



Charity gives, justice changes.

Good Shepherd Youth & Family Service
Social Policy Research Unit
21 Budd St
COLLINGWOOD VIC 3066

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By email: corporations.joint@aph.gov.au; economics.sen@aph.gov.au

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

Dear Committee Members,

**Re: Consumer Credit and Corporations Legislation Amendment (Enhancements)
Act Bill 2011**

Good Shepherd Youth & Family Service welcomes the opportunity to comment on the proposed bill. We are fully supportive of regulations which provide further supports for people who are in financial stress and are often marginalised by low income. Specifically we support the bill in regards to:

- Increased consumer protection:
 - Increased protection for people experiencing financial hardship
 - Greater onus on credit providers in enabling consumers to apply for hardship provisions
 - The protection from collection activity for those who are in the process of applying for hardship provisions
 - Protection of consumers from unfair and dishonest conduct

- Regulation on small amount credit contracts
 - Fee limits on loans under \$2,000
 - Cost rate caps on loan exceeding \$2000

- The prohibition on refinancing or rolling over small amount credit contracts to reduce debt spiralling
- An increase in the information disclosure requirements of fringe lenders, ensuring consumers are informed of alternatives to small amount, high-cost credit contracts, such as no and low interest loans, financial counselling and other supports.

Detailed comment is provided below.

ABOUT GOOD SHEPHERD YOUTH & FAMILY SERVICE

Good Shepherd Youth & Family Service is a community based not-for-profit organisation. We believe everyone deserves an equal place in the world and a quality of life that makes participation in the community possible. This is why we work with the most vulnerable, particularly women and girls.

Our services work towards achieving life-giving outcomes for the most disadvantaged people. We also research the root causes of social injustice, advocating for change and greater independence for people experiencing disadvantage.

Our submission regarding changes to the Consumer Credit and Corporations Legislation is based on our practice experience in financial inclusion and financial capability programs. Specifically, at Good Shepherd Youth & Family Service, we offer:

- **Financial Counselling Services:** Financial counselling is a free and confidential service for people going through financial hardship and those who are concerned about how to pay bills and debts. Financial counsellors offer information and support to help people get on top of their financial difficulties. This may take place face to face at our offices or by telephone. Our financial counsellors also undertake community education through activities like group information sessions
- **Microfinance:** Low and No-Interest Loans for people who are not always able to engage in mainstream banking. These programs include NILS® and StepUP – a low interest loan operated in partnership with NAB. We also offer the AddsUP program also in partnership with NAB. AddsUP is a matched savings programs designed for low-income earners to build their financial resilience and provide an avenue for people to build their savings.
- **Community financial education:** workshops and forums to enable people to identify and build on any gaps experienced in financial skills and knowledge. These are primarily driven through our financial counselling programs, as well as our community houses. We also work with corporate and other organisations to build their knowledge of hardship and financial stress to better enable integrated service delivery

We are also actively involved in research and advocacy on consumer protection, consumer issues, financial inclusion and financial capability.

Given this, we believe we can offer first-hand, practical insight into the issues consumers face and appropriate programs and policy responses.

HARDSHIP

We welcome the explicit reference to protection of the debtor in cases of hardship. Often those experiencing hardship are also experiencing other vulnerabilities, either as a cause or consequence of their financial stress. Given this, any process that better protects these vulnerable consumers is welcomed. Our further recommendations for consideration focus mainly on defining hardship, and easing the often onerous task of providing evidence of hardship.

We support the changes which place greater onus on the credit provider to inform consumers of their rights when seeking hardship protections. Often people who seek these provisions need to ask for those explicitly when dealing directly with their credit provider. Without the intervention of a financial counsellor or other advocates, many people are not aware of hardship provisions or able to access them. Even in the instances where a financial counsellor is able to assist, the burden of proof can make accessing these provisions difficult if not impossible. Our financial counsellors often find it challenging to support people experiencing hardship, particularly when clients are maintaining their debt obligations at the expense of other needs.

Our practice experience indicates that hardship policies across credit providers differ vastly, and are often inconsistent. The legislation needs to ensure there are consistent protections and definitions of what is 'reasonable' evidence of hardship.

We recommend there be amendments to reflect the idea that cases of hardship should not be contingent on borrowers being behind in their loan repayments. Our research supports that many people who are in financial stress ensure their rent, bills and loan payments are made prior to their other material needs. Items such as food, clothing and utility consumption are compromised to ensure these obligations can be made¹, therefore we think it is reasonable that a borrower in these circumstances be considered in hardship even if their loan repayments are up-to-date. Similarly, the evidence required to prove this is the case should be made less onerous. We accept it is important that there be evidence of hardship; however, the case study below reflects how what is considered 'reasonable' can be anything but reasonable.

¹ Corrie, T (2011), Microfinance and the Household Economy, Good Shepherd Youth & Family Service, Collingwood

Case Study: Hardship

'Graham' and 'Rosie' are an elderly couple who live in private rental. Rosie is in receipt of a Disability Support Pension (DSP) owing to her physical health and Graham receives an Aged Pension.

After receiving offers to increase their credit card limit from a well-known finance provider, Graham and Rosie found themselves in \$15,000 debt. They kept up their repayments by cutting back on food and trying to save on electricity bills. This became far too difficult, and Graham and Rosie contacted the finance provider to discuss their options.

Although Graham and Rosie were more than capable of self-advocacy, they were not offered any hardship provisions. They engaged with a financial counsellor, who assisted them to self advocate further. The credit provider would not accept a doctor's letter or the fact that Rosie was receiving a DSP as evidence of her ill health, given that Graham and Rosie had been able to maintain their credit card repayments. Further evidence, such as a list of medications Rosie was taking was requested. In all, forty different pieces of documentation were provided to the finance company to try and prove the need for assistance. This is what was considered 'reasonable' by their credit provider.

PROTECTION OF DEBTORS

Given the 21 days allowed for credit providers to respond to hardship claims, it is important that the consumer is protected from being pursued while the application is being assessed. In their absence there is no incentive for the credit provider to expedite hardship claims.

We understand there is a need to allow sufficient time for credit providers to assess claims and develop means of addressing these. However, that time in the interim can be critical to those being affected by hardship. We believe section 89A addresses these concerns by prohibiting credit providers from taking collection action while claims for hardship are being assessed.

The process of external dispute resolution through the Banking Ombudsman offers similar protection in the event of an appeal to a decision if the claim is rejected, and we support these two complementary protections.

UNFAIR AND DISHONEST CONDUCT

We support changes that allow for greater detection of unfair and dishonest conduct; however the changes to the legislation make reference to those who are experiencing 'special disadvantage.' We would argue that many consumers are at a disadvantage based solely on the complexity of many financial products. We believe any unfair

conduct should be treated as such, and welcome and recommend changes that do not require 'special disadvantage' to be established, only that the dishonest conduct led to the taking out of the financial product.

Case Study – Unfair and Dishonest Conduct

Dina is a middle aged single mother, who receives a Disability Support Pension. She lives in private rental and has a young son at home.

Dina had wanted to start a small business, and required a car to do so. In exploring her options, she came across a car dealership which specialised in offering finance to 'low income earners'. On investigation, she realised that although the interest rate itself was higher than she would like, the bigger problem was the price the car was being sold for. The dealer was charging \$10,000 for a \$2,000 car. Dina thankfully had researched the market price for the car and realised the dealer was attempting to take advantage of her situation. However, limited in her options, Dina may have been duped into making the purchase.

SMALL AMOUNT CREDIT CONTRACTS

Our research indicates that many low-income earners possess strong financial management capabilities, but that these are constrained by institutional factors such as lack of access to suitable products and unscrupulous practices by certain credit providers. A view of financial capability which incorporates institutional capacities – both regulatory and financial – as well as individual capacity has been developed as a result of our research.² Our approach then is to support regulation that ensures both a non exploitative market and adequate information and support.

Small amount short term lending can be important for people living on low and fixed incomes .Where people are financially stable small amount short term loans can assist with developing household assets and in preparing for income generation. Small amount short term lending can also be used by those on low and fixed incomes for addressing financial crisis and smoothing the gap between living expenses and income.

Good Shepherd Youth & Family Service believes that primary, secondary and tertiary supports are necessary to enable financial inclusion. For this reason we believe that options like pawn broking and 'pay day lending' have a role to play for people excluded from the normative or mainstream financial services. However this role should be limited to a tertiary service. Regulation is needed in the tertiary sector to ensure that the most vulnerable consumers using financial services in this sector are not exploited when they

² Landvogt, K. (2008) "Money, Dignity and Inclusion. The role of financial capability" Good Shepherd Youth and Family Service. Collingwood.

have exhausted all other options. This protective regulation approach presumes other public policy approaches including:

- ensuring income adequacy including social security,
- public education approaches to financial competency and
- strategies to encourage inclusion of consumers by providers in the normative financial services sector.

Good Shepherd Youth & Family Service strongly supports the caps on costs for small amount short-term lending. We openly supported these changes in our letter to Treasury (Appendix 1) as well as contributing to the open letter facilitated through Consumer Action Law Centre. We are also supportive of the prohibition on refinancing or rolling over credit contracts in order to protect people from entering into a debt spiral which can be difficult for people to recover from.

Similarly, the requirement that consumers be made aware of alternative to payday loans, such as no and low interest loans and financial counselling, is also welcome.

The quote below from one our microfinance borrowers reflects the importance of these protections.

"I have done those payday lenders... for the first seven months of the year ... they were paying me \$152 a fortnight to live on, and like, trying to buy food and live off all that is impossible, and...the agoraphobia at that stage was just terrible ... [I was] living in this permanent circle of debt, where I would have to like payday advance, and pawn and loan, and then do it all over again ... I am starting to work my way out of that circle, because one decision I made was [name of lender] are never getting another cent out of me ever again" – Daniel

Our only concern is the use of a cap on fees for loans under \$2,000 (although we understand no interest can be applied to the loan). Given an all inclusive cost rate cap of 48 per cent has been tested previously and has already been in place in other states, we believe this may be sufficient for loans both under and over \$2,000.

However, we do strongly support cost limits and protection from exploitative lending practices, and ask for ongoing monitoring to ensure the protections are clear and adequate.

In summary, we strongly support the changes to the legislation and the greater protection of vulnerable consumers, particularly against predatory and dangerous lending practices. We also encouraged the changes to ensure the protection of consumers in the event of hardship and welcome the opportunity to work with the

banking, corporate and government sectors in providing safe alternatives for people who seek to access credit.

Thank you for the opportunity to comment.

Regards,

Robyn Roberts
CEO
Good Shepherd Youth & Family Service