

**Anglicare Victoria
Submission to the Inquiry into the
Consumer Credit and Corporations Legislation
Amendment (Enhancements) Bill 2011**

INTRODUCTION

Anglicare Victoria is one of the largest child and family welfare not-for-profit organisations in Victoria.

Through a network of services, across more than 40 metropolitan and non-metropolitan Victorian sites, Anglicare Victoria is able to provide assistance to individuals in need, and to work with local communities in building more effective responses to current day challenges. Anglicare Victoria services span the service continuum from primary prevention (universal) and secondary prevention (targeted) - with programs such as Communities for Children, Communities for Children Plus, Parentzone, Integrated Family Services, Alcohol and Other Drugs interventions, Family Violence responses, Adolescent Support Services and Child FIRST – to more specific cohort focused responses such as placement services including residential care, kinship care, foster care, other related home based care supports and lead tenant programs.

Over the past twelve months Anglicare Victoria has:

- supported 429 foster care families
- coordinated 1,205 foster care placements.
- provided emergency relief and food and material aid to more than 60,000 Victorians in need.
- provided financial counselling to 10,553 people facing financial hardship.
- helped 4,741 parents learn new skills and develop positive relationships with their children.
- worked with 226 men with a history of family violence to understand and change their behaviour.
- responded to the needs of families 11,503 times through its frontline family support services.

For many years a wide range of Anglicare Victoria emergency relief centres across Victoria have been assisting individuals and families in local communities, along with services for homeless people, new refugees and asylum seekers. Anglicare Victoria chaplains also work in prisons and youth training centres across Victoria.

Anglicare Victoria's financial counselling program provides free and confidential assistance through casework, advocacy and community education to people who are experiencing financial crisis or difficulties. In the last twelve months 10,553 individuals have received assistance from Anglicare Victoria's financial counsellors.

In the last year we have experienced an over 56% increase in people seeking financial counseling. Financial counsellors assist vulnerable and disadvantaged people who typically have affordability problems with living expenses, paying bills or addressing other financial commitments. Financial counsellors play a vital role in protecting the rights of consumers with respect to credit contracts, and in ensuring that licensees are held accountable for their lending practices.

Of all the client cases Anglicare Victoria Financial Counsellors deal with, 72.5% of the cases relate to the clients' debt problems. Of these debt problems, 50% result from creditor harassment or creditors not being willing to negotiate payment arrangements with clients.

Breakdown of Anglicare Victoria client debt related problems in 2010-2011

Debt Problems	Percentage
Centrelink	18.2
Creditor harassment	13.5
Creditor, inadequate, non negotiation	36.5
Insurance	5.3
Mortgage, rental	2.9
TAC	1.2
Taxation	10.0
Telecommunications	6.5
Work/employment	5.3
WorkCover	0.6

Comment on Proposed Amendments

1 Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (Schedule1)

Anglicare Victoria supports the provisions below that protect debtors in cases of hardship and make it easier to apply for hardship variations, by making procedures more flexible. We are often faced with clients who have entered a pay day loan with repayments that are too excessive to meet. This then leads to default on the contract and a never ending spiralling debt.

- *Removal of limits to the form of hardship variation debtor can request*

Credit providers, historically, have overlooked other hardship options available to debtors due to the restrictions of the previous legislation thereby limiting the ability of the consumer to make an informed decision. The proposed amendments will go a long way to strengthening the capacity of consumers to make informed decisions regarding the various options available for hardship.

This provision will provide additional assistance for people requesting financial hardship whose situation is invariably complex and who may be "assets rich and income poor".

"A recent client is in arrears on their home loan and has received a short-term moratorium on repayments and requires some additional time to sell the property. They attempted a further application with their lender to extend their hardship arrangement, but were subsequently declined. The financial counsellor made contact with the lender and highlighted the customers equity of over \$400,000, as substantial reason to hold off any further legal recovery action. Without this intervention the property would have been seized and sold at a possible monetary loss to the consumer."

The proposed amendment will ensure that consumers will have the ability and more scope to negotiate directly with creditors to provide a flexible and responsive outcome.

- *The flexible provision enabling debtors to inform the credit provider of their current hardship either verbally or in writing will enable more adequate protection to clients who require a delay to possible enforcement action*

This provision enables debtors or their authorised representative to lodge a complaint with the Ombudsman within 31 days of a default notice being issued, even when a debtor has requested a hardship variation, to ensure no legal proceedings commence. This provision offers more timely protection of the debtor's interests and eliminates time-consuming last-ditch complaints to dispute resolution schemes.

"A client was desperately trying to negotiate a home loan with a major bank over several weeks. The client had an Acquired Brain Injury and Anglicare Victoria became involved after being contacted by the police. This client also had no utilities connected to the property. The Anglicare Victoria Financial Counsellor followed protocol and submitted all appropriate paperwork as a third party representative. The Bank made the process very difficult by misplacing faxes/paperwork that had been forwarded. After weeks of phone calls the Financial Counsellor was eventually able to speak to the Case Manager on a Friday afternoon at 4.45pm. He informed the Anglicare Victoria Financial Counsellor the eviction notice was happening that day. This information was delayed by the Bank until it was too late.."

The change in legislation would not allow this to happen in the future as notification can be given verbally, thus avoiding timely delays.

- *Licensees should not be able to advise consumers that they are eligible to enter into a contract until they have done an assessment of consumers' financial capacity under section 129*

Anglicare Victoria is pleased to support this provision as it provides protection to vulnerable consumers from predatory advertising by licensees, particularly with respect to consumer lease contracts.

"A single mother with 3 children fled from an interstate home due to domestic violence. She had all her furniture and white goods in storage but could not afford for them to be shipped down. She entered a rental contract for some furniture items a fridge and a washer. She is now be paying \$100 a fortnight for the next 3 years, amounting to \$7,800. After the three years she will own the items. There was no assessment to see whether she could afford the repayments, and if she defaults due to being overcommitted she will incur default fees. The goods will likely be repossessed."

The provision may avoid the likelihood of overcommitment and places some ownership equally between the credit provider and the customer. Consumer lease contracts in Gippsland are more a concern than payday lenders. Radio Rentals, In Rent and Easyrent dominate the market. Every client who walks in the door of the Anglicare Victoria office in Gippsland has a rental contract. These contracts are unjust and clients are having to enter into 3-5 year contracts for their normal household goods.

- *Licensees should not be permitted to indicate they are "financial counselors" and provide "financial counselling" when making representations to consumers*

The appearance of numerous financial institutions using the above terms has often confused consumers seeking assistance for their financial difficulties. This restriction clarifies for consumers who financial counselors are and imposes restrictions on licensees who mislead consumers about the type of service they provide. This will avoid some unscrupulous individuals who have been working locally and charging exorbitant fees including thousands of dollars to submit a Bankruptcy application, and hourly rates as high as \$80.00 per hour. The change in Legislation will prevent these people from preying on the disadvantaged and vulnerable within the community.

- *The improvement of ASIC's enforcement capacity by giving it standing to apply to the Court for an order where civil remedies are available for offences.*

Anglicare Victoria is supportive of this provision and is of the view that providing additional authority and power to ASIC is a positive enhancement to the regulatory powers invested in ASIC.

2 Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011: Small Amount Credit Contracts (Schedule 3)

Anglicare Victoria supports the new provisions below that apply to small amount credit contracts:

- *Consumers cannot enter into multiple contracts.*
- *Licensees cannot suggest credit limit increases to consumers.*
- *Consumers cannot refinance any part of the credit provided under another small amount credit contract.*
- *Licensees who have websites must disclose terms and the types of assistance available to consumers in simple language in a highly visible manner and also identify alternative or cheaper sources of credit.*

Anglicare Victoria views this provision as most important in restricting exploitative practices by some small credit providers. The current concern is for those consumers who access a small credit amount and default in payment, requiring them to refinance the original amount plus the interest and or fees. This can quickly spiral out of control and lead to additional debt. The current provision provides much needed protection from this scenario. Anglicare Victoria supports the expectation for product disclosure of this nature to be a requirement for all licensees.

"We have a client who has presented with severe mental and physical health issues. She has adult children who suffer from drug and alcohol dependencies. She has been abused financially. Her family have nearly cleaned her house out by hocking all her goods to get loans to buy their drugs. Because of her health she cannot stop her children. She has lost count on the amount of loans she has with the pawn broker. She cannot retrieve her goods because she owes too much. With this case we will be informing ASIC of the loans and the inappropriate conduct but by having strict laws this prevents such a scenario occurring. It also begs the question as to how her children can enter into such loans under her name where she has never signed the documentation."

3 Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011: Caps on Costs for Credit Contracts (Schedule 4)

From our client experiences, the main destructive nature of uncapped short term lending appears as two-fold; both the high cost of credit and the over-commitment of borrowers through multiple or 'rollover' loans can cause crippling effects. The proposed amendments seek to address exactly this, and Anglicare Victoria wholeheartedly welcomes the new obligations placed on such credit providers.

Due to the short term nature of 'payday' loans, our clients are often unclear or unaware of the annualised percentage rate (APR) they are paying until our counsellors calculate it for them. When asked if they would agree to a loan at 1000% APR, clients say they would refuse. But when the information is given as paying \$70 extra plus sign-up fees for a \$200 loan over two weeks, clients are far more receptive.

"A family in desperate need trying to get their 12 month old child to Melbourne for cancer treatment resorted to a pay day loan for \$300.00. This then forced the couple to repay roughly \$500.00 the next fortnight, and to survive needed to re-borrow to buy food and pay for necessities. Anglicare Victoria Emergency Relief staff were needed to assist this family to remove themselves from the vicious re-borrowing cycle."

By capping loans, borrowers are far less likely to suffer if their comprehension of a loan's 'real' interest is inadequate. There is also much less likelihood of crippling debt cycles (especially as this is also monitored under the proposed amendments), where we experience clients taking out multiple loans to 'rollover' or cover payments off previous interest commitments. This is particularly problematic for clients who present with drug and alcohol and/or mental health issues. Advocacy in situations to challenge resultant unfair debt cycles have even been met with emailed responses such as:

"If he cannot meet his bills, he is insolvent and should petition ITSA to go bankrupt. It's a ridiculously easy process. All he has to do is fill in a form and submit it to ITSA and hey presto - problem gone."

Anglicare Victoria welcomes the new obligations placed on credit providers to provide a two-tiered cap on the costs that can be charged under credit contracts.

For small amount credit contracts the obligations Anglicare Victoria supports include:

- *An establishment fee that can be a maximum of 10 per cent of the adjusted credit amount (i.e. the amount of credit the debtor receives in their hand).*
- *Monthly fees that can be a maximum of 2 per cent of the adjusted credit amount.*
- *Providers of small amount credit contracts cannot charge interest, any fees prohibited by the Code or amounts greater than the amount of a permitted fee and charge, for example overcharging government fees.*

The disclosure of fees and interest to consumers before they sign on the dotted line, and a calculation of the annual percentage rate are much needed disclosures by credit providers. Clients typically say that they would have sought alternatives had they been aware of the true cost of a payday loan. Credit providers should be required to advise borrowers of the total amount repayable per fortnight which is to include all costs and interest charges. To have the full story listed out in front of them is critical to responsible lending.

- *In addition, small amount credit providers cannot take security under such contracts.*

The capping the maximum amount that can be recovered under the contract by way of default fees to twice the adjusted credit amount is strongly supported by Anglicare Victoria. This provision will limit exploitative practices currently present in the 'grey areas' of credit law.

- *Lenders are prohibited from redirecting part of the loan back to themselves, for example where the debtor is made to purchase a good, usually at above market value, as part of receiving credit.*
- *Amounts payable to third parties as a way to avoid the restrictions on costs can be included in the above prohibited credit amount.*

Anglicare Victoria is pleased to see the inclusion of these provisions as further protection to vulnerable members within our community. It is expected that the inclusion of these provisions will further reduce the incidence of exploitation and debt cycle helplessness. Consumers will be protected from businesses providing inflated prices for goods that are worth far less than the lease item repayments would suggest. Also targeting and advertising for ex-bankrupts, the self employed, those with bad credit or credit defaults, the unemployed and pensioners will be monitored far more stringently.

Some consumers have reported manipulation by businesses making it very uncomfortable for consumers to choose their own products. For example a customer is offered the option to lease one vehicle and the choices and decision making process are taken out of their hands. They are told to accept a particular car and are given no other options. If only one option is given to the consumer for owning a vehicle, in desperation they have in the past succumbed to heavy pressure sales tactics and accepted outrageously high interest rates on leases.

For all other credit contracts, Anglicare Victoria supports the obligation below:

- *The annual cost rate (including all credit fees, interest and other charges) cannot exceed 48 per cent.*

It is noted that this provision is already present within some Australian states. It is understood that a cap of 48% will continue to provide the basis of viable business models of consumer credit.

4 Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011: Consumer Leases (Schedule 5)

Anglicare Victoria supports the provisions for consumer lease contracts:

- *A unilateral alteration of a lease by the lessor will be void without the lessee's agreement.*

This alteration will allow consumers to continue to budget appropriately for the leased item, without variation. This will give the consumer the opportunity to maintain household budgets without unexpected hidden costs appearing six months into a signed contract.

- *Overcharging of fees under a consumer lease is prohibited.*
- *Consumer leases can be changed under hardship grounds or on the basis the transaction is unjust.*

This will allow consumers in the event of changed circumstances eg changed income, relationship breakdown or illness to alter the amount repayable without the difficulties faced previously.

- *Lessors are liable for a supplier's misrepresentation.*
- *A criminal penalty for harassment applies to the lessor or supplier.*

Lessees with low incomes are particularly vulnerable because they tend to forego other essential expenses to maintain these repayments especially if they are leasing a car for work purposes or replacing broken whitegoods. These provisions address the current lack of legislation that has led to lessors pressuring lessees in financial hardship to enter into unrealistic repayment arrangements for arrears. They presently have the scope to penalise lessors by using heavy-handed collections activities when the lessee misses the unaffordable repayments. Rental items in default by consumers are common, harassment and heavy handed tactics and are not beneficial in working towards an amicable resolution for either party. Reports of abusive phone calls, letters and upsetting collection procedures only deter consumers from communicating.

5 Issues of Concern arising from the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

- *Low-income consumers may not be able to afford the Court costs involved when taking legal action against licensees in breach of their obligations.*

Under legislation the options for legal recourse available to low-income consumers may be limited by their capacity to take their creditors to Court. Low-income consumers will be unable to afford any legal dispute, with Legal Aid only available to those consumers who have no assets. If low income consumers are purchasing a home or car they would be expected sell these to cover the costs of their legal disputes.

- *Cap on maximum amount that can be recovered from under small amount credit contracts, must also include a cap on enforcement expenses.*

In the event a debtor defaults, capping the enforcement expenses reduces the incentive the credit provider currently has to take legal action and charge the debtor recovery costs that are disproportionate to the credit amount provided. This current practise increases the likelihood of Bankruptcy due to small loan amounts to low income consumers.

- *Anglicare Victoria agrees with Financial Counselling Australia's observation that small amount credit contract provider websites should include a loan repayment calculator for such contracts¹.*

This would counter possible advertising that entices consumers with "minimal monthly fees of 2%" or a "low 10% establishment fee".

¹ <http://www.financialcounsellingaustralia.org.au/submissions.htm>

- *More stringent disclosure requirements should also apply to the forms signed by the debtor under small amount credit contracts.*

The forms must have a minimum standard font size of 10 points to ensure their legibility. Pages detailing terms and conditions should be standardised and written in simple language. If the client is from a CALD background an interpreter needs to be present or available on the phone to be clear that the consumer is aware of what they are entering into.

- *The repayments of any lease should not exceed 30% of a consumer's income.*

Consumer leases are very popular with low-income families. It is not unheard of to see, for example, a young single mum on government payments and caring for dependents take out a \$30,000.00 vehicle lease with repayments of \$300.00 per week. The above restriction would prevent lease companies from exploiting the disadvantaged customers in similar circumstances.

6 Additional Issues to be considered for Inclusion in the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

- *Consumers must be given the ability to choose their preferred method of payment for small amount credit contracts.*

Providers of small amount credit loans requiring the majority of consumers to make repayments by direct debit pose problems for consumers. It is common for the direct debit to not coincide with the day the consumer is paid. It is not unusual for individuals and families on low incomes to have no funds in their bank accounts when the direct debit goes through, resulting in them incurring default fees with the licensee and overdrawn fees with their bank. Therefore, legislating to allow for preferred payment methods helps consumers avoid the above pitfalls. Flexible options would include BPay, PostPay and Centrepay to be consumer driven rather than credit provider driven.

CONCLUSION

Anglicare Victoria recognises the important steps the amended legislation takes in protecting the rights of debtors, expanding ASIC's powers, putting restrictions on payday loans and bringing the rules affecting consumers leases in line with other credit contracts. In particular, we welcome the powers that allow lawmakers to respond to possible attempts by payday lenders to circumvent the limitations imposed on them.

The provisions affecting payday loans are particularly relevant to Anglicare Victoria's clients. We therefore call for the amended legislation to incorporate a cap on recovery costs by payday lenders, for clearer upfront disclosure by the credit providers about the cost of the payday loan, for simple non-technical language in the contract documents and for the law to allow the borrower to nominate a preferred payment method.

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