8 June 2012

By email: SALpaper@treasury.gov.au

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam

Discussion Paper - strategies for reducing reliance on high-cost, short-term, small amount lending

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Government's discussion paper S*trategies for Reducing Reliance on High-Cost, Short-Term, Small Amount Lending* (**the discussion paper**).

In summary, this submission:

- Expresses significant concerns with the way the payday lending problem is framed in the discussion paper. In particular, we do not agree that high-cost short-term lending is a necessary or useful part of the consumer credit landscape. Nor do we agree that the provision of this kind of credit is a useful response for a consumer who already has insufficient income to meet basic needs.

- We are also concerned that the paper appears to assume the payday lending problem is solely one of financial exclusion. This assumption will lead to inaccurate problem identification and inappropriate policy responses. It is not only financial exclusion that drives problematic payday lending but insufficient income and the easy accessibility of unsafe ("payday") loans.

- With regard to the discussion paper's suggestions about encouraging broader availability of community and commercial sector credit:
    - We reiterate that demand for payday loans should not be assumed to be driven by lack of access to safer alternatives, and we caution against encouraging either community or commercial lenders changing lending criteria to offer products more like payday loans, particularly by shortening loan terms.
    - We stress that loans from mainstream lenders or community and not for profit finance providers are not an 'alternative' to payday loans - in the vast majority of cases, they are used for different purposes.
    - We see value in banks providing smaller personal loans (in the vicinity of $1000 to $5000) rather than encouraging use of credit cards for these amounts.

- Regarding Centrelink services:

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  - We agree that there may be a case for access to Centrepay for repayment of a wider range of community finance loans, but this should be considered as part of a wholesale review of Centrepay.
  - Centrelink Advances may be improved by enhancing the assessments undertaken before giving advances. There may also be scope to make advances more flexible.

- Regarding other initiatives mentioned in the discussion paper:
  - Improving awareness of and access to hardship schemes has potential to significantly divert demand for payday loans to a far safer alternative.
  - Improving access to financial counselling will also reduce demand for payday loans, though there are significant barriers to access which need to be addressed.
  - For-profit debt repayment services (such as debt consolidation loans or Debt Agreements under Part 9 of the Bankruptcy Act) are unlikely to be the best option for many consumers. However, a community-based debt repayment service could play a useful role. In all cases, it should be considered whether a debt repayment service is in the best interests of a consumer before referral.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

Framing of the issues and general remarks

Summary of this section

- Expresses significant concerns with the way the payday lending problem is framed in the discussion paper. In particular, we do not agree that high-cost short-term lending is a necessary or useful part of the consumer credit landscape. Nor do we agree that the provision of this kind of credit is a useful response for a consumer who already has insufficient income to meet basic needs.

- An approach which assumes the payday lending problem is solely a problem of financial exclusion will lead to inaccurate problem identification and inappropriate policy responses. Key drivers of problematic payday lending is not just financial exclusion but includes insufficient income and the accessibility of unsafe loans.

We have significant concerns with the way the payday lending[1] problem is framed in the discussion paper.

The ministerial foreword to the discussion paper discusses the problem in these terms:

> The Government recognises the value of this small amount lending sector as it fills an important gap in the market place. However, the cost of these loans can be very high due to their short-term nature and high risk, so that this type of borrowing by the financially disadvantaged can perpetuate their debt problems as they need to spend a relatively high percentage of their income to service the debt. The Government wants to see improved outcomes for this sector by ensuring the availability of a range of affordable and fair alternatives.

Later in the paper, similar themes are repeated:

> The Government... considers it is important to canvass strategies to reduce the extent to which financially excluded consumers are dependent on these high cost short term loans... [including by providing] alternatives to high-cost, short-term, small amount lending[2]

> In a modern society such as Australia, the need for small amounts of short-term credit to help manage cash flow and lumpy expenditure should be accepted as a universal element of financial inclusion.[3]

> Small amount loans fill a gap in the market for credit that is otherwise not readily available.[4]

Broadly, the paper also appears to assume that demand for payday loans is driven primarily by financial exclusion.[5]

From these sections of text (and indeed the broad discussion throughout the paper), it can be concluded that the Government believes:

- Payday lending is a useful and valuable part of the consumer credit landscape and it fills a gap in the market;
- Payday loans are particularly useful to those who are financially excluded, as they lack access to other consumer credit products;
- However, payday lending can be harmful to some consumers, so it is important to fill the gap in the market with safer alternatives.

We strongly disagree with the first two points, and regarding the third would note that payday lending can be harmful to all consumers, not only the financially excluded. Framing the problem in the way described above suggests a real misunderstanding of the nature of the payday lending market and its inter-relatedness with the problem of financial exclusion. We discuss this in more detail below.

<u>The payday lending problem</u>

The central problem with payday loans is that, where used other than as a once off, they worsen a borrower's financial situation rather than improve it. This is a problem of product design - factors fundamental to the business model mean that a typical payday loan is likely to be harmful when issued to a typical payday loan customer.

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[1] By 'payday lending' or 'payday loans' we broadly mean the same type of product that is described in the discussion paper as 'high cost, small amount, short term loans'.
[2] Page ix.
[3] At page 2.
[4] At page 5
[5] Pages 1-2.

There are four key factors which make payday lending harmful:

1. They are predominantly used to pay for basic, recurrent expenses like bills, rent or groceries (rather than for building assets). Consumer Action's 2010 research *Payday Loans: Helping Hand or Quicksand* found that basic living expenses made up 75 per cent of borrowing[6]. More recently, RMIT's *Caught Short* found that the seven reasons most commonly cited by borrowers for taking out their first payday loan were 'regular, weekly-type needs and expenses'. For all loans (not just the first loan) these regular expenses were cited twice as often as one-off expenses and the third most common reason cited was 'to pay back another loan'.[7]

2. Loans are short-term - principal and all charges must be paid back in short periods (often as little as 2 to 4 weeks[8]), meaning individual repayments are relatively large.

3. Loans are effectively secured by direct-debits which deduct repayments soon after the borrower's wages or benefits are deposited in their account. This gives lenders a first stake in the borrower's income and prioritises debt repayment over more important expenses like housing or food. Where a borrower is already on a low income (as is common) this is likely to mean a borrower is again unable to afford basic necessities for the next pay period and thus encourage return to lender for another loan.

4. Loans are very high cost. This is significant (our calculations suggest that a typical loan issued to a typical borrower would require repayments equal to around one quarter of the borrower's take home income[9]) but much of the harm would exist even if the loans were advanced in the same way at a lower cost.

These features create a product which is profitable precisely because it creates a cycle of dependency or repeat borrowing. This is established by independent research[10] and confirmed by the industry itself. Cash Converters International's 2006-07 Annual Report states that the "vast bulk" of their lending business was conducted with repeat customers.[11] More recently, an industry representative has said that 28 per cent of payday lenders would go out of business if refinancing or "rollovers" (that is, taking out a loan for the purpose of paying off part or all of an

[6] Zac Gillam (2010), *Payday Loans: Helping Hand or Quicksand?*, Consumer Action Law Centre. Page 6.
[7] Marcus Banks (2011), *Caught Short: Exploring the role of small, short term loans in the lives of Australians - Interim Report*, RMIT University, Melbourne, pp 14-15.
[8] Research conducted by Consumer Action Law Centre in 2008 found that 34% of payday loans had a repayment period of equal to or less than two weeks. Similar research in 2002 (albeit with a smaller sample) found that 41% of loans had a term of two weeks or less. Gillam 2010, p 84.
[9] See Consumer Action's submission to the Parliamentary Committee inquiries on the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, page 4. The submission can be accessed at: http://www.consumeraction.org.au/downloads/CALCsubmission-ConsumerCreditandCorporationsLegislationAmendmentEnhancementsbill-141011.pdf
[10] RMIT's *Caught Short* found that over half of the respondents to their study had taken out more than ten loans "with many saying they had received over 50 loans". Banks (2011), p 11.
[11] At page 19. Accessed from http://www.asx.com.au/asxpdf/20071023/pdf/31594bv0528dn3.pdf.

existing loan) were prohibited because "at least that number are dependent, in part... on some form of rollover or refinancing opportunity".[12]

For the reasons above we do not agree with the sentiment in the ministerial foreword that payday lending is a useful or necessary part of the credit market. On the contrary, consumers and the consumer credit market functioned before payday loans were introduced in Australia in 1998, and numerous developed economies overseas[13] also operate well without payday lending. Government should not be afraid to reduce the availability of this product - it is inherently harmful and should be regulated as such. Nor should Government be concerned about filling any 'gap' in the market left by reduced supply of payday loans if doing so allows a similar kind of product to be offered by different lenders.

Government should however be interested in reform which reduces the demand for problematic payday lending and directs consumers to more useful solutions to financial hardship.

The need to provide safer alternatives for people who are financially excluded

The suggestion in the discussion paper that there is a need to expand the supply of safer alternatives to payday lending implies that there is a market response to the payday lending problem, or that a financial product or a credit product is a significant part of that response. This is incorrect. In particular, the suggestion that alternative credit products (such as NILS or community finance) will entirely fill any 'gap' in the credit market currently exploited by payday loans is a fiction.

Likewise it is not correct that

> The specific eligibility requirements applying to NILS and StepUP products, their limited coverage and lack of universal access for financially excluded groups has meant that there remains unmet demand for small amounts of credit. This is one factor that has led to significant growth in the high-cost, short-term loan sector.[14]

This misunderstands the purpose of programs like NILS and StepUp which, put briefly, provide credit for purchases which are expected to create a net improvement in welfare (most commonly, this involves building a basic asset base of household items or even a vehicle).[15] This is a completely different purpose to the typical payday loan, which is used to cover basic and ongoing expenses like groceries or utilities bills. That being the case it does not follow that lack of access to NILS creates increased demand for payday loans. The demand for payday loans is driven by the existence of payday lenders and desperate consumers who feel they have no other options other than payday loans. The existence of payday lenders is, in turn, facilitated by a regulatory regime which allows this particular type of irresponsible lending to be both legal and profitable.

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[12] Australia, Parliamentary Joint Committee on Corporations and Financial Services (2011), *Inquiry into Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, paragraphs 5.149. Accessed from http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/Consumer_Credit_Corporations_2011/index.htm

[13] Including France, Germany, many other european countries and a number of US states.

[14] As stated in the discussion paper, page 20.

[15] We understand that NILS programs for more specific needs, including loans for women setting up home after leaving domestic violence or after leaving prison, are now also available in some areas.

Further, it shouldn't be a cause of concern that there is unmet demand for the kind of credit offered by payday lenders. Unlike loans offered by NILS or StepUp (or any loan that can be expected to improve welfare), the typical payday loan will almost by necessity create a decrease in welfare - repayments create strain on an already limited budgets without providing any longer term benefit.

<u>The financial exclusion policy response</u>

Financial exclusion has commonly been defined as a lack of access to appropriate financial products and services, including banking, credit and insurance.[16] It has also been defined more broadly by the Brotherhood of St Laurence as

> a process whereby a person lacks of or is denied access to affordable, appropriate and fair financial products and services, with the result that their ability to participate fully in social and economic activities is reduced, financial hardship is increased, and poverty (measured by income, debt, and assets) is exacerbated.[17]

Looking at the payday lending problem from a financial inclusion standpoint invites a discussion about industry and government-led structural reforms particularly around product design, combined with efforts to support individuals' skills, to give consumers a 'fair go'.

While we support the aim of financial inclusion and particular financial inclusion initiatives, viewing the payday lending problem from a financial inclusion perspective can lead to a misunderstanding about how payday lending operates and why it is a problem. The discussion paper appears to assume[18] the demand for payday loans is created through a process along these lines:

- a consumer has a need for credit, for example to smooth consumption or deal with an emergency;
- the consumer cannot access that credit from mainstream or 'safe' sources because they are financially excluded, or because of the difficulty in accessing safe options;
- the consumer then seeks credit from a payday lender because that is the only option open to them.

We do not agree that this is the typical scenario.

This view misunderstands the drivers for payday lending and the nature of the payday lending product, for two (related) reasons. The first is simply that many payday loan borrowers are not necessarily financially excluded, at least according to a narrow definition of that term. Consumer Action's research from 2008 found that over 60 per cent of borrowers had used a credit card in the last 12 months, over one quarter had accessed a Centrelink advance payment, over one third received loans from family or friends, and almost 10 percent had accessed a bank loan.[19] Many of the indebted borrowers that contact financial counsellors have a range of debt

[16] For example, see Centre for Social Impact and National Australia Bank (2012), *Measuring Financial Exclusion in Australia*, p 6.

[17] Ingrid Burkett and Genevieve Sheehan (2009) *From the Margins to the Mainstream: The Challenges for Microfinance in Australia*, Brotherhood of St Laurence and Forresters Community Finance, page v.

[18] See pages 1-2.

[19] Gillam (2010), pp 76-78.

problems of which payday loans may be one. As well as payday loans, financial counselling clients frequently have credit card debt and expensive consumer leases for household goods.

The second reason is that it is largely insufficient income, not financial exclusion, that is the key driver for problematic payday lending. As already discussed, the most common purpose for taking out a payday loan is to pay for basic ongoing expenses, not the unexpected one-off. A person who, on an ongoing basis, is unable to afford their rent, groceries and utilities cannot correctly be described as a person who needs credit. Provision of more credit for the purpose of paying regular basic expenses may allow short-term relief but will ultimately create detriment because it adds more expenses (loan repayments) without increasing income or wealth. It follows that a person who cannot access credit for the purpose of paying basic ongoing expenses is not excluded from credit. To say so would presume that credit would be helpful, and also overlooks the reason why providers other than payday lenders refuse to issue loans for this purpose, that is, it would be irresponsible.

We readily accept that insufficient income can lead to a person encountering 'cash emergencies' and also to financial exclusion,[20] but it is important to realise that financial exclusion may not be the primary or immediate reasons that people turn to payday lenders.

By misunderstanding the drivers for payday lending we risk misdiagnosing the problem and in turn producing an unsatisfactory policy response. If we assume the problem is that the financially excluded first access problematic payday loans because of a lack of access to other credit, our solution would presumably be to improve access to safe credit options for people who are financially excluded and preserve access to payday lending for those who are not excluded. This response would:

- fail to address the key driver of problematic payday lending (insufficient income);
- fail to recognise that providing additional high-cost, short-term credit to a consumer who is already struggling to make ends meet will exacerbate financial distress; and
- fail to address the product design aspects of payday loans that make them an inherently hazardous product for almost all borrowers, not just borrowers who are financially excluded.

<u>A more appropriate policy response</u>

When we understand the key driver for payday lending to be insufficient income, and accept that there are serious product safety problems with payday loans, we are led to a different and more appropriate policy response which would:

- regulate payday lenders to reduce harmfulness of the product. In particular, we have recommended in the past that a cost cap be legislated at a level which will make the shortest term (and most hazardous loans) unviable, forcing lenders to offer loans on

[20] We note that the link between insufficient income and financial exclusion is mentioned at page three of the discussion paper.

terms that are more reasonable and affordable. While the Government is currently proposing to introduce a cost cap[21], it will not achieve this aim.

Alternatively, we have proposed a cap on the number of loans allowed to be issued to each borrower (we suggest the limit should be four loans each twelve months), enforced by a register of all payday loans. Lenders would have to check the register before advancing a loan, to ensure that the cap is not reached.

- Recognise that providing additional high-cost short-term credit is not a suitable response for a consumer with insufficient income and focus on providing programs and support which actually solve this problem (for example utilities hardship and financial counselling).

- Recognise that problems caused by financial exclusion are driven by product design, and could be improved by more accessible, responsible small amount personal loans. As outlined further below, small amount personal loans are not the same as short-term credit. Many low-income borrowers will have the capacity to pay back a small amount loan (vicinity of $500 to $5000), if there is an appropriate repayment period and fixed repayments. Mainstream banks do not currently provide such products, or only in a limited way.

- Over the long term, work to reduce the problem of insufficient income. This is a complex policy issue which will require a multifaceted response, including consideration of welfare, wages and housing policies. Improving access to mainstream and safe alternative financial products (and so helping to build wealth and financial resilience) will also be part of such a response.

Encouraging alternatives to high cost, small amount, short term lending

<u>Summary of this Section</u>

- As discussed above, Government should be wary about assuming that demand for payday loans is driven by lack of access to safer alternatives. We caution against encouraging either community or commercial lenders to change lending criteria to offer products more like payday loans, particularly by shortening loan terms (which is a key reason why payday loans drive repeat borrowing). Current lending criteria ensure that loans issued are safe and responsible.

- We stress that loans from mainstream lenders or community and not-for-profit finance providers are not an 'alternative' to payday loans - they are, in the main, used for different purposes.

- We see value in banks providing smaller loans (in the vicinity of $1000 to $5000) rather than encouraging use of credit cards for these amounts.

[21] The cap currently in the Enhancements Bill will allow lenders to recover an establishment fee of 20 per cent of the amount loaned plus a monthly fee of four per cent of the amount loaned.

Broad remarks

We agree with the objective of improving access to useful financial products and services. However, Government should be wary about encouraging either mainstream commercial lenders or community sector lenders to change lending criteria to become more like payday loans.

As noted above, microfinance initiatives are designed and developed to meet very different purposes to payday loans. We do not accept that a shortage of 'safe' finance options drives demand for payday loans, nor do we believe that access requirements for community finance options should be relaxed to allow loans for purposes similar to typical payday lending. Existing lending criteria prevent loans being issued irresponsibly and ensure that loans assist in building financial capability and improving welfare for borrowers over the long term.

For the same reasons, we would be very concerned if the Government encouraged mainstream commercial lenders to offer products substantially like payday loans – that is, short term loans to cover basic ongoing expenses. These loans are likely to be harmful regardless of who provides them.

Community Sector Finance – NILS, LILS and CDFIs

We support the expansion of community sector finance initiatives like No Interest Loans Schemes (NILS), Low Interest Loans Schemes (LILS) and Community Development Financial Institutions (CDFIs). However, we would caution against extending lending criteria for these initiatives in an attempt to fill a 'gap' in the market currently serviced by payday lenders.

Lending to cover ongoing basic expenses (currently done by payday lenders but not community sector lenders) is likely to be irresponsible regardless of the costs charged to the borrower or mission of the lender. Reducing the amounts loaned by community sector financiers to be more like payday loans (that is, $100-$500) is again unlikely to be appropriate. Most needs in this vicinity will be for essential purposes, rather than to assist build assets.

We can see value in expanding the capacity of CDFIs to provide access to responsible small amount loans to help purchase household assets, including vehicles. Car ownership is a key factor in financial inclusion for many, and the availability of community sector car finance could divert consumers from exploitative car finance and lease providers currently in the market. It should be stressed however that this will not be an alternative to most payday loans, which are not sourced for this purpose.

We can also see benefit in mainstream commercial lenders providing smaller personal loans (in vicinity of $1,000 to $5,000, for example). These would be a product similar to CDFI loans, NAB's Step UP loan or ANZ's (now discontinued) Progress Loan. This is a key consumer product which is not generally provided by mainstream lenders. Mainstream providers instead encourage the use of credit cards (an inappropriate option for many consumers) for small amount credit.

While we think there is a role in this sector for both community finance and mainstream banks, we note that mainstream banks have an established distribution system that can provide access to many borrowers. Most community finance initiatives are limited to particular communities or locales, though there is scope for expansion. Any development of this market would need to be monitored to ensure lending is undertaken responsibly. It should be noted again that this kind of product would also not be an alternative to most payday lending, which is for smaller amounts and different purposes.

Centrelink services

Summary of this Section

- While there may be a case for expanding access to Centrepay for repayment of a wider range of community finance loans, this should be considered as part of a wholesale review of Centrepay.

- Centrelink Advances may be improved by enhancing the assessments undertaken before giving advances. There may also be scope to make advances more flexible.

Centrepay

While there may be a case for allowing a wider range of community sector loans access to Centrepay, this should be considered as part of a wholesale review of Centrepay.

There are currently businesses that have access to Centrepay (some consumer lease providers and some funeral insurance products for example) which are very expensive and in some cases, access to Centrepay significantly enhances their ability to sell their product. These businesses should not receive payment prioritised above more essential needs. There are also some payments that would seem appropriate to pay via Centrepay that do not have access (such as vehicle registration, and essential and appropriate insurances like vehicle insurance or contents insurance). These steps could significantly improve Centrepay's potential as a tool for financial inclusion (for example, by making insurance more accessible). In some circumstances, such measures might also contribute to a reduction in demand for payday loans – Consumer Action's 2008 research found that 22 per cent of loans were taken out to pay for either car repairs or registration.[22]

Centrelink Advances

To our knowledge there is very little assessment of ability to repay an advance before it is granted. A key consideration for any review of the Centrelink Advance system would be to look at current assessment processes and whether they stack up against responsible commercial lending practice. For example, the larger advances for Pension recipients (up to around $1000) have a standard 13 fortnight repayment period, meaning repayments of $74 a fortnight. This level of repayment can be unaffordable for some.

It may be worth considering whether there could be more flexibility in repayment periods of Centrelink Advances, perhaps allowing advances of up to $2000 over two years where appropriate. These repayments would be more in line with repayment amounts of community

[22] We note that vehicle registration, when required to be paid in an annual lump sum, is a significant expense even for people on middle incomes. We see no reason why consumers should not be permitted to pay their car registration by installments whether through the Centrepay system or otherwise.

loan schemes. In addition, the advance payments could be much smaller, for example in the vicinity of $100 to $500 without onerous restrictions placed on access. [23] Recipients could be able to receive multiple such advance payments within a year.

Other initiatives

Summary of this Section

- Utility hardship may not be providing support to all who need it. Improving awareness of and access to hardship schemes has potential to significantly divert demand for payday loans to a far safer alternative.

- Improving access to financial counselling may also direct financially stressed consumers away from payday loans, though there are significant barriers to access which need to be addressed.

- For-profit debt repayment services (such as debt consolidation loans or Debt Agreements under Part 9 of the Bankruptcy Act) are unlikely to be the best option for many consumers. However, a community sector debt repayment might play a useful role. In all cases, it should be considered whether a debt repayment service is in the best interests of a consumer before referral.

Hardship programs

Research from a number of sources (including payday lenders) demonstrates that a large proportion of payday loans are taken out to pay utility bills - our research found that around one in five loans were for this purpose.[24] This suggests that consumers are either unaware that utilities hardship schemes exist or that they are unable to access these schemes. We expect that few consumers would take out a high cost loan to pay a bill if they had ready access to a safe, free alternative.

The Victorian Essential Services Commission has reported that only 0.45 per cent of the customer base participates in a hardship program[25] which suggests that energy and water hardship programs are not providing support to all who need it. There is a lack of data about the performance of hardship programs in other sectors, such as banking and telecommunications. In some sectors there are insufficient regulatory standards around hardship programs.

Encouraging more widespread awareness and use of utility hardship programs should be a key part of any attempt to reduce reliance on payday loans. We suggest a more detailed industry-by-industry assessment is necessary to see where hardship programs do or do not work well. This assessment could consider (among other things):

- how well the availability of hardship assistance is publicised and/or the proportion of consumers who are aware that assistance is available;

[23] A suggestion along these lines was made in the *Caught Short* interim report, page 22.
[24] Gillam 2010, p 59. The *Caught Short* report makes a similar finding on pages 14-15, and research by Smiles Turner (who represent payday lenders) found that nearly 30 per cent of loans were for 'basic expenses and bills' (cited on page 3 of the discussion paper).
[25] Essential Services Commission (Victoria), *Energy Retailers Comparative Performance Report: Customer Service: 2010-11*, page 7. Accessed from http://www.esc.vic.gov.au/getattachment/c4a6ee04-f9bc-4eb9-98fa-0bd4c58e7aa5/Energy-Retail-Performance-Report-2010-11-Customer.pdf

- what 'triggers' apply in different industries to notify consumers of the availability of hardship programs. For example, telecommunications suppliers are required to have financial hardship policies in place and inform consumers of these policies when appropriate. We understand that under future regulatory arrangements being considered by the Australian Communications and Media Authority suppliers will be required to make hardship policies easily accessible to customers (rather than simply informing customers when they consider appropriate);

- what barriers exist to accessing hardship (for example, dealing with call centre staff and delays) to receive a hardship variation in each sector, in comparison to the ease with which one can get a payday loan.

One policy response that might serve to better understand the operation of hardship policies, and thereby serve to inform ways to improve their operation, might be a requirement on service providers (or relevant regulators) to publish key metrics relating to the operation of hardship programs. In energy, the new National Energy Customer Framework empowers the Australian Energy Regulator to publish information about hardship policies.[26] This approach should be considered for other sectors like banking and telecommunications.

Financial counselling

Many borrowers of payday loans are seeking credit to help manage existing financial problems and would be better off meeting with a financial counsellor who can help resolve underlying problems. A strategy for reducing reliance on payday lending will need to consider in more detail the existing barriers which prevent consumers from accessing financial counselling and how they can be overcome.

Of particular relevance may be:

- the lack of visibility of financial counselling relative to payday lenders (though the one-stop-shop hubs like Good Money in Victoria may be one response to this);

- lack of awareness in the community of the existence and role of financial counsellors;

- an overwhelming demand - there are often long waiting lists to meet with a face-to-face financial counsellors (although telephone services can provide initial advice quickly); and

- that (related to the point above) consumers in desperate situations may be more likely to go to a payday lender who they know will advance them a loan very quickly, rather than seek financial counselling which will take longer, even if they believe that payday lending is not in their long term interest.

Debt repayment services

Consumer Action and other advocates have long had concerns about for-profit debt repayment services such as debt consolidation loans and Debt Agreements under Part 9 of the *Bankruptcy*

[26] See Australian Energy Regulator (2011) *Guidance on AER Approval of customer hardship policies,* available at http://www.aer.gov.au/sites/www.aer.gov.au/files/Final%20Guidance%20on%20AER%20approval%20of%20customer%20hardship%20policies%20-%20May%202011.pdf

Act. In our view, these types of services will rarely be the best option for consumers in financial hardship. These kinds of services are unlikely to provide an appropriate alternative for payday loan users. Our recent joint submission to the Attorney-General's Department's consultation on debt agreements outlines many of the problems with this option[27].

Community-based debt repayment services may be more useful than commercial options. However, to be successful, the service should involve advice from financial counsellors and there needs to be close oversight about the appropriateness of debt repayment proposals. For example, for many indebted consumers there may be other options such as hardship variations, and even bankruptcy in some circumstances. Further, where a consumer's sole income is a social security benefit, and where they have no income or assets which could seized through bankruptcy or a court judgement, repayment of debt should not be prioritised over more essential expenses such as housing and food. A financial counsellor is best placed to independently assist debtors determine their best option.

Bulk debt negotiation

Another initiative mentioned in the discussion paper is the National Bulk Debt Project. This project negotiates waivers or closures of debts held by the most disadvantaged and vulnerable consumers. While we wholeheartedly support this project and it clearly benefits the consumers involved by relieving financial hardship, the ultimate purpose of the project is to change the way creditors deal with impecunious debtors and so may be limited as a response to payday lending specifically.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

Gerard Brody	David Leermakers
Director, Policy and Campaigns	Senior Policy Officer

[27] See pages 2-4. The submission can be accessed at http://www.consumeraction.org.au/downloads/CALCsubmission-ReviewofDebtAgreementsconsultationpaper-020911.pdf