

DEPARTMENT OF JUSTICE
CONSUMER AFFAIRS VICTORIA

Small Amount Lending Inquiry 2008

Report to Tony Robinson MP
Minister for Consumer Affairs

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MEMBER FOR PRESTON

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Recommendations

1. That monitoring be undertaken to ensure that the provisions of the *Second Hand Dealers and Pawnbrokers Act 1989* are not used to avoid the Uniform Consumer Credit Code.
2. That the Victorian Government acts to better educate Victorians about the hardship provisions applicable to gas and electricity bills so that Victorian consumers do not needlessly pay additional interest and fees for small amount loans taken to pay utility bills.
3. That further research be undertaken on the prevalence and impact of multiple small loans on consumers.
4. That the Victorian Government supports the application of the unfair contract terms provisions of the Fair Trading Act to consumer credit contracts and, in particular, to small amount cash loans.
5. That Consumer Affairs Victoria's unfair contract terms taskforce works with the credit industry to eliminate unfair contract terms from standard small amount lending contracts.
6. That Consumer Affairs Victoria monitors credit contracts for compliance with Part 2B of the Fair Trading Act and take enforcement action where appropriate.
7. That the Victorian Government supports the Australian Law Reform Commission's recommendation to expand the existing credit reporting regime to a more comprehensive model.
8. That Consumer Affairs Victoria monitors implementation of the Australian Law Reform Commission's recommendations on credit reporting.
9. That industry members be invited to develop and adopt a Code of Conduct .
10. That a copy of the Code of Practice be provided to industry members' external dispute resolution bodies, to ensure compliance.
11. That Consumer Affairs Victoria monitors compliance with a voluntary Code of Practice.
12. That the Victorian Government, in conjunction with the Commonwealth, imposes a mandatory and enforceable code should a voluntary code not be adopted and adhered to widely.
13. That the Victorian Government reaffirm its commitment to implementing the recommendations of the Consumer Credit Review (2006) in relation to compulsory membership of an external dispute resolution scheme for all credit providers.
14. That Consumer Affairs Victoria takes action against small amount cash lenders where patterns of behaviour involving serious breaches of the Uniform Consumer Credit Code and the Consumer Credit (Victoria) Act 1995 are detected.

15. That Consumer Affairs Victoria continues to monitor the advertising practices of small amount cash lenders.
16. That regulatory options, other than an inclusive fees and charges cap, be trialled including: a Code of Practice, membership of an external dispute resolution scheme, and application of Part 2B of the Fair Trading Act (unfair contract terms).
17. That legislation (or equivalent policy) to impose an interest rate cap be considered if unacceptable consumer detriment is not ameliorated by the policy actions recommended by this Inquiry.

1. Scope of Inquiry

On 28 February 2008, the Hon Tony Robinson MP, Minister for Consumer Affairs, asked the Member for Preston, Mr Robin Scott MP, to undertake an Inquiry into small amount lending practices in Victoria.

The agreed scope of the Inquiry is provided below.

For the purposes of the Inquiry “small amount lending” is confined to cash loans of not less than \$200 and not more than \$2000.

The Inquiry will:

1. Update the Government’s knowledge and understanding of those aspects of small lending practices that are causing most consumer detriment. Issues to be examined include:
 - blackmail security
 - debt collection practices
 - default and other fees
 - rollover practices and their role in debt spiral creation
 - misleading and deceptive advertising
 - assessment of borrower’s capacity to repay.
2. Identify ways in which the current range of protections and initiatives, both regulatory and non-regulatory, could be improved to increase their capacity to address key and critical problems facing consumers.
3. Review interstate and international initiatives relating to capping price.
4. Identify and analyse policy options.
5. Identify and examine compliance and enforcement issues and opportunities and propose a strategy to address them.

2. Background

2.1 Nature and Size of Small Amount Lending Market

Over the past decade, there has been a significant increase in the size and diversity of the small amount lending market. Factors thought likely to have influenced this shift include: increased consumer demand for small loans; growth in consumerism; deregulation of financial institutions; withdrawal of mainstream financial institutions from small amount lending; and, increased reliance on credit cards by major institutions to satisfy demand for small loans.

Small amount credit products are now an established part of the credit landscape and deserving of inclusion in any consideration of credit regulation.

Small amount lenders provide credit products and services that are no longer provided by mainstream credit providers.

Although some product diversification is evident, small amount lending products are typically characterised by:

- advertising that targets consumers who have limited access to credit, including consumers with low incomes or poor credit records
- easy and fast processing from application to approval and provision of funds
- short term duration
- a fixed fee or charge for the loan with low or unexpressed annual interest charges
- repayment via a direct debit authority.

Estimates of the size of the small amount lending market vary. Research undertaken in 2006 by the Market Intelligence Strategy Centre Australia (MISC)¹ for Consumer Affairs Victoria (CAV) estimated the annual lending flow for small amount lenders in Victorians at around \$38 million. This estimate now appears conservative in light of *Cash Converters'* submission² to the Inquiry which estimated that Cash Converters writes \$230 million in small amount loans per year in Australia, excluding the Australian Capital Territory (ACT) and New South Wales (NSW) where Cash Converters do not provide loans. Allocation of a conservative 25 per cent of this national market to Victoria, suggests that Cash Converters lends over \$55 million in Victoria. Further, Cash Converters is not the only provider of small loans. For example, *The Cash Store* operates eleven stores in metropolitan and regional Victoria and *City Finance* has 33 franchisees in Victoria.

In addition to small amount lenders offering loans via shop-front businesses some lenders provide loans on-line. Earlier in 2008 *Radio Rentals* began offering loans of \$1,000 to \$3,000 for terms of 12, 18 and 24 months in NSW, the ACT, Victoria and Tasmania. Potential borrowers apply on-line via www.cashfirst.com.au; loan documents are signed at the nearest Radio Rentals store. The National Australia Bank's small loan

¹ Market Intelligence Strategy Centre, *Consumer Credit Report*, Department of Justice, 2006 p 50

² Cash Converters, Submission to the Small Amount Cash Lending Inquiry 2008, p 3

pilot, operating in partnership with Mobile Finance (trading as *Money Fast*), is also providing on-line loans.

Taking all of this into account, turnover for the small amount lending industry in Victoria is likely to be valued at \$50m to \$100m per year.

2.2 Victorian Consumer Credit Review (2005 & 2006)

This Inquiry builds upon an extensive examination of the effectiveness of credit markets, and the efficiency and fairness of credit regulation, conducted by CAV in 2005 and 2006. That inquiry into consumer credit in Victoria (the Review) culminated in a report and recommendations³, which were endorsed subsequently by the Victorian Government⁴.

The Review commenced when the credit market was becoming increasingly complex and diverse; the volume of personal and household debt held by Australians had never been higher and the state and territory administered Consumer Credit Code (the Code) had remained largely unchanged since its establishment in 1994; although there had been extensive change to other forms of financial sector regulation.

The Review found that consumer credit regulation was not operating at optimum effectiveness. Loopholes and gaps had emerged because new credit products had not been envisaged when the Code was enacted; further, products that had previously held a relatively small market share had become more prominent. Also, resolution of some systemic problems in the market was delayed or partial, while consumer risk was increasing as consumers took on more debt and deficiencies in the regulatory framework grew.

The consequences of deficient regulation of credit and related services can be serious. Irresponsible or reckless lending, poorly informed borrowing, and limited access to affordable credit, all contribute to over-indebtedness. Rising interest rates and borrowing levels place pressure on the regulatory scheme. The Victorian Government's response to the Review endorsed a holistic approach to reforming and modernising the regulatory framework.

While the Review had a Victorian focus, the nature of the credit market and consumer credit regulation meant that its recommendations encompassed both Victorian and collective state and territory action.

Some consumer advocates proposed to the Review that an inclusive interest rate cap be introduced as a means of minimising the cost of small amount lending. CAV commissioned Manning and de Jonge⁵ to examine the effectiveness of inclusive interest rate caps in minimising consumer detriment in the small amount lending market. After researching international practices, Manning and de Jonge concluded that the effectiveness of inclusive interest rate caps was debatable. In 2006 the Review supported that finding and identified specific industry practices as sources of greater consumer detriment than high interest rates. These practices included 'blackmail

³ Consumer Affairs Victoria, *Report of the Consumer Credit Review*, Department of Justice, 2006

⁴ Consumer Affairs Victoria, *Government Response to the Report of the Consumer Credit Review*, Department of Justice, 2006

⁵ Manning I & de Jonge A, *Regulating the Cost of Credit*, Research Paper No. 6, Consumer Affairs Victoria, 2006

security⁶, inappropriate use of business purpose declarations, and unfair contract terms.

The Review did not recommend imposition of an inclusive interest rate cap, instead, other measures were identified to target problems caused by specific industry practices.

During the course of the Review, the Governments of NSW and the ACT enacted legislation to cap the total cost of credit at 48 per cent per annum for small amount loans. Since the Review, the Government of Queensland (Qld) has introduced a similar interest rate cap, which commenced on 31 July 2008. The Government of South Australia has also signalled that it will introduce an inclusive interest rate cap. This change in the regulatory landscape generated considerable public debate and was a factor in the Victorian Government's decision to re-examine its approach to the regulation of small amount lending.

2.3 Regulation of Small Amount Lending

Originally, the Code did not regulate most small amount lending because the sector did not exhibit significant or widespread problems; accordingly, s.7(1) of the Code exempted loans of less than 62 days' duration. As small amount lending burgeoned, in the form of payday lending, Governments shifted gear and the *Consumer Credit Amendment Act 2001* extended coverage to include most short-term loans.

Applying the Code to this sector addressed some of the key problems associated with small amount lending by, for example:

- requiring contracts to be in writing
- requiring disclosure of fees, charges and interest
- providing borrowers with the legal capacity to challenge unjust and unconscionable contracts.

At the time of the 2001 amendment, the Ministerial Council on Consumer Affairs (MCCA) acknowledged that further reform would be required to address other areas of concern.

In 2003, MCCA released *Fringe Credit Providers: Discussion Paper*⁷. Providers of credit can be divided into 'mainstream credit providers' and 'fringe credit providers' with small amount cash lending forming part of the fringe lending market. *Fringe Credit Providers: Discussion Paper* provided an overview of the fringe credit market and the problems in the market; a number of policy options were advanced to address identified problems, including special disclosures for high cost loans. Responses to the discussion paper informed an extended policy revision process which resulted in recommendations to deal with undesirable practices by fringe credit lenders, and, to a lesser degree, by mainstream lenders.

⁶ Generally in the form of security over essential domestic goods.

⁷ Ministerial Council on Consumer Affairs, *Fringe Credit Providers: Discussion Paper*, Office of Fair Trading, Queensland 2003.

In August 2007, MCCA endorsed these recommendations and released a consultation package⁸ that included draft amendments to the Consumer Credit Code and the Code Regulation. The draft amendments are intended to enhance the Code's effectiveness by:

- tightening exemptions from the Code for short term credit and pawn broking
- dealing with abuses of business purpose declarations aimed at avoiding the Code
- strengthening consumer remedies under the Code by broadening the powers of courts to review credit fees and charges and interest rate changes
- enabling consumer protection agencies to take legal action under the Code on behalf of consumers
- prohibiting lenders from taking security over household items
- requiring lenders to provide consumers with information about their rights and responsibilities regarding direct debit payments.

Amendments are expected to be introduced into Parliament late in 2008, or early in 2009. If the Bill is passed, there will be a 6-month transitional period for most amendments, so that amendments are likely to commence late in 2009.

2.4 Pawn Broking

In Victoria, pawn broking is regulated by the *Second-Hand Dealers and Pawnbrokers Act 1989*. The primary purpose of the Act is to regulate the handling of goods that have been pawned, with a particular focus on tracking stolen goods.

Regulation of pawnbrokers was reviewed by CAV in 1995-96 and again in 2000-01. The 1995-96 review focused on the impact of National Competition Policy on pawn broking. A consequence of this review was removal of the 48 per cent per annum interest rate cap, after it was found that the cap was encouraging the practice of "buybacks". Buybacks occur when a pawnbroker buys an item from a borrower for a percentage of its true value, with a tacit agreement that the borrower has first option to re-purchase the good later for a higher price. This practice enables unscrupulous pawnbrokers to avoid many of the consumer protections provided by *Second-Hand Dealers and Pawnbrokers Act* by on-selling goods or varying the terms of the agreement.

The 2000-01 review⁹ examined the regulation of pawn broking and the handling of pawned goods. The protections afforded by the Consumer Credit Code were considered in the review, but only in the context of loans on vehicles. Consequently, the *Second-Hand Dealers and Pawnbrokers Act* imposes few restrictions on the credit provision aspects of pawn broking and further, pawn broking is excluded from the Consumer Credit Code under s.7(7). Thus, many of the consumer protections provided by the Code, such as hardship provisions, are not available to consumers using pawnbrokers' services.

⁸ Ministerial Council on Consumer Affairs, *Consumer Credit Code Amendment Bill 2007, Consumer Credit Amendment Regulation 2007: Consultation Package*, Department of Tourism, Fair Trading & Wine Industry Development, Queensland.

⁹ Consumer and Business Affairs Victoria, *Review of the Regulation of Pawnbrokers: Discussion Paper*, Department of Justice, 2000; and, Consumer and Business Affairs Victoria, *Options Paper on the Regulation of the Pawn broking Industry*, Department of Justice, 2001.

The 2005-06 Credit Review invited views on the regulation of pawnbrokers, including whether any future regulation should extend the Consumer Credit Code to pawn broking businesses. No submissions were received on these issues.

During this Inquiry (2008) consumer and industry stakeholders raised pawn broking as an issue, but from different perspectives. Consumer advocates noted a correlation between the diminishing number of pawn broking outlets and the growth in small amount lending. Industry stakeholders cited regulation of pawn broking as an example of the failure of interest rate caps to achieve their public policy objectives. The removal of the interest rate cap on pawn broking arrangements was due to the avoidance of the cap, rather than an inherent problem with an interest rate cap.

The 2008 agreement to transfer credit regulation to the Australian Government excludes pawn broking. The Council of Australian Governments (COAG) has agreed that pawn broking is outside the scope of credit and broking.

Historically pawn broking regulation has been enforced by Victoria Police and handled differently from credit. Given this, and with no review of the *Second-Hand Dealers and Pawnbrokers Act* scheduled, it is imperative that this sector be monitored should it be utilised by small amount cash lenders in an attempt to bypass the Consumer Credit Code.

Fringe lending amendments currently under consideration by MCCA recognise that some small amount lenders may try to use the pawn broking exemption as a way of avoiding the Code. In instances where a small amount lender is using a pawn broking arrangement, lender options remain the same, that is, the lender has recourse to withhold pawned goods should the customer default.

Recommendation

1. That monitoring be undertaken to ensure that the provisions of the *Second Hand Dealers and Pawnbrokers Act 1989* are not used to avoid the Uniform Consumer Credit Code.

3. Consumer Behaviour & Access to Credit

3.1 Why do people take out small amount loans rather than ask for help?

Anecdotal evidence suggests that a significant proportion of small amount borrowers use pay day loans and similar products because they have difficulty accessing cheaper mainstream credit products due to one or more of the following personal characteristics¹⁰:

- low income
- insufficient income to utilise the revolving credit options, such as credit cards, preferred by larger financial institutions
- a poor credit history.

It is likely that these characteristics may cause consumers operating in the small loans market to be relatively more disadvantaged or vulnerable than consumers generally, because their capacity to respond to financial pressures is less flexible and they have fewer borrowing options.

This generalised view of the low-income and otherwise vulnerable small amount borrower was again advanced to the Inquiry through case studies cited by financial counsellors and other consumer advocates; although, the rising cost of living due to increasing interest rates and growth in the rate of inflation appeared to have diversified the customer base for small amount lending with some consumers borrowing money to meet expenses such as home mortgage repayments and private school fees.

Unexpected events or uncontrollable increases in living expenses can bring about financial hardship for people across the income spectrum though people with limited discretionary income are more likely to be severely affected. Factors such as illness, family or marriage break-up, unemployment, rising interest rates, rents and other costs of living, may bring about extended financial difficulty or a short-term cash crisis.

Small amount lending is a relatively recent phenomenon in Australia. Before the emergence of a significantly-sized small amount lending industry, people in need of small cash loans sought loans or gifts from friends or relatives, pawn brokers and assistance from government or help from not-for-profit agencies.

The reasons why some people in difficulty choose to borrow money rather than seek financial counselling or other assistance are probably many and varied. Potential explanations include easier access to credit, increased promotion and acceptance of credit as a normal means of financing wants and needs, and embarrassment about being unable to pay bills. The reasons underpinning this behavioural shift are not well understood and the Inquiry has been unable to access statistically reliable data to measure or explain this apparent phenomenon.

¹⁰ Consumer Affairs Victoria, *Report of the Consumer Credit Review*, Department of Justice, 2006 p 95.

In 2007, CAV commissioned BlueMoon Research Planning Pty Ltd¹¹ (BlueMoon) to examine Victoria's financial counselling program to assist CAV to assess the overall effectiveness of financial counselling in Victoria. BlueMoon conducted 30 in-depth interviews with clients of financial counsellors; respondents were drawn from a range of financial backgrounds and their interactions with financial counsellors were triggered by short term or long-term hardship.

BlueMoon found that there were three main barriers to improving an individual's financial situation: denial of problems, embarrassment, and fear.

These underlying issues may help explain why some people seek out small amount credit in response to financial difficulty instead of going to their existing lender or a financial counsellor.

The slow take-up of affordable credit products (discussed later in this section) may be influenced by the circumstances under which people borrow money from small amount lenders.

Profile of a Small Amount Borrower

Consumer Action Law Centre's (CALC) 2008 survey of payday borrowers¹² casts some light on the client base for small amount loans. While some of these characteristics are consistent with the image of the stereotypical payday borrower, some are not. For example, the survey suggests that the typical small amount borrower:

- was born in Australia (75%), the UK (5%) or New Zealand (2.5%) – 82.5% in total
- speaks English as his/her first language (90%)
- has university (31%) or other post-secondary standard (27%) education - 58% in total
- has a personal income below \$60,000 pa (43%)
- is a couple with children (30%)
- has limited knowledge of small amount lenders (68% knew of only one payday lender)
- selected their payday lender because they were located nearby (54%)
- obtained a payday loan to meet essential living expenses (54%, or 76% where transport is included)
- borrowed less than \$500 (60%)
- borrowed money from Cash Converters (60%)
- has used a credit card in the previous 12 months (63%).

3.2 How much awareness is there of alternative sources of assistance?

The increased prominence of small amount lending suggests there may be increased awareness among Victorians of the availability of small amount loans.

¹¹ BlueMoon Research and Planning 2007, *Research Report: Victorian Financial Counselling Program*, Consumer Affairs Victoria, Melbourne

¹² See Appendix 1 for preliminary data from the survey.

There are alternatives to small amount loans including no interest loan schemes (NILS), low interest loan schemes (LILS), sometimes referred to as affordable lending, and other options such as Centrelink programs, and hardship arrangements that can be negotiated with utility providers.

This Inquiry found no Australian research that measures awareness among small amount borrowers of alternatives to cash loans. American research by Drysdale and Keest¹³ suggested that consumers had little knowledge of the alternatives to payday loans. Drysdale and Keest also found that consumers with knowledge of alternatives overlooked them due to the influence of advertising and promotion.

It is interesting to note that even within the small amount lending sector, borrowers appear not to shop-around for a good deal. CALC's 2008 survey found that:

- fewer than one-third of survey respondents (32%) were aware of other companies offering similar products to the one they had used
- fewer than 10% of borrowers chose a particular payday lender because of "low fees" (4.9%) or "good rates" (4.5%).

3.3 What alternatives are there and are they real alternatives?

Centrelink Programs

Centrelink provides two programs to assist people on government benefits who experience an event resulting in financial hardship:

- *Crisis Payment* is available to benefit recipients who, among other things, face severe financial hardship¹⁴. The Crisis Payment is equivalent to one week's benefit, and can be claimed up to four times in 12 months under extreme circumstances.
- *Special Benefit* is also available to those experiencing severe financial hardship¹⁵. There is no set amount available under this scheme; rather cases are assessed individually based on the applicant's income and/or assets.

¹³ Drysdale L & Keest K, *The Two Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 *South Carolina Law Review* 2000, 589-663. p. 630-1

¹⁴ "You may get a Crisis Payment if:

- you are in severe financial hardship, and
- you are claiming in Australia, and
- certain payments from Centrelink are payable, and
- you have left your home and cannot return because of an extreme circumstance, such as domestic violence, and you have set up or intend to set up a new home, or
- you remain in your home after experiencing domestic violence and the family member responsible has left or been removed from your home, or
- you have served at least 14 days in jail, have just been released and are in severe financial hardship, or
- you have arrived in Australia for the first time on a qualifying humanitarian visa on or after 1 January 2008.

http://www.centrelink.gov.au/internet/internet.nsf/payments/qual_how_crisis.htm, viewed on 7/08/08.

¹⁵ "You may get Special Benefit if you:

- are in severe financial hardship, and
- are not able to earn enough income for yourself and your dependants because of age, physical or mental disability or domestic circumstances, or for any other reason over which you have no control, and
- are not able to receive any other payment from Centrelink, and
- have been in Australia for a certain amount of time.

http://www.centrelink.gov.au/internet/internet.nsf/payments/qual_how_spb.htm, viewed 07/08/08.

Recipients of Centrelink benefits may be entitled to a *Centrelink Advance* of up to \$500; these may be accessed once a year with repayments deducted from the client's benefit payment at a rate of around \$38 per fortnight. The Centrelink Advance is widely used by recipients of Government benefits including users of NILS; 86 per cent of recipients have previously used Centrelink Advance¹⁶.

No Interest and Low Interest Loans

NILS and LILS provide little real alternative to small amount lending. It is presently estimated that NILS and LILS have the capacity to meet only one per cent of the demand for small amount loans.

In 2006, Victorian NILS was expanded with government providing \$4.7 million in infrastructure funding over four years, and the National Australia Bank (NAB) providing \$3.3 million in loan capital. By the end of the 2007-08 financial year, the NAB had allocated all of its \$3.3 million in loan capital. This compares with the estimated \$50m- to \$100m p.a. turnover in small amount lending in Victoria.

Good Shepherd Youth and Family Service (Good Shepherd) co-ordinates NILS in Victoria. Good Shepherd estimates that approximately 800¹⁷ no interest loans were written in the 2006-07 financial year.

LILS were established in an attempt to offer an alternative to small amount lending for vulnerable consumers. The ANZ Bank collaborated with the Brotherhood of St Laurence to offer the *Progress Loan* product, which provides loans of \$500 to \$3000 at 12.7 per cent interest per annum. Good Shepherd and NAB collaborate to offer the *Step Up Loan* product, which provides loans of \$800 to \$3000 at 7.24 per cent interest per annum; these loans are available to welfare recipients only. Uptake of these low interest products has been slow; however, all participating organisations remain committed to the schemes.

Expanding NILS and LILS may reduce, but not eliminate, demand for small amount loans among low-income earners or those in financial hardship. The purposes for which NILS can be accessed are restricted to essential household items (generally whitegoods) and medical items; LILS allow somewhat broader loan purposes, including car repairs. Neither NILS or LILS can be used to repay an existing debt. Unlike NILS and LILS, small amount lending is not restricted to the purchase of specific products. Obtaining a small amount loan does not usually depend on the purpose for which the funds are borrowed, although a purpose such as gambling, if declared, is likely to impact on the success of an application. Nor are small amount loans linked to welfare status, while NILS and LILS require applicants to be recipients of a Centrelink benefit.

It may be argued that NILS and LILS, especially LILS, do not offer a real alternative to small amount loans, simply because of the time required to process a loan application. As demonstrated by the research undertaken by the Consumer Law Centre Victoria in 2003 and by Policis (for Cash Converters), low-income borrowers predominantly require cash quickly. Small amount cash lenders promote the convenience and speed of their loan approval process, whereas a LILS application will require an applicant to go through a process, often requiring the consumer to meet more than once with their community

¹⁶ Rent Assistance and Centrepay Section 2002, *Centrepay National No Interest Loan Scheme Pilot Project: Mid-Term Evaluation Report*, Department of Family and Community Services, Canberra.

¹⁷ Please note this figure is an estimate only

worker before the application is submitted. This is usually followed by detailed conversations between the community worker and the credit provider about the whether the loan should go ahead. The time involved in these negotiations is obviously much greater than the process required to obtain a small cash loan.

NAB Sponsored Small Amount Loans

In an attempt to encourage greater competition in the small amount lending sector, and to demonstrate that small amount lenders can provide credit at low cost, the NAB has funded Mobile Finance (trading as *Money Fast*) to provide small amount loans. Mobile Finance is a new entrant to small amount lending, and provides loans of \$1000 to \$5000 for up to 12 months on a cost recovery basis. Loans are available on-line, with the customer mailing documentation when required. Mobile Finance loans have a comparison rate of 28.5 per cent (see Appendix 3 for an extract of Money Fast's website @ 9 September 2008¹⁸).

As this product only became available in June 2008, it is too early to tell whether it will achieve its aim of providing real competition to the small amount lending market and/or cause other small amount lenders to reduce the cost of their products.

Taking into consideration the reasons why people obtain small amount cash loans, it is apparent that a new approach is required to ensure that low-income earners have a genuine alternative to high cost, small amount loans.

Despite the successful expansion of the NILS program, the low penetration of LILS loans and restrictions on Centrelink *Special Benefit* and *Crisis Benefit* payments, measured against the growth of the small amount cash lending market in the past ten years, demonstrate that the present options are not meeting the needs of low-income borrowers.

The challenge for government and industry is to consider new models that offer a viable affordable alternative to the high cost, small amount loans, and meet the needs of consumers who require quick access to additional funds.

¹⁸ <http://www.moneyfast.com.au/>

4. Recent Research Findings

4.1 Market Intelligence Strategy Centre 2006

CAV commissioned the Market Intelligence Strategy Centre (MISC) to conduct research to identify the characteristics and size of the small cash loan market to inform its 2005-2006 Consumer Credit Review.

MISC's report¹⁹ was the first study in Australia to examine extensively the small amount lending market. MISC's report draws a strong connection between systemic and episodic financial stress, and small amount borrowing. It provides extensive information on the characteristics of financial and accommodation stress, and their demographic incidence. For comparative purposes the report also provides an overview of the US and Australian markets to complement detailed data on the spread of small amount lending in Victoria.

MISC took a holistic view in its examination of the credit market. Rather than creating two distinct groups, (a) the "microfinance" sector (which includes no interest and low interest loan schemes) and, (b) the high cost small amount cash lending sector, MISC merged the two into a single group termed "Micro Credit." MISC justifies this on the basis that those who are financially excluded and the poor are not necessarily the only users of these forms of credit. This was confirmed through MISC's research and the views of other organisations, such as the Australian Financial Services Association (AFSA), which stated '70 per cent of micro-borrowers, in Victoria, are not socio-economically disadvantaged'.²⁰

A significant finding by MISC was that those facing the greatest level of financial difficulty across Melbourne, regional centres and outer regional areas were: females, single people (with or without children), people receiving some form of government assistance or benefit, and people who were paying rent or board. Of these, those living in outer regional areas faced the highest levels of financial stress in all but one category (going without meals), and generally paid more for small amount loans than their metropolitan and regional centre counterparts.

4.2 Manning & de Jonge 2006

CAV also commissioned Ian Manning and Alice de Jonge to conduct research on the use of interest rate caps to inform its 2005-2006 Review.

In their conclusion, Manning and de Jonge identified three main arguments for controls on credit pricing²¹.

- (i) Despite deregulatory actions over the years, custom demands the capping of interest rates. In Victoria, the 48 per cent cap meets this requirement, but has little impact since it is greater than the market rate for nearly all capped loans. By contrast, the all-inclusive NSW cap of 48 per cent (which is only applicable to short-

¹⁹ Market Intelligence Strategy Centre, *Consumer Credit Report*, (Vic) Department of Justice, 2006

²⁰ Smiles P, *Submission to the Consumer Credit Review*, Australian Financial Services Association, 2005, p. 4

²¹ Manning I & de Jonge A, *Regulating the cost of credit: Research Paper No. 6*, Consumer Affairs Victoria, 2006, p. 41

period loans) has a more symbolic effect as it is set below cost-recovery for short-period loans, which it therefore prohibits.

- (ii) Prohibition of high-cost credit helps prevent consumers from contracting unmanageable debt burdens by preventing lenders from providing high-risk loans where their costs are greater than the cap. However, a cap is a blunt instrument for this purpose; it does not address all of the causes of over-indebtedness, and prevents provision of loans that would not result in over-indebtedness. It is necessarily secondary to other approaches, such as controls on debt recovery, controls on reckless lending, debt counselling and bankruptcy.
- (iii) Lenders exercise monopoly power to over-price credit, at least in some sectors of the market. The sector of most concern is that serving poorly informed marginally credit-worthy consumers. The conventional answer to monopoly pricing is promotion of competition, thus the UCCC attempts to facilitate competition by imposing uniform disclosure provisions, which aim to prevent lenders from creating monopolistic niche markets by confusing borrowers. It is a matter of judgement whether pro-competitive strategies of this kind are practically effective. However, the consequences for consumers of failure of competition, in terms of wrecked household accounts, are such that a case can be made for controls that supplement competition policies by disallowing high credit prices.

This argument can lead to a cap set at levels that allow lenders reasonable cost recovery and profit. Such a cap needs to cover all credit-related charges, as credit costing is so flexible that lenders who are aiming for excess profit will have no compunction in increasing their uncontrolled charges. The logic of this leads to a structured cap that reflects major cost drivers. It also requires the regulator to make a judgement, or judgements, as to the cut-off level of risk for acceptable lending.

4.3 Consumer Action Law Centre 2008

In 2008, CALC received a grant from the Victorian Consumer Credit Fund to undertake empirical research into the impact of small amount loans. The research will inform a publication tentatively titled 'Fringe Lending in Victoria: A Policy Toolkit' but will not be complete until later this year. CALC provided the Inquiry with raw survey data and a draft literature review.

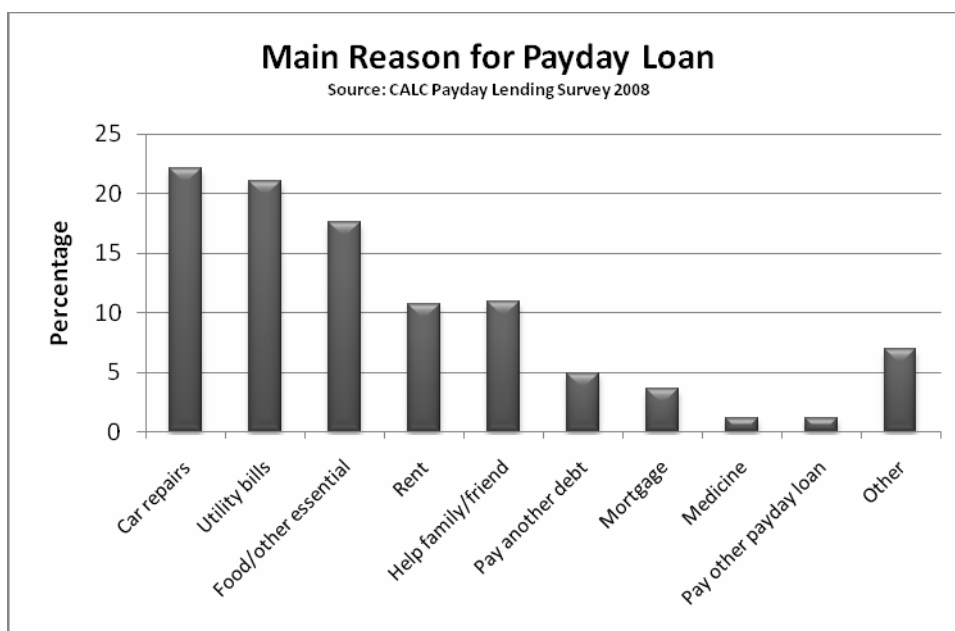
CALC contracted Pure Profile, to undertake surveys of a sample of small amount borrowers. For the study, the definition of small amount loans was compatible with the definition used by this Inquiry, that is, cash loans under \$2000 that must be repaid within a 2-month period. During May 2008, Pure Profile conducted interviews with 448 respondents. A selection of data generated by CALC's survey is tabulated in Appendix 1 to this report.

Highlights from the survey findings include:

- 60% of loans were for less than \$500
- 60% of loans were written by Cash Converters
- 30% of borrowers were couples with children, 24% were single and 10% were single with children

- 23% of respondents had an annual income of less than \$20,000, 51% had an annual income of less than \$40,000 and 72% had an annual income of less than \$60,000.

CALC’s research found that most payday loans were obtained to meet essential living expenses such as utility bills, food, rent/mortgage payments, medicine (see Appendix 1, Table A).



CALC’s literature review seeks to analyse the role of interest rate caps in regulating the small amount lending industry. It is not surprising, given CALC’s strongly stated desire for an inclusive interest rate cap to be imposed, that the preliminary report of the literature review focuses on literature that supports the interest rate cap approach.

4.4 Price Waterhouse Coopers 2008

The Western Australian Department of Consumer and Employment Protection has commissioned Price Waterhouse Coopers to:

- examine the underlying costs of small amount lending
- estimate the likely impact on small amount lending of an inclusive 48 per cent interest rate cap
- estimate the level of cap that would be viable for small amount lenders, should a 48 per cent cap be found likely to make small amount lending unviable
- identify other options for addressing problems associated with small amount credit.

A final report is expected soon.

5. Problems Associated with Small Amount Lending

Consumers of small amount loans face problems that are similar to those experienced across the broader credit market. However, as a significant proportion of the consumers operating in this market are thought to be more vulnerable, the high cost of credit and the practices adopted by some lenders are likely to have a greater impact on their financial and general well-being. The problems highlighted to this Inquiry include:

- the high cost of credit
- consumers taking on credit they cannot afford
- inappropriate lending practices by some providers
- inadequate or non-existent dispute handling procedures
- unfair debt collection practices
- taking security over household items
- avoidance of the UCCC, through the inappropriate use of promissory notes and brokering arrangements.

5.1 Opinions Expressed by Consumer Advocates

Consumer forums conducted by the Inquiry, together with written submissions received, raised numerous issues. The most prominent areas of concern were the price and availability of small amount credit and their impact on vulnerable borrowers. In response to these concerns, the majority of consumer representatives advocated the introduction of an inclusive interest rate cap and stronger compliance monitoring and enforcement action by CAV. Licensing of lenders was also supported.

Concerns raised and assertions made by consumer advocates also included that:

- the growth of small amount lending is driven by increasing numbers of consumers who experience difficulty making ends meet
- security is taken over household goods, otherwise known as 'blackmail security' as the goods are unlikely to be repossessed due to very low resale value and the associated cost of repossession, thus security is taken as a threat to ensure repayment of the loan
- the cost of small amount loans is excessive, with the cost built into the high fees and charges levied on the loans, not an interest rate
- the high penalty fees some lenders charge when consumers cannot repay loans within the initial loan period constitute penalty fees, which, when combined with loan rollovers, can cause the original loan to balloon to a significantly larger amount than was initially borrowed
- lenders do not refer their customers to financial counsellors when they appear to be experiencing financial difficulty as evidenced, for example, by inability to meet loan repayments

- lenders do not adequately assess capacity to repay loans - there is a belief amongst consumer advocates that if small amount lenders properly assessed applicants' capacity to repay loans, fewer consumers would be eligible to borrow small amount loans²²
- securing loan repayments through direct debit arrangements can cause problems where consumers are unable to meet a repayment, due to penalty fees imposed by the customer's bank and the lender because of the missed loan repayment. In some instances repeated direct debit claims by lenders, despite reasonable evidence that funds are not available, generate multiple bank penalty fees.
- some small amount lenders avoid regulation imposed by the UCCC by using broker arrangements
- complaint handling processes are not transparent, or not accessed by borrowers as they do not want to impair the borrower-lender relationship or place future borrowing at risk
- a national regulatory scheme would provide greater consumer protection, rather than the existing state-based regulation.

5.2 Views Expressed by the Small Amount Lending Industry

The main concerns expressed by small amount lenders related to the regulation of their industry by government and a desire that the Inquiry not ignore any national policy process. There was also concern that the inquiries conducted in NSW and Queensland, and their policy outcomes, did not acknowledge the true cost of conducting a small amount lending business.

There was a widely expressed view that the introduction of a positive credit-reporting scheme would alleviate many of the problems with small amount lending. This proposal was seen as a means of alleviating the majority of consumer problems, which the industry says are due to consumers not fully disclosing their debts and lenders not being able to assess fully an applicant's capacity to repay.

In response to the terms of reference to this Inquiry, industry representatives stated:

- problems associated with assessment of an applicant's capacity to repay loans are caused by consumers withholding or misrepresenting their financial circumstances rather than poor industry practices
- they do not provide loan rollovers, though one participant at an industry roundtable indicated that his firm would extend up to four loan rollovers
- up to 30% of borrowers fall behind with repayments
- the high cost to consumers of small amount loans reflects the cost to industry
- the NSW inclusive interest rate cap is being avoided through broker arrangements
- stronger compliance and enforcement action is required to rid the industry of 'rogues'

²² CALC's finding that 8.3% of respondents to their 2008 payday lending survey, borrowed "...less than you required because the lender would not go to your desired amount" indicates that some lenders do assess applicants capacity to repay loans (see Appendix 1, Table C).

- practitioner licensing is an essential consumer protection requirement.

5.3 Misconceptions about Small Amount Lending

Consumer advocates assert that the growth in, and use of, small amount lending leads to an increasing debt spiral for consumers and higher numbers of bankruptcies.

Bankruptcy statistics, which include causes of bankruptcy, show that '*excessive use of credit*' accounts for one-third of personal bankruptcies in Victoria²³. However, the data does not detail the types of credit that finally lead to bankruptcy. One example was provided to the Inquiry of a consumer being bankrupted by a small amount loan. The Consumer Credit Legal Centre (NSW) submission included information of a consumer bankrupted because a \$2000 loan was rolled-over 11 times so that the final amount owing was \$7000. With the prevalence of different types of credit available and the small portion of overall credit being small amount lending, it is unlikely that a significant number of bankruptcies are the direct and exclusive result of small amount lending.

For consumers finding it difficult to make ends meet on an ongoing basis, a small amount loan may not lead to bankruptcy nor will it ease long-term financial difficulties. A loan may resolve an urgent problem but the high cost of the loan may result in reduced disposable income in the short-term. This may in turn mean that the consumer needs to take out a further loan, to meet other expenses because of the impact of the loan repayments. It is unlikely that a once-off small amount loan of a few hundred dollars will be a serious problem for most consumers, however, repeated borrowing to cover living expenses such as rent, food, utilities, transport and medicine could lead to a debt spiral, which leaves some borrowers with few options.

The key concern with repeated use of small amount loan products by low-income or financially troubled consumers is that, 'money from the household budgets of low-income families repaying high-cost loans will continue to be directed to credit providers rather than meeting basic living costs'²⁴.

To understand the prevalence and impact of multiple small amount loans on consumers, further research would need to occur.

5.4 Borrowing to Pay Utility Bills

Borrowing money to meet daily living expenses or essential services via high cost small amount loans will not usually relieve the borrower's financial difficulties and may, where the borrower has a low income, exacerbate those difficulties. In an ideal world, consumers would not borrow money to meet basic living expenses.

CALC's preliminary research findings indicate that 21 per cent of monies borrowed from small amount lenders are for utility bills (Appendix 1, Table A). Some industry representatives opined that this figure may be as high as 40 per cent.

²³ Insolvency and Trustee Service Australia, *Inspector-General Annual Report 2007*, Table 4 Non-Business Related Personal Insolvencies By State.

²⁴ Office of Fair Trading (QLD), *Managing the cost of consumer credit in Queensland*. Discussion Paper, Nov 2006, p21.

This finding caused the Inquiry to consider why consumers are taking out loans to repay utility bills when it is a right of all Victorian consumers experiencing financial hardship to negotiate a repayment plan, at no extra cost, to meet gas, electricity and water bills.

In 2005 the Government's social policy action plan *A Fairer Victoria* banned late payment fees for energy consumers. In 2006, *A Fairer Victoria: Progress and Next Steps* went further by funding training for financial counsellors and emergency relief workers to provide specialist energy related advice to consumers in hardship, and, requiring gas and electricity retailers to develop and implement hardship policies to ensure that people in financial hardship do not have their energy services disconnected. The training is expected to be completed by the end of 2008.

Water

The Customer Service Code for urban water businesses administered by the Essential Services Commission (ESC) requires retailers to assist customers in financial difficulty by:

- providing alternative payment arrangements
- referring customers to government funded assistance programs or to an independent financial counsellor
- observing minimum periods of notice before applying supply restrictions or pursuing legal action to recover outstanding debts
- not restricting the water supply or pursuing legal action without first taking steps to secure payment, including making a reasonable attempt to contact the person, offering a payment arrangement and resolving any dispute over the debt.

Electricity and Gas

Under the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*, electricity and gas retailers in Victoria are also required to operate hardship policies, which include:

- flexible payment options
- provision for auditing usage
- arrangements to purchase appliances
- provision for early response by both the company and the customer
- not disconnecting consumers who are in their hardship program and are complying with the requirements.

Consumer Use of Hardship Support Programs

Two indicators of consumers' use of hardship provisions are: (1) use hardship assistance grants; and (2) disconnection rates.

The ESC's monitoring of Victorian water businesses in 2004-05 identified a low level of hardship assistance grants provision by retailers. A later review made recommendations about the regulatory and monitoring framework for water hardship policies. In 2006-07, water businesses approved 11,839 hardship applications, up from 10,302 in 2005-06. Corresponding figures for energy businesses are not available²⁵.

²⁵ In 2008 the ESC commenced collecting and reporting data to evaluate the effectiveness of energy retailers' hardship policies.

Preliminary reports by electricity and gas companies on disconnections since the commencement of the training of financial counsellors and emergency relief workers suggest there has been a decrease in the number of disconnections.

The obligation imposed on energy companies to comply with hardship policies and institute processes to assist customers in difficulty has resulted in some companies developing internal policies to promote compliance. Discussions with Origin Energy during this Inquiry suggest that Origin exceeds the guidelines by providing high quality support to vulnerable and disadvantaged consumers.

Energy retailers are proactively seeking to assist consumers experiencing hardship and encourage consumers to 'self identify'. Staff members are trained to recognise key words that may indicate the consumer is experiencing difficulty; consumers are then moved to an affordable repayment plan. Energy retailers also use a range of strategies to assist customers in difficulty including access to utility relief grants, capital grants, providing energy audits of consumers' households and retro-fitting with energy efficient appliances where necessary (up to a total cost of \$300). Some energy retailers are also funding financial counselling services in areas of need, including providing a financial counselling service at the Royal Children's Hospital to assist families with children undergoing treatment in the hospital's oncology unit.

The combination of government funding for community workers to provide specialist energy related advice and the processes developed by energy retailers to assist consumers in hardship should mean that no consumer needs to access credit to repay water, gas or electricity bills; yet research suggests that at least one in five small amount loans are applied to this purpose.

If consumers do not know that the hardship programs exist, solutions include information display in small amount lending outlets and on lenders' websites, and for lenders to refer applicants seeking loans for this purpose to their utility provider or a financial counsellor.

Though also an essential service, telecommunications are treated differently from other utility providers. The *Telecommunications Consumer Protection Code 2007*, administered by the Australian Communications and Media Authority (ACMA), requires service providers to establish a financial hardship policy and to inform customers about the policy. When negotiating a payment arrangement for an outstanding amount, the policy should take into account the financial circumstances of customers. Unfortunately, the Australian Communications Industry Forum's (ACIF) *Guide for a Financial Hardship Policy* does not prohibit the charging of fees, unlike the financial hardship arrangements available to energy and water consumers in Victoria. The ACIF's Guide does, however, suggest that the provider may "wish to consider waiver of disconnection and late payment fees, to assist the customer to reduce their level of debt and therefore pay the debt off sooner"²⁶.

²⁶ Australian Communications Industry Forum, *Guide for a Financial Hardship Policy*, 2006, page 9.
http://www.tio.com.au/POLICIES/Credit%20Management/Financial_Hardship_Guide.pdf

Recommendation

2. That the Victorian Government acts to better educate Victorians about the hardship provisions applicable to gas and electricity bills so that Victorian consumers do not needlessly pay additional interest and fees for small amount loans taken to pay utility bills.

5.5 Rollovers

Some borrowers enter into contracts which specify repayments must be made by a single lump sum payment. At the end of the loan period, the consumer repays the amount borrowed and any fees or charges owing for the provision of the loan. Such loans can be difficult for some consumers to repay because they find it difficult to accumulate the lump sum.

Other borrowers are loaned amounts of money they have no hope of repaying within the time allowed for repayment without penalty. These practices can force low- income borrowers to extend, or *rollover*, the facility, increasing the total amount of fees, charges and interest to be repaid. This is problematic in the small amount credit market, where some borrowers may be on very low fixed incomes and loan repayment cycles are short. Should the consumer not be able to repay the loan, fees and charges can rapidly accumulate to the point where repayments cannot cover payment of additional charges on top of the initial fees, charges and interest payments.

The detriment this practice can cause consumers is substantial where they become locked into an ever-increasing loan spiral, thereby placing additional financial and emotional pressure on an already struggling household. Such practices can also increase the risk of over-indebtedness because the size of the loan grows without the consumer choosing to borrow more money.

It is difficult to determine the incidence and impact of rollovers, or other borrowing related to meeting small amount loan repayments. Consumer advocates outlined a number of cases to the Inquiry where rollovers had caused serious financial hardship for consumers who were already very vulnerable and economically disadvantaged. On the other hand, industry representatives at an industry roundtable (with one exception) informed the Inquiry that they do not provide rollover loans.

Tables H and I in Appendix 1, drawn from preliminary survey data provided to the Inquiry by CALC, provide evidence of rollover practices but present conflicting information and may be indicative of the extent to which people in financial trouble are often unwilling to admit that they are unable to meet their debts. For example, CALC found that:

- 92.6% of survey respondents said that they had never had “more than one payday loan at the same time” (see Appendix 1, Table F); however
- 20.3% of respondents also said that they had “refinanced” a payday loan with the same lender; and,
- 8.5% said that they had “borrowed from another payday lender” to repay a payday loan.

The Inquiry recognises that incentives are needed to ensure consumers do attempt to repay their loans on time, but does not acknowledge the need to use rollovers to ensure repayment. Where a customer cannot meet repayments of an existing small amount loan within the agreed loan term, the imposition of default fees and charges will only impair the borrower's capacity to repay the loan.

In their submission to the Inquiry, Cash Converters confirmed that 30 per cent of borrowers could not repay their cash advance within the initial loan period; a new repayment arrangement is then entered into at no further cost to the customer. The Inquiry believes that the high costs borrowers pay for small amount loans should provide sufficient profit for small amount lenders without the need to charge further fees for customer defaults.

Recommendation

3. That further research be undertaken on the prevalence and impact of multiple small loans on consumers.

6. Policy Approaches Elsewhere

6.1 United States of America

Payday lending, where money is lent to be repaid by the next 'payday' (usually in one or two weeks), operates on a very large scale in the United States of America (USA) with over \$40 billion in payday loans written annually²⁷.

Regulation is predominantly state-based though there is some federal regulation.

Payday lending is legal and regulated in 37 states. In 13 states payday lending is either illegal or unviable due to the imposition of interest rate caps combined with usury laws. Where payday lending is legal, states regulate through licensing and/or other regulation. While state laws vary greatly, the most common approach in states that allow payday lending is by statute law that explicitly permits payday lending. Usually this statute law contains several features²⁸:

- loans are limited to \$500 or less
- loans can only be renewed once
- borrowers can rescind a loan within one day
- lenders cannot use threats of criminal prosecution as a lending tool
- lenders must obtain a licence to operate
- fees are capped at 20 per cent of the first \$300 loaned and 7.5 per cent for any funds over \$300.

Federal legislation was passed in 2006²⁹ to cap fees on payday loans extended to military personnel and their dependants at 36 per cent. This legislation addressed growing concern about the 'debt trap' caused by payday lending and the apparent targeting of military bases by payday lending businesses.

While US regulation of payday lending is recognised as among the best in the world, some problems remain. In particular, regulation needs to be supported by compliance and enforcement action; however, competing priorities mean that many states are not able to assign sufficient resources to monitor compliance effectively or to take enforcement action against non-compliant lenders.

6.2 Canada

As in the USA, small amount lending in Canada takes the form of payday loans. On average, a payday loan is valued at \$280 and provided for a 10-day period, with payment usually guaranteed by a post-dated cheque provided by the borrower.

The rapid growth of payday lending in Canada outstripped consumer protection regulation. Originally, regulation was limited to s.347 of the *Criminal Code*, which made

²⁷ Morse A, *Payday Lenders: Heroes or Villains?*, University of Michigan, Ross School of Business 2006

²⁸ Mann RJ & Hawkins J, "Just Until Payday" in *UCLA Law Review* 855 V. 54 No. 4, April 2007 pp. 857-912

²⁹ The Talent-Nelson Amendment was passed by Congress in 2006 and came into operation on 1 October 2007

it a criminal offence to charge more than 60 per cent interest per year, though these regulations were not enforced. In 2007, amendments to the *Criminal Code* exempted payday loans under \$1500, and for fewer than 62 days, from the 60 per cent criminal rate of interest. The 2007 amendments also provided guidelines for Provinces wanting to regulate payday lending. The guidelines include limits on the total cost of borrowing, practitioner licensing, and, a framework of other consumer protections.

Subsequently some provinces took steps to regulate the industry. Those Provinces that have adopted consumer protections consistent with national guidelines have, with some variations, the following consumer protections in place:

- interest rate caps - though each Province is able to set an interest rate cap only Quebec and Manitoba have done so (respectively setting caps of 35 and 17 per cent)
- cancellation protection
- disclosure requirements
- rollover prohibition
- licensing.

In a move to achieve national uniformity in payday lending, the Canadian Payday Loan Association (CPLA) developed a *Code of Best Business Practice* which commits members to a set of standards designed to protect consumers. The Code of Best Business Practice prohibits rollovers, multiple loans and the taking of collateral. The CPLA has funded an independent *Commissioner of Ethics and Integrity* to enforce the code of practice. The CPLA's code of practice is reproduced at Appendix 4.

A weakness of this self-regulatory approach is that not all Canadian payday lenders are members of the CPLA and a substantial number of operators have not committed to these standards. For example, The Cash Store, which operates a number of outlets in Victoria is a subsidiary of one of the biggest payday lenders in Canada, and has chosen not to sign-up to the Code of Best Practice.

6.3 United Kingdom

Small amount lending in the United Kingdom (UK) largely comprises payday lending, doorstep lending and loan sharks. Recently, the use of payday loans in the UK has exploded with 130 per cent growth between August 2007 and June 2008. The UK Office of Fair Trading has responded to mounting public pressure over the growth and high cost of these loans by commencing an inquiry into the sector³⁰.

Doorstep or home credit lending is popular among low-income earners in the UK. As the name suggests, loans are provided and collected on the consumer's doorstep. Loan costs are high with the consumer generally paying 100 per cent of the amount borrowed in fees. The high cost of the loan reflects the high cost of providing these loans, but no late payment or other charges are levied in addition to the initial loan cost. Research on these types of loans shows that consumers are more concerned about obtaining an affordable repayment amount than the total cost of the loan.

³⁰ Office of Fair Trading (UK) 2008, *Irresponsible lending – a scoping paper*, August OFT 1012, London

With the intention of making credit more affordable for low-income earners, consumers in receipt of a government benefit have access to the Social Fund; monies can be obtained from the Social Fund for a variety of reasons at no cost, however, the Social Fund is under-utilised when compared with the amounts borrowed through payday and doorstep lending. The UK Government's *Financial Inclusion Taskforce* is working with credit unions and the banking sector to encourage more affordable lending to low income consumers and has committed £40 million in loan capital to support these ventures.

6.4 Ireland

Individuals and companies providing small cash loans or supplying goods or services on credit in Ireland (termed "moneylenders") are licensed and regulated by the Financial Regulator. In issuing licences, the Regulator takes into account a range of factors including the lender's trading background and the proposed cost of credit. Licences are renewed annually and lending without a licence can attract a penalty of up to €63,487 (or around \$A100,000) and/or five years imprisonment.

Moneylenders must provide detailed lending agreements to borrowers showing all the relevant costs, including future collection charges. The lender cannot subsequently apply other fees or charges and the total amount that must be paid on the loan will remain the same regardless of the length of the loan.

Both parties must sign the agreement and borrowers are entitled to a 10-day "cooling off" period, which they may waive through an explicit statement in the contract, if, for example, they want to receive the money immediately. Lenders are required to provide borrowers with repayment books allowing them to track the repaid portion of the loan and the balance outstanding. Alternatively, lenders must issue regular statements providing the same information.

Moneylenders or their agents are permitted to call at customers' homes to collect repayments only during designated *reasonable* hours (usually 10am to 9pm Monday to Saturday). Moneylenders are not permitted to contact borrowers at their workplace or through their employers or relatives unless the moneylender has consistently been unable to contact a borrower at home, or the moneylender needs to serve notice of legal action. Borrowers must be allowed to make payments at the lender's business premises to avoid incurring collection charges. It is an offence to demand payment of a debt in a way designed to alarm, distress or humiliate. Moneylenders are not permitted to offer customers 'top-up loans' to help pay-off previous loans.

If a customer fails to make a payment, the lender must provide written notice of intent to commence legal proceedings and allow 21 days to enable the borrower to make the payment and avoid legal proceedings. The courts may waive this 21-day period where a customer has consistently failed to make payments.

6.5 Australia

All states and territories have contributed to the development of a set of policy proposals to address harmful fringe lending practices. The Fringe Credit Providers proposals do not include a recommendation for a national uniform interest rate ceiling

because interest rates are outside the Uniformity Agreement. States and territories are responsible for setting interest rate ceilings.

In Victoria, a cap of 30 per cent per annum applies to secured credit and 48 per cent per annum to unsecured credit. While the imposition of interest rate ceilings in some jurisdictions does not breach the Uniformity Agreement, it does pose compliance issues for small amount lenders operating across state and territory borders.

The UCCC does not impose many restrictions on credit fees and charges, though it does contain a power, never used, to prohibit particular fees or charges and some fees are constrained to cost/loss recovery. The prospect of several jurisdictions imposing a cap on the total cost of credit does pose a real problem for the maintenance of uniformity, hitherto a fundamental foundation of the Code. In those jurisdictions where a cap on the total cost of credit has been applied, the benefit to consumers, particularly vulnerable and disadvantaged users of small amount loans, was perceived as outweighing the risk of compromising the uniformity agreement.

Any regulation of small amount lending, whether a cap on the total cost of credit or a licensing scheme, is only as good as the compliance and enforcement action taken by the regulator.

New South Wales and the Australian Capital Territory

On 1 March 2006, the NSW Parliament enacted legislation requiring all fees and charges to be included in the calculation of a 48 per cent interest rate cap. Authorised deposit-taking institutions (mainstream credit providers) were exempted from the total cap requirement, because the initiative targets the 'fringe lending' market.

Like NSW, the ACT has a 48 per cent ceiling on interest rates that includes fees and charges.

The Inquiry is aware of no research having been conducted into the efficacy of the NSW and ACT interest rate caps. Anecdotal evidence suggests that some small amount lenders avoid the caps by using brokerage arrangements and business purpose declarations.

Queensland

In 2000, the Minister for Fair Trading established an independent payday lending working party to examine payday lending practices and consider proposals to regulate the industry. The working party concluded that an interest rate cap was not appropriate.

In 2006, Queensland's Office of Fair Trading released *Managing the Cost of Consumer Credit In Queensland*, which explores viable options to achieve the objective of ensuring fees, and charges for consumer credit are fair and reasonable. The paper expressed an explicit policy objective of ensuring vulnerable consumers were not exploited through high fees and charges.

The Queensland Parliament recently legislated for an inclusive interest rate cap, similar to that in NSW. The cap came into operation on 31 July 2008 and has not yet been evaluated; however, there have been media reports of evasion by some lenders through bogus pawn-broking arrangements (see Appendix 2).

South Australia

In 2006, the SA Government released *Payday Lending in South Australia – Options to Increase Consumer Protection*³¹; the paper outlined a number of policy options for regulating small amount lending.

Subsequently, the SA Government committed to introducing a series of reforms to regulate small amount lending including: licensing and the imposition of a 48 per cent all-inclusive interest rate cap. However, it is unclear whether the SA Government will implement these proposals in light of the national agreement to transfer credit regulation to the Australian Government.

Western Australia

Historically, small amount lenders in Western Australia used promissory notes to avoid regulation under the UCCC. That loophole was closed in November 2007 when legislation brought promissory notes under the Code; the legislation came into operation in WA in August 2008.

The WA Government licenses credit providers including small amount lenders. Under licensing arrangements, the Department of Consumer and Employment Protection (DoCEP) can audit lenders' compliance. DoCEP has been collecting data on small amount lenders, including financial statements, details of average loan amounts, loan term, fees and charges and bad debts. DoCEP proposes to analyse this data to develop a better understanding of the underlying costs of providing small amount loans. DoCEP acknowledges that an inclusive interest rate cap is not the only option for limiting consumer detriment from small amount lending, and has signalled that it would be just one of a series of measures to combat the high cost of small amount loans.

The WA Government is also considering introducing external dispute resolution requirements for all licensed credit providers; a discussion paper is expected to be released shortly.

Commonwealth Green Paper

On 26 March 2008 COAG announced an in-principle decision for the Commonwealth to assume responsibility for the regulation of home loans and mortgage broking, which have until now been primarily regulated by the states and territories. COAG later announced the timetable for the transfer and further details of the "new national approach".

On 30 April 2008, the Productivity Commission (PC) published the final report of its inquiry into Australia's consumer policy framework³². Echoing COAG but going further, the PC recommended that the regulation of credit providers and intermediaries providing advice on credit should be transferred to the Australian Government, with the Australian Securities and Investments Commission (ASIC) to be the regulator. The PC stressed that this should cover all credit products and advice, and that the Consumer Credit Code should, for the time being, be retained. In the meantime, the

³¹ Office of Consumer and Business Affairs, *Payday Lending in South Australia – Options to Increase Consumer Protection*, Government of South Australia, October 2008 (http://www.ocba.sa.gov.au/assets/files/Discussion_Payday_Ar.pdf)

³² Productivity Commission, *Review of Australia's Consumer Policy Framework*, Productivity Commission Inquiry Report No 45, Australian Government, 30 April 2008 (<http://www.pc.gov.au/projects/inquiry/consumer/docs/finalreport>)

Commonwealth Treasury released a green paper³³ in June 2008 outlining options for addressing problems with the regulation of credit and broking and recommending an approach reflecting COAG's decision. This attracted further criticism.

In July 2008, COAG announced that the transfer to the Commonwealth would cover all credit and related broking activity. CAV, together with the Victorian Departments of Treasury & Finance and Premier & Cabinet will participate in planning for the implementation of the transfer, to ensure that the process proceeds smoothly and delivers a good outcome for consumers and the credit industry alike.

In this national context, policy options adopted by the Victorian Government need to be capable of working nationally or need to complement the new national approach to the regulation of credit, which will be developed in the coming years.

³³ The Treasury, *Financial Services and Credit Reform - Improving, Simplifying and Standardising Financial Services and Credit Regulation Green Paper*, Australian Government, June 2008

7. Policy Responses and Options

7.1 Unfair Contract Terms

Unfair contract terms legislation came into operation in Victoria in 2003; part 2B of the Fair Trading Act (FTA) voids unfair terms in consumer contracts and prohibits the use of any terms prescribed in regulations. Part 2B of the FTA has the following effects:

- unfair terms in consumer contracts are void and consumers can use Part 2B as a defence against debt collection actions and other contract enforcement actions
- certain terms in standard form contracts can be to be prescribed under regulation as “unfair” and it is an offence to use a prescribed unfair term
- the Director of CAV is able to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a declaration that a term is unfair, and for injunctions to prevent the continued use of unfair terms

Initially, consumer credit contracts were exempt from the application of Part 2B.

Part 2B of the FTA is modelled on the UK’s *Unfair Terms in Consumer Contracts Regulations 1994*, which has provided significant protection for UK consumers from unfair contract terms.

CAV has had notable success in educating Victorian traders about unfair terms. When CAV first released guidelines on unfair terms, they were informed heavily by the decision of Morris J in *The Director of Consumer Affairs Victoria v AAPT Pty Ltd*. In finding particular terms unfair within the meaning of Part 2B, Morris J provided a strong foundation for the interpretation of what may be deemed unfair within the meaning of the FTA. Since that decision, CAV has successfully worked with traders in the window and floor covering, pay TV, internet service provider, health and fitness, mobile phone and online auction industries, as well as airline loyalty programs to remove unfair terms from their contracts.

Application of Part 2B of the FTA to credit contracts was recommended by the Consumer Credit Review and endorsed in the subsequent Government Response. CAV has been consulting with industry, including small amount lenders, to develop guidelines on the application of unfair contract principles to credit contracts.

Part 2B of the FTA, currently scheduled to apply to credit from March 2009, has substantial potential to address consumer detriment in the small amount sector. Such problems include the inclusion of clauses taking security over household goods and exploitation of the direct debit payment system, that are exempt under the *Bankruptcy Act*, unlimited assignments of wages, and powers of entry without consent.

Recently, the Productivity Commission has acknowledged the effectiveness of Victoria’s unfair contract terms legislation. In its report on the *Review of Australia’s Consumer Policy Framework (April 2008)*, the Commission recommends that the proposed national generic consumer law include a provision voiding ‘unfair’ contract terms that have caused consumer detriment. The Commission says that the new provision should:

- provide clarity about what constitutes unfairness
- provide for the broader public interest to be considered

- apply only to non-negotiated contracts and preclude action in regard to up-front prices (that is, the UK rather than the Victorian approach)
- provide guidance to consumers and businesses through indicative lists of terms that would usually fail a fairness test (taking account of requirements dealing with unfair contract terms in existing industry codes)
- give businesses reasonable time to make necessary changes to their contracts
- allow for effective private and regulator-led representative actions
- be accompanied by inter-jurisdictional protocols to promote general consistency in enforcement and to prevent particular unfair contract issues being pursued by more than one regulator.

Recommendation

4. That the Victorian Government supports the application of the unfair contract terms provisions of the Fair Trading Act to consumer credit contracts and, in particular, to small amount cash loans.
5. That Consumer Affairs Victoria's unfair contract terms taskforce works with the credit industry to eliminate unfair contract terms from standard small amount lending contracts.
6. That Consumer Affairs Victoria monitors credit contracts for compliance with Part 2B of the Fair Trading Act and take enforcement action where appropriate.

7.2 Positive Credit Reporting

Since the introduction of the *Privacy Act 1998*, the Australian Government has been responsible for the credit-reporting regime. Over this time, states and territories have referred privacy matters to the Privacy Commissioner, with Victoria taking the additional step of repealing the *Credit Reporting Act 1978*, thereby formally acknowledging the primary role of the Commonwealth. Thus, Victoria will welcome any amendments made to the Privacy Act that will improve the assessment of borrower's capacity to repay.

Since the 1980's, governments, consumers and industry have considered the potential for positive credit reporting to limit consumer detriment. Industry representatives promoted the adoption of a positive credit-reporting regime to this Inquiry, arguing that defaults and over-commitments occur due to consumers' failure to disclose existing debts and financial commitments when applying for a loan.

Prominent cash lenders promote themselves as an easy alternative to mainstream lenders who may reject applications from credit-impaired consumers. Radio Rentals, who advertise that they do 'no credit checks' on consumer lease applications recently launched a cash lending business. It is unreasonable to target advertising at people with impaired credit histories or high levels of existing debt, then place the blame for defaults solely on borrowers. It is important, therefore, that small amount cash lenders assume some responsibility for the default levels present within the sector.

As the credit-reporting regime is regulated by the *Privacy Act*, the Australian Government must initiate any change. The Australian Law Reform Commission (ALRC) reviewed the *Privacy Act* and recently released its report³⁴.

In its report the ALRC discusses the credit-reporting regime and considers the proposals for adoption of positive credit reporting. The ALRC made extensive recommendations on credit reporting and recommended debate on the need for positive credit reporting, as it has been an area of contention for some time.

International and national research delivers divided opinion on the benefits of positive credit reporting. Broadly speaking, proponents argue that credit reports that capture all loans attributable to an individual will enable more responsible lending and greater financial literacy, as both lenders and consumers will be more aware of a consumer's liabilities. Dissenters cite privacy concerns, specifically the risks associated with private companies holding vast amounts of personal information and the tendency of some to sell that information to marketing companies. In its recommendations, the ALRC indicates its support for a more comprehensive credit-reporting regime rather than a positive credit-reporting regime³⁵.

Recommendation

7. That the Victorian Government supports the Australian Law Reform Commission's recommendation to expand the existing credit reporting regime to a more comprehensive model.
8. That Consumer Affairs Victoria monitors implementation of the Australian Law Reform Commission's recommendations on credit reporting.

7.3 Code of Practice

Industry self-regulation could be strengthened by adoption of a voluntary code of practice. Industry often self-regulates when it believes that, by demonstrating it can manage its behaviour in line with community expectations, it will avoid regulation or gain commercial advantage. Self-regulation can be a highly flexible form of regulation that allows businesses to achieve standards that suit their needs while respecting basic consumer rights. The level of industry understanding and acceptance of the standards achieved can also be high.

For self-regulation to be effective there must be a strong desire among members of an industry to build and preserve that industry's reputation. Businesses must believe that the success of their business depends on being seen as compliant with the code of

³⁴ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice Report No 108*, Australian Government 2008 (http://www.austlii.edu.au/au/other/alrc/publications/reports/108/vol_1_full.pdf)

³⁵ ALRC, 2008 p. 64

Recommendation 55–1 The new Privacy (Credit Reporting Information) Regulations should permit credit reporting information to include the following categories of personal information, in addition to those currently permitted in credit information files under the Privacy Act:

- (a) the type of each credit account opened (for example, mortgage, personal loan, credit card);
- (b) the date on which each credit account was opened;
- (c) the current limit of each open credit account; and
- (d) the date on which each credit account was closed.

practice. The incentives for industry to comply with self-regulation may also be higher if there is a risk of the government imposing its own regulation if the industry fails to meet minimum conduct standards. The threat of government action can support compliance but alone is unlikely to guarantee compliance.

It is likely that self-regulation, through a voluntary code of practice, would not address the problems in the small amount lending market. Rather, a code of practice should be supported by other measures including, for example, membership of an external dispute resolution scheme, licensing or registration of practitioners, and, targeted compliance and enforcement action to address problems more effectively.

As a minimum a “Code of Practice for Small Amount Lenders” would need to encompass clauses dealing with:

- disclosure of all terms including fees and charges
- loan rollovers
- assessment of applicant’s capacity to repay a loan
- late payment or default fees
- direct debit arrangements
- debt collection
- complaint handling and external dispute resolution arrangements.

Recommendation

9. That industry members be invited to develop and adopt a Code of Conduct .
10. That a copy of the Code of Practice be provided to industry members’ external dispute resolution bodies, to ensure compliance.
11. That Consumer Affairs Victoria monitors compliance with a voluntary Code of Practice.
12. That the Victorian Government, in conjunction with the Commonwealth, imposes a mandatory and enforceable code should a voluntary code not be adopted and adhered to widely.

7.4 External Dispute Resolution

One way to enforce a Code of Practice is to connect it to a dispute resolution scheme, where the Code forms part of the terms of reference of the Scheme.

Dispute resolution administered independently of the credit provider is particularly important for consumers of small loans. The nature of the small amount lending market means that some consumers may not have access to other forms of credit. Consumers are less likely to complain, if they fear that complaining will exclude them from future loans, thereby cutting off their access to credit. Further, vulnerable and disadvantaged consumers are less likely to complain in the first place.

Credit providers who are “financial service providers” within the meaning of the Commonwealth’s *Corporations Act 2001* must be members of an Australian Securities

and Investments Commission (ASIC) approved external dispute resolution (EDR) scheme as a condition of their licence. Small amount lenders are not required to belong to such a scheme, although dispute resolution services are provided by CAV and other fair trading agencies.

The Victorian Consumer Credit Review recommended that all credit providers in Victoria: subscribe to an approved EDR scheme; implement an internal dispute resolution process; and, supply details of their membership of an EDR scheme to the Business Licensing Authority upon registration. This Inquiry believes that adoption of these recommendations is important for addressing disputes about small loans.

Recommendation

13. That the Victorian Government reaffirm its commitment to implementing the recommendations of the Consumer Credit Review (2006) in relation to compulsory membership of an external dispute resolution scheme for all credit providers.

7.5 Licensing

The *Government Response to the Consumer Credit Review*³⁶ endorsed the proposal to require more comprehensive licensing of credit providers in Victoria and membership of an alternative dispute resolution scheme as part of the licensing provisions.

In March 2008, the *Consumer Credit (Victoria) and Other Acts Amendment Act 2008* was passed. In view of the transfer of credit regulation to the Commonwealth and the expectation that it will include a wide ranging and comprehensive licensing scheme, this aspect of the Victorian amendments will not be implemented. The Commonwealth's Green Paper indicates that the Australian Government aims to improve licensing requirements for credit providers and will subject credit providers to more stringent probity checks.

7.6 Enforcement

Consistent with concerns expressed in *A Fairer Victoria* about predatory and exploitative lending CAV gave particular attention to small amount cash lending in its 2005-2006 Consumer Credit Review.

Recent amendments to Victorian law, implementing recommendations from the Consumer Credit Review, provide greater opportunities for the Director of Consumer Affairs to take action against unscrupulous small amount cash lenders.

CAV's regional compliance exercises routinely target small amount cash lenders and CAV has also held discussions with selected lenders to better understand their business model and standard operating procedures, with a view to identifying and resolving compliance issues. CAV is presently investigating the conduct of selected small amount cash lenders with a view to taking enforcement action. CAV is also investigating the manner in which some traders offer consumer leases, as these are often targeted at the same people who patronise small amount cash lenders.

³⁶ Consumer Affairs Victoria, *Government Response to the Consumer Credit Review*, Department of Justice

Despite the welcome addition of new powers afforded to the Director of Consumer Affairs, more compliance and enforcement in itself is not the answer. To address the problems experienced by small amount cash borrowers, new initiatives need to be introduced to:

- provide redress for unfair terms in small amount loan contracts
- introduce compulsory membership of an EDR scheme for all credit providers
- enhance consumer protection through the creation of a Code of Practice to be enforced by EDR schemes
- make it easier for small amount lender to lend by better assessing a borrower's capacity to repay the loan.

Recommendation

14. That Consumer Affairs Victoria takes action against small amount cash lenders where patterns of behaviour involving serious breaches of the Uniform Consumer Credit Code and the *Consumer Credit (Victoria) Act 1995* are detected.

7.7 Advertising

Consumer advocates who attended the Inquiry's consumer roundtable did not raise any concerns about advertisements for small amount lending products, nor did any of the submissions to the Inquiry provided by consumer advocates. Comments about the marketing and advertising of small amount lending products were confined to noting the effectiveness with which small amount lenders marketing and promote their products.

CAV received no complaints from consumers about small amount lenders' advertising in the 12 months preceding the Inquiry.

Recommendation

15. That Consumer Affairs Victoria continues to monitor the advertising practices of small amount cash lenders.

Consumer Affairs and Fair Trading (Tasmania) responded to concerns about bait advertising by small amount lenders by proposing legislation to limit how products can be advertised, where the comparison rate is above 40 per cent³⁷.

Small amount lenders' (referred to as "high-cost credit providers" in draft Tasmanian legislation) advertisements were to be permitted to include specified information only, with information limited to:

- the credit provider's name, business address and telephone number
- the words "short-term finance is available" or "high-cost finance is available".

Tasmania has decided not to proceed with these legislative proposals in light of national policy developments.

³⁷ The comparison rate is calculated by combining the annual percentage rate with fees and charges.

7.8 Interest Rate Caps

Imposing a ceiling on the price of credit is one of the oldest policy tools available, along with prohibiting credit provision altogether. While a cap prevents usurious rates of interest, or the charging exorbitant fees, lenders will usually seek to avoid a ceiling; sometimes by lawful means and sometimes not.

For some time Victoria has had a 48 per cent p.a. interest rate cap in place for unsecured credit and a 30 per cent p.a. cap for secured credit (where 'security' for the loan is taken over goods). Victorian consumers are able to enter into high cost credit contracts, as fees and charges, other than interest, are not captured by the interest rate cap.

Australia's experience of inclusive interest rate caps largely centres on NSW, where the Government implemented a 48 per cent p.a. cap on the total cost of credit in 2006. Since the introduction of that cap, some small amount lenders have taken advantage of legislative loopholes to avoid the cap while some lenders have stopped operating in NSW, for example, Cash Converters no longer offer their Cash Advance product in NSW.

There is some evidence to suggest that lenders who have complied with the cap have done this by increasing the minimum loan size and duration, a result applauded by consumer advocates, as this gives the consumer more time to repay their loan. The NSW Office of Fair Trading has not evaluated the effectiveness of its capping legislation and is still working to close loopholes and to ensure lenders are compliant. However, the NSW experience is useful in highlighting some of the problems and challenges associated with this regulatory option.

The main loopholes used to avoid the cap are the use of broker arrangements and sham pawn broking transactions. The fringe lending amendments currently under consideration by MCCA will address both of these strategies for avoiding the UCCC.

A major issue with interest rate caps, whether inclusive or not, is determining the level at which the cap should be set. Balancing the needs of consumers and providers is a difficult process. If pitched too low, the cap can damage the market. If pitched too high, its effectiveness is compromised. The 48 per cent figure implemented in NSW is based on historical precedent rather than an assessment of the cost base for lenders. Research being conducted in Western Australia will address the issue of the appropriate level at which to set an inclusive interest rate cap, however, the research findings will not be available until later in 2008 or early 2009.

Given inconsistent evidence that a ceiling significantly ameliorates the high cost of credit and, the difficulty in determining the appropriate ceiling, a more nuanced policy approach combining more established regulatory tools is preferred. If a holistic policy approach does not sufficiently limit consumer detriment, the introduction of an inclusive interest rate cap, similar to that in NSW and Queensland, must be considered. If introduced, such a cap should be based on a systematic understanding of the costs of lending and the impact of such a cap on disadvantaged consumers.

Recommendation

16. That regulatory options, other than an inclusive fees and charges cap, be trialled including: a Code of Practice, membership of an external dispute resolution scheme, and application of Part 2B of the Fair Trading Act (unfair contract terms).

17. That legislation (or equivalent policy) to impose an interest rate cap be considered if unacceptable consumer detriment is not ameliorated by the policy actions recommended by this Inquiry.

Appendix 1: Payday Lending Survey Findings³⁸

Table A: Main Reason for Taking Out The Loan

	Percentage
Car repairs	22.1
Utility bills	21.0
Food or other essential expense	17.6
Rent	10.7
To help family member	6.7
Pay another loan or credit card	4.9
To help friend	4.2
Mortgage repayment	3.6
Medicine	1.1
Pay back another payday loan	1.1
Other	6.9
Total	100.0

Table B: Thinking about your most recent payday loan, what amount of money did you borrow (excluding fees or interest)?

	Percentage
\$0 - \$50	3.8
\$51 - \$200	20.5
\$200 - \$500	35.7
\$500 - \$1,000	26.1
\$1,000 - \$2,000	13.8
Total	100.0

Table C: The last time you borrowed money in the form of a payday loan, did you?

	Percentage
Borrow the exact amount of money that you required	78.3
Borrow more than you required because the lender required you to borrow a minimum amount	13.4
Borrow less than you required because the lender would not go to your desired amount	8.3
Total	100.0

Table D: Company Borrowed From

	Percentage
Cash Converters	60.90
GE	2.70
Aussies cash	2.00
Cash doctors	2.00
Money3	1.80
Fast access	1.30
Centrelink	1.10
Payday Loan Australia	1.10
Family/Friends	0.90
Other responses	26.2
Total	100.0

³⁸ This preliminary data is derived from a survey carried out by Pure Profile on behalf of the Consumer Action Law Centre in 2008. The survey findings were based on interviews conducted on 448 clients of payday lenders.

Table E: What was the reason you chose that company to provide the loan?

	Percentage
Nearby/convenient	54.2
Used them before	17.0
Only one that would lend me the money	14.7
Low fees	4.9
Good rates	4.5
Other	4.7
Total	100.0

Table F: Are you aware of other companies that offer similar loans to the loan that you used?

	Percentage
Yes	32.1
No	67.9
Total	100.0

Table G: Have you ever had more than one payday loan at the same time?

	Percentage
Yes	7.4
No	92.6
Total	100.0

Table H: Have you done any of the following to repay a payday loan?

	Percentage
Borrowed from family/friends	25.9
Refinanced with the same lender (rollover)	20.3
Pawned something	14.1
Borrowed from another payday lender	8.5
Other	40.2
Total (Multiple responses permitted)	109

Table I: Have you used any of these forms of credit over the past 12 months?

	Percentage
Credit card	62.7
Loan from Family/Friend	37.9
Centrelink Advance Payment	27.5
Pawnbroker	13.4
Finance Company	10.5
Bank or Co-op Loan	9.4
Other type of small amount cash loan	5.1
Total (Multiple responses permitted)	166.50%

Table J: Borrower's Current Annual Income

	Percentage	
	Respondent	Household
Under \$20,000	23.4	8.3
\$21,000-\$40,000	27.9	17.9
\$40,001-\$60,000	21.4	17.2
\$60,001 - \$90,000	8.3	16.5
\$90,001 - \$120,000	4.0	10.7
\$120,001 - \$150,000	1.6	6.0
\$150,001 - \$180,000	0.4	3.8
\$180,001 - \$210,000	0.0	1.3
over \$210,001 - \$240,000	0.2	1.6
Prefer not to say	12.7	16.7
Total	100.0	100.0

Table K: Highest Level of Education

	Percentage
University (under graduate)	24.3
University (post graduate)	6.5
TAFE	23.9
Other college	3.3
Higher school certificate	19.2
Some Secondary school	15.4
School Certificate	7.4
Total	100.0

Table L: Country of Origin

	Percentage
Australia	75.4
United Kingdom	5.1
New Zealand	2.5
India	1.8
Germany	1.1
Hong Kong	1.1
Other	13.0
Total	100.0

Table M: First or Primary Language

	Percentage
English	90.0
Cantonese / Chinese	2.5
Hindi	0.9
Other	6.6
Total	100.0

Appendix 2: Brisbane Courier Mail Article

Sky-High Loan Rates Exposed As Lenders Skirt New Law

Article from: **Courier Mail**

Patrick Lion

August 17, 2008 01:55pm

The Queensland Government is investigating a suspected loophole in new laws designed to protect consumers from high-interest payday lenders.

The Consumer Credit and Other Acts Amendment Bill 2008 forces payday lenders to cap the total cost of rates, fees and charges at 48 per cent, or face fines of up to \$500,000.

But The Courier-Mail yesterday reported the state-wide chain Cash Converters was writing loans under pawn broking laws which do not attract the rate cap.

The move allowed the stores to charge effective interest rates of up to 420 per cent on short-term loans, the newspaper claimed.

Premier Anna Bligh today said the Government was looking into the loophole.

"I have one clear message for them, people will be out there enforcing the law and if the law needs any amendment then we won't hesitate to do so," Ms Bligh said.

"Like any law, once it's out there being implemented, if we find any need to improve it then we'll do so. It's only two weeks old.

"Many of the people who are involved in payday lending are, frankly, quite unscrupulous people, and I'm not surprised to see that some of them might be acting in an unscrupulous way."

The Courier-Mail reported yesterday that Cash Converters was charging customers effective interest rates of up to 420 per cent on short-term loans, despite new laws introduced only two weeks ago designed to cap costs at 48 per cent.

The state-wide chain has admitted writing loans under pawn broking laws, which do not attract the rate cap, with customers being able to buy a CD or DVD from the store as collateral for only \$1.

A Courier-Mail investigation has also discovered other operators are offering loans at rates equivalent to several hundred per cent when calculated over a year.

The revelations are an embarrassment for the Bligh Government and come only a fortnight after long-overdue legislation came into effect following years of inaction.

Attorney-General Kerry Shine refused interviews on Friday but admitted in a statement that the laws the Government promised would protect consumers might not be working.

"Unfortunately some businesses will continue to look for ways to charge excessive interest rates," Mr Shine said.

Smaller lenders such as Cash Smart at Goodna offered a \$200 loan under a one-month term repaid weekly for a total repayment of \$265 - an annualised cost of 641 per cent. A staffer later claimed when contacted: "We don't do those loans."

Fast Access Finance, a chain with 31 Queensland stores, offered a loan arrangement where it was selling "real diamonds" through \$250 no-interest loans.

The customer immediately on-sold the diamond to a "completely unrelated" company for \$125 cash.

Cash Converters is offering a new VIP Advantage Loan, which gives customers \$1000 for a total repayment of \$1350 after only one month. Loan applicants are required to demonstrate their capacity to repay by providing recent pay slips and collateral.

The chain, which campaigned heavily against the cap to protect its 43 Queensland stores, claimed it was not circumventing the laws but rather just going back to its pawn broking roots.

A Cash Converters' spokesman said the loan, which had been cleared as legal by a QC, actually left the firm more exposed as it could only recoup the item of value deposited rather than the loan.

"It is absolutely in the spirit of the law and to the letter of the law," he said.

However, Opposition justice spokesman Stuart Copeland said the loophole was another broken promise from the Government on payday lending over the past decade.

"Remember, they had to be dragged to the line to do anything about it," Mr Copeland said.

"Now it looks like they just got to the point of embarrassment and had to show the Government was doing something and it's not good enough."

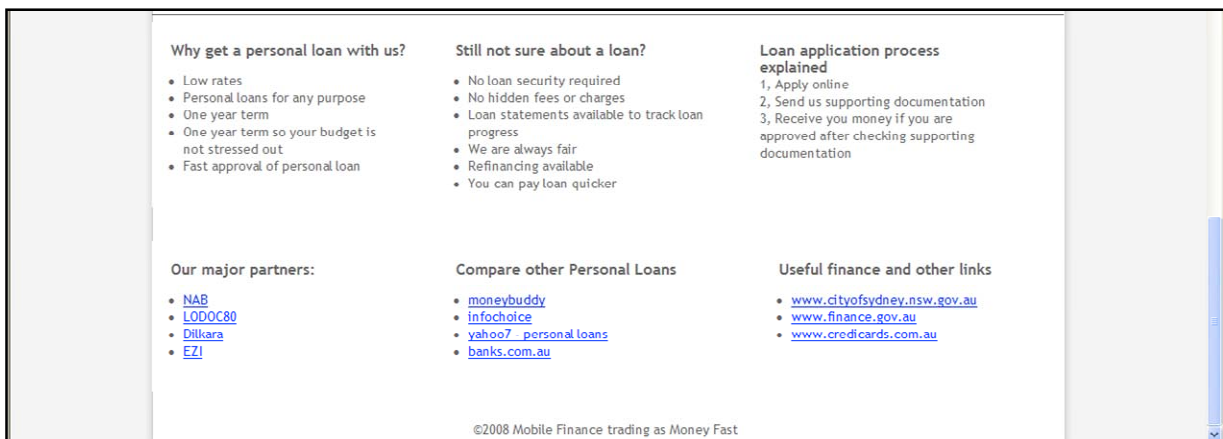
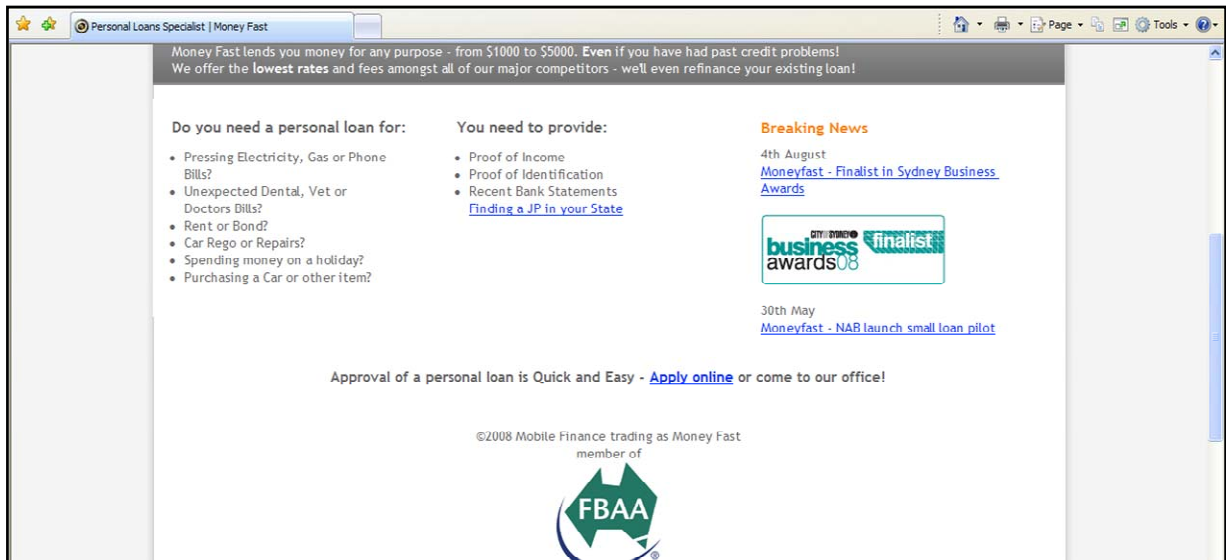
Legal Aid Queensland civil justice director Elizabeth Shearer said it was concerning to hear that lenders were still able to charge high rates.

"We were pleased with the tough stance from the Government but if there is a loophole we would want them to take action and investigate the situation," Ms Shearer said.

The Government refused to say how many inspectors were conducting checks or how many inspections had been done in the first fortnight.

- with AAP

Appendix 3: Money Fast Website



Appendix 4: CPLA Code of Best Business Practices

The Canadian Payday Loan Association (CPLA) represents members who operate retail outlets that provide payday loans.

A payday loan is an unsecured short term loan to meet unexpected cash needs. Payday loans are for occasional use only and should not be used to cover continual shortfalls in a persons budgetary requirements. People who have ongoing problems meeting their financial obligations should be consulting credit counsellors. CPLA Members are committed to providing credit counselling references.

As a condition of membership, all Members of the CPLA must abide by the following Code of Best Business Practices and display this Code prominently in their places of business.

No Rollovers: A Member will not grant a customer an extension of an outstanding payday loan for a fee or advance a new payday loan to pay out their existing payday loan.

Multiple Loans: A Member shall not grant multiple payday loans to a customer that in total exceed what the Member initially approved the customer to borrow.

Default and Post-Maturity Interest Charges: A Member shall not charge a penalty fee and/or NSF fee that exceeds an amount set from time to time by the Association. Interest on each \$100 of a payday loan in default will not exceed \$0.90 per week for the first thirteen weeks and \$0.50 per week thereafter.

Credit Counselling: A Member must advise customers who have defaulted twice within one year of credit counselling services, and offer to forgo accrual of interest if the customer obtains credit counselling.

Collateral: A Member may not take title to chattels or assets of a borrower as security for repayment of payday loans.

Collection Practices: A Member will collect past due accounts in a fair, lawful and professional manner. Members are prohibited from taking an assignment of wages.

Loans to Certain Customers: A Member shall not grant payday loans to customers on the basis of social assistance payments received by that customer.

Amount Loaned: A Member shall not grant a payday loan that exceeds \$1500.

Term of Loan: A Member shall not grant a payday loan with a term that exceeds 31 days.

Record Keeping: A Member will keep and maintain records of financial transactions with their customers in accordance with standards established by the Association.

Right to Rescind: A customer shall have the right to rescind a payday loan at no cost on or before the close of the following business day.

Privacy Protection: Members are prohibited from using personal and confidential information for marketing or other purposes unrelated to the payday loan without the consent of the customer and will comply with all privacy laws.

Selling Other Goods or Insurance: A Member is prohibited from requiring a customer to obtain insurance as a condition of taking out a payday loan.

Advertising Standards: Members will follow the advertising standards as established by the Association and must also comply with all Provincial laws governing advertising.

Disclosure to Customer: A Member shall use plain language in their documentation, will disclose all the fees, costs and interest in a clear manner and will prominently indicate the high-cost nature of the payday loan on all loan documentation.

Education and Awareness Campaigns: Members shall prominently display the Code of Best Business Practices, the CPLA logo showing membership in the Association, credit counselling and CPLA educational brochures, and information on how customers can contact the Association with complaints or comments.

Member Non-Compliance: The Association will ensure Members comply with all elements of the Code. A Member will report to the Association any violation of this Code by any other Member.

Responding to Consumer Complaints: A Member must respond diligently to all complaints of their customers. If a customer is not satisfied with redress of their complaint they are invited to contact the Association action line at 1-800-413-0147 or by email at inquiry@cpla-acps.ca. The Association will investigate and take any appropriate and necessary action to resolve customer complaints.

Source: <http://www.cpla-acps.ca/english/consumercode.php> , downloaded on 17 December 2008