Submission –

Review of the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

Senate Standing Committee on Economics (Legislation).

11 November 2011

Contact:

Haydn Cooper

Director

Min-it Software
PO Box 1367
Sunnybank Hills
QLD 4109

TABLE OF CONTENTS

Foreword 3

Background Information 4

Market segmentation 5

The need for a precise and accurate definition of a payday loan 6

Existing responsible lending obligations and loan suitability ignored 8

The Years of Hypocracy 11

Academic research 14

The use of research in policy making 21

Interest rate caps – do they currently work as claimed? 22

Lending system issues 24

Unintended consequences 27

Level playing field imperative 30

Foreword

The author would like to thank the Committee for the short extension of time granted in order to make this submission.

If the Committee would like to discuss any information contained in this submission, please do not hesitate to contact me.

Haydn Cooper, Director

Background Information

This submission is made by Min-it Software on behalf of its clients. Aside from the software produced in-house, specifically by or for franchised organisations, Min-it Software is the leading internet-based industry software supplier in the Australian market to the micro-lending market.

Our client base crosses both payday, micro-lending and commercial (non-regulated) sectors of the lending industry. Consequently, this enables us to offer our knowledge of these very different markets to the Committee in the hope it will correct matters before they create market distortions.

We were a finalist in the Queensland Consumer Protection Awards 2005 and were awarded a Highly Commended Award in the 2007 Awards. Min-it Software promotes compliance with the Code and other legislation. In order to do this, we have held training conferences open to the entire industry, not just our own clients, since 2006 and have just held this year’s one at the end of last month at the Novotel Twin Waters resort.

Neither the author nor his business partner has any financial interest in any lender.

We welcome this opportunity to assist the Committee in its deliberations regarding the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (“the Bill”) currently before Parliament and hope you find the contents of this submission useful.

Given the author is a member of the FAA/Industry/Smiles Turner Delegation, representing the Financiers Association of Australia (“FAA”), this submission will comment only on certain aspects of the Bill which we feel will add value to the Committee’s deliberations.

Market segmentation

From the outset, it is important the Committee understands that suppliers of credit fall into four fairly distinct segments:

- Banks and other large financial institutions
- Other lenders (including micro-lenders)
- Payday lenders
- Pawnbrokers

This delineation approximately represents the types and terms of the loan products generally offered, so as one comes down the list, the length of the loan gets shorter and the amount lent reduces, often considerably.

These are basic facts yet, from our experience, having been involved first hand with regulators at both State and now Federal level, the industry has consistently failed to get this information believed. As a result, we believe the unwillingness to listen and understand how the industry actually works has long been the cause of much of the industry's issues with credit regulators, both previously and currently.

There is a huge difference in attitude between the different types of lenders reflecting the risks associated with lending within each sector. By failing to recognise the different segments, regulators have tried to adopt a one-size-fits-all approach, consistent with what was previously in the State-based Consumer Credit Code ("UCCC") and which morphed into the National Credit Code ("the Code") with the passing of the National Consumer Credit Protection Act 2009 ("the Act").

It is worth repeating the comment we made in a Green Paper response to Government "that the only difference between a bank and a loan shark is the size of the client base over which its costs can be spread."[1] That is why, as a rough approximation and coming down the list, excluding pawnbrokers, the interest rates payable on the various products offered by each of the sectors generally increases with the risk level. These facts are inescapable; they apply anywhere in the world.

[1] Joint Min-it Software/ FAA Submission, August 2010, p15. *Green Paper: National Credit Reform - Enhancing confidence and fairness in Australia's credit law*

As a generalisation, most payday lenders will now lend anywhere from $50 through to $800 for a term of anywhere from a day through to 12 weeks with some lending even as much as $1500. The vast majority of these loans are for terms of 4 to 8 weeks maximum with weekly or fortnightly repayments, in line with how the borrower is paid. On our system, the average 'payday' loan amount lent, repayable over a 4 or 6 week period, is around $300. This will be covered in further detail later in the submission.

In contrast, many micro-lenders will lend between $500 through to $3,000 over terms ranging from 26 through to 104 weeks. There are a number of lenders that will extend these limits, increasing the amount lent out to $5,000 or even $10,000, depending on client requirements. Some of our larger clients that lend to consumers compete directly with banks and credit card issuers, providing loans up to $20,000 and more on terms up to 5 years or more, consistent with those providing motor vehicle finance.

Min-it Software has less than a handful of what we would define as pure payday lenders using our system. We have not actively sought out clients in this sector and the vast majority are micro-lenders with shop fronts, motor vehicle financiers and non-regulated (i.e., business loan) lenders. That said, some of our clients will offer, where responsible lending obligations can be met, what we regard as a 'payday' loan in order to meet the client's loan suitability requirement as one product offering amongst their available range.

The need for a precise and accurate definition of a payday loan

For roughly the past 10 years, Consumer Groups have claimed, aided and abetted by sympathetic academics, that there are serious issues with payday loans. In light of this, we believe it is worth defining what constitutes one.

In the US, a payday loan is generally defined as a short term loan used to cover expenses until the next payday. The principal and any fees must be repaid in full from the borrower's next pay cheque. Since 1995, Australian lenders generally mean it to be a short term loan of less than 62 days duration. This was because 'payday' lenders used the then-applicable exemption under the UCCC to avoid compliance with the State-based Consumer Credit Code. Even when this exemption was removed (although Consumer Groups would call it fixing a loophole), the

industry's participants still provided their short term loans using the old definition. The only difference was their contracts and documents now had to be UCCC compliant.

Many lenders here in Australia limited their 'payday' loan offering to small(er) amounts but since the arrival, from 2000 onwards, of a number of overseas payday lending companies, many operating totally over the Internet, the amount of money lent has seen a marked increase. Whereas many local lenders were reluctant to lend no more than $200 or so initially, we know of some lenders that will now lend up to $1200 and still require a single repayment on the next payday in full.

Since July 2010, when responsible lending obligations became a statutory requirement for non-ADI ("Authorised Deposit-taking Institution") lenders, it is our view that the vast majority of consumers do not have the financial capacity to make the full repayment in a single repayment. For that reason, we suggest a lender doing so may breach their responsible lending obligations if it applied this policy across the board. For any that do so, there are sufficient teeth in the existing Act for the Australian Securities and Investment Commission ("ASIC") to enforce this without the need for further legislation.

In our opinion, the Bill's definition, as proposed by Treasury, will create market distortions. Defining, as it has, that a payday loan is an unsecured loan under $2,000 and of a term less than 2 years cuts across two current market segments and bears no resemblance to industry norms.

Based on our own statistical data, the average payday loan done by our clients is just over $300 on terms varying between 4 to 6 weeks. When we began operating, we limited our client's ability to borrow large sums of money as a payday loan by limiting the number of weeks of the term to not more than 8 weeks and denying any ability to take security on them.

In 2006, for example, the typical loan amount was just under $225 over a term of 4 weeks. If the client could not afford the repayment under this loan type, the loan must be taken over a longer term in order to make it affordable. It must be borne in mind we did this well before the introduction of responsible lending. Since January 2010, six months prior to when responsible lending commenced, we increased the term to 12 weeks for this loan type given the average loan amount had risen to slightly over $300. If the loan repayment is such the borrower cannot afford it and the maximum number of weeks is exceeded, we force the lender to do the loan over a longer term, typically 26 to 40 weeks.

We acknowledge, though, that we have few actual payday lending clients per se and that almost all our clients are micro-lenders or commercial loan lenders. From the author's own industry knowledge, it is estimated a typical payday loan is currently around $300.00 in those States not having all-inclusive interest rate caps and approximately $400 for those that do. The reason for this difference is in those States with the all-inclusive interest rate caps, the loan amount includes some alternate methodology for revenue-raising, such as a brokerage fee (that includes GST) whereas lenders in the States without caps will apply an establishment fee instead.

In our view, there is a need to recognise and return to what the loan is intended for when formulating the definition. For that reason, we suggest a payday loan should be defined as being an unsecured loan of $500 or less with a maximum term of no more than 12 weeks. Loans outside these parameters should be regarded as micro-loans rather than payday loans and outside of the proposed capping mechanism.

Existing responsible lending obligations and loan suitability ignored

We will not deny a small number of borrowers have had issues with some of their loans over the years but it is important that those that do so are put into context. It is also important to remember the industry has undergone major regulatory change since the introduction of the Act, not least of which are the Responsible Lending Obligations and Loan Suitability test. Introduced as of 01 July 2010, ensuring these requirements have been met has gone a long way to alleviate the financial difficulty some borrowers may have previously entered, mainly from unscrupulous lenders.

The consumer groups claim these statutory requirements are not being met by the industry yet have offered little in the way of proof and have not referred any issue to the EDR (External Dispute Resolution) providers who, if they see a systemic issue of concern, must refer the latter to ASIC pursuant to the provisions of Regulatory Guide 139. Furthermore, as the industry has not heard anything adverse on systemic issues, it would suggest they have done little to persuade ASIC to review individual lenders' practices where they believe these obligations and requirements have not been met.

It is our firm belief if they are truly genuine in their claims, there is no need to attack every lender but only those that are failing to be compliant. Unfortunately, as before, there are just a few that are tarnishing the reputation of the many good lenders still in the industry.

In our experience, the vast majority of micro-lenders have never had an issue with assisting consumers meet their financial obligations. It is important to remember this is largely their own money they are lending and so they want it back with some element of profit. For this reason, our clients and equally, some of the other micro-lenders that do not use the Min-it Lending System, will reduce a borrower's payments. In our clients' case, they may hold interest and payments as well, if that is what it takes to assist the consumer recover from their difficulties. From experience, this is far more than the ADI's will do for their clients.

Many of our own clients complain about the number of payday loans some consumers have at any one time and find they cannot payout and consolidate some of these loans because as fast as they do, the client returns for yet another payday loan and exacerbates the situation. Note, again, we have said 'some' as this does not apply to all borrowers but only a tiny percentage of them. If all lenders were undertaking proper checks and meeting their responsible lending requirements, we believe many of those currently getting into financial difficulty would not do so. Under the proposed Bill, we would remind the Committee there would be no opportunity whatsoever of restructuring debt if the loan is unsecured, the amount lent is below $2000 and the term is less than 2 years. We do not believe this to be sound financial assistance.

That is not to say more cannot be done, however. Just as we advised the States they already had the power to act (but they chose not to do so), ASIC also has the ability and resources available to police the legislation. We believe ASIC should take action where there is evidence that the lender has not met or suspects it has not met its responsible lending obligations or loan suitability requirements. As an example of what we believe is non-compliant, one of our clients approached a competitor recently and ascertained they will lend up to 50% of net after-tax income. After being advised it was $500 a week and so the maximum borrowing would be $250, our client was advised the total cost of the loan would be $403.80, repayable in one single payment on the next payday. This sum was made up as follows:

Principal Repayment	250.00

Fees payable:

Credit card	10.00
ATM Fee	7.00
Monthly card fee	7.50
Brokerage fee	107.23
Interest	8.24
Consumer Protection Insurance	13.38
Total $	**403.80**

The main points to note are:

1. The card fee is the fee payable to supply a credit card and is required in order to draw the funds supplied via an ATM;
2. The ATM fee is the fee payable to load the card with funds initially;
3. The Monthly Card fee is a fee payable monthly and continues to apply even after the loan is paid back. The borrower must cancel it for it not to be levied;
4. The Consumer Protection Insurance appears to be compulsory although it should not be. Consumers need to request a copy of the policy and it takes 14 days to supply, a period in which the consumer will have been required to make full repayment of the total owing via one single payment. We believe this to be an unfair requirement; and
5. The interest calculation appears to be for a 15 day period, even though the loan was to be for just 7 days.

The important thing to remember here is the borrower only gets $500 net per week. In our opinion, this must fail responsible lending obligations because the consumer, having repaid the loan, is only left with $96.20, an amount clearly insufficient on which to survive the balance of the week. We also question the loan suitability of having to repay the loan in one repayment but this is largely because it would appear <u>this</u> lender's lending system cannot cope with multiple repayments. From our own knowledge, the total revenue payable is well above what most other payday competitors charge, even in, as is the case here, a State where there is an all-inclusive interest rate cap. We also believe some of this to be unfair.

It is <u>**this**</u> type of lending **and no other** that brings all its participants into disrepute. Thankfully, this type of practice and the fees and charges that are applied are not universal. We, and our clients, do agree ASIC needs to act where this occurs. It doesn't need all-encompassing further legislative changes, such as those proposed, applying to all lenders to do it though. Legislators should recognise there are bad eggs in any industry but it doesn't mean one must take a

sledgehammer to crack every nut, regardless of size. The Australian finance industry is already amongst, if not, the world's most regulated.

Whilst we are unaware of any micro-lender that leaves borrowers with insufficient disposable income, based on the assessment the lender must do, after taking into account the loan repayment, it is worth noting this is a somewhat grey area of legislation. What is "sufficient" and causes the borrower no "undue hardship" will vary by individual circumstance and time. To solve this, the FAA/ Industry/ Smiles Turner Delegation offered a solution at a Treasury industry group meeting earlier this year. The Delegation proposed that either the consumer be left with a minimum percentage of disposable income or, one we suggested was more preferable, the repayment amount couldn't exceed a fixed percentage of disposable income but this was totally rejected by the consumer groups. One would have thought they would have jumped at the offer.

In our view, responsible lending and loan suitability requirements should be the key issue, not attempts to control prices artificially at unrealistic rates by anti-industry consumer agitators.

The Years of Hypocrisy

Much of the industry's woes can be traced back to a comment by Therese Wilson who stated, at a Griffith University "Credit Matters: A seminar on Regulating the Cost of credit", held in Brisbane on 7 December 2006, that she would rather see no credit granted than providing it at high cost.

In our submission to the NSW Minister for Fair Trading dated 5 April 2007[2], we stated "[s]ome consumer welfare organisations[3] and politicians[4] have been clearly influenced by the work of Therese Wilson[5] who firmly believes that if even one person is disadvantaged by the use of such loans, then they should be legislated out of existence. This is even at the expense of other consumers who use such loans and have no problem with them." As the NSW Minister refused to meet and discuss the extension of the NSW Special Provisions Regulations with the industry, we

---

[2] Min-it Software, 2007. *Submission: Invitation to Comment: Remaking of the Consumer Credit (New South Wales) Special Provisions Regulations 2002* , p10

[3] Consumer Law Centre Victoria and Consumer Credit Legal Service (Victoria) Joint Submission, p.15.

[4] Legislative Council Hansard, 2005. Page 19282, 9/11/2005. Available online http://parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/V3Key/LC20051109039 viewed 23/10/2006

5 Wilson, T, 2004. "*The inadequacy of the current regulatory response to payday lending*". Available online http://www.griffith.edu.au/centre/cccl/pubs/ablr32-3.pdf viewed 26/11/2006.

reminded him "the Department does not know of the industry's costs. Instead it has taken the three monkey approach: hear evil, see apparent evil, and speak evil.[6]"

This three monkey approach was subsequently taken up by the main Consumer Groups, Consumer Credit Law Centre (NSW) ("CCLC(NSW)"), Consumer Action Law Centre (Victoria) ("CALC") and National Legal Aid ("NLA"). We believe the actions of these three organisations since then, whilst stating publically that they want a viable industry, show they have deliberately set out to shut down the payday and micro-lending sectors of the lending industry.

For example, the author, representing the FAA, attended an MCCA Roundtable in Melbourne on April 1 2009 at which CCLC(NSW) stated they wanted a viable industry and had no objection to lenders recovering their costs. What they didn't want to see was huge profits made. When the NSW Credit (Commonwealth Powers) Act 2010 was introduced, the author contacted CCLC(NSW) on behalf of its clients to see if they would support representations to the NSW Minister to approve a loan type with very specific properties that would enable the lenders to recover their costs and make a small profit whilst operating under a Ministerial exemption under that Act. Even though they knew it was uneconomic to do so, CCLC(NSW) refused the request, stating they wanted the industry extinguished and that was why they were sticking to a 48% cap. Thankfully, this view is not held universally. For example, the National Financial Service Federation advised its members some consumer agencies at the RMIT "Caught $hort" launch said that whilst questioning some of its methods, the industry was needed and provided a valuable service to consumers.

Looking back in history, despite any substantial evidence to suggest otherwise, consumer groups, aided by pro-consumer academics, convinced State bureaucrats and Ministers in NSW over 6 years ago that interest rate caps were the way to stop the desperate and vulnerable from getting into debt spirals. The Australian Capital Territory followed soon afterwards but it took another 2 years for Queensland to introduce its capping regulations.

One would realistically assume that if the problem were as bad as alleged at the time, there would be a huge number of complaints about the industry. Yet, even when Queensland

---

[6] Ibid 2, p34.

introduced its cap, the number of complaints against the industry didn't even rate a mention in the top ten complaint categories according to its Office of Fair Trading for the previous year[7].

As we stated in our submission[8], "[w]hilst we are not saying that there aren't rogue lenders operating in Queensland or elsewhere, the Office of Fair Trading's own statistics clearly show, however, that it is unjustly misdirecting its attention at a legislative and policy level to an industry sector where there really isn't a big problem. The Office of Fair Trading's own statistics should be suggesting where its efforts need to be focused."

The same situation continues today, and COSL, for example, has reported a very low number of complaints were referred to it from these industry sectors. In 2007[9], we stated "no one knows the number who are disadvantaged", a point also acknowledged in a meeting held with the Policy Advisors to the then-Attorney General for Queensland[10] a year later and some 4 years on, we are still no wiser.

We would suggest it should be remembered that the Consumer Groups only see people who have already got themselves into some degree of financial difficulty. We acknowledge some of their clients' financial issues may have been exacerbated by a loan or number of loans that they then couldn't repay. However, just because all have or have had a payday loan or loans at some stage doesn't necessarily mean their argument that payday loans, as the common denominator, must be the cause of their problems. If every one of the respondents also had a car, drank alcohol and smoked cigarettes, we can see more common denominators. We suggest one can dismiss their findings as simplistic nonsense designed to achieve a point and instead, we would point to recent research that suggests financial distress can be more directly attributed to an individual's behavioural characteristics than the action of a specific lender[11].

We would submit the response by the Consumer Groups, though, is no different to asking any group of doctors or nurses that work in Emergency Response over a weekend whether they believe cars should be banned. Without doubt, almost all will, because all they see is the carnage and destruction caused by motor vehicle accidents. They are so immersed in their own

---

[7] Ministerial Media Statements, 03/02/2008. Available online: http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=56341 viewed 04/02/2008.

[8] Min-it Software, 15 February 2008. *Submission: Interest Rate Capping Measures for Fringe Lenders - Consumer Credit Code Amendment Bill 2008 and Consumer Credit (Queensland) Special Provisions Regulation 2008*, p.5

[9] Ibid 8, p7

[10] Meeting between Haydn Cooper and Lou Statos of the FAA and Derran Moss and Kate Stutchbury as Policy Advisors to the Attorney-General, Queensland, held Brisbane, 5 September 2008

[11] McCarthy, Y, Central Bank of Ireland, 2010. "*Behavioural Characteristics and Financial Distress*."

perceptions of reality that they cannot see the wider picture. This conditioning is a known medical fact and is a form of untreated post-traumatic stress disorder commonly suffered by those engaged in stressful emergency work.

Despite the many submissions, the small number of meetings we have had with Treasury, all of which have cost vast amounts of time, energy and a not inconsiderable sum of money, the Consumer groups really haven't moved away from their belief the industry should be shut down. They have offered no willingness to work with industry to find a solution, apart from insisting on a 48% interest cap they know will close it. We suggest this is hypocritical and their engagement in a consultation process a waste of valuable time for all concerned. Given all three receive funding from the relevant States, it is also a waste of State taxpayers' funding.

Academic research

The consumer groups have consistently used extremely small numbers of case studies to argue what they see is the tip of the iceberg[12]. Even the RMIT in its latest research, "Caught $hort"[13], on which the Consumer Advocates place huge reliance to argue their case, uses the data from just 112 people, all of whom were paid for their responses. Victorian respondents were paid $50 whilst NSW and Queensland ones were paid $40[14]. As a result of its findings, the RMIT has chosen to laud figures like:

- More women (59 per cent) than men (41 per cent) take out payday loans.
- Most people talked about borrowing amounts less than $300 (54 per cent), followed by $301 to $500 loans (21 per cent).
- People in their 30s (32 per cent) and 40s (24 per cent) were more likely to borrow small, short-term loans than individuals in the 20s (19 per cent), 50s (13 per cent) or those over 60 years of age (12 per cent).

---

[12] For example, refer to those listed on pages 11 – 12 of the RIS (Australian Government, June 2011. *The Regulation of Short Term, Small Amount Finance: Regulation Impact Statement* available online http://ris.finance.gov.au/files/2011/09/RIS-Short-term-small-amount-finance.pdf viewed 04 September 2011.

[13] RMIT University, 2011. "Caught $hort: Exploring the role of small, short-term loans in the lives of Australians", Interim Report. Available Online: http://www.nab.com.au/wps/wcm/connect/c0f59d80486ac8f4851595fa033d4942/CaughtShortInterimReportSeptember2011.pdf?MOD=AJPERES&CACHEID=c0f59d80486ac8f4851595fa033d4942 viewed 24 September 2011.

[14] Ibid 13

- Over half the respondents had taken out more than 10 loans since they had started borrowing from this sector, with many saying they had taken out more than 50 loans.(But no mention over what period this is)
- When asked why they first took out a loan, the most commonly cited reasons (food, ‘had no money’, bills and rent) were to meet regular, weekly-type needs and expenses.
- Few people (7 per cent) had a credit card and over 60 per cent mentioned they had a poor credit rating.
- Ninety nine respondents had often strongly-held opinions about what needs to happen to help people on low incomes. The most common views were:
    - Increase Centrelink payments and pensions (43 per cent of respondents)
    - Increased government support for education, training or finding a job (27 per cent)
    - Centrelink payments be made weekly rather than fortnightly
    - Centrelink advances be more flexible to reflect respondents’ borrowing practices with small-loan, short-term lenders (23 per cent). Many proposed that smaller amounts (down to $50) be available through Centrelink with short repayment schedules of two to four fortnights. We note this has been ruled out by the Minister

but these figures are representative only of the 112 they did engage with, not other 3,888 plus potential respondents mentioned at the very beginning of the report on page 7 that didn’t reply. It does not take a mathematical genius to know 32% of 112 is a far lower number than 32% of 4000, leading to distorted views. The vast silent majority who didn’t need the inducement to reply weren’t interested. If someone has to be paid for their reply, we submit this is or, at the very least, could be interpreted as, clear evidence of bias.

Furthermore, the RMIT statistics and methodology leaves a great deal to be desired. The table overleaf, taken directly from the RMIT report[15], shows the sample demographics. From this, one can see the percentage of metro respondents is 63.3%, representing 72 respondents, so correspondingly, there were 40 respondents or 35.7% from regional areas. Of the 72 metro respondents, 44 (61%) were from Melbourne. We are very concerned that there may be a bias with regard to this Victorian response, with a particular Money3 outlet providing a disproportionate number of respondents when they were interviewed at a local coffee shop. If other coffee shop clients were able to listen in, no matter how unintended, this “coffee shop survey” centred primarily on one outlet must raise issues of privacy and possible statistical bias, particularly as the Melbourne total represents 39.3% of all respondents.

[15] Ibid 13, p8

Table 1: some major characteristics of the sample

Interview location	Gender		Receiving a Centrelink pension or payment		How participants found out about the study			Total
	M	F	Yes	No	Lenders	Community organisations	Other	
Brisbane Metro	10	18	21	7	20	0	8	28
Queensland Regional[5]	8	8	14	2	9	6	1	16
NSW Regional[6]	3	5	8	0	3	0	5	8
Melbourne Metro	18	26	31	13	24	13	7	44
Victoria Regional	7	9	13	3	4	10	2	16
Total Respondents	46	66	87	25	60	29	23	112

Based on our own and from assisting Smiles Turner with their research, we are astounded that the report is also an Interim Report. Our assessment of their inquiries, particularly with such a small sample to evaluate, is that it should have taken approximately two months to complete. Given this report was not issued until September and, on the industry's understanding the report's release was delayed anyway, why the chief investigators and research partners could "not present a final report until late 2011"[16] is astounding. Industry was of the opinion this full report's findings would be released and considered as part of the Bill's formulation.

Furthermore, whilst it is one thing for the National Australia Bank to offer financial support for this type of research, presumably on the basis it can be used to test or market research new products, we do have concerns when a major charity and consumer assistance organisation such as Good Shepherd Youth & Family Service also offers financial support to it. The *Northside Chronicle*'s recent front page appeal for food donations[17] points out that

> "[t]his is not Dickensian London. This is Brisbane 2011, and we have a poverty crisis of our own. It's hidden. But it's real. Each week, more than 100,000 people in southeast Queensland can't afford to eat and half of those are children. Eight per cent two-parent

[16] Ibid 13, p.6
[17] Northside Chronicle, Quest Newspapers Pty Ltd., Wednesday, 9 November 2011. Front page appeal- "*Don't let me starve: Each week 50,000 of our children go without food*", p.1

families live on or below the breadline. Today we ask you to support our Foodbank appeal."

We have no doubt a similar situation occurs in other states, so given the work they do, one would imagine the funds employed on this project could have been put to far better use in the community they serve.

The use of small sized sample populations is nothing new to academics and consumer groups, some of which have been kindly listed by Treasury in the RIS[18]. One of these is Zac Gillam and CALC's *Payday loans: Helping hand or quicksand?* Report issued September 2010. We would refer you the FAA/ Industry/Smiles Turner delegation submission for a more detailed analysis of this document.

The EU did the same last year with the iff/ZEW-produced report into a *Study on Interest Rate Restrictions in the EU – Final Report*[19] that is also mentioned in the RIS. What has not been mentioned by Treasury is this report provided statistical analysis on ***opinions*** held by various stakeholders such as government regulators, consumer groups and industry associations yet presented them as facts. The authors' of that report sent questionnaires to 333 recipients in 27 EU states.

In the original iff/ZEW IRR report, the authors used a number of different sources such as prior economic research, existing statistical data, surveys they undertook (this included those involved at different levels), so it encompasses responses from credit providers, consumer protectionist organisations and regulatory authorities, and finally literature, legislation and a review of EU case law.

Those contacted for responses comprised 83 regulators and government agencies, 98 credit associations, 106 consumer associations and 46 others but only 96 replied - wholly or in part. The following table (overleaf) shows some details of the demographic breakdowns of respondents:

[18] Australian Government, June 2011. *The Regulation of Short Term, Small Amount Finance: Regulation Impact Statement* available online http://ris.finance.gov.au/files/2011/09/RISShorttermsmallamountfinance.pdf viewed 04 September 2011, p12-13

[19] Reifner, U., Clerc-Renaud, S., and Knobloch, RA M. , 2010. Study on interest rate restrictions in the EU, Final Report, Project No ETD/2009/IM/H3/87: Joint report by Institut für finanzdienstleistungen e.V (iff) and Zentrum für Europäische Wirtschaftsforschung GmbH (ZEW, Mannhiem). Available online http://ec.europa.eu/internal_market/finservices-retail/docs/credit/irr_report_en.pdf viewed 15 March 2011.

Category	Recipients	Completed Questionnaires	% of Actual Responses/ Completed Questionnaires
Regulators, public authorities and government agencies	83	35	36.46%
Credit provider associations	98	23	23.96%
Consumer associations	106	28	29.17%
Other stakeholders	46	10	10.41%
Total	**333**	**96**	100.00%

Just 28.82% of all recipients responded (although another 41 provided additional material or what the authors term a 'significant answer' but the authors make categorical assertions based on this fairly limited sample. Even if one were to include the additional replies, some assumptions were made at best using 41% of the original sample size. Although the authors don't give any precise information on the number of responses to each question, there is at least one where you can clearly see not everyone replied (in relation to the effect of the introduction of interest rate restrictions).

Reading the IRR report, it's essentially divided into two parts. Part 1 deals with what's there right now whereas in Part 2, the authors developed 12 hypotheses and set out to test them. 6 countries were used as case studies.

Of the 12 hypotheses, 3 were found to be plausible -
Hypothesis 1 - IRR reduce credit access, in particular for low-income borrowers
Hypothesis 2a -Without IRR, more product types exist in the market
Hypothesis 7 - IRR lead to increased charges as providers will try to compensate the reduced interest revenues by increased charges

these 3 were unlikely -
Hypothesis 2 - IRR's lead to a decline in the volumes of consumer credit granted
Hypothesis 5 - The lack of IRR's leads to a higher level of over-indebtedness

Hypothesis 9 - IRR lead to a convergence of all consumer credit interest rates at the level of the interest rate cap

and these 6 inconclusive -

Hypothesis 3 - IRR lead to credit from non-bank sources, such as paying bills late

Hypothesis 4 - IRR lead to a substantial illegal market in lending

Hypothesis 5a - The lack of IRR has particularly adverse effects on default rates/over-indebtedness in the presence of negative shocks (e.g., recessions) to the economy

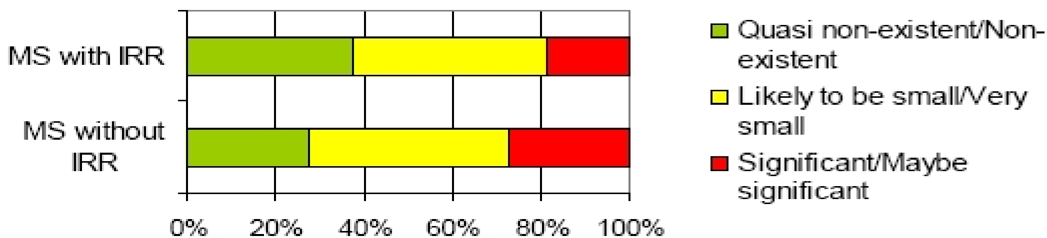
Hypothesis 6 - The average consumer (or even more so: low-risk consumer) would be granted cheaper credit in the presence of IRR

Hypothesis 8 - IRR represent barriers to consumer credit market integration

Hypothesis 10 - IRR lead to a convergence of all consumer credit interest rates at the level of the interest rate cap

Definitions for "plausible", "unlikely" and "inconclusive" were provided - see page 224 of the report.

It is unfortunate that the report does not give the actual numbers of respondents to questions, but from my examination of a number of questions, the results can be easily skewed. For example, when one looks at hypothesis 4 (IRR lead to a substantial illegal market in lending) and the graphs for the number of respondents[21], by adding up the bars, there would appear to be about 22 that replied. If one now looks at the table overleaf[22],



SQ Question: How would you describe the presence of an illegal market in lending money to low-income households? (Significant/ May be substantial/ Likely to be small/ Very small/ Quasi non-existent/non-existent)

Source: iff/ZEW report

[21] Ibid 19, Figure 100 (p.271) and Figure 102 (p.273)

[22] Ibid 19, Figure 99, p. 270

although it's difficult to tell exactly, in those EU states with IRR's, there are roughly 10% fewer respondents who believe illegal lending is either 'Significant/ Maybe significant' than in those EU countries that don't have any IRR's. Conversely, in those EU states with IRR, the same percentage (approximately 10%) think illegal lending is 'Quasi non-existent/Non-existent' than in countries without IRR's.

By taking our estimated 22 respondents, that means just 2 respondents swayed the difference! If these 2 were to have, let's say, selected another choice such as "Significant/Maybe significant' instead of 'Quasi non-existent/ Non-existent', there would be no difference. We contend this is an unacceptable scientific sampling methodology but equally, it is no different to what RMIT have done either. It comes out of using such small sample sizes to make critical judgements. Without any substantiation of facts, it will be subject to the same degree of bias and misinformation by or of the stakeholders that provided it.

So, given:

1. those that did reply didn't always answer every question; and
2. the inability of a reader to accurately see how representative the replies of those that did were; and
3. the recipients themselves may have skewed results - for example, the report shows there were 10 German credit provider and 13 French consumer organisations, yet almost half the EU states had no credit provider association complete the questionnaire;

how accurate are the results (and it must be remembered, these are based on opinions of the respondents, not facts)? Despite what the EU Summary states, whilst obviously a very detailed report, the iff/ZEW report shows how even a minority of respondents can sway its reported results. For that reason, we suggest it's no more reliable than the CALC report.

It is important to remember the authors of the iff/ZEW report are particularly critical of the 2004 Policis report and methodology. Whilst there may be some academic argument for criticising the methodology in places, for the sample of the 2004 Policis report, they sampled 2,717 low income consumers falling into the bottom 20% of household incomes in each location. Essentially, around 900 people chosen at random in 3 countries. Having assisted Smiles Turner in their latest surveys, one would suggest using a sample size of 2,717 would give far more meaningful results than the 96 they obtained. Equally, had the RMIT survey obtained 4,000 and not 112 respondents, the same could be said to apply.

The use of research in policy making

We have previously stated "[t]he use of case studies, even if validly highlighting certain adverse commercial practices, is no better than the reliance placed on small-scale research studies such as that of Griffith University upon which the Department has relied heavily, even though it was advised not to. Small-scale research invariably limits the scope and range of what is either reviewed or researched. The same biases are brought equally to the fore in each and call into question whether the research or use of the case study is ethical and has integrity. Shills notes "[t]he ethical values affected by contemporary social research are vague and difficult to formulate precisely. They refer mainly to human dignity, the autonomy of individual judgment and action, and the maintenance of privacy."[23] The consumer agencies have no ethical bounds in using such material; they rely on situational ethics to justify their cause. "

"Citing Walt & Gilson, Almeida & Bascolo[24] state that "the underlying assumption of many is that both research and policy-making are logical, rational processes where researchers ask the right questions, plan and conduct their studies rigorously, and circulate their results appropriately, and that decision-makers read research reports, understand the results and their implications, and act to correct their course in the direction indicated. Even admitting to a specific rationality in each of these processes, the real world is not so linear." These authors argue that there are a number of influences such as Ideological Problems and Media Interference that affect research being used as expected by decision-makers. Ideological Problems are those "that constrain political rhetoric and the formulation of reform agendas, in addition to a lack of political "will" or an inability to formulate and implement more integrated, interactive policies"[25] whilst Media Interference is that " which can both confuse the issue by publicizing results inappropriately and exploit divergences rather than clarifying them"[26]. "

"Almeida & Bascolo go on to cite Bardach who "states that policy analysis theory proposes that evidence is information that affects existing beliefs by important persons about significant features of the problem under study and how it might be solved or mitigated."[27] Unfortunately, Griffith University has collected little actual evidence; it mainly reviewed some overseas studies

---

[23] Shills, E.A., 1959, p.117. "*Social inquiry and the autonomy of the individual*", in Lerner, D (ed), "*The Human Meaning of the Social Sciences*", Meridian Books, New York.

[24] Almeida, C & Bascolo, E., 2006, p.S11. "*Use of research results in policy decision-making, formulation, and implementation: a review of the literature.*" Available online http://www.scielo.br/pdf/csp/v22s0/02.pdf viewed09/02/2008

[25] Ibid 24, p.S12.

[26] Ibid 24, p.S12

[27] Ibid 24, p.S12

and literature. Noting that the Office of Fair Trading not only financially supports but directs what research is undertaken at Griffith, there is little if any autonomy and one may draw a presumption that its research to date is no more unbiased than that applying to any other paid research. "

"We note that none of the research done by Griffith University appears to have cited any counter-argument in its research such as that done by the Personal Finance Research Centre at Bristol University. Professor Kempson of the Personal Finance Research Centre at Bristol University states

> "superficially [an absolute interest rate cap] is a very attractive idea. However, our research with people on low incomes suggests that it is premature while they have such poor access to low-cost credit and could well have an adverse effect on the people it would be intended to benefit. It would, undoubtedly, lead to a displacement of costs (with more additional charges) so that they would not have to be included in the APR quoted by lenders. This would result in a serious lack of transparency for people who need it most."[28] "

Interest rate caps – do they currently work as claimed?

The Consumer Group claims that the all-inclusive interest rate caps work in those States that have them simply aren't true. If they were, no one would be in business. The Consumer Groups claim they work is simply to dupe politicians into believing they do so that an all-inclusive style of interest rate cap can be applied that they know will close the industry down. This is their sole goal in pushing for this type of cap. They have no awareness of, nor indeed any regard for, the costs incurred by lenders, despite having stated they do want a viable industry. Their one desire is to see the industry closed down, under the misguided presumption the banks will come in and save the day. We will cover this in more detail under the heading "Unintended Consequences".

[28] Kempson, E., 2006. House of Commons Treasury Committee enquiry into *"Financial inclusion: credit, savings, advice and insurance"*, pp17-18. Available online http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtreasy/848/848i.pdf viewed 14/02/2008

Cash Converters have said their average Payday Advance ("PDA") loan is now $325.00[29]. In those states that have an all-inclusive interest rate cap at present, if they were to operate entirely under a 48% interest cap, that means the maximum revenue it could earn by staying completely within the legislation is $7.38 where the loan is repaid over a 4 week term. This would amount to a 2.27% mark up. From this, the lender would have to deduct operating costs. Any tax paid by such entities now would disappear because there simply won't be anything left.

We have pointed out to Treasury that Chris Zappone quoted statistics from the Australian Bureau of Statistics in May 2011 that showed what the average mark-up by type are[30]. These are reproduced below:

Product average mark-up by type

Product Type	**Average mark-up**
Clothes and shoes	142%
Other manufactured products	97%
Electrical and electronic goods	85%
Furniture	76%
Books newspapers and magazines	52%
Fresh food	47%
DVDs and music	40%
All goods wholesale or retail markup	65%

Source: Australia Bureau of Statistics data, The Australia Institute

If the average retail or wholesale mark-up across Australia is 65%, how can any small business expect to say viable with an all-inclusive 48% capped interest rate? The answer, of course, is they can't. Even at a straight 48% all-inclusive interest rate they can't, because 48% daily reducing is approximately 26% flat. This is well below any of the mark-ups listed in the table.

Of course, one of the problems is 48% interest sounds a lot. Many politicians at State level passed the legislation in the firm belief lenders made huge amounts of profit, not realising that

[29] Donkin, R., The West Australian, 23 August 2011. "*Cashies lifts profit on higher payday lending*". Available online http://au.news.yahoo.com/thewest/a/-/newshome/10093563/cashies-lifts-profit-on-higher-payday-lending viewed 02 September 2011.

[30] Zappone, C, The Age.com.au, 24 May 2011. "Retailers' mark-ups under threat from online". Available online http://www.theage.com.au/business/retailers-markups-under-threat-from-online-20110524-1f1g7.html viewed 26 May 2011.

48% interest does not mean $48.00 profit in every $100.00. Instead, it's roughly equivalent to 26% flat.

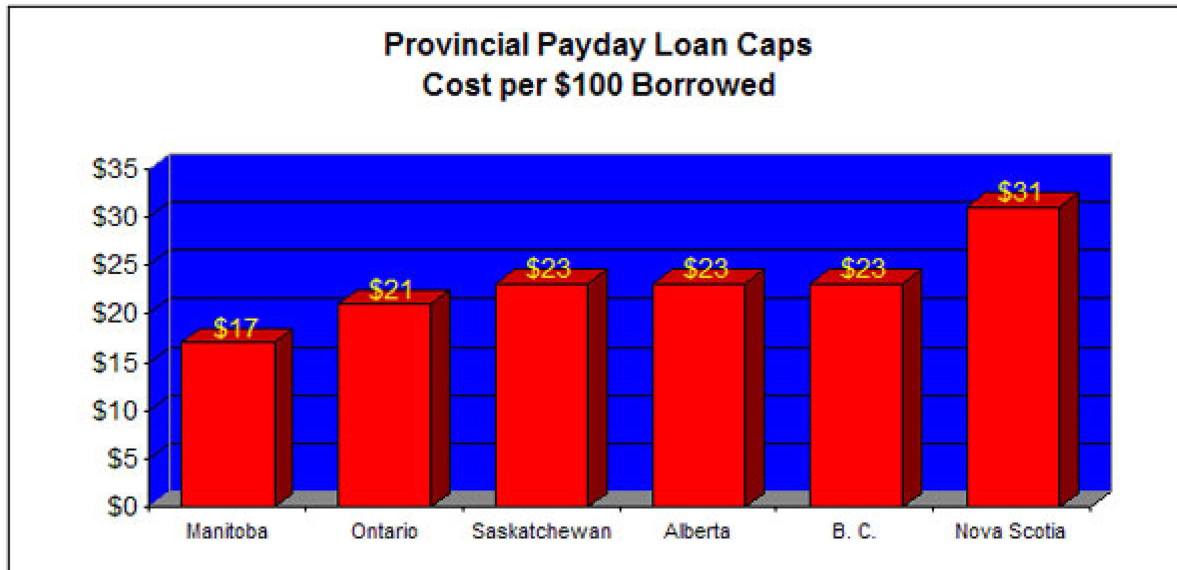
Lending system issues

In a verbal discussion with Treasury at an industry group meeting, we pointed out that some of the issues faced by lenders are system related. As this point has not been mentioned in the Explanatory Notes or the RIS, we will provide the Committee with our reasons for stating this.

Payday lenders typically use software derived or modeled on US- or Canadian-based systems where the amount payable is a simple ad valorem percentage of the principal calculated at an amount per $100 lent. It is not an interest rate per se, though many of the Canadian payday lending interest rate cap legislations describe it as such. The table below shows the various rates[31]:

Canadian Jurisdictional Comparisons

Maximum total cost of borrowing for payday loan agreements



Source: Ontario Ministry of Consumer Affairs

Using such an ad valorem rate, however, one cannot calculate interest in accordance with the requirement of s.28 of the Code.

[31] Ministry of Consumer Services, Ontario, 2011. *Ministry News: Cost of Payday Loans Capped*. Available online http://www.sse.gov.on.ca/mcs/en/Pages/News_15Dec2009.aspx viewed 012 October 2011.

These systems all work on typical US pay cycles (being fortnightly or monthly), so most have a single repayment due at the borrower's next payday, a maximum of either 15 or 31 days. The amount due will generally be a whole dollar rounded amount and calculated using rates between $20 to $25 per 15 days or between $35 or $50 per 31 days. These systems generally have no ability to extend the loan or create a number of repayments.

It should also be noted that due to lower costs, Dr Greg Elliehausen of the US Federal Reserve System states US payday lender profitability is around 66% of the total fee charged[32]. In comparison, the profitability is almost exactly reversed, with costs making up roughly 66% and profitability being 34%. Please refer to the FAA/ Industry/ Smiles Turner delegation submission for a far more in-depth analysis of this.

Cash Converters used, and continues to use but only in those states where there is no current State-based interest rate cap, a $35 fee per 4 weeks or per multiple of 4 weeks. Loans are generally calculated over the 4 week period but if the repayment is too high, the loan will be repaid over a longer period. Whilst this increases the fee payable, the repayment amount will decrease. As an example, a $300 loan for 4 weeks will be repaid at $101.25 per week. The revenue (not profit) received will be $105.00. If this same loan is taken over 8 weeks, the revenue received will be $210.00 but the repayment will drop to $63.75 per week.

On our system, as stated earlier, we have made it so that all 'payday' loans are capped at a maximum of 12 weeks. The lender cannot exceed this term. If they need to reduce the repayment amount to accommodate what the borrower can afford to repay, then they must create the loan as a standard principal and interest bearing loan over a longer period.

Prior to the introduction of interest rate caps, our clients used two types of 'payday' loan contracts, one along identical lines to that of Cash Converters but with the ability to override the fee amount payable. This enabled a client to offer a reduced fee when compared to that of competitors for, say, a 6 week term, or even to simply reduce the fee lower than that of competitors. Whilst some clients used the same fee rate as Cash Converters, many others reduced it as a way of competing.

[32] Elliehausen, G., 2009. "An analysis of Consumers' Use of Payday Loans", Financial Services Research Program , Monograph No 41.

Alternatively, they could use an interest bearing loan contract and whilst some of the rates may sound horrendous, a nominal 925% interest rate applied on a $100 loan over 4 weeks equates to the same amount of gross revenue as does applying a single $35.00 fee. Consumer Groups, however, would prefer to quote the Comparison Rate as generally, this rate is higher. On the interest bearing loan, when repayments are paid weekly, the Comparison Rate is 688.485% or 688.0877% for the fee based loan due to the slight differences in actual repayments on the due dates. However you look at it, though, and using whatever calculation method you wish, the lender still receives just $35.00 in gross revenue.

By comparison, in those States where an all-inclusive 48% interest rate cap applies, this same loan of $100 for 4 weeks using a nominal interest rate of 48% would enable the lender to earn a maximum revenue amount of just $2.26. On the other hand, should the 10% / 2% formula be applied, the amount of revenue earned will be $12.00. Neither is capable of meeting costs, no matter how much people think the fee may be reasonable.

To further protect the consumer, our system will also not allow any lender to reduce the repayment amount to a sum below that of the interest component, where one is applicable, without altering other parameters such as the interest rate or term. This ensures whatever amount is paid by the consumer will enable the loan to be paid out. Other software systems allow lenders to continually draw payment after payment without any hope of the loan ever being repaid. In the vast majority of these cases, the lender simply doesn't realise this is happening.

When converting a lender's database from another system to ours, we have yet to find one instance where we have not found examples of loans that would never have closed under their old system. On this basis, there will undoubtedly be some affected consumers that have suffered some financial detriment purely through the inadequacies of the loan management system the lender is using, the number affected being directly proportional to the level of management that has been exercised by the lender. We feel we should point out to Committee members that this is not a sales promotion for our system, as we do not accept every lender that wants to use it. Even in these unsettled times, we turn down potential users, particularly if we feel they do not want to be compliant.

There will invariably be those, however, that use their systems to flout the law and it is these lenders that the majority want removed from the industry.

Unintended consequences

The decision by Government not to propose an allowable fee, such as an establishment fee, in addition to interest capped at a maximum rate of 48% for all non-payday loans as the Delegation proposed will create a number of unintended consequences.

For example, the motor vehicle financiers that use our system generally have relatively large loan books. Anecdotal evidence suggests that at least 70% of the used car market for cars over 8 years old is met from the micro-lending sector with the balance being funded either by unsecured personal loans or on credit cards. This is because some of the main financiers such as Toyota Finance, GE Money, Esanda, etc. will not lend on vehicles exceeding 8 years old. In fact, many lenders will only lend on terms that take the age of the car up to the 8 year mark. As the car gets older, the risk and interest rate increases.

Even though none of them actually charge anywhere near 48% interest right now, three of our largest car financiers have said they will consider withdrawing from the market if they have to effectively survive on a maximum 48% interest rate because they consider the risk exceeds the return on investment. Many of these lenders do so via brokers who are paid for their services by the consumer. We know of one private, publicly listed company, not one of our clients, that has said to us privately that they would have to exit the market should this Bill be enacted “as is”.

If this were to occur on a widespread basis, and no finance could be secured for their subsequent purchase, there could well be a domino effect felt through the motor vehicle industry. As cars older than 8 years essentially become all but worthless, depreciation would increase on all vehicles and it would immediately reduce the value of the entire fleet on Australian roads. As younger cars fetched less as a trade-in, this would impact on the upward distribution channel so that it would cost more to trade into a new vehicle. If the differential required were to become so great that it would cause buyers to think twice, new car sales will slump and result in the layoff of more workers in the already hard-hit automotive industry.

We already know there is a downturn in the used car industry, with second-hand vehicles over $5,000 but under $30,000 being particularly difficult to sell at present, even with conventional mainstream finance sources. If this difficulty continues for any length of time, this will have serious repercussions for a number of smaller dealers.

For those other micro-lenders that decide to remain in the industry rather than exiting it, they will inevitably become more risk-adverse and cherry pick potential borrowers even more than they do now. This will lead to financial exclusion for many. Depending on the definition of payday loan eventually selected, if the term is too long or the amount too high as we suggest it is, as proposed, the restriction on repeat borrowing will not enable micro-lenders to assist the many good clients they have now. This may lead to further financial exclusion and force more consumers to seek out other means of finding the money they see as needed or even take on greater amounts of debt. Some may achieve this by offering borrowers loans of more than the upper limit (currently suggested as being $2,000) but the issue of covering costs will be the main difficulty almost all micro-lenders will face if they cannot secure an establishment fee plus interest as the Delegation has proposed.

To fill the gap, where the client wants to purchase goods or services rather than simply obtaining cash, this may see some retailers or service industry suppliers attempting to enter the black credit market by offering services which are tantamount to providing credit but attempting to avoid the Act's licence requirements or circumventing it in novel ways. Industry will certainly seek ASIC's assistance should this occur.

Depending on the ultimate outcome of the rate to be applied to payday loans and the actual definition enacted, without any establishment or other such fee being applied, even if capped as the delegation proposed, a funneling of the amount lent may quickly be established depending on the thresholds chosen. This could cause many to be financially excluded because of failure to meet loan suitability requirements. For example, the suggested 10%/2% will be of concern to those micro-lenders where the loan is less than the proposed payday loan definition of 2 years and under $2,000 if they take security. It is likely there will be some who would try and overcome the issue, possibly by devious means. In our opinion, this represents the worst feature of the Bill.

The Delegation has worked totally from the premise it wants to see lenders return to a simple operating structure and not have to rely on legal accommodations or valid Code exemptions to survive. Passing the Bill as is, for those that decide to remain in the industry, will see them having to resort to such measures.

Given the overseas experience with credit cards, should one of the banks, such as the NAB, which has funded nearly all the major research work in recent years, decide to introduce a high interest rate, low value limit credit card, the detriment seen now by consumer groups will be a small drop in the ocean. It will also see general credit card rates rise to offset the losses incurred. Given the NAB's own findings from its Money Fast project[33], we believe it could only do so, though, by using the ADI exemption proposed. We will discuss this separately in the next section.

Should some of our clients and other lenders exit the industry, there is the potential for many redundancies. We would estimate it could be as high as 2000, depending on what might occur. It is already difficult to get suitable staff with the right attitude and knowledge and whilst some may obtain employment elsewhere, it will be at the cost of another's position. We have a small number of clients currently considering whether or not to stay in the industry and their decision will ultimately be made on what is enacted by this Bill. Should they decide to go, although it will impact on us immediately, we would encourage them to go and close down almost immediately rather than wait until 01 January 2013 so that they could extract the best possible price for their loan book from potential purchasers. Leaving it until the commencement date will inevitably see fire sale prices offered and possibly accepted.

Finally, we are aware consumer groups have already played down, as have politicians, bikie and other gangs entering the market. This should not be dismissed. I have been advised of three very unsavoury individuals with gang connections already operating now, two operating on the Gold Coast and one in South Australia. I have been informed by one of our clients he has one borrower who is so terrified, he has fled the country twice after being badly beaten up and threatened. He has had ribs, both arms and one leg broken after being taken out into the bush. He cannot work due to his injuries and the lender personally paid for his family to move and live elsewhere. He is not contacting them, for fear of retribution and is far too afraid to go to the Police. These kind of individuals would certainly not be afraid of any ASIC investigation.

---

[33] National Australia Bank, 2010. *Do they really want to hurt me? Exploring the costs of fringe lending - a report on the NAB Small Loans Pilot*. Available online http://www.nab.com.au/wps/wcm/connect/9f8b888046d2f552af2bbfa676247d67/NAB-Small-Loans-Pilot-Report.pdf?MOD=AJPERES&CACHEID=9f8b888046d2f552af2bbfa676247d67 viewed 04 October 2011.

Level playing field imperative

The Bill as presented allows an exemption from all of the capping mechanisms. We oppose this totally as it sends the wrong message. All lenders must have an Australian Credit Licence and there should be no exemptions from compliance available to big business simply because of size.

There is already a distortion in the Act that protects ADI's when compared to any other lender. As we said in an earlier response to Government[34], "[a]s the Minister states he wants to promote uniformity and deter widespread consumer detriment, then the Government must apply the same standards to all credit providers without exception or favour. The Minister should not become personally involved in any decision to prosecute or not as the case may be or apply any punitive measure against any credit provider."

"There is no arguable case for exempting the ADI's if the Government wants to be seen to be promoting transparency for the industry. One type of organisation should not be treated differently to another merely because of size and the fact that it subject to other regulation; every business in Australia can claim the same since they are subject to both Federal and State laws."

"In retaining the provision that allows only the Minister to decide whether or not a prosecution will occur for an ADI is effectively creating the ability for corruption to occur or be perceived to occur. To be blunt, there is enough evidence to show the top end of town are not adverse to providing "financial sweeteners" dressed up as donations to political parties in return for "favours"[35]. We suggest it would be a brave Minister indeed that effectively stopped a bank from trading yet the legislation makes it clear the Government is not adverse to any other [non-ADI] credit provider or credit assistance provider business from being stopped from trading [by ASIC]. There should be no differential; if the ADI has or could have committed an offence that would stop it lending, then so be it."

Under the old Consumer Credit Code, it was those areas where exemptions applied that caused the most detriment. There was ample evidence that the banks and ADI's have been the main

---

[34] Min-it Software/ Financiers Association of Australia, 11 December 2009. *Joint Submission Draft National Consumer Credit Protection Regulations 2010, Draft National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010 and other legislative amendments pertaining to the National Consumer Credit Protection Act 2009,* p.9

[35] Australian Protectionist Party, 2008. "*Political donations from corporations are a recipe for corruption*" Available online http://www.protectionist.net/?p=126 viewed 21/05/2009

cause of consumer detriment[36]. Despite the fact that many would have us believe they really are responsible, there are still current examples of poor lending practices still occurring[37]. Apart from bridging finance where, for a small loan amount, we acknowledge there may be an issue, there is no commercial practicality whatsoever for an exemption. The bridging finance issue can easily be accommodated by the inclusion of a clause granting exemption where the loan, or any extension of such a loan, is secured by a mortgage over real property for a term of less than 12 months.

We wish to make it plain that if this Bill is passed without amendment, it sends the clear message that the Government believes it perfectly acceptable for the people of Australia to be ripped off by banks and other ADI's with impunity because their clients can afford to be. It is a fallacy that detriment only occurs amongst the poor and every Australian has a right to be statutorily protected.

We reject the arguments put forward by these institutions that they need to be exempted because it will add cost. Why should it cost only those that are not an ADI? The cost of compliance is proportionate to each lender's client base, so the non-ADI lenders already face a far higher cost of compliance per customer that will have to be passed on than that applying to the ADI's. The exemption should not be a tool to force out non-ADI lenders from the market by inflicting massive compliance costs.

The exemption should be seen for exactly what it is: an anti-competitive request by the top end of town for regulatory assistance to further strangle the market and protect their market power.

Furthermore, as the charities such as Good Shepherd and others that use NILS and LILS have funding supplied by ADI's, it gives those ADI's the ability to charge more than what would or could be applied by non-ADI lenders for providing the loan if it were a LILS loan. This would be a

---

[36] See for example, Janet Albrechtsen Blog, The Australian, 06/05/2009. "*Having a lend of us - Comments*". Available online http://blogs.theaustralian.news.com.au/janetalbrechtsen/index.php/theaustralian/comments/nightmare_for_business/#commentsmore viewed 08/05/2009, Martin North, Fujitsu on Broker News, 05/03/2009. *Fujitsu: Australian banks ripping off customers* Available online http://www.brokernews.com.au/people/fujitsu-australian-banks-ripping-off-customers/1330/34044 viewed 20/05/2009 and I Hate Bank$.com.au, Available online http://www.ihatebanks.com.au/ viewed 21/05/2009

[37] For example, AAP article, Sydney Morning Herald, 16 September 2011. Banks rip off elderly, lobby group claims. Available online http://news.smh.com.au/breaking-news-national/banks-rip-off-elderly-lobby-group-claims-20110916-1kdi4.html viewed 19 September 2011 and Gardner, N, Sunday Telegraph, 02 January 2011. *The secret bank home loan rip-off, Available online http://www.dailytelegraph.com.au/property/the-secret-bank-home-loan-rip-off/story-e6freztr-1225980068997 viewed 03 January 2011*

totally hypocritical and farcical scenario. We urge the Committee to recommend this provision be removed totally.