

Additional Comments by Senator Hanson-Young

Introduction

1.1 The Australian Greens share the concerns of many in the consumer protection and advocacy sector regarding payday loans. While we recognise that in some instances short-term loans play a valuable role in helping consumers meet unexpected and unusual expenses, the use of these high interest loans to meet essential living expenses can perpetuate a cycle of debt that has serious consequences for individual consumers and their families. Given our interest in consumer protection, we have limited our comments to Chapter Five of the Joint Committee on Corporations and Financial Services Report, which is concerned with the introduction of caps and new regulations for certain kinds of credit contracts.

1.2 The Government should be commended for attempting to address this issue through its Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill however we note with concern the limited scope of the majority report recommendations relating to payday loans. The Committee recommends that Schedules 3 and 4 relating to caps and regulations for credit contracts be subject to further review. It is an inevitable consequence of this recommendation that any meaningful action in relation to payday loans will be deferred in the short-term.

1.3 The Australian Greens believe a number of provisions could be strengthened in order to enhance consumer protection and our preference is for the Committee to recommend the bill proceed with amendment. The areas we have identified for potential amendment are outlined below.

Small amount credit contracts

1.4 The Australian Greens strongly support the application of a cap model for all credit contracts, including short term small amount credit contracts. This should be aligned with the cap model that operates effectively in the jurisdictions of Queensland, New South Wales and the Australian Capital Territory (including interest, fees and charges).

1.5 Rather than imposing a model of a 10 per cent establishment fee plus a 2 per cent monthly fee for short term contracts, the cap of 48 per cent per annum that has proved successful in capping the costs of high cost, short term credit in the above jurisdictions should be utilised.

Enforcement expenses under 39B

1.6 The Greens are concerned about the potential for enforcement expenses that are outside the remit of s39B to undermine the purpose of the provision. As noted by the Consumer Credit Legal Centre:

Lenders could set up separate entities for the purpose of pursuing the consumer for payment and then charge these expenses back to the original entity to be added to the amount recoverable under s39B.

1.7 Enforcement expenses should be defined specifically and limited to only those allowed by the equivalent small claims jurisdiction in each State/Territory in Australia. This would ensure that lenders are unable to circumvent this requirement.

Implementation date

1.8 The bill is due to commence 1 June 2012 but Schedule 4 dealing with payday loans is being delayed until the following year. This should be brought forward, in recognition of the pressing need to take action on this issue.

Monetary obligations and fees and charges

1.9 We share the concerns of consumer advocates that the sections 23A and 31A provide scope for brokers and introducers to charge fees. To guard against this, we consider that sections 23A and 31A should be amended to prevent fees incurred with third parties, whether associated with a credit provider or not.

Web-based disclosure

1.10 The provision of information to consumers about alternate assistance and cheaper sources of credit is considered essential to any effective consumer regime. The web-based disclosure statements under Schedule 3 could be further strengthened by the inclusion of a link to financial counselling information.

Conclusion

1.11 The Greens believe that the payday loan industry is one in need of regulation. While there is potential to strengthen protections for consumers, the measures proposed in the Government's Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill do provide a workable framework. The inquiry process has been a valuable airing of key issues, but by deferring any substantive recommendations for reform, the majority report has missed a good opportunity. The Australian Greens will continue to pressure the Government to act on these reforms.

Senator Sarah Hanson-Young