consumer action law centre

MEDIA RELEASE

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ASIC payday lending report reveals fundamental non-compliance—a cap is needed

The Consumer Action Law Centre has welcomed the Australian Securities and Investment Commission's (ASIC) report, *Review of micro lenders' responsible lending conduct and disclosure obligations.* Catriona Lowe Co-CEO of Consumer Action noted that 'the report offers a frankly frightening insight into compliance that is and is not occurring at payday lending outlets. It also offers insight into the practical limitations on what ASIC is able do under responsible lending laws and supports our view that further regulation is needed to address consumer harm caused by payday lending.'

Ms Lowe said that the problem with payday lending is a combination of the fact that loans are short-term, high cost, generally used to pay for living expenses, and repayments are debited from a borrower's bank account before they can access their income.

'In practice, this means that people already in financial difficulty have a significant amount deducted from their next pay, often leading to them needing another loan to supplement their reduced income. This can lead to repeat borrowing—the borrower is continually "caught short", so obtains another loan, and so on. The product seems to be designed to encourage repeat borrowing and dependency. It is exactly the same features which make this product so dangerous that makes it so profitable.'

Ms Lowe noted that ASIC had restricted its report to how lenders administered their businesses. To do otherwise would have required ASIC to interview hundreds of individual borrowers—a massive undertaking that highlights the shortcoming of responsible lending laws in this context.

'We are great supporters of the responsible lending laws,' said Ms Lowe, 'but they are ill-suited to address unsafe products as they focus on the circumstances of individual borrowers. That's why improved consumer protections are needed to complement the responsible lending laws, and we believe the Government's proposed interest rate cap is the answer.'

'What ASIC's report does show is a litany of fundamental instances of non-compliance with even the most basic of requirements of responsible lending. Such practices are likely to lead to significant detriment to the most vulnerable in our community,' said Ms Lowe.

ASIC found instances of limited inquiry about a customer's financial situation. Where inquiries were made, too often, scant regard seems to have been paid to the results of that inquiry, with the report also finding instances where:

- Lenders' files revealed there had been a default on the first or second loan repayment for a previous loan;
- Expenses listed in loan applications added to the cost of the credit applied for exceeded the borrowers stated income;
- Loans were being provided to refinance other small loans;
- Bank statements on lenders' files showed that consumers' accounts were overdrawn by the end of each pay cycle; and
- Consumers' incomes appeared to be overstated and didn't match other information obtained during the assessment process.

‘Bear in mind all these consumers obtained a loan. These findings beg the question—what would a consumer have to do to be refused a payday loan?’ said Ms Lowe.

‘Our concern is that these many of these loans are dangerous products, and responsible lending laws do not adequately address this fundamental concern. A cap on the cost of credit would encourage lenders to advance loans that have longer terms, and a lower cost, meaning that they would more likely to be affordable appropriate to consumers' needs.’

Consumer Action also raised its concern about ASIC referring to the lending as "micro loans".

‘Microfinance or micro lending has a well developed meaning—that is, safe lending that builds assets and improves a borrower’s financial position and inclusion. Much of microfinance, such as no or low interest loans, is for small amounts to purchase essential household goods but have longer terms allowing for affordable repayments. In contrast, it is our experience that most high cost, short term loans actually strip wealth and lead to debt traps’, said Ms Lowe.

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