

Our Ref: CU:Paydaylending amendments
Date: Friday, 4 November 2011

Contact: Catherine Uhr

Attn: Tim Bryant
Committee Secretary

Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate

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Dear Mr Bryant

**Further to Public Hearing , Inquiry into Consumer Credit and Corporations
legislation Amendment (Enhancements) Bill 2011**

Please accept this letter as a supplementary submission responding to queries and questions on notice for National Legal Aid (NLA) following the public hearing on Monday 24 October 2011.

Cases referred to in the oral submission (with citations)

State of Queensland v Ward & Anor [2002] QSC 171 (99/5515) Brisb Ambrose J 14/06/2002

State of Queensland v Ward [2004] 1 Qd R 429

(reported Court of Appeal decision or at:)

State of Queensland v Ward and Shark Financial Services [2003] QCA 366

Cash Solutions (Aust) Pty Ltd v Turner & Anor [2008] QDC 108

Clarification of nature of New South Wales (NSW) research on legal needs and client ability to identify a legal issue

In the writer's oral evidence on Monday 24 October I referred to research in NSW which provided evidence that clients with civil law problems (debt and credit) did not always seek legal advice because they did not identify that their problem was a legal issue that merited legal advice. This issue is relevant as, coupled with a lag in clients seeking advice from NLA member commissions, it impacts on the numbers of clients seeking timely advice about short term credit.

In NSW, Victoria and the Australian Capital Territory there are community legal centres who specialise in credit, Consumer Credit Legal Centre (NSW), Consumer Action Legal Centre (Vic) and Consumer Law Centre, Care Inc Financial Counselling Services (ACT). It is the practice of legal aid commissions to refer many payday lending clients to these centres.

The research I was referring to was: Coumarelos, C, Wei, Z & Zhou, AH 2006, **Justice made to measure: NSW legal needs survey in disadvantaged areas**, Law and Justice Foundation of NSW, Sydney. The research suggested the possibility that, compared with high-income earners, low-income earners have more serious legal needs, are less able to recognise or less willing to complain about their legal needs, and tend to experience different types of legal needs. This is consistent with research in the United Kingdom referred to by the NSW study and disclosed by their literature review.

The NSW research involved a survey in which inter alia, participants were asked whether or not they had sought any help, advice or information in relation to their three most recent legal events.....

“Participants sought help for just over half (1496 or 51.2%) of the 2921 legal events, handled the matter alone in response to 467 or 16.0 per cent of events, and took no action in response to the remaining 958 or 32.8 per cent of events.

Participants who did not seek help in response to legal events were asked to provide the ‘most important’ reason why they did not do so. The participants who handled the matter themselves cited this as the reason why they did not seek help... ..The two most frequently cited most important reasons for taking no action were that the participant did not perceive the event to be serious or did not realise its seriousness (28.7%), and that the participant thought seeking help would make no difference or make things worse (26.1%). ...”

Data in relation to extent of payday lending legal advice and rollovers

Each of the legal aid commissions collect data in different ways. In all cases the major reasons for collecting statistics on the nature of legal problems about which clients seek legal advice is in order to meet targets set in collaboration with Commonwealth and State funding agencies, and to assess trends in legal needs.

No commission currently collects specific data on the number of clients seeking assistance for payday loans. In addition civil law clients tend to approach legal aid lawyers with clusters of problems. This is also supported by the research referred to above.

For the purposes of responding to a Discussion Paper prepared by the Office of Fair Trading in Queensland, ‘**Managing the cost of consumer credit in Queensland**’, Legal Aid Queensland (LAQ) advised in December 2006, prior to the introduction of the state 48% fees and charges interest rate cap, that LAQ provided 50 065 advices (Annual Report at 63). Approximately 11 000 advices concerned civil law matters, and of these at least one third related to debt. The response stated:

Of those debt-related advices, it is estimated by the Consumer Protection Unit that at least 1000 involved a high cost consumer loan. In many of our clients' cases there are a range of issues. A car break-down may lead to a loss of employment and an inability to continue to service debts. Investigation of the clients' financial situation may uncover an unjust loan within the meaning of s 70 Consumer Credit Code. Frequently LAQ solicitors assist clients with high interest loans — many with interest rates exceeding 100 per cent per annum. Their advice is that high interest loans are legal in Queensland and the client is left without any legal remedy to ameliorate an escalating debt.

Since the introduction of the cap in Queensland LAQ advice solicitors have noticed a decrease in the number of clients seeking assistance for a payday loan. No formal data on client numbers has been maintained, however, a manual count for advice only for the Consumer Protection Unit has revealed so far that advice was provided in relation to at least 200 separate loans, involving at least 20 different lenders since July 2008.

In terms of the extent of the industry before the State cap in Queensland, we note that in a submission in September 2007 in relation to *Discussion Paper: Consultation Package – Consumer Credit Code Amendment Bill 2007 and Consumer Credit Amendment Regulation 2007* Hayden Cooper from Min-it Software, a major provider of software support for the payday lenders, said:

“For example, the majority of Queensland lenders typically use a 180 – 240% interest rate, a rate which horrifies those in Victoria, NSW and ACT, with an establishment fee of between \$50 and \$120.”¹

That would mean even higher interest rates when establishment fees are included.

http://www.creditcode.gov.au/content/downloads/creditcodesubmissions/Minit_software.pdf

I note that a table on page 22 of that submission snapshots 55 lenders using Min-it Software during 2007, and refers to small loan books. More than 20 lenders in that snapshot had loan books of less than 100 loans

3. (c) *The average loans across the market were in excess of \$1,000;*

http://www.creditcode.gov.au/content/downloads/creditcodesubmissions/Minit_software.pdf

I also note across the 55 lenders the average loan size was over \$2000.

Issue of security for small high costs loans (payday loans)

¹ At 3rd para, page 37,

http://www.creditcode.gov.au/content/downloads/creditcodesubmissions/Minit_software.pdf

The writer raised the issue of security being taken by pay day lenders at the time a loan was made or upon a roll-over of an existing debt.

Legal Aid Queensland's consumer protection unit has commenced a review of advice/casework records and, so far, has identified 18 distinct lenders who took actual security over personal assets before making loans in relation to separate matters over the past 4 years. The study of records was not exhaustive.

In addition there are lenders who have retained the right to take security in their loan documents whether or not they have routinely exercised that right.

We enclose a de-identified standard terms and conditions for a loan agreement which at top of page 11 under paragraph 8. Mortgage says "*The Borrower promises that they own the security property and mortgages the security property to to secure the Borrower's obligations under this contract,*". This example relates to a Queensland client borrowing \$2 000 repayable within 6 months in December 2007.

Lenders change their business models and update credit contracts from time to time. This example illustrates a practice, taking security over homes and cars, which will remain possible in Queensland with or without the national cap, subject to the limitations proposed under the tiered cap proposal in the Bill, regardless of whether a particular provider adopts the practice or not.

In Queensland (the practice differs state to state), the borrower can relatively easily give a second mortgage over real property to a lender.

Some examples of high cost small term loans where security was taken over personal or real property from LAQ records are detailed below.

Short term Lender	Amount borrowed	Year loan contract signed	Length of loan	Asset over which security taken
Lenders – each data box below represents a separate lender	\$ 1,000.00	2009	30 Weeks	Car x 2
	\$ 3,968.00		31 Weeks	Car
	\$ 2,500.00		30 Weeks	Car
	\$ 2,000.00	2007	UNKNOWN	Car
	\$ 2,189.13	2007	12 Months	Car
	\$ 1,500.00	2010	6 Months	Car
	\$ 3,500.00	2007	6 Weeks	Car
	\$ 3,000.00	2007	24 Months	Car
	\$ 1,958.40	2009	52 Weeks	Car
	\$ 3,500.00	2009	18 Months	Car
	\$ 1,400.00	2010	24 Weeks	Car
	\$ 800.00	2009	12 Weeks	Car
	\$ 2,198.52	2008	36 Weeks	Car
	\$ 20,000.00	2007	3 Months	Car
				House

	\$ 1,700.00	2009	29 Weeks	Car
	\$ 1,500.00	2009	52 Weeks	Car
	\$ 3,300.00	2007	UNKNOWN	Car
				House
	\$ 7,306.00	2008	46 Fortnights	Car
	\$ 400.00	2010	36 Weeks	Dining Suite
				Queen-size Bed
				Single Bed
				Stereo
				Sofa Bed
				Microwave
				34cm TV
				DVD Player
				Lounge Suite
				Laptop
	\$ 1,400.00	2010	17 Fortnights	Car
	\$ 500.00	2007	UNKNOWN	General Goods
	\$ 3,000.00	2009	39 Weeks	Car
	\$ 2,500.00	2008	Ongoing	Car

We enclose three de-identified contracts to assist the committee.
The writer is happy to provide further assistance as required.

Yours sincerely,

Catherine Uhr
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Civil Justice Services (Consumer Protection)
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