consumer credit. The current system of consumer credit law management is cumbersome. We anticipate that Commonwealth regulation of credit will result in improved consumer protection. The Commonwealth has greater resources than the States and can provide a uniform national system that can keep pace with developments in the credit industry and emerging issues.

The alternative proposed would leave poorer consumers worse off than wealthier consumers. Generally wealthier borrowers are the ones with mortgages. Poorer consumers can only choose between the credit products with the highest charges and have the fewest choices between products. They have nothing to offer as security except perhaps a car and may not have secure employment.

They often lack the literacy or educational standard required to read and understand the fine print of loan documents. They may lack the transport to access credit through agencies other than those that advertise in the mainstream media or are physically located in their local shopping area. They may not have the confidence to shop around for a good deal on a loan.

Many poor people feel compelled to turn to payday lenders because they have a default listed on their credit report or simply because they feel that the mainstream lenders will reject them. In particular, people affected by problem gambling are customers of payday lenders.

It would be socially inequitable for the Australian government to accept the responsibility of regulating credit for middle class Australians with mortgage debts, but leave the poor to be regulated by the inferior current system.

Many consumers have more than one credit product. For example, a consumer may have a home loan, an investment loan secured by mortgage, a car loan and a credit card all with the same financial institution. If the Commonwealth only takes control of some forms of credit, then the home loan will be regulated by the Commonwealth under its consumer law; the investment loan may be regulated by Commonwealth or State under the law that applies to investment borrowing; the car loan will be regulated by the State unless it is also secured against the home; and the credit card will be regulated by the State. Commonwealth consumer credit law, State consumer credit law and general law for non-consumer lending would all apply. This would be a very inefficient outcome.

The national loans market

The mainstream financial institutions largely operate on a national basis. Increasingly consumers are also operating across State boundaries. A homeowner in one State may purchase an investment property in another State. Both properties are linked by the same credit product. However the position of the consumer may vary depending on which of the 2 States the credit provider nominates as the jurisdiction for the loan.

Smaller lenders that operate regionally such as credit unions are mostly members of CUSCAL, the Australian Finance Conference or other organisations that enable them to keep up with developments in credit regulation. There are little differences between regions, and those that exist are rarely for the benefit of consumers.

Consumer redress against lending institutions is usually more effective through the Banking and Financial Services Ombudsman and other EDR

schemes that operate on a national basis. The Fair Trading offices that exist on a State level are often overwhelmed by demand for their services. Some States such as N.S.W. have a specialist tribunal, but the number of consumers taking cases to these tribunals is very low by comparison to the number of complaints that are made to the ombudsman services. Some States do not have a specialist tribunal. Consumers there are reluctant to go to court as they must tackle the credit providers' lawyers and risk a massive bill for legal costs if they lose their case. A nationwide credit tribunal would provide a better outcome.

Increasingly payday lenders are operating nationally or at least interstate. There are daily advertisements placed in all forms of media by payday lenders who will lend money to consumers throughout Australia. For example some Queensland payday lenders advertise their loans in the Sydney media. Applications can be made by telephone, post or the internet. Loan funds are deposited in the person's bank account.

Although the consumer lives in N.S.W., the written contract may stipulate that it is made in Queensland and subject to Queensland law. This is to the disadvantage of the N.S.W. consumer who may not be able to exercise their rights in Queensland. For example, if a low income consumer wished to dispute their contract, they would not be eligible for Legal Aid. The N.S.W. Legal Aid Commission only funds actions in N.S.W. courts. Legal Aid Queensland only provides legal aid for Queensland residents. So there is no legal assistance for N.S.W. consumers who are involved in cases in Queensland courts.

It is important that a national system of credit regulation incorporate all aspects of consumer protection, in particular:

- An EDR scheme for consumer complaints
- Protection against unconscionable lending practices, particularly irresponsible lending & unsolicited loan offers
- Hardship provisions without a low monetary threshold

- Fair credit reporting practices
- Strict control of credit brokers
- Improved disclosure of broking commissions

The 48% interest rate cap

An important question is whether the 48% interest rate cap should be imposed on a national basis. There is strong community support for the 48% interest rate cap. Consumers expect the government to provide protection for the poor, weak and vulnerable. Problem gamblers are one such group. These are the consumers who are exploited by the payday lending industry.

The payday lending industry has resisted such a cap by devious means such as false business declarations or disguising their documentation as promissory notes or bills of exchange. When fees and charges are factored into the contract, the effective interest rate for many of these products can go as high as 1500% p.a. Most people consider that sort of rate to be the territory of loan sharks.

Other Credit Products

We strongly support the proposal that the Commonwealth regulate all credit products and services.

The growth of the national credit market continues and the differences between States are of little significance. Consumers are increasingly able to access credit products from other States or Territories by telephone or internet.

The States have made significant progress towards uniform consumer credit regulation, but progress is slow due to the difficulties inherent in getting all States to agree. Progress in providing consumer protection has lagged behind developments in technology and the development of new or varied credit products.

The Commonwealth will be able to regulate credit products and services more efficiently and effectively than a combination of the individual States and Territories. Commonwealth agencies such as ASIC and the ACCC are larger and better resourced than State fair trading offices.

We are particularly concerned at the effect of micro loans and payday loans on consumers. These exacerbate poverty and should be restricted or eliminated.

People caught in the debt trap turn to welfare agencies such as Wesley Mission for emergency assistance when the next crisis strikes. Over time they may become dependent on emergency assistance handouts. Essentially it means that they are using charity to live on while they repay their payday loans.

Dated: 24th June 2008

Richard Brading

Trevor Collier

Wesley Community Legal Service

15 Belvoir Street

Surry Hills NSW 2010

(02) 9951-5569 (tel.)

(02) 9951-5582 (fax)

communitylegal@wesleymission.org.au