



NATIONAL FINANCIAL SERVICES FEDERATION INC.

SUBMISSION

to the

**SENATE FINANCE AND PUBLIC ADMINISTRATION
COMMITTEE**

Concerning the

ACCESS CARD

**INQUIRY INTO THE HUMAN SERVICES
(ENHANCED SERVICE DELIVERY) BILL 2007**

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INTRODUCTION

The National Financial Services Federation is Australia's peak representative body for payday and microlenders. The Federation has Divisions in Queensland, New South Wales and South Australia and Interim Boards in Western Australia and Victoria, pending general meetings to ratify the state constitutions.

The Federation represents 450 lending outlets and offices across Australia, which we estimate constitutes approximately 60% of lending outlets and offices in the sector.

In recent months the Federation has made representations and presented submissions on behalf of its membership in South Australia, Queensland and New South Wales and, nationally, to the Productivity Commission, Committee of Attorneys General and Australian Law Reform Commission.

This submission seeks to present the Federation members' views in regard to certain sections of the Human services (Enhanced Service Delivery) Bill 2007.

We do so with the following in mind:

1. The industry lent in excess of \$248 Million last year.
2. 86% of our members' lending is for personal loans, requiring access to identification of the applicant borrower.
3. Our four largest members, in total, lent to over 100,000 different individuals last year.
4. We calculate that over 168,000 individual loans were advanced by the industry in 2006.
5. Accurate identification of the loan applicant is essential for credit management and is demanded under the Uniform Consumer credit Code. However, with the current lack of opportunity to utilise the benefits of positive or comprehensive credit reporting, there are some significant challenges.
6. Although, because of the size and nature of their business, not all members of the Federation will be obliged to acknowledge the Commonwealth Anti-Money Laundering/Counter-Terrorist Act, at least 20% will and we do not want our members facing a conflict between the current provisions of the Bill you are reviewing and that Act. As you would be aware, those members will face the same strict customer identification and recording keeping provisions the major banks will face.

THE FEDERATION'S GENERAL CONCERN

Federation members play their part in the management and security of identity details of individuals who do business with them. The Commonwealth Privacy Act 1988, and the limitations it imposes on lenders and their credit reference agencies, has a daily impact on Federation members.

Equally, every time a consumer loan is applied for, the Uniform Consumer Credit Code in each state and territory demands that members are very diligent in their assessment of a potential borrowers' capacity to pay, as well as the amount of information that must be included on consumer credit contract documentation.

In addition, common law understandably voids a contract in favour of the person purported to be the individual borrowing, as against the interests of the lender, when a fraudster assumes that person's identity to apply for a loan.

Similarly, the Anti-Money Laundering and Counter Terrorism Finance Act, demands a vigorous approach to sighting, verifying and recording details of a customer's identification documents for a range of transactions, a number of which are, or will be, offered by Federation members.

Consequently, establishing the true identity of the individual is a paramount current and future statute and common law requirement in the conduct of a money lending business in Australia.

The challenge for lenders intensifies when a potential borrower has limited forms of identification. We cannot assume everyone has a driver's licence – some people are unable to drive, some people have no wish to drive, some people simply never get around to applying for one, and some people cannot afford a car and therefore have no need for a driver's licence. The proposed Bill heightens this challenge even further because it will replace the Medicare Card, which our members do accept as an identifier, with the Access card, which has limited flexibility for such a purpose.

In addition, under the proposed legislation, utilisation of the Access Card for identification will mean getting permission in writing, creating more paperwork for our members. This complain is not insignificant. Under the Uniform Consumer Credit Code, associated state legislation and regulations and the Privacy Act, our members are obliged to provide, or are strongly advised by their lawyers to provide up to 8 documents. Customers can walk away with over 20 pages of documentation in relation to a secured loan of, say, \$750, or up to 14 pages of documentation for an unsecured loan of \$200. It also imposes more storage obligations upon lenders.

THE PRESENT CLAUSES OF CONCERN

The Federation has little difficulty with, or its members are not impacted by, most of the current provisions. However, there are three clauses of concern. These are:

1. Clause 45(1); and 45(2), in particular subclauses (a) and (b).

“(1) A person commits an offence if:

- (a) the person requires you to produce your access card or someone else's access card; and
- (b) the person does so for the purposes of identifying you or someone else; and
- (c) if the person is a *delegate or an *authorised person - the requirement is not made for the purposes of this Act; and
- (d) if the person is not a delegate or an authorised person - the requirement is not made to establish that:
 - (i) you hold, or someone else holds, a *benefit card; or
 - (ii) you have, or someone else has, a *medicare number

(2) A person commits an offence if:

- (a) the person makes a statement (whether orally, in writing or any other way) to you that you could reasonably understand to mean that you

are required to produce your access card or someone else's access card; and

(b) the person does so for the purposes of identifying you or someone else; and..."

2. Clause 46, in particular subclauses (1); (2)(a) and (b); and (3) (a)(b)(h)(i) and (k).

"(1) A person commits an offence if:

(a) the person requires you to produce your access card or someone else's access card; and

(b) the person does so in connection with a matter referred to in subsection (3); and

(c) if the person is a *delegate or an *authorised person - the requirement is not made for the purposes of this Act; and

(d) if the person is not a delegate or an authorised person - the requirement is not made to establish that:

(i) you hold, or someone else holds, a *benefit card; or

(ii) you have, or someone else has, a *medicare number...

(2) A person commits an offence if:

(a) the person makes a statement (whether orally, in writing or any other way) to you that you could reasonably understand to mean that you are required to produce your access card or someone else's access card; and

(b) the person does so in connection with a matter referred to in subsection (3); and...

(3) For the purposes of paragraphs (1)(b) and (2)(b), the matters are as follows:

(a) supplying goods or services to you or someone else;

(b) conferring any right, title or advantage on you or someone else;....

(h) making an agreement with you or someone else;

(i) making facilities available to you or someone else;...

(k) making an offer of employment to you or someone else."

In addition, the penalty clauses appear particularly harsh.

WHAT THIS BILL IS ABOUT ...OBJECTS AND PURPOSES

The Federation would contend that the above listed clauses do not contribute to an unambiguous achievement of one of the rationales provided for the Bill, in the earlier

Division 4:

Clause 6(1)(e) - to permit access card owners to use their access card for such other lawful purposes they choose.

Government concern that the access card not become a national identity card, as expressed in Clause 6(2), is not an issue. The access card is NOT going to become such, if modifications to the current Bill are adopted in accordance with this submission and a number of others, including that of the Australian

Bankers Association, which is as concerned for its members' counter staff as the Federation. Many of the Federation members' customers will never have an access card and those that do will have to show considerably more than just the card to establish identity for borrowing (most Federation members demand up to 6 identifiers, including employment proof, rent receipts, utilities' bills, driver's licence, pay slips, passports and the like. The Access card will NOT replace all of these, given the requirements of good business and credit management and the Uniform Consumer Credit Code.

The Federation notes the content of the Explanatory Memorandum. In particular we note that, according to the Memorandum, a person will only be taken to have "required" the production of an Access Card if they "provide no other reasonable option for a card owner to prove they are who they say they are". However, this view is not included in the body of the Bill and that means a judge could interpret the clauses of the Bill in a manner that rejects this explanation, because he or she identifies a supposed contradiction between the Memorandum and the relevant clause.

THE COMMITTEE'S ASSISTANCE IS REQUESTED

The Federation asks that the Committee consider recommending appropriate amendments to the Bill, which will achieve the following:

1. Provide a right for lenders' staff to request the opportunity to sight a potential customer's Access Card.
2. Remove any opportunity for dispute with regard to whether a staff member is asking to see the card, or the customer is offering for it to be sighted by that staff member. Interpretations are so subjective ("you could reasonably understand to mean" – reasonable by whose standards?) and so much a matter of the individual's life experiences and what they thought they heard. Further, there may be no reliable collaborative witnesses in attendance to support one party or the other, in a dispute, and we will be reduced to a "he said/she said" situation, which means no satisfactory resolution.
3. Provide a right, subject to the applicant individual's permission, for the lenders' staff to photocopy the Access Card and for such photocopy to be stored in the customer's file held with the lender.
4. The removal of the provision that demands written permission from the customer for such sighting and use, so that the Access Card can be used as an identifier, in the same way as the current Medicare Card and other Government Cards are currently used.
5. Remove the circumstances, in a situation where a customer has little identification, whereby any inclination by the lender's staff to ask to sight the customers' Access Card in order to satisfy the AML/CTF Act, is an offence under the proposed Human Services Act.
6. Clarifying, if consent is required for any provision, what constitutes consent and under what circumstances such consent is effectively revoked.
7. If written consent is still to be required - a pro-forma letter, that lenders can adopt, which satisfies the legislation.
8. Simplifying the provisions in the Bill to accord with the above, in a manner that provides a regime easily understood by the lender's counter staff and easily included in any counter staff training.
9. That the penalty provisions include the words "up to", because the current Bill provides no flexibility, or opportunity for judicial discretion. There are a

range of potential offences involving ignorance or honest misinterpretation, by either customer or counter staff personnel, and which do not involve maliciousness or deliberate intent, that do not deserve mandatory punishments of 2 years' goal and/or very substantial fines.

CONCLUSION

We thank you for your consideration of this brief submission and we do hope that the Committee will successfully recommend, to the Parliament, the amendments the Federation has suggested in the above analysis.

**National Council
National Financial Services Federation Inc.**