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Parliamentary Joint Committee on Corporations and Financial Services
Senate Economics Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members

Inquiries regarding Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the provisions of the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (the **bill**). The following is a submission to both the inquiry being conducted by the Parliamentary Joint Committee and the Senate Committee.

We are generally very supportive of the amendments proposed by this bill. A summary of the submission is below.

Regarding **small amount credit contracts** we have explained the problems created by these kinds of loans, why regulatory intervention is warranted in this case, and discussed some of the common arguments made in opposition to caps on costs of these kinds of loans.

We have recommended:

- amendments to the design of the cap on small amount credit contracts to prohibit fees incurred with third parties (such as introducers, brokers or processes) whether associated with the credit provider or not;
- that the commencement date for Schedule 4 of the bill be changed to 1 June 2012;
- that the bill require the cost of credit for short term credit contracts be stated as an annual percentage rate;
- that civil penalties to be made available for a breach of subsection 23A(1), which describes the fees that may be charged under a short term credit contract;
- that guidance be provided on what costs are 'reasonable' in an establishment fee;
- that a prohibition on repeat borrowing is added to complement the ban on refinancing;

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- that regulations be created to describe the investigations that must be made by a lender or a credit assistance provider to determine if a borrower already has an existing short term loan;
- that lenders be prohibited from using “employer authorities” to secure repayment;
- a prohibition on contracts requiring loans to be repaid in a single repayment period and/or contracts requiring any one repayment being greater than the principal borrowed;
- a prohibition on lenders requiring the use of a direct debit authority; and
- that Government provide sufficient funding to the Australian Securities and Investments Commission (ASIC) to enable necessary compliance and enforcement work.

Regarding **consumer leases** we have discussed the problems caused by current regulation, and made recommendations about the provisions in the bill regarding statements of account.

Regarding the **enhancements** to the *National Consumer Credit Protection Act 2010* (Cth), we have identified the provisions that we believe to be the most significant and recommended some relatively minor amendments.

We have also suggested some minor amendments to the **reverse mortgages provisions**.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

Small amount credit contracts

Overview

Consumer Action supports the amendments regarding high cost short term loans and in particular the cap on costs under these loans proposed by Schedule 4 of the bill. We support the amendments because we believe that they will achieve:

- a reduction in harm to consumers caused by high cost short term loans, including a reduction in fees and effective interest charged; and
- a significant decrease in the number of these loans, in particular the most harmful examples at the very short term end of the market and those for basic living expenses.

At the time of writing, 31 other community organisations have also publicly supported these proposed amendments in a joint open letter to the Minister for Financial Services and Superannuation, the Hon Bill Shorten MP. The letter and full list of current signatories is attached as an appendix.

However, to our knowledge, the cap model the Government has chosen (a 10 per cent establishment fee plus a 2 per cent monthly fee) is untested. The cap proposed in the bill also allows lenders to charge higher fees than the 48 per cent cap currently in place in Queensland, New South Wales and the ACT which has been effective in reducing the harm caused by high cost short term loans. For this reason, we believe the proven solution of a comprehensive interest rate cap of 48 per cent per annum is the best way to cap costs of high cost short term credit. However, we support the Government's proposal as the "next best" option.

In the remainder of this section we will:

- restate the problem with high cost short term loans;
- explain why regulatory intervention is warranted;
- rebut the main arguments currently being made against introduction of a cap;
- list some specific improvements that could be made to provisions of the bill; and
- list some further recommendations on matters not covered by the bill.

The problem

The central problem with high cost short term loans is that, where used other than as a one-off, they worsen a borrower's financial situation instead of improving it.

Although these loans are marketed as a one-off solution to temporary problems, evidence indicates that repeat borrowing is the norm. For example, the recent *Caught Short* study from RMIT University found that over half of the respondents to their study had taken out more than ten loans "with many saying they had received over 50 loans".¹ Lenders numbers seem to confirm these findings, with Cash Converters International's 2006-07 Annual Report stating that the "vast bulk" of their lending business was conducted with repeat customers.²

High cost, short term loans are harmful because of a combination of four key factors:

1. They are extremely expensive: These loans typically attract effective annual percentage interest rates (**APR**) of 400 per cent (and can be over 1000 per cent). Moreover,

¹ Marcus Banks (2011), *Caught Short: Exploring the role of small, short term loans in the lives of Australians - Interim Report*, RMIT University, Melbourne, p 11.

² At page 19. Accessed on 11 October 2011 from <http://www.asx.com.au/asxpdf/20071023/pdf/31594bv0528dn3.pdf>.

repayments create a very large burden for borrowers on a low income, particularly due to the short term nature of many of the loans.

Where a loan is for a short term, it must be repaid over a small number of relatively large instalments, which has a much greater impact on a person's budget than if the same loan is repaid through a large number of lower instalments.

For example, assume a typical short term credit scenario where the borrower earns \$24,000 per annum after tax³ (that is, \$923 per fortnight), borrows \$300 over a term of 28 days,⁴ and is required to repay a total of \$405.⁵ In this scenario, fortnightly repayments would be \$202.50 per fortnight, which is 22 per cent of this borrower's income.

Alternatively, assume the borrower's income was the maximum, single adult rate of Disability Support Payment (this is also not uncommon, as discussed below) which equates to an income of \$748.80 per fortnight.⁶ Assuming all other factors in the scenario above remain the same, repayments for this person would be 27 per cent of income.

In both scenarios, repaying the loan creates what is without doubt an enormous burden for a low income borrower whose entire income is likely to be required to meet necessary living expenses. It is not surprising that these loans exacerbate rather than relieve financial stress.⁷

2. They are predominantly issued to people on low, fixed incomes: It is beyond doubt that users of short term small amount loans are predominantly on low incomes. The Government's Regulation Impact Statement on Short Term Small Amount Finance (the **RIS**), reviewed a range of studies and found that around 40-49 per cent of borrowers had an annual income less than \$24,000 and between 50-74 per cent earned less than \$36,000. In addition, it found that

a substantial number of short term borrowers, possibly up to 25%, have incomes that are so low that they fall beneath the Henderson Poverty Line.⁸

In addition, both the RIS⁹ and *Caught Short* have found that a large number of borrowers are receiving Centrelink payments. According to *Caught Short*, 78 per cent of borrowers

³ 49 per cent of consumers using Cash Converters' 'Cash Advance' product earned \$24,000 pa (after tax) or less: Treasury (2011), *The Regulation of Short Term, Small Amount Finance: Regulation Impact Statement*, Australian Government, Canberra, pp 14-15. Accessed on 6 October from <http://ris.finance.gov.au/files/2011/09/RIS-Short-term-small-amount-finance.pdf>.

⁴ Our 2010 research found that loans were most commonly for amounts between \$200 and \$500, with four weeks the most common loan term (49% of loans were for terms of either four or two weeks). See Zac Gillam (2010), *Payday Loans: Helping Hand or Quicksand?*, Consumer Action Law Centre, p 82.

⁵ Based on Cash Converters' charges of \$35 per \$100 loaned. Cash Converters is the largest provider of small amount credit contracts in Australia.

⁶ This figure includes the single rate pension supplement. Centrelink, Payment Rates: Disability Support Pension (effective 20 September 2011). Accessed 6 October 2011 from http://www.centrelink.gov.au/internet/internet.nsf/payments/dsp_rates.htm.

⁷ Consistent findings were made by the Government's RIS, see Treasury, above n 3, p 35.

⁸ As above, p 15.

⁹ As above, p 15.

receive Centrelink payments, with 37 per cent of that group receiving the Disability Support Pension.¹⁰

This is one of the most pressing reasons why a cap on costs is needed—the people these loans are targeted at are the very people who can least afford them.

3. They are predominantly used to pay for basic recurrent expenses: Consumer Action's research found that payment of basic living expenses was the reason for 75 per cent of borrowing.¹¹ This includes 22 per cent of borrowers using the money to pay for car repairs or registration and 21 per cent to pay utility bills, followed by food or other essentials (18 per cent) and then rent (11 per cent).¹²

More recently, *Caught Short* found that the seven most commonly cited reasons for borrowers taking out their first loan were "to meet regular, weekly-type needs and expenses".¹³ When asked about all short term small amount loans the borrower had taken out (not just their first loan), regular, weekly expenses were cited twice as often as one-off expenses. Notably, the third most common reason cited for taking out a loan was 'to pay back another loan'.¹⁴ Again, this establishes that these loans are a cause of long term debt rather than a solution to one-off shortfalls.

4. The loan contract prioritises debt repayments over essential expenses: Lenders generally obtain direct debit authorities from borrowers as part of the application process. Lenders then debit a borrower's bank account as soon as pay or benefits are deposited, securing the loan. When a borrower is already on a limited income and unable to afford basic needs, this impinges on their capacity to pay for essentials like food or rent, prompting additional financial stress and further borrowing.

In combination, these factors mean that these loans by their nature tend to create additional financial stress rather than resolve a financial shortfall. For the majority of borrowers who are already in financial distress, they can lead to a cycle of debt that can be very difficult to escape.

The justification for regulatory intervention

While there is rarely a case for price regulation in competitive, well functioning markets, the payday lending market is neither of these things.

Our research established that there is little if any price competition among lenders. We found that less than 10 per cent of borrowers chose a particular lender based on price, while 54 per cent chose a lender because they were nearby, and 17 per cent because they had used that lender before.¹⁵ In addition, borrowers appear to be largely unaware of the cost of their loans, either in percentage or dollar terms. When asked to report the cost of their loan, borrower responses

¹⁰ Banks, above n 1, p 8.

¹¹ Gillam, above n 4, p 6.

¹² As above, pp 59-60.

¹³ Banks, above n 1, p 14.

¹⁴ As above, p 15.

¹⁵ Gillam, above n 4, p 66.

varied widely but the most common response was actually \$0.¹⁶ A relatively small number of people nominated figures that could realistically be the cost of the loan.¹⁷ This suggests there is very little competitive pressure on the cost of these loans. The Government's RIS also cited overseas research finding that normal price competition does not appear to apply in the short term high cost lending market.¹⁸

This lack of competition is created because many borrowers are simply desperate to access money and do not feel they are in a position to look for a cheaper loan. This desperation, as well as a lack of awareness of safe alternatives to loans, allows lenders to effectively charge what they like.

Further, despite a huge increase in the number of loan providers operating in Australia since the first the first operator in began trading in 1998,¹⁹ cost of loans has not fallen as one might expect in a competitive market.

The need for regulatory intervention also arises due to the combination of the design of the product and the target market. The product provides what is marketed as a short-term solution to borrowers who are usually desperate. Even where it is foreseeable that one or more loans may worsen the individual's financial situation, the immediate need for cash means that it is unlikely that disclosure, or even financial education, would lead to considered decision-making by potential borrowers.

These loans are causing significant harm to consumers, and normal market forces are not working to reduce that harm.

Common arguments made against the introduction of the cost cap

A cap on the cost of short term high cost loans has been the subject of debate in Australia and elsewhere for many years. During these debates, lenders tend to consistently make the same series of arguments opposing a cap. In anticipation of those arguments being made to the committee, we would like to take the opportunity to present evidence to the committee about the reality of high cost short term lending.

Argument: the costs cap is less than cost of issuing loans, so the cap will effectively shut down the industry

In a recent submission by the National Financial Services Federation (**NFSF**, a representative body for short term lenders) it was argued that the cap in the proposed legislation (a 10 per cent establishment fee plus a 2 per cent monthly fee) would not cover lenders' costs. The NFSF propose a cap of either \$30 per \$100 loaned, or at a minimum, an establishment fee of \$26 per \$100 loaned plus a 2 per cent monthly fee.²⁰

¹⁶ 12.9 per cent of respondents gave this response. As above, pp 64-5.

¹⁷ For example, 7.1 per cent responded with \$100. As above, p 65.

¹⁸ Treasury, above n 3, pp 19-20.

¹⁹ See Gillam, above n 4., p 89; Treasury, above n 3, pp 24-5.

²⁰ NFSF (2011), *Submission on Draft National Consumer Credit Protection Amendment (Enhancements) Bill 2011*; p 16. Accessed 10 October 2011 from

We do not doubt that there are costs involved in issuing a loan, and we also acknowledge that the RIS suggested a return of "approximately \$20-30 per \$100 is required to generate a reasonable return" on loans under around \$300 (though costs would be lower on larger loans). However, we would oppose a cap at the levels suggested by the NFSF, for two main reasons.

The first is that the cap suggested by the NFSF would allow lenders to charge very close to what they are charging now—for example, Cash Converters' fee for their 'Cash Advance' product is \$35 per \$100 loaned. Given the lack of price competition currently in this market, we do not accept that the NFSF's proposed cap would bring fees down to a competitive level.

The second is that (even if the NFSF's suggestion represented a competitive price) increasing the cap to allow continued provision of very short term versions of these loans would be to profoundly miss the point of this reform. The reason the proposed cap will protect consumers is that it will make the shortest term loans less viable, encouraging lenders to offer longer term loans. As discussed above, the short terms of these loans are one of the key reasons they are so harmful. The object of any cap should be move the market away from the shortest term loans.

Argument: Removing or restricting access to these loans will financially exclude consumers

Lenders commonly argue that removing or restricting access to short term loans will harm consumers by excluding them from credit.

The borrower survey in *Helping Hand or Quicksand*²¹ suggests that rather than simply being excluded from mainstream credit, many payday borrowers seek out a payday loan because they have exhausted their use of other forms of credit. For example, 63 per cent of borrowers had used a credit card within the previous 12 months, suggesting that their credit cards had been cancelled due to non-payment or had been used to the limit.²²

Further, a fundamental flaw with this argument is that it assumes these loans help the people that use them. As we have discussed above, use of these products by their typical customer (who is on a low, fixed income) for the purposes they are typically used (basic, recurrent expenses) creates debt and financial hardship rather than relieves it.

Access to harmful financial products does not amount to financial inclusion. Real efforts to improve financial inclusion will involve improving access to affordable credit (such as no interest loans, or low interest loans offered through community agencies), supporting people to build wealth, and improving access to services like financial counselling which can provide sustainable solutions to more serious financial problems.

http://www.treasury.gov.au/consumercredit/content/consultation/submissions/downloads/national_consumer_amendment/110906_NFSF.pdf

²¹ Gillam, above n 4, pp 76-8.

²² While the industry claims that borrowers often choose a payday loan ahead of other forms of credit (such as credit cards) our casework experience suggests that this is unlikely.

Argument: Capping costs on short term loans will drive people to loan sharks

Lenders frequently claim that imposing a cap on costs for short term credit will create a market for illegal lending. However, there is simply no credible evidence to suggest that this is the case. Lenders making this claim typically rely on a single reported survey by UK consultancy firm Policis. Both the findings and the methodology of this survey have since been widely questioned.²³

The actual experience of jurisdictions that have implemented a cap on the cost of short term loans is that there has not been a rash of illegal lending. These include:

- Queensland, New South Wales and the ACT where there is currently a 48 per cent cap on the total cost of credit (these caps allow a lower return to lenders than the one currently proposed); and
- thirteen European countries²⁴ including Germany and France, and in a number of jurisdictions in the US and Canada which impose caps at least as restrictive as the one proposed.

To our knowledge, there is also nothing to suggest that illegal lending was a problem in Australia before legal high-cost short term lending first began in 1998.

Further, the argument that borrowers will turn to illegal lenders if access to payday loans is removed is not logically coherent. This argument assumes that borrowers know an illegal lender, and also that borrowers who currently source their loans from well known, brightly lit main street lenders would automatically turn to underground providers.

Finally, even if there was an increase in illegal lending, the appropriate response would be prosecution of criminal activity, not reducing protections for vulnerable consumers.

Argument: Responsible lending provisions are adequate to limit harm to consumers

Lenders have also claimed that a cap on costs is unnecessary, as existing responsible lending requirements²⁵ provide adequate protection to consumers.²⁶

While we strongly support the responsible lending requirements, we suggested before their introduction that those type of laws are simply not well adapted to the particular threat posed by short term credit contracts.²⁷ This form of credit differs from other consumer credit where payments are made over a period of months or years. We are concerned that small amounts lent out as high-cost short term loans (at least when assessed in isolation), may not breach the responsible lending test—that is, that they are "not unsuitable" for the borrower.

²³ For a discussion of our concerns with the Policis survey, see Gillam, above n 4, pp 187-191.

²⁴ For details, see iff/ZEW (2010), *Study on interest rate restrictions in the EU, Final Report for the EU*, p 63. Accessed 10 October 2011 from http://ec.europa.eu/internal_market/finances-retail/docs/credit/irr_report_en.pdf.

²⁵ In particular requirements under Chapter 3 of the National Consumer Credit Protection Act 2009 that lenders do not provide credit which is unsuitable for the borrower.

²⁶ For example, see NFSF, above n 20, p 16.

²⁷ See Gillam, above n 4, p 18. For a similar discussion, see Treasury, above n 3, pp 38-9.

Even if some of these loans were likely to be found to be unsuitable, enforcement would be unlikely. Our experience indicates that in general this borrower group is less likely than others to raise a dispute (with a court, tribunal or ombudsman scheme) than other borrowers, are less likely to be prepared to provide evidence to a regulator and, even when they do, their understanding of the transaction and other factors reduce the likelihood that they will be identified as useful witnesses by the regulator. This means that enforcement of the responsible lending laws in this sector by the regulator would be extremely difficult, and would be unlikely to be adequate to change industry practices.

Earlier this year, Consumer Action contacted financial counsellors across Australia to test the hypothesis that the responsible lending laws were not providing any protection for users of high cost short term loans. In response, we received a number of case studies of expensive loans being given to customers despite clear proof of ongoing financial stress. Twelve of these case studies were compiled into our report *Mission Incomplete: A Snapshot of Consumer Experiences of Short Term Loans Post the National Consumer Credit Reforms*.

The Government's RIS also recently confirmed our concerns that responsible lending laws were ineffective in addressing harm caused by high cost short term loans, finding that:

It is noted that the introduction of the responsible lending requirements could be expected to have the greatest impact on very short-term loans with a single high repayment. However, there do not appear to have been any significant changes to practices in this area.²⁸

Comments regarding specific provisions

While we broadly support the amendments regarding short term credit contracts, we have a number of recommendations regarding particular aspects of the bill.

Avoidance issues

Unfortunately, the caps on cost of credit that exist in Queensland, New South Wales and the ACT have been subject to a number of avoidance techniques by lenders. These include lenders implementing sham arrangements whereby fees charged "under the credit contract" do not exceed the cap, but instead a borrower enters two contracts—one for broking and one for a loan. When the fees and interest under the two contracts are accumulated, they exceed the cap. In other instances, fees are paid to other persons (for example, introducers or processors) arguably "not under the contract".

The NSW legislation sought to deal with this issue, and its approach has been re-created in the bill for the purposes of calculating the "annual cost rate" for the 48 per cent cap on credit contracts that are not short term credit contracts (see Division 4A²⁹ and section 32B(3) in particular). However, we believe that fees will still be able to be charged by other persons such as brokers and introducers in relation to short term credit contracts (Division 4). We acknowledge the inclusion of section 24A³⁰ which makes it an offence for a person to introduce, or assist a consumer with, a short term credit contract that imposes prohibited fees. However, it would still

²⁸ At p 38.

²⁹ Schedule 4, item 13.

³⁰ Schedule 4, item 8.

be entirely possible for some person (whether or not related to the actual lender) to introduce or assist a consumer to enter into a short term credit contract that complies with section 31A³¹ (which limits the fees which may be imposed by a short term credit contract) and charge a fee for that "service". This is a clear loophole that will be exploited by lenders if Division 4 in relation to short term contracts does not replicate the approach taken in Division 4A in relation to the 48 per cent cap.

Recommendation:

We recommend that the prohibition on monetary obligations (s 23A) and the prohibition of fees and charges (s 31A) be amended to reflect the approach taken by section 32B(3), that is, that is, that it also prohibits fees incurred with third parties (an introducer or broker) whether associated with the credit provider or not.

Date of commencement for caps on costs of short term loans

We note that most of the bill is scheduled to commence on 1 June 2012, but that Schedule 4, which introduces the caps on costs, commences on 1 January 2013. We see no reason for a delay in commencement of these provisions, given the significant harm that has been documented by the widespread availability of high cost short term loans.

Recommendation:

We recommend that the commencement date for Schedule 4 of the bill be 1 June 2012.

Disclosure requirements³²

We note that the draft bill does not require providers of a small amount credit contracts to disclose the interest rate under the contract as is ordinarily required by subsections 17(4) and 17(6) of the National Credit Code. While we understand why this exemption is required (no interest will be able to be charged on a small amount credit contract) it is important that lenders are still required to express cost of credit under these contracts as an annual percentage rate.

This will ensure that APR is used as a consistent measure of cost of credit across all credit products, allowing consumers to easily compare costs of different products. It will also ensure that the cap on costs will not inadvertently reduce transparency of the cost of short term credit. For example, a requirement to disclose cost as an APR will ensure that lenders will not be permitted to advertise the cost as '10 per cent upfront and a 2 per cent monthly fee', which (though accurate in itself) will mislead consumers by making the product appear cheaper than it is, and make comparison with other credit products nearly impossible. Even a consumer with average levels of financial literacy may mistake the 2 per cent monthly fee as being an annual rate and so compare a small amount credit contract favourably compared to mainstream credit products.

Recommendation:

We recommend that the bill be amended to require that, where a small amount credit

³¹ Schedule 4, item 12.

³² See schedule 4, item 1.

contract is advertised, cost of credit must be stated as an annual percentage rate, not as 10 per cent establishment fee and/or 2 per cent monthly fee.

Penalties for breach of cap: section 24³³

Proposed subsection 24(1A) provides that a credit provider who imposes a fee or charge apart from those allowed in subsection 23A(1)³⁴ can receive a criminal penalty of up to 100 penalty units. While we welcome the availability of the criminal penalty, civil penalties need also to be made available.

Where a consumer is in dispute with a lender, the availability of civil penalties means that there is more risk for lenders in allowing a dispute to reach court and so provides a greater incentive to resolve the dispute. Criminal penalties can only be imposed when a hearing follows an application by the regulator.

Recommendation:

We recommend that subsection 23A(1) be listed as a 'key requirement' for the purposes of section 111(1) of the National Credit Code. This will allow civil penalties to be imposed for a breach of subsection 23A(1) on application by either the debtor, a guarantor or ASIC.

Requirement that establishment fees reflect only reasonable costs: s 31A(1)(a)³⁵

We agree that lenders should not be permitted to charge establishment fees beyond their reasonable costs. However, we do not believe that this prohibition will be easy to enforce given the small amounts involved in individual cases relative to the cost of enforcement activity and the difficulty in establishing underlying (and potentially different) costs for different businesses. Provision of guidance as to reasonable *types* of costs that may be considered in establishing 'reasonable costs' and *level* of costs that may be considered reasonable (or unreasonable) may aid compliance and provide a basis for enforcement where departure from the guidelines can be established.

Recommendation:

We recommend that guidance be provided on what costs are 'reasonable' for the purposes of section 31A(1)(a), for example through regulations or an ASIC regulatory guide.

³³ Schedule 4, item 6.

³⁴ Subsection 23A(1), in conjunction with section 31A provides that the only monetary obligations lenders of short term credit contracts can impose are a 10% establishment fee, a 2% monthly fee, default fees and government fees. Lenders may not charge interest.

³⁵ Schedule 4, item 12.

*Prohibitions on refinancing (sections 124C and 133CC) and simultaneous loans (sections 124B and 133CB)*³⁶

We strongly support the policy intent behind the prohibitions against refinancing and issuing simultaneous loans as these practices drive or exacerbate consumer harm caused by high cost short term lending. However we are concerned that the prohibitions will not be enforceable or effective in practice.

For example, the ban on refinancing at 133CC (and the ban on assisting a consumer to apply for an increase at 124C) will not prevent a borrower from paying off one small amount contract and then taking out another a few minutes later. This would clearly cause the same harm as refinancing. In fact, we would argue that receiving a new loan within the same pay period as paying off the last loan has the same effect as a rollover—in both cases the consumer starts their new pay period with a new loan and all repayments yet to be made.

If a ban on refinancing is to work, it will need to be complemented by restrictions on repeat borrowing. Repeat borrowing could be defined as providing a small amount loan (or assisting a consumer to access a small amount loan) within a defined period after the consumer had terminated a previous small amount loan. We suggest that the period in question should be a fortnight or the borrower's pay period, whichever is greater.

The prohibition on providing a loan where the lender knows, or is reckless as to whether the consumer already has a short term credit contract at section 133CB (and the mirror ban for credit assistance providers at 124B) also seems unenforceable. It is unclear what investigations a lender will need to make to be properly satisfied that a borrower is not already party to a small amount loan. Without guidance on what investigations must be conducted, it will be difficult to establish that a lender was in breach.

It is also unclear how compliance with these provisions will be monitored, noting that a consumer would be very unlikely to report a lender who breached them.

Recommendation:

We recommend that:

- the bill is amended to include a prohibition on repeat borrowing to complement the refinancing bans at section 124C and 133C; and
- the bill is amended to include a regulation-making power for sections 133CB and 124B, and create regulations which describe the investigations that must be made by a lender or a credit assistance provider.

³⁶ Schedule 3, item 4.

Matters not covered by the bill

Additional consumer protections

In addition to consumer protections proposed by the exposure draft bill, we believe additional provisions are required to prohibit the use of employer authorities, single payment loans and contracts which require repayment be made only by direct debit. In our experience, these practices all increase the potential for these loans to cause harm.

Recommendation:

We recommend the bill be amended to:

- prohibit lenders using “employer authorities” to secure repayment of a loan—any garnishing of wages should only be done in accordance with court-supervised processes. In our experience, customers applying for short term loans are frequently required to sign documents authorising their employers to garnish wages at the request of the lender;
- prohibit contracts requiring loans to be repaid in a single repayment period and/or prohibit contracts from requiring any one repayment (including any fees or charges, including default fees) being greater than the principal borrowed. This recognises that single repayment loans pose the greatest harm to consumers; and
- prohibit lenders requiring the signing of a direct debit authority and/or introduce a requirement for lenders to offer a range of repayment mechanisms—not just direct debits. This recognises that payday loans are commonly repaid by direct debits which remove payments from the debtor's account as soon as payment is deposited. Where a borrower has insufficient income to both repay debt and buy essentials, direct debit authorities ensure the debt is prioritised leaving them unable to pay for rent, groceries and utilities. This ensures that lenders wear little risk of losing their money on even the most irresponsible loans. In turn, this removes financial incentives to loan responsibly and actually creates incentives for irresponsible lending by encouraging repeat borrowing.

Enforcement

Prior experience demonstrates that providers of short term credit will commonly attempt to evade caps soon after they are introduced.³⁷ It is essential that the cap proposed by this bill is actively enforced.

Recommendation:

We recommend a boost to ASIC resources (at least in the short term after the introduction of the costs cap) to enable it to undertake the necessary compliance and

³⁷ See, for example the discussion of lender avoidance after the introduction of caps in NSW and Queensland in Gillam, above n 4, chapter 5.

enforcement work to implement any cap that is introduced.

Consumer Leases

Overview of comments in this section

Broadly, we are very supportive of the consumer lease reforms. As the explanatory memorandum states, consumer leases are subject to fewer regulatory obligations than credit contracts, and consumers enjoy less protection in lease contracts than they do in credit contracts.³⁸ Reform to address this inconsistency is welcome and long overdue.

The problem

At present, there are four key problems with consumer leases:

1. Regulatory avoidance: Under current law, an agreement will be a consumer lease (rather than a credit contract) if the agreement does not give the consumer a right or obligation to purchase the goods.³⁹ As noted by the Australian Government's Credit Reform Green Paper,⁴⁰ and the explanatory memorandum to the bill, many traders are offering arrangements which do not give the consumer a right or obligation to purchase the leased goods (rather than a credit contract) because of the lower regulatory burden⁴¹. The leases offered by some traders are designed to so closely resemble credit or sale by instalment contracts that they are 'loans in lease clothing' rather than genuine leases.⁴²
2. Consumer misunderstanding around whether agreements are loans or leases: As discussed above, regulatory incentives to offer leases rather than credit means that traders will offer payment arrangements that are technically leases, but appear to be a sale by instalment or a credit arrangement.⁴³ These arrangements will mislead many consumers to believe they are buying the goods rather than leasing them.
3. Exclusions in section 171 of the National Credit Code allow some traders to avoid the Code entirely: Currently, section 171 of the Code excludes from regulation:
 - leases of less than 4 months duration;
 - leases of an indefinite period; and
 - employment-related leases (that is, where goods are hired by an employee in connection with their remuneration or benefits).

³⁸ Paragraph 6.10.

³⁹ National Credit Code, section 169.

⁴⁰ Treasury (2010), *National Credit Reform: Enhancing Confidence and Fairness in Australia's Credit Law*, accessed at:

http://www.treasury.gov.au/documents/1852/PDF/National_Credit_Reform_Green_Paper.pdf

⁴¹ at p 72.

⁴² For examples of these kinds of arrangements, we suggest the committee refer to the Micah Law Centre (2007), *A Loan in Lease Clothing*, available at:

[http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Credit_Grant_Resources/\\$file/credit_grant_resources_micah_law_centre_consumer_leases_project.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Credit_Grant_Resources/$file/credit_grant_resources_micah_law_centre_consumer_leases_project.pdf)

⁴³ As noted in Treasury, above n 38, pp 72-73

These exclusions allow traders to structure leases which will avoid the regulation entirely, and we are unaware of any reason why they are needed.

4. Insufficient disclosure requirements: Credit providers are required by section 17(4) of the National Credit Code to disclose the cost of their products through an annual percentage rate, but there is no equivalent obligation on providers of consumer leases. This means that consumers are not readily able to compare costs between credit contracts and consumer leases, and also that consumers are less able to identify how bad a deal some leases are.

We note that problems three and four above are not addressed by the current bill, though we understand they will be considered at a later date. We look forward to providing comment on these matters at that time.

Comments regarding specific provisions

The following recommendations are taken from the submission we previously made to Treasury during the development of this bill.

Provisions regarding statements of account: section 175C, 175D and 175H⁴⁴

Recommendation

We recommend that:

- A statement of account should be provided to borrowers at least once every six months, rather than the twelve months suggested by section 175C. Twelve months is in our view a very long time between statements, and six monthly statements will not create a significant burden for lessees.
- Regulations created under section 175D should provide that statements disclose that the lessee will not own the goods at the completion of the lease. One of the most common complaints we hear from consumers regarding consumer leases is that they were misled or otherwise unaware that they had entered into a lease (rather than a credit contract) and that they would not own the goods at the end of the lease term.
- Statements provided three months before the termination of the lease under section 175H should be prescribed by regulation. This is to ensure that they provide useful information to lessees rather than simply being used by lessors as a marketing tool to encourage repeat business.
- As well as the statements envisaged by sections 175C, 175D and 175H, we recommend that lessors be required to send a statement to the lessee at the beginning of the lease term clearly setting out key information regarding the lease, and that the consumer will not own goods at the end of the lease term.

⁴⁴ Schedule 5, Item 18.

Enhancements to the National Consumer Credit Protection Act

We are very supportive of the "enhancements" provisions. We have long argued for many of these changes and are pleased that the Government has included these amendments in the bill. In particular, we strongly support:

- Provisions improving protection of debtors in hardship,⁴⁵ particularly amendments to section 72 which reduce the formalities for debtors who wish to make a hardship application and section 89A which prevents creditors from beginning enforcement proceedings until they have responded to the hardship application. This latter provision will protect borrowers from harsh enforcement practices where it is clear that non-payment relates to financial hardship experienced by the borrower.
- Section 160B⁴⁶ which prevents credit licensees from using the terms 'independent', 'impartial', 'unbiased' or other similar terms unless the licensee is actually free from conflicts of interest and does not receive commissions that would influence their recommendation.
- Section 160C,⁴⁷ which prevents credit licensees from using the term 'financial counsellor' (and similar terms) to describe their service unless they actually are a financial counsellor (though see our recommendation below). In particular, we support the power at 160C(1)(c)(ii) allowing additional terms to be prescribed by regulation if traders begin using different terms in way that can mislead consumers. We suggest Government could initially use this power to prohibit terms such as "debt counsellor" or "credit counsellor";
- Section 180A,⁴⁸ which gives consumers extra protection against unfair and dishonest conduct (but note our recommendations below). In particular we strongly support the inclusion of:
 - 180A(4)(b) which allows the court to consider whether a consumer is a member of a class of people more likely to be at a disadvantage; and
 - 180A(4)(d), which allows the court to consider whether the consumer is financially excluded.

These provisions may in our view extend greater protection to vulnerable or excluded customers who may find it difficult to prove unconscionability as defined by the *Australian Securities and Investments Commission Act 2001* (Cth);

- Amendments at Part 3 of Schedule 1 which prevent licensees from making representations that a consumer will be able to enter a credit contract or consumer lease without first assessing suitability of the consumer for the contract. This will prevent lenders from using terms such as 'pre-approved'. Our 2008 report *Congratulations, You're*

⁴⁵ Schedule 1, Part 1.

⁴⁶ Schedule 1, item 25.

⁴⁷ Schedule 1, item 25.

⁴⁸ Schedule 1, item 10.

Pre-Approved found that credit card providers use terms of this kind as one of a number of methods to encourage consumers to take on more credit impulsively.⁴⁹

Comments regarding specific provisions

Restriction on use of the term 'financial counsellor': Section 160C

As discussed above, we strongly support amendments to prevent people who are not financial counsellors from describing themselves as such. However, we are concerned that this provision is currently drafted too narrowly.

In the exposure draft version of the bill released in August 2011, the prohibition was targeted at "a person", whereas the current bill narrows the provision by only applying the prohibition to licensees.

We believe it needs to be broadened again so that the prohibition will extend to anybody passing themselves off as a financial counsellor. We acknowledge that a person falsely claiming to be a financial counsellor could be subject to action under section 18 of the Australian Consumer Law for deceptive or misleading conduct. However, having created the prohibition at section 160C, we see no reason for limiting it only to credit licensees.

Recommendation:

We recommend that Section 160C be amended to replace the word "licensee" with "person".

Remedies for unfairness and dishonesty: Section 180A

As discussed above, we support the inclusion of section 180. However, it is difficult to predict at this point how this provision will be interpreted and applied by the courts. We therefore make the following recommendations.

Recommendation:

We recommend that section 180A be retained and its operation reviewed after a certain period (perhaps two years) to assess its effectiveness and whether any amendment is required.

Recommendation

In addition, we recommend the following amendments:

- 180(4)(a) provides that a court may have regard to whether a consumer was at a "special disadvantage" in regards to the person whose conduct is suggested to be unfair or dishonest. Given the complexity of credit contracts, we would suggest most consumers will be at a considerable disadvantage when dealing with a credit expert (such as a lender or a broker). Use of the term "special disadvantage" invites a more conservative interpretation than is required. **We recommend that 180A(4)(a) be redrafted to replace "special disadvantage" with "disadvantage".** With this

⁴⁹ The report can be accessed at <http://www.consumeraction.org.au/downloads/CongratulationsYourePreApprovedfullandfinalreport150808.pdf>. Discussion of the term 'pre-approved' from p 28.

wording, the court will still be free to consider whether the extent of the disadvantage in each case amounts to unfairness or dishonesty under 180A(3)(a).

- 180A(4)(g) provides that a court may have regard to whether the terms of a transaction were "less favourable than the terms of a comparable transaction". Again, we believe this invites a more conservative interpretation than required. Where it is a broker whose conduct is claimed to be unfair or dishonest, a consumer would reasonably expect to be given access to the best deal available, not a deal that is average or not unfavourable. **We recommend that 180(4)(g) be redrafted to replace "less favourable to the consumer than the terms of a comparable transaction" with "unfavourable to the consumer"**. With this wording, the court will still be free to consider whether the extent of the disadvantage in each case amounts to unfairness or dishonesty under 180A(3)(a).

Reverse Mortgages

We are supportive of the reforms regarding reverse mortgages, particularly the new statutory negative equity guarantee. We make the following particular comments and recommendations.

Section 18A: prohibited terms

We strongly support the list of prohibited default terms in a reverse mortgage in section 18A(3).⁵⁰ However, we are aware that some reverse mortgage contracts include terms that provide that the borrower is in default if they do something that decreases the value of the home, even where they do so unwittingly (for example, good faith changes to the house or renovations). We believe that such a term should be included in the list of prohibited default terms.

Recommendation

We recommend that section 18A(3) be amended to provide that a contract for a reverse mortgage may not allow the credit provider to begin enforcement proceedings on the basis that the debtor has taken an action that decreases the value of the property in question.

Damage caused, or misrepresentations made by debtors: section 86E

Sections 86A, 86B, 86C and 86D collectively provide that a reverse mortgage will be discharged when the lender receives a sum equal to the market value of the property (subject to adjustment by regulations).⁵¹ This means that a borrower cannot be required to pay more than the current value of the property to discharge a reverse mortgage.

However, section 86E provides that this protection will not apply where:

- the market value of the property has been reduced as a result of deliberate damage caused by the borrower, or a person occupying the property with the debtor's consent (section 86E(a)); or

⁵⁰ Schedule 2, item 13.

⁵¹ Schedule 2, item 20.

- the borrower engaged in fraud or a misrepresentation at a relevant time (86E(b)).

We understand that the purpose of 86E is to prevent borrowers from attempting to reduce the amount they need to repay by dishonest or fraudulent means. However, we are concerned that the section as currently drafted will catch some innocent conduct by borrowers.

Recommendation

We recommend that:

- section 86E(a) be amended to include the words 'caused with intent to devalue the property' after 'deliberate damage'. Without making this clarification, this paragraph will capture a debtor who innocently or accidentally damages the property (for example, while making repairs or renovations). Alternatively, the Explanatory Memorandum could be amended to clarify that good faith attempts to repair or renovate the property will not be considered 'damage' for the purposes of section 86E.
- section 86E(b) be amended to replace 'misrepresentation' with 'fraudulent misrepresentation'. This is to make clear that this provision is concerned with fraudulent conduct and should not catch innocent or even reckless misrepresentations.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

Carolyn Bond
Co-CEO

David Leermakers
Policy Officer

Appendix - Open letter to the Minister for Financial Services and Superannuation

2 September 2011

The Hon. Bill Shorten MP
Minister for Financial Services & Superannuation
Assistant Treasurer

Dear Minister,

We write in support of the direction you have taken in the proposed amendments to the *National Consumer Credit Protection Act 2009* regulating small amount contracts.

Our agencies see the detriment caused by high-cost, payday loans, and we believe that the draft legislation will provide protection for vulnerable consumers.

Some of the organisations below will be making their own detailed submissions on the substance of the draft legislation, however we provide some initial general responses below.

Yours sincerely

Carolyn Bond

**Co- Chief Executive Officer
Consumer Action Law Centre**

On behalf of⁵²:

James Farrell
PILCH Homeless Persons' Legal Clinic

Dr John Falzon
St Vincent de Paul Society,
National Council of Australia

Andrew Yule
Anglicare Victoria

Carmel Franklin
Care Financial Counselling
Consumer Law Centre of the ACT

Matt Levey
Choice

Nicole Lawder
Homelessness Australia

Maree Mcpherson
Victorian Local Government Association

Stella Avramopoulos
Kildonan UnitingCare

Peter Gartlan
Financial and Consumer Rights Council Inc.

Robyn Roberts
Good Shepherd Youth and Family Service

Sally Finlay
Brotherhood of St Laurence

Karen Cox
Consumer Credit Legal Centre (NSW) Inc.

⁵² Note that the original open letter dated 2 September 2011 was signed by Consumer Action and endorsed by 12 other organisations. The remaining organisations endorsed the letter at a later date.

Graham Smith
Indigenous Money Mentor
Muru Mittigar Aboriginal Culture and Education
Centre

James Davis
Financial Counselling Tasmania

Tomas Passeggi
Caloundra Community Centre Inc

David Robinson
Gambling Help Caboolture and Redcliffe
Peninsula

Denis Nelthorpe
Footscray and Wyndham Community Legal
Centres

Anne Lewis
Townsville Community Legal Service Inc

Saskia ten Dam
Financial Counsellors' Association of
Queensland

Jackie Bramwell
EACH Social & Community Health

Garry Rothman, Financial Counsellor,
UnitingCare Moreland Hall

Amanda Sulter
Lions Emergency Accommodation Centre Inc
Keys to Early Intervention in Homelessness
Service

Bridget Burton
Caxton Legal Centre Inc.

Cecelia Taylor
Bribie Island & District Neighbourhood Centre

Natasha Syed Ali
George Street Neighbourhood Centre Assoc
Inc.

Anthony Kelly
Flemington & Kensington Community Legal
Centre

Simon Schrapel
UnitingCare Wesley Adelaide

Peter Noble
Loddon Campaspe Community Legal Centre

Cassandra Goldie
Australian Council of Social Service

Carmel Franklin, Chair, Financial Counselling
Australia

There are a number of individual and systemic factors that contribute to people becoming homeless, including family breakdowns, illness, family violence, and many others. However, chronic poverty is a shared experience of all the people we see who are homeless. Because of this chronic poverty (linked closely to the inadequacy of social security payments), our clients often seek loans from payday lenders, despite being unlikely to ever repay.

A few months ago, I met Melinda (not her real name) at a crisis shelter. Melinda had recently started a methadone program and had been sleeping in her car in Ballarat for several months before coming to this shelter in Melbourne. She had a number of outstanding fines, and debts with four separate payday lenders in Ballarat. As she described it, 'While I was using, I borrowed money from every shop in Ballarat with 'cash' or 'money' in their name'. We lost contact with Melinda after she left the shelter, and weren't able to resolve her legal issues or deal with her outstanding debts.

- James Farrell, Manager/Principal Lawyer, PILCH Homeless Persons' Legal Clinic

Vinnies applauds this move to offer some protection to the people who are particularly vulnerable to these unscrupulous lending practices.

- Dr John Falzon, Chief Executive Officer, St Vincent de Paul Society, National Council of Australia

Payday lending practices are in urgent need of reform to protect low income earners and vulnerable families from becoming trapped in debt. Anglicare Victoria provides financial counselling to more than 10,000 Victorians every year and we have seen firsthand the impact excessive fees and other charges can have on people who see no other option but to use short term loans.

- Andrew Yule, Media and Communication Manager, Anglicare Victoria

Care Financial Counselling and the Consumer Law Centre of the ACT are pleased that the Federal Government will be introducing legislation to address and minimize the problems associated with payday lending. The proposed legislation offers a number of protections to reduce potential financial harm resulting from short term high cost credit contracts.

- Carmel Franklin, Director, Care Financial Counselling and the Consumer Law Centre of the ACT

CHOICE supports the proposed reforms which will make short term lending fairer for consumers.

CHOICE also welcomes the promotion of alternatives to high cost short term lending for vulnerable consumers and looks forward to seeing continued and increased government support for these initiatives, including financial counselling, no and low-interest loan schemes, matched savings schemes, and community finance. In addition, CHOICE joins the government in asking the major banks to provide more help for people who are financially excluded. We agree that ASIC will need to enforce these reforms and will also need to make recommendations if there are gaps to ensure that the intent of the regulations is not diminished in its implementation.

- Matt Levey, Head of Campaigns, CHOICE

Homelessness Australia is very concerned about “payday lending”. Payday lenders’ clients are usually low income clients and those experiencing hardship and disadvantage and we believe regulation is important to protect vulnerable consumers.

- Nicole Lawder, CEO, Homelessness Australia

The Victorian Local Governance Association is pleased to support the Federal Government’s draft legislation for the proposed regulation of high-cost, short-term loans (payday lending). Local governments are often the ‘frontline’ for people facing a debt crises, such that the real-life impacts for these people manifest as increased calls on emergency relief, meals, housing and many other local government support programs.

- Maree Mcpherson, CEO, Victorian Local Governance Association

Kildonan UnitingCare supports the tightening of legislation regarding payday lenders. Our financial counselors are increasingly seeing clients who approach these agencies for money they can ill afford to repay, often before they have spoken with our service. Whether it's buying Christmas gifts, paying for the school camp or registering the family car there are often other options that are more affordable. Our clients often feel that there are no choices available when it comes to finance and we aim to share different approaches both on a one to one basis and through community awareness. At the minimum we recommend regulation capping interest rates and charges levied on the poorest and most vulnerable in our community.

- Stella Avramopoulos, Chief Executive Officer, Kildonan UnitingCare

FCRC supports tighter regulation of the high-cost short-term credit industry and looks forward to vulnerable Australians breaking out of the poverty cycle imposed by unjustifiably high repayments. Whilst we feel a 48% cap would be the best response, we commend the government for recognising and tackling the problems caused by the payday lending sector.

- Peter Gartlan, Executive Officer, Financial and Consumer Rights Council Inc

Lack of access to fair credit has a significant impact on the day-to-day lives and longer term wellbeing of financially stressed Australians. It is vital to provide protection for consumers who are more vulnerable to exploitation in the credit market through low income and other factors that limit financial choices. Through our programs and research we know that people already compromise food budgets, energy consumption, clothes and other essential goods and services when there is not enough money, and may then turn to the fringe lending market to manage the fluctuations in their day-to-day living expenses and cope with financial shocks. While we appreciate there is a need for these groups to access smaller short-term loans, we do not believe an under-regulated fringe lending market is best positioned to fill this gap. We believe the right protection needs to be in place as well as a suite of programs including microfinance, emergency relief services, and financial counselling.

- Robyn Roberts, CEO, Good Shepherd Youth and Family Service

The impact of high interest rates for loans of small amounts by Pay day Lenders is well known. In short, it hurts those people who can least afford the burden of debt. In addition to the impact on individuals who borrow these loans, there is a broader impact on all low income earners. By trapping people in ongoing debt, Pay Day Lenders help to feed the myth that people on low incomes are bad with money and can't manage their finances. Experience by the Brotherhood of St Laurence through our financial education program and the saving and loans products we offer with ANZ shows just the opposite. Low income people are responsible and do want to live without the burden of debt.

- Sally Finlay, Senior Manager Financial Inclusion, Brotherhood of St Laurence

Our MoneyHelp financial counsellors speak to people every day who have problems with payday loans, obtained at a time when they were already in financial difficulty. Payday loans don't resolve their problems, but exacerbate them by trapping them in repeat borrowing.

Consumer Action's *Helping Hand or Quicksand* report from 2010 showed that most payday loans were for living expenses, and most payday borrowers had recently used other forms of credit.

We support regulation that will curtail the cost of payday loans, and stop the exploitation of consumers who can least afford it.

- Carolyn Bond, co-CEO, Consumer Action Law Centre

Consumer Credit Legal Centre (NSW) supports the Commonwealth Government's proposed reforms introducing a national cap on the cost of credit and other complementary reforms designed to protect vulnerable consumers. Callers to CCLC's Credit and Debt Hotline report considerable difficulties repaying pay day loans, including one client who was frequenting 10 lenders and using one loan to pay another. Another caller felt she was trapped in a cycle where it was costing her over \$130 to borrow less than \$300 for a few weeks but she felt that if she didn't do this again she would be evicted from her rental accommodation. Ironically, she would have then paid the lender \$260 in interest charges in a six week period, the equivalent of a week's rent. Others have turned to pay day loans when they couldn't meet their repayments on other credit such as credit cards and mortgages, exacerbating their financial situation in the longer term and reducing their options for financial rehabilitation.

Just this morning an aged pensioner over 70 years old called in a very distressed state because she had got herself into a viscous cycle with Cash Converters and Cash Stop. She was pawning her jewellery repeatedly to one company in order to pay interest /fees to the other. She has no idea how much she owes anymore because every time she pays them some money she needs to borrow some more to live on. She has stopped opening mail and is afraid to ask the amount outstanding or tell her family of her predicament.

And it's not just about pay day lending. In one appalling case a client who borrowed \$2,000 ended up owing \$15,000 as a result of rampant default fees. Charges like these will not be permitted under the proposed legislation. Our solicitors spend considerable time and resources just explaining to callers how to cancel direct debits to fringe and pay day lenders so that they will have sufficient funds left to eat and pay their rent. High cost loans don't fix financial problems, they make them worse. We don't have a panacea for inadequate income, but allowing the meagre resources of some of our most vulnerable community members to be siphoned off to pay for high cost loans is not the answer. We urge the government to proceed with this important reform.

- Karen Cox, Coordinator, Consumer Credit Legal Centre (NSW) Inc.

I work as a Financial Counsellor within the Indigenous communities of Western Sydney and time and time again I see (and need to deal with) clients who have fallen victim to a small loan from a payday lender that quickly grows to a much larger amount with excessive fees and charges for insufficient funds in their bank account. The people that present to me, often have more than one loan from a Payday lender, leaving little money for food and the basic needs of their children. This then creates a situation where families are required to attend welfare agencies for electricity / gas vouchers, food or other assistance. Which in turn drains the resources of the charity as they support people over the long term.

Many aboriginal people I deal with don't understand the interest rates or fees charged by Payday lenders. In fact when I sit down and show them on paper the full cost of the money borrowed, they are 'shamed and frustrated', thinking these people were there to help them. Instead, they feel they were tricked!

I don't believe that Payday lenders make a full financial assessment of a person's situation prior to issue of a loan, often setting people up to fail.

I would like to add, that the Federal Government should immediately cancel the authorities all Payday lenders who have access to Centrepay deduction scheme. This move would be in the best interests of those who try to survive on Centrelink benefits.

- Graham Smith, Indigenous Money Mentor, Muru Mittigar Aboriginal Cultural & Education Centre

We endorse the open letter supporting the government's proposals for action to legislate around pay day lenders. As a services that works to prevent families and individuals from entering the homelessness system, we constantly see the cycle that households get caught up in with pay day lenders. We are also aware that without significant support it is VERY difficult to escape this cycle and as such there can be very dire outcomes in terms of homelessness and other significant issues.

- Amanda Sulter, Coordinator, Lions Emergency Accommodation Centre Inc, Keys to Early Intervention in Homelessness Service

Financial Counselling Tasmania endorses the open letter supporting the government's proposals for action because we as Financial Counsellors see the devastating effects that unregulated Payday lending interest rates have on struggling Tasmanian families. We fully support Minister Shorten's proposed legislation which will regulate the market.

- James Davis, President, Financial Counselling Tasmania

Caxton Legal Centre supports the draft legislation introducing further regulation to the payday lending industry. Caxton Legal Centre sees desperate clients with payday loans, and the consequent spiralling trap of debt from refinancing these loans, in both its Consumer Law Service and its Seniors' Legal and Support Service. The interest rate cap introduced in Queensland in 2008 has made a tangible difference to the lives of many of our most disadvantaged clients. We particularly support the reforms which will extend protection against exorbitant rates of interest to other Australian consumers.

- Bridget Burton, Coordinator Consumer Law Service, Caxton Legal Centre Inc.

The Caloundra Community Centre welcomes The Hon. Bill Shorten MP proposals to reform payday lending and endorses the open letter supporting the government's proposals for action. As an agency that distributes emergency relief to vulnerable people we are aware of the traps

people fall when they are in need of cash. In our view payday lending under its current form exacerbates people's financial difficulties.

**- Tomas Passeggi, Community Development Coordinator,
Caloundra Community Centre Inc.**

We endorse the open letter supporting the government's proposals for action in regulation of payday lenders. We provide emergency relief and financial counselling to low income households and we see the destructive effects of high interest loans on such families.

- Cecelia Taylor, Coordinator, Bribie Island & District Neighbourhood Centre

I am writing in support of the open letter which backs the proposals to reign in Pay Day Lending. In my work with problem gamblers, i have had many clients whose problems have been compounded after falling into the clutches of these dubious practices. It is often noted that pay-day lenders, along with pawnshops, proliferate in direct proportion to the number of pokies in a given area.

- David Robinson, Coordinator, Gambling Help Caboolture and Redcliffe Peninsula

The George Street Neighbourhood Centre Association Inc. endorses the open letter supporting the government's proposals for action.

The organisation auspices and manages the Mackay Regional Financial Counselling Service funded by the Department of Families, Housing, Community Services and Indigenous Affairs. We have assisted many clients who experience severe financial hardship and have a heavy reliance on pay day lenders. Unfortunately, many are not able to get out of the cycle of accessing these loans. We have had several clients inform that they were not aware of how much they were repaying until after they have entered into the contract. We are trying our hardest to educate the community and our clients about debt traps and financial hardship. We offer individual appointments and budgeting workshops.

**Natasha Syed Ali, Financial Counsellor, Mackay Regional Financial Counselling Service,
George Street Neighbourhood Centre Assoc Inc.**

Footscray and Wyndham Community Legal Centres support the proposed legislation because we see clients harmed by their involvement with loans from the pay day lending industry. Too often these loans are for payment of household bills such as electricity which would be better dealt with by other solutions. The loans only make things worse!

- Denis Nelthorpe, Manager, Footscray and Wyndham Community Legal Centres

The Flemington & Kensington Community Legal Centre Inc. endorses the open letter supporting the government's proposals for action. Payday lending contributes to the cycle of debt and poverty experienced by many of our vulnerable and low-income clients in the inner West.

- Anthony Kelly, Executive Officer, Flemington & Kensington Community Legal Centre

The Salvation Army through its Moneycare financial counselling service and no interest loan program sees the very negative ramifications of vulnerable and marginalised people obtaining pay day loans. People have been found to be in much worse financial positions following their dealings with such organisations. Often people are in desperate circumstances to have to resort to these type of loans and the personal and social harm caused can be significant. We strongly support moves to limit the harm that they can cause.

- Tony Devlin, Moneycare Territorial Consultant, The Salvation Army, Moneycare

We are well aware of the vulnerability of consumers accessing pay day lenders on a regular basis. The majority of clients who present with debt issues for assistance from our Financial Counselling Service have accessed pay day lenders and have, as a consequence, spiralled into a debt cycle.

We therefore endorse the call for a cap on interest rates including fees and charges at 48%.

- Anne Lewis, Coordinator, Townsville Community Legal Service Inc

Our financial counsellors and staff working with homeless persons and in other programs regularly assist people in financial difficulties and on low incomes who are struggling with pay day or small contracts loans. People who are desperate for money see these loans as a quick and easy solution. However they are only a short term fix. The people we see are on low incomes, generally Centrelink only income, and cannot repay these high cost loans as well as their normal living expenses. Often they will have taken out another loan to pay out the first which leads to a cycle of repeat or rollover of loans. These loans are not only ineffective in resolving clients' issues with day to day living expenses or other financial issues but actually exacerbate or directly cause financial hardship and financial problems. We strongly support the proposed amendments to the *National Consumer Credit Protection Act 2009* regulating small amount contracts. A national cap, prohibition on refinancing and requirements for lenders to advise consumers of other options for small contract loans will go a long way in protecting vulnerable and low income consumers. These requirements may not resolve the impact of escalating living costs for people on low incomes but will ease the pressure on them and services in dealing with the negative consequences of fringe credit and pay day loans.

- Simon Schrapel, Chief Executive, UnitingCare Wesley Adelaide

The Financial Counsellors' Association of Queensland supports the retention of an interest rate cap as Financial Counsellors have assisted consumers across Queensland who have been negatively impacted by the pay day lending sector.

The harm that these loans cause have generated serious concerns for Financial Counsellors as the clients who are using these loans are frequently unable to escape the debt trap into which they slide as a consequence of obtaining their first, often modest, loan. The most vulnerable consumers in our community are the target of these lenders as can be witnessed by the places that they (pay day lenders) establish their shop fronts.

FCAQ is the peak body for the Financial Counselling sector in Queensland. The association has 55 members located from Cairns to the Gold Coast and west to Darling Downs.

Our membership's client base (depending on funding agreements) ranges from wage/salary earners, gamblers, and Centrelink recipients; self funded retirees, small business owners and primary producers. Financial Counsellors provide support to individuals or families experiencing financial difficulties. Support is tailored to each client and includes advocacy, budgeting, education, and empowerment. Referrals are made where necessary and appropriate to other services to further improve the situation of the client.

-Saskia ten Dam, President, Financial Counsellors' Association of Queensland

The Bendigo based Loddon Campaspe Community Legal Centre is a generalist CLC servicing Central Victoria. LCCLC conducts a significant credit and debt practice and frequently encounters people experiencing financial hardship due to payday lender debts. In our experience the individuals that access such lending services are highly vulnerable and are caught in a debt trap, borrowing to repay other debts. Payday lending is often accessed as a last resort and drains customers of critical income that they need just to survive. At times these services are accessed as a last resort by people who are desperate to maintain a line of credit, despite its unsustainable terms. On other occasions they are unaware of the terms or the effect of interest repayments or hidden fees, and become financially crippled when these take full effect. LCCLC strongly supports regulating this industry – achieving greater transparency and greater fairness in lending.

- Peter Noble, Coordinator, Loddon Campaspe Community Legal Centre

EACH Financial Counselling has been an indignant witness to the harm caused by payday lending. Payday lending has historically left clients with a bigger monetary shortfall that they originally began with, creating a downwards debt spiral. Many loans have been inappropriately issued by payday lenders. A common example of this is inappropriate loans for utility bills. With suitable information from payday lender many loans could be avoided by using alternative and less unsettling borrowing options.

For people with identified problem gambling, payday lending has contributed to enabling gambling and worsening the downward debt spiral.

EACH supports these reforms as we believe they will assist in the empowering of clients to use alternative safer options based on more informed decision making resources. Put some of the onus back on the lender having to adhere to legal and/or ethical responsibility to protect vulnerable clients and support consumer rights.

**- Jackie Bramwell, Financial Counselling and Problem Gambling Manager,
EACH Social & Community Health**

Our support for payday lender reforms is informed by the related issue of financial exclusion.

There is a growing body of evidence indicating that financial exclusion is a particular barrier to the social and economic participation of people on low incomes. ACOSS supports any regulation that prevents payday lenders profiting from that disadvantage.

- Cassandra Goldie, CEO, Australian Council of Social Service

UnitingCare Moreland hall is an alcohol and other drug treatment centre. We constantly see our client's struggle with addiction further exacerbated by the unscrupulous and unfair payday lending contracts that out of desperation they enter into.

Many of our clients are marginalised and vulnerable and in their constant struggle to meet the costs of daily living, manage their addiction and often having to deal with a multitude of health problems and medication, we have found that they often resort to these high cost loans.

Many are caught in a downward spiral of moving from one payday loan to another or constantly renewing their existing loan. Many have their or their family's only valuables tied up in these loans. The high cost of these loans often leave our clients only paying interest and never paying off the capital.

We therefore call on the Government to make legislative change which will prevent the current prohibitive costs and practices from continuing.

- Garry Rothman, Financial Counsellor, UnitingCare Moreland Hall

This legislation is extremely important to the financial counselling sector. Financial counsellors see many clients who are impacted by payday lending. In a majority of cases the clients are in a considerably worse financial situation as a result of accessing payday loans in their current form. There are a plethora of interest rate regulations amongst the various States and Territories, and FCA strongly supports the notion of single, national approach to regulating these loans.

- Carmel Franklin, Chair, Financial Counselling Australia