



Promoting Responsible Consumer Lending

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National Financial Service Federation Ltd

Submission
to

Financial Services and Credit Reform Green Paper

Corporations and Financial Services Division

Treasury

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Submitted via email to

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The National Financial Services Federation welcomes the opportunity to contribute to the Financial Services and Credit Reform Green paper.

What is the National Financial Services Federation?

The National Financial Services Federation Limited is the peak industry body representing micro-lenders and payday lenders in Australia. It is governed nationally by a board of directors representing each of the states.

Our members are non-bank, non-ADI lenders and their market can generally be described as providing loans up to \$5,000 over terms of up to 2 years. The National Financial Services Federation represents over 300 credit provider outlets nationally from this market segment. All members are required to subscribe to, and abide by, the National Financial Services Federation's own Code of Ethics.

Over the past few years, the National Financial Services Federation has been conducting research and providing submissions and recommendations at state government level. These recommendations include major credit reforms including;

1. Licensing of all credit providers;
2. External dispute resolution as an industry requirement;
3. Membership of a professional industry body with code of Ethics such as the National Financial Services Federation as an industry requirement;
4. Promotion of a worlds best practice model to protect consumers as opposed to an unworkable capping of fees and interest rates which cannot stop debit spirals;
5. Positive credit reporting to help reduce the level of over-indebtedness being experienced by consumers;
6. Regulators working closely with industry representatives to manage beneficial outcomes rather than waiting for problems to arise; and
7. A truly Uniform Consumer Credit Code (Commonwealth control).

The Federation has also heavily campaigned against the interest rate caps in the New South Wales and ACT (legislated in Queensland and mooted in South Australia), which we feel relies on a false perception of the industry, its practices and returns.

The National Financial Services Federation has recently held seats at these conferences and committees:

1. Griffith University – Regulating the Cost of Credit 7 December 2006
2. Ministerial Payday Lending Working Party – SA November 2006 to March 2007
3. Consumer Credit Code Amendment Bill – Roundtable Discussion April 2008
4. Roundtable Small Amount Cash Lending Inquiry – Vic June 2008

The National Financial Services Federation holds a wealth of industry information that can assist with the discussion to be undertaken. This information includes statistics, facts and relevant further research into the industry and represents large amounts of input from many industry stakeholders over the past two years. The information we are able to provide will

accurately reflect the realities of our industry and the members of the community who choose to be its customers.

Information on the Industry

The Green Paper contains information on page 47, under Section B, pertaining to the industry. Unfortunately, this information is only partly correct.

Payday and Micro loans are separate sub-sets of this lending industry segment.

A payday loan is a small, short-term loan. They usually have a 2 to 4 week duration and are designed to meet unexpected expenses. They are not suited for long-term borrowing or continuing financial needs, and are best reserved for temporary cash flow problems. Their principals range up to several hundred dollars, with the average payday loan being around \$250. Although, obviously, subject to the Consumer Credit Code, payday loan charges are traditionally expressed as a rate of \$X per \$100 borrowed over term.

A micro loan is a loan with a duration of two months to two years. They are generally for amounts of \$500 or more, with an industry average principal of \$1,000. These loans are generally used to meet larger expenses such as replacing whitegoods, car registration, rental bonds, dental expenses and unexpected travel. They are operated in a similar way to personal loans (as described on page 47 of the Green Paper) with establishment fees and principal and interest repayments.

Both types of loans may be secured or unsecured. Micro loans have a greater incidence of being secured than payday loans. This is attributable to their differing characteristics, particularly the level of principal involved. For larger value loans, the usual form of security is over a motor vehicle. It is not uncommon for our members to provide unsecured loans as well.

Our members operate predominantly as either a payday or a micro lender. A sub-set of lenders provide both services. Jointly, these products represent \$500 million in loans throughout Australia per annum.

In addition, some of our members also operate as brokers or agents in the provision of larger finance for motor vehicles, business equipment or housing.

The Green Paper also states that the industry tends to be offered by small businesses in one jurisdiction. This is incorrect. There is, in fact, a great mix of industry providers. These range from single shop operators up to multi-state, franchised chains. In addition, a sub-set of the industry operates their lending activities solely via the internet. For example, on our National Board we have at least five directors whose operations consist of lenders with shop fronts present in two or more states.

Problems with State Based Regulation

When the Uniform Consumer Credit Code was first announced, one of main reasons for the reform of the consumer credit industry was to achieve a uniformity of laws throughout Australia. Unfortunately, due to time and certain reservations contained in the laws, this has not been achieved.

The two main areas of difference are licensing and interest rate caps. There also exists a lag in enacting changes to the Code in Western Australia that has created a gap in the uniformity. These differences are shown in the following table:

State/Territory	Licensing?	Cap on Interest Rates?	Promissory Notes under the Code?
A.C.T.	Yes	Yes	Yes
New South Wales	No	Yes	Yes
Northern Territory	No	No	Yes
Queensland	No	Yes (not enacted)	Yes
South Australia	No	No	Yes
Tasmania	No	No	Yes
Victoria	Yes	Yes	Yes
Western Australia	Yes	No	No

What the table does not show is that the licensing regimes are not consistent where they are present. For example, the regime in Victoria is simplistic while the Western Australian requirements are extremely extensive (going so far as to require trading figures).

Furthermore, there is division in terms of the interest rate capping. The caps in ACT, New South Wales and (announced but not enacted) in Queensland are not the same as the cap in Victoria. ACT, New South Wales and (to be) Queensland include fees and charges, Victoria does not. In fact, Victorian public officials have stated on a number of occasions that the New South Wales cap model (which is the same as the ACT and Queensland) is not desirable, and has even been stated in terms of “we will never recommend the New South Wales model to our Minister”. In responses, the SA Minister’s office often refers to capping “as per New South Wales” and “Queensland laws to come into effect later in the year” but never mentions the situation in Vic.

Added to this, there are vastly different approaches in each state government’s dealings with industry. The National Financial Services Federation has found that around the country:

1. Victoria is proactive and openly consults with industry on a continuing basis;
2. New South Wales’ Minister has never met face-to-face with industry delegates after years of requests;
3. Queensland has gone from providing cursory meetings to failing to meet with industry delegates in any forum for over 6 months, with all requests for meetings to discuss policy and enforcement refused;

4. South Australia's Minister invited the National Financial Services Federation's SA President to join a Working Party to provide the Minister with options regarding payday lending; and
5. Western Australia regularly visits and audits lenders and commissions research into the industry.

This is despite there being a Labor party government in each state.

In short, there is very little uniformity in the content of the laws or the ways in which they are administered around Australia. What this means, particularly for lenders operating in more than one jurisdiction is that policies, procedures, administration and execution of operations has to be duplicated to fit with each state's regulatory regime. This creates excess cost to business, which is ultimately passed on to consumers.

Confusion by Members of (state) Parliament is another issue to be aware of since the March 2008 COAG meeting. On more than one occasion in NEW SOUTH WALES and SA, National Financial Services Federation state executives have had MP's, both in government and opposition, comment to them with words to the effect of "that bill is now dead in the water" or "it is now a federal matter".

The National Financial Services Federation openly supports a national approach to consumer credit regulation for our industry, under the oversight of the Federal government. We have noted the comments by the Hon. Chris Bowen and the Hon. Nick Sherry recently in the media supporting a national approach to finance regulation. Their comments espousing consistent laws and protections, better disclosure and better options for consumers have been advocated by the National Financial Services Federation since its inception.

Cost, Benefit and Compliance Analysis

Costs

- Cost of instituting a uniform regulatory regime by Federal government. This could be at least partially subsidised by a licensing regime; and
- Transitional/education costs to lenders in adapting to a new regulator.

Benefits

- Greater certainty for lenders dealing in multiple jurisdictions;
- More experienced regulators overseeing industry;
- Increased competition brought about by a "level playing field" across borders;
- Consumers will receive the "flow-on" benefits of greater competition;
- Increased certainty for consumers by being able to rely on one set of rules regardless of the jurisdiction of the transaction; and
- No division in the financial services market between "Federal regulated" activities and "state regulated" activities.

Compliance

- A truly uniform set of rules would create greater industry compliance as a single set of standards could be applied, instead of the current different 5 sets of standards that apply across Australia; and
- Federal government has ready access to regulatory bodies, particularly in the form of ASIC.

Recommendation – Section 6. Other Credit Products

The National Financial Services Federation strongly supports Option One of the Green Paper. We feel that that States and Territories have not collectively been able to adequately, and consistently, regulate consumer credit in Australia.

In 2008 technology has all but removed state boundaries when it comes to many services. In the area of financial services a person's needs do not differ because they live in Melbourne, Sydney, Mt. Gambier, Broome or Mt. Isa. A person can easily access the internet or dial a "1300" number to obtain a facility from a lender located thousands of kilometres away. However the same cannot be said from the point of view of the service provider. The cost of doing business in another state is increased by the differing regulations and the associated staff training, software and other compliance requirements, not to mention the uncertainty of state government intentions. It also discourages or prohibits the ability to trade from physical locations in other states. The result is anything but a level playing field from which the consumer is the end beneficiary.

In the Foreword by Hon Nick Sherry he noted the non-ADI market represents a very large portion of lending, and the UCCC by its cooperative state based framework makes it slow to react. The National Financial Services Federation is concerned that splitting the governance of lending, and for the Australian Government looking to work in partnership with the state governments (as canvassed on page 16 of the Green Paper), would only serve to exacerbate the problem rather than make the market more competitive and efficient.

As mentioned earlier in this response, many of the National Financial Services Federation's members act as finance brokers and many receive finance applications from other brokers for smaller amount personal loans. Under Option Two these parties would end up needing to comply with the Commonwealth and a State government - more if they operate in multiple states.