



**CONSUMER LAW CENTRE
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By email: consumercreditgreenpaper@treasury.gov.au

National Credit Reform Green Paper
Corporations and Financial Services Division
Treasury
Langton Crescent
PARKES ACT 2600

Dear Madam or Sir

Re: Care's and the Consumer Law Centre of the ACT's Submission into the Green Paper on Phase Two of the COAG National Credit Reforms

Care Inc Financial Counselling Service (Care) and the Consumer Law Centre of the ACT (the CLC) would like to thank the Treasury for the opportunity to offer our comments on the Green Paper regarding the second phase of the government's National Credit Reform, and for the extension of the deadline.

Care has been the main provider of financial counselling and related services to low-to-mid income and vulnerable consumers in the ACT since 1983. Its core services include the provision of information, counselling and advocacy to ACT residents with credit and debt related problems. Care also runs a Community Development, Education and Research Program and the ACT's only No Interest Loans Scheme. The CLC is a project of Care that offers legal assistance to consumers in the area of credit and debt, consumer protection and fair trading. In addition to casework, Care and the CLC advocate and offer comment and community education on behalf of and for the ACT's consumers on local, territory and Australia-wide scale to improve legal protection and raise awareness and understanding of consumers' rights in the ACT.

Care receives funding from a variety of contributors, and specifically acknowledges the funding that it receives from the ACT Government, the Department of Disability, Housing and Community Services and the Department of Justice and Community Safety; the NSW Financial Counselling Trust Fund administered by the Office of Fair Trading; and the Commonwealth Financial Counselling Program administered by the Department of Family and Community Services.

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The CLC's concerns about the proposals contained in the Green Paper are similar to those of many community legal centres across Australia. With the centre being a single-solicitor practice with highly limited resources, we must necessarily limit our comments only to this brief submission.

Our comments refer sequentially to the chapters of the Green Paper:

1. Credit for Small Business

It is the experience of Care and the CLC that many loans provided for so called business purposes are either not genuine, secured by the borrower's principal place of residence, or guaranteed by a third party, usually a family member. They have also been instances where such loans have been issued without the full informed consent of the borrower's partner (co-mortgagee).

Given these circumstances, we recommend that lenders providing credit to small business should be brought under the umbrella of certain aspects of the national consumer credit protection (NCCP) regime. At a minimum, credit providers should be licensed, with the related requirement to participate in a mandatory EDR scheme. EDR would provide greater access to justice for many cash-strapped small businesses who would have a much better opportunity of presenting their case before an ombudsman rather than in legal proceedings.

The challenges of running a small business and keeping it financially viable are great enough. Small business people who encounter problems should not also have to confront the loss of their family home while tackling these challenges.

2. Regulation of Credit Cards

Australia's credit binge is being driven by spiraling credit card lending. Current lending practice is based on the capacity of the borrower to meet the minimum monthly repayments, as opposed to their capacity to repay the total debt – which they often do not have.

For this reason we would like to strongly support our interstate colleagues in advocating for a legislated nominal maximum term for repayment of the total maximum credit limit offered to a customer - to be set at the stipulated two years. This term would be the mandatory basis upon which all lenders would base their assessment of a consumer's capacity to repay the debt. Such a term would give the borrower clear information about the necessary repayments to meet their debt obligations in a reasonable time frame.

In the case of goods purchased with an interest-free period, we also urge that this period is used as the basis for assessing the capacity to repay up to the stipulated maximum two year nominal term.

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We believe that it is of utmost importance to retain the existing provisions of the ACT's *Fair Trading Act 1992* (subsequently *Fair Trading [Consumer Affairs] Act*). These include section 28A, which not only bans unsolicited credit card offers, but also prevents credit providers from offering unsolicited increases to credit card limits without properly assessing the borrower's capacity to repay. Care and the CLC have long advocated that this legislation represents best practice and should be extended nationally, rather than watered down as part of the new NCCP regime.

3. Reverse Mortgages

The ability to obtain credit by using one's home as security is a fundamental consumer right, provided it is done responsibly and is well informed. We accept that a reverse mortgage product can be a part of the solution for some older clients.

Given that the variety of reverse mortgage products is now routinely offered to retirees and pensioners, it is essential that this group of potentially vulnerable consumers is offered comprehensive information and advice on which to base their choices. Strong regulation is required to ensure that:

- a consumer compulsorily receives free legal, financial and general product advice combined with extensive disclosure requirements
- a consumer is protected from reaching a situation where there is negative equity in their property
- there are no or limited fees on early discharge of mortgages
- there are maximum mandatory loan-to-value ratios.

We would particularly emphasize the need for consumers in such life circumstances to obtain independent legal and financial and product advice.

4. Regulation of Investment Lending

Care and the CLC has not encountered (nor is it funded to assist) consumers who have experienced problems with commercial investments. As such we are unable to comment on this issue.

5. Regulation of short-term small-amount lending

Pay-day lending is often the only type of credit available to the poorest and most disadvantaged (however employed) members of our society. We believe that existing ACT legislation has largely prevented the exploitation of local consumers, unlike those in some other states and territories.

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Care and the CLC have been consistently arguing for the federal government to maintain a cap on the cost of loans, inclusive of interest and fees, currently enjoyed by ACT residents. Currently, the Territory's limit on the annual interest that may be charged to consumers for a credit contract has been preserved in section 51D of the ACT *Fair Trading Act* 1992 at 48 per cent, protecting the Territory's residents from unfair and extreme interest rates.

6. Regulation of consumer leases

We recommend that consumer leases be treated as a standard consumer credit contract. This would mean that the stricter obligations which apply to credit contracts would also apply to this form of credit arrangement. They would include, inter alia, more extensive disclosure requirements, a requirement to issue a default notice before commencing an enforcement process, and a need to disclose an annual percentage rate.

7. Enhancement to the National Consumer Credit Protection system

As stated in our submission of 5 August 2009 into the NCCP, we strongly believe that existing hardship provisions are not strong enough. The rules regarding what constitutes hardship, the application process, how it is considered, accepted or denied, how it is considered by the court and what recourse or appeal consumers will have – all need to be clearly defined. We also recommend that a duty be imposed on lenders to consider a wider and more flexible range of options for repaying a loan. We have addressed these issues comprehensively in our earlier submissions.

We also agree with our colleagues in the sector that a hardship variation be compulsorily considered before commencing default proceedings. There should also apply an automatic stay of proceedings where these have already commenced.

8. Coverage of Credit and Avoidance

Given the potential of some credit providers to evade or avoid existing consumer protection laws, we believe it is of the highest importance that an adequately resourced national regulator (ASIC) exists to enforce these laws.

The NCCP system heavily relies on licensing and access to EDR schemes which are intended as the primary dispute resolution mechanism. It is therefore absolutely essential that not only ASIC, but also the EDR schemes, are well resourced and set up to meet customer demand and offer adequate services, including not only casework, but also regular review and evaluation.

Yours faithfully,

Carmel Franklin, Director and
Agata Pukiewicz, Principal Solicitor

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