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5 August 2009

The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

& via email: economics.sen@aph.gov.au; Cc: greg.lake@aph.gov.au

Dear Committee Secretary

Inquiry into the National Consumer Credit Protection Bill 2009

Submission from CARE Inc Financial Counselling Service and the Consumer Law Centre of the ACT

CARE Inc. Financial Counselling Service (Care or Care Inc.) and the Consumer Law Centre of the ACT (the CLC) welcome the opportunity to provide a submission to the Senate Economics Legislation Committee inquiry in this Bill.

About Care Inc. and the Consumer Law Centre

Care Inc. has been the main provider of financial counselling and related services to low income and vulnerable consumers in the ACT since 1983. Care's core services include the provision of information, counselling and advocacy to ACT residents experiencing problems with credit and debt. Care also runs a Community Development, Education and Research program and the ACT's only No Interest Loans Scheme.

The CLC is a project of Care offering legal assistance and advice to consumers on low to moderate incomes, mainly in the areas of consumer credit, telecommunications and utilities, general fair trading law and consumer protection.

Care responds to over 2000 requests for assistance every year across its programs. In addition to case work, Care and the CLC work hard to advocate on behalf of the ACT's consumers, striving to improve legal protection and raise awareness and understanding of consumers' rights in the ACT.

Care receives funding from a variety of contributors, and specifically acknowledges the funding that it receives from the ACT Government, the Department of Disability, Housing and Community Services and the Department of Justice and Community Safety; the NSW Financial Counselling Trust Fund administered by the Office of Fair Trading; and the Commonwealth Financial Counselling Program administered by the Department of Family and Community Services.

Introduction

Care Inc. and the CLC are generally supportive of a national consumer credit regime. In submissions over the past 12 months Care and the CLC have urged that the following priorities guide the transition:

- Any revised regulatory system should represent the high water mark of financial services regulation and not a slide to lowest common denominator positions. This would include the retention of interest rate caps;

- At the heart of any revised system for the regulation of credit in Australia should be the concept of responsible lending, recognising the national and global fall-out from the sale of unsustainable levels of personal debt; and

- Consumers requiring access to consumer protections in financial services regulations should see that access *enhanced* by the reform process, rather than diminished in any way. Any enforcement mechanisms are only as strong as the regulator which highlights the need for a robust regulatory system to accompany legal reform.

We note our endorsement of the Consumer Action Law Centre's submission to the exposure draft of this Bill. The CLC's concerns about the provisions of the Bill are similar to those of many community legal centres and legal aid providers across Australia. With the CLC being a single-solicitor practice with very limited resources, we shall limit our comments to the most important issues.

Specific Comments

Firstly, we would like to express disappointment with the decision to postpone the implementation of the Bill's Responsible Lending Conduct provisions until January 2011. Our concerns relate especially to finance brokers and 'fringe' lenders who are not covered by the existing Uniform Consumer Credit Code. Only four of Australia's eight jurisdictions presently have some regulations relating to brokers. However, if these are abolished when the new federal Act comes into operation, consumers everywhere in Australia will not be afforded most of the proposed legal protection for a full year.

Another concern relating to brokers is the power granted to them in the draft Bill to assess whether a consumer is capable of entering into the credit contract (principally their capacity to repay the debt). Although consumers are the clients of brokers, the brokers' fee is paid by the lender. This creates an obvious conflict of interest through the powerful incentive for brokers to achieve approval of finance for their clients. Indeed much of our clients' financial and legal misery has in the past been caused by the unscrupulous conduct of some brokers. For example, a large proportion of the CLC's foreclosure matters involve clients who had originally approached a broker because of experiencing hardship, but on broker's recommendation would refinance into a more expensive and often unaffordable product with a non-ADI lender, often attracting higher interest, additional fees and charges (including brokers' fees), and leading to foreclosure and significantly reduced equity in their property.

We strongly believe that the real capacity to asses risk and the responsibility for assessing determining suitability must in the end rest with the providers of credit. The proposed legislation exposes our clients to an unacceptable level of risk of litigation by lenders, while giving limited recourse and protection from the action of brokers.

In addition to the above, we make the following comments in relation to other provisions within the draft Bill:

- We welcome the Bill's recognition of the need for access to low cost jurisdiction for the consumers – while awaiting further detail we stress that such access is paramount to removing significant barriers to justice faced by consumers, with those on low incomes or coming from vulnerable backgrounds being most disadvantaged.

- The legislation should ensure that consumers are able to defend any proceedings against them in the jurisdiction where they live. If a credit provider is able to institute proceeding elsewhere this would be a major barrier to accessing justice for (predominantly low-income) consumers.

- While we are supportive of the increase of the threshold for the hardship applications to $500,000, we are concerned that this threshold will apply only to loans written after the enactment. In addition, it appears that lenders who do not provide credit after the commencement of the Bill will not be covered by its provisions, leaving existing debtors of these lenders without the protections the legislation will provide.

- We believe that the financial hardship provisions of the Bill are not strong enough. The rules regarding what constitutes hardship; the application process; how it is considered, accepted or denied; how it is considered by the Federal Court; and what recourse or appeal consumers may have – all need to be clearly defined. We also recommend a duty imposed on lenders to consider a wider and more flexible range of options for repaying a loan, along the lines of the most recent agreement between the government and the banks with respect to hardship requests.

- Finally, we renew our plea for the Federal Government to place a cap on the cost of loans, which would include interest and fees, or, at least to retain the current interest rate caps in those jurisdictions that currently have them (including the ACT). Removing those caps will decrease the level of protection currently available to consumers in the ACT, NSW, VIC and QLD and reinforce a system which takes away significant protections from a large proportion of Australian consumers in favour of the lowest common denominator position.

We look forward to seeing the regulation appending to the Bill which deal with these matters. Once again we wish to endorse the spirit and intent of the legislation and thank the minister for his commitment to adequately resource both ASIC and the non-profit legal sector to implement and enforce the new consumer credit regime.

Yours Faithfully

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