



Submission to Australian Treasury  
*The National Consumer Credit  
Protection Bill 2009*

Brotherhood of St Laurence  
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## **Background to the Brotherhood of St Laurence's interest in consumer credit regulation**

The Brotherhood of St Laurence is an independent non-government organisation with strong community links that has been working to reduce poverty in Australia since the 1930s. Based in Melbourne, but with a national profile, the Brotherhood continues to fight for an Australia free of poverty, guided by principles of advocacy, innovation and sustainability. Our work includes direct service provision to people in need, the development of social enterprises to address inequality, research to better understand the causes and effects of poverty in Australia, and the development of policy solutions at both national and local levels.

The Brotherhood also works in partnership with financial institutions to provide appropriate financial services to people on low incomes and address financial exclusion. We believe that a financially inclusive society is one where all Australians have access to mainstream, affordable and appropriate financial services and have the opportunity to build assets.

Since 2003, the Brotherhood of St Laurence has worked with banks to provide small personal loans to Australians on low incomes. From May 2003 until 2006, the Brotherhood partnered with Community Sector Banking (partly owned by Bendigo Bank) to pilot a loans program targeted to people on low incomes. A review of this program found that the pilot met borrowers' needs, by providing affordable, mainstream credit and assisting them to obtain basic household items (Scutella & Sheehan 2006).

In 2006, the Brotherhood and ANZ partnered to develop the Progress Loans program, a low-repayment small personal loan for health-care and pensioner card holders to facilitate purchasing of household goods and services. The loans are for \$500 to \$3,000 and interest is charged at the same rate as a standard ANZ personal loan. Since the beginning of the program, over 500 loans have been made with a default rate of less than one per cent. Both programs have given the Brotherhood insight into the challenges relating to responsible lending, particularly in relation to lending small amounts of money to people on low incomes.

## **National Consumer Credit Protection Bill**

The Brotherhood of St Laurence welcomes the public exposure draft of the National Consumer Credit Protection Bill. The Bill includes a number of measures that should protect people on low incomes and other disadvantaged groups. Particular measures that we support include:

- The proposed Australian Credit Licence, requiring all credit providers and intermediaries to:
  - do all things necessary to ensure that they act efficiently, honestly and fairly;
  - be members of a no-cost external dispute resolution scheme; and
  - properly train and supervise staff and representatives that act on their behalf;
- The increase to the maximum threshold for mortgage hardship cases from the current \$312,400 to \$500,000, and a requirement that a credit provider respond to a hardship request within 21 days;
- Changes to default notice requirements, which includes information about a consumer's right to make a hardship application and the availability of external dispute resolution;
- The prohibition of a lender taking a mortgage over essential household property or goods (known as blackmail securities);
- The enhanced powers for the Australian Securities and Investments Commission to enforce the laws; and
- The range of consumer remedies available as well as the ability for the regulator to seek compensation on behalf of consumers.

The Brotherhood believes that various areas of the Bill require further work if vulnerable consumers are to be adequately protected. We provide further comments below on the new responsible lending obligations, the use of disclosure documents and the regulation of the cost of credit. The Brotherhood also believes that the enactment of the Bill must be accompanied by further policy measures that support the availability and accessibility of affordable credit options, especially for small loans.

The Brotherhood also supports comments made by consumer advocates in relation to:

- the operation of business purpose declarations (section 11 of the Draft National Credit Code); and
- the availability of consumer remedies through the new small claims jurisdiction of the Federal Court.

## Responsible lending obligations

The Brotherhood of St Laurence strongly supports the Bill's proposed responsible lending obligations, including the requirement that licensees must make an assessment whether the provision of a credit contract (or increase in credit limit) is unsuitable. We also support the provisions of the Bill that state that a credit contract must be assessed as unsuitable for the consumer if at the time of making the assessment it is likely that:

- the consumer will be unable to comply with the financial obligations under the contract, or could only comply with substantial hardship; or
- the contract will not meet the consumer's requirements and objectives.

In relation to the second requirement, we suggest that the legislation make it clear that this assessment requires objective consideration of a borrower's individual knowledge and/or expertise. Determining a consumer's requirements and objectives should not rely solely on the borrowers' own needs as they perceive them at the time. Example 3.6 in the Explanatory Memorandum discusses a borrower who needs to borrow \$3,000 to buy a computer with least-cost finance. The discussion states that it would not be appropriate to suggest a credit card for this purchase, rather than a personal loan with lower interest rates and other costs. The Brotherhood supports this, but notes that it the onus should not be on the consumer to state that they are seeking the *least-cost* finance for such a recommendation to be made.

We also support the requirements that a licensee must:

- make reasonable inquiries about the consumer's requirements and objectives for the credit contract;
- make reasonable inquiries about the consumer's financial situation; and
- take reasonable steps to verify the consumer's financial situation.

These requirements should ensure that some of the very poor assessment practices, such as 'no credit check' policies, are no longer undertaken. We strongly support the approach taken in Example 3.5 of the Explanatory Memorandum relating to a small amount lender who lends for rent or utility bills, and the statement that reasonable inquiries to make an assessment of the consumer's capacity to repay the loan would include recent payslips and bank statements confirming details of pay and amounts, the number of dependents, time employed, period at home address and other factors that influence the consumer's capacity to repay.

The Brotherhood notes that these responsible lending obligations, of themselves, should not result in credit becoming inaccessible for people on low-incomes, particularly in relation to small amount lending. Indeed, the Brotherhood and ANZ's assessment of Progress Loans applicants would satisfy the above requirements. For example, our loans officers work with potential borrowers to assess their capacity to repay the loan and determine affordable repayment amounts. Further, the loan product offered – a fixed-term, fixed-amount, low repayment loan – is suitable for low-income

borrowers' objective or requirement of obtaining a household item or service that they would otherwise be unable to obtain.

### **Application to obligations to credit cards**

The Brotherhood is concerned about the application of the responsible lending obligations to continuing credit contracts, such as credit cards or loans involving a line of credit. While we understand that responsible lending in the context of credit cards will be examined in phase two of the consumer credit reforms, we are concerned that lenders will use the laws to restructure credit products to allow for minimum repayment amounts that do not result in substantial hardship. This is the case with credit cards, where minimum monthly repayment amounts are often deceptively low. Despite the low minimum monthly repayments, interest and debt levels can accrue significantly. Continuing credit contracts should be subject to a requirement that the credit limit be entirely repaid within a particular period, for the purposes of considering whether repayments would result in substantial hardship. Additionally, further guidance could be provided, perhaps by the regulator, about what types of credit products are suitable for particular circumstances, objectives and requirements. Particular attention should be given to credit products suitable for those on limited incomes or to other vulnerable groups.

## **Use of disclosure**

The Bill requires greater disclosure of information, including fees, charges and commissions. While the Brotherhood supports effective disclosure, we are concerned that further documentation will merely serve to confuse borrowers, rather than enhance their understanding of credit products.

Recent research undertaken by the Brotherhood and Griffith University found that pre-contractual disclosure documents did not help low-income people understand many of the important terms of credit contracts, or to know their rights (Sheehan, Wilson & Howell 2008). Instead, emotions and prejudices (such as desperation to obtain credit, or trust that a lender was acting in a borrower's best interests) had a greater influence on low-income peoples' understanding of contract terms, and their rights and responsibilities. That research recommended that regulators should reduce their reliance on disclosure as a consumer protection measure, and ensure that the language and length of contractual documents be tailored to meet the capacity and needs of consumers.

The Brotherhood is particularly concerned about the new disclosure requirements proposed by the Bill, including:

- The requirement that credit providers and credit assistance providers provide a credit guide;
- The requirement that credit assistance providers provide a credit proposal disclosure document;
- The requirement that credit assistance providers provide a written quote for credit assistance.

These requirements are additional to the current (and continuing) requirement that a credit provider must provide a pre-contractual disclosure statement pursuant to section 14 of the Code. It appears to us that these requirements will only increase complexity for consumers in obtaining credit. There is no evidence that this increased disclosure will enhance consumers' understanding of their rights and responsibilities.

The Brotherhood is aware that Treasury has been working to improve disclosure documents in financial products and services, through the Financial Services Working Group (Sherry & Tanner 2008). The Brotherhood suggests that a similar process be established to ensure that consumer credit disclosure documents are simple, readable, and as concise as possible. For credit products, disclosure should focus on the cost of the product as well as key rights, responsibilities and protections.

## **Regulation of cost of credit**

The Brotherhood is disappointed that the current Bill does not include an effective way to limit extortionate fees, charges and interest on credit. High costs of credit are common among payday and other fringe lenders, who often target vulnerable people who have difficulty meeting essential living expenses such as utility bills, food, rent/mortgage payments, and medicine (Scott 2008, p18). High-cost or usurious credit unfairly limits the material resources of individuals and families, and can subsequently restrict a person's economic and social participation and ability to lead a life of dignity

The Brotherhood is aware that phase two of the consumer credit reforms will examine the cost of credit, particularly interest rate caps. We note that a cap on the total cost of credit (interest and fees/charges) in New South Wales and ACT has resulted in some extortionate lenders leaving those markets (Scott 2008). A comprehensive interest rate cap could protect vulnerable people who have difficulty understanding lender disclosure, such as those with a disability or cognitive impairment, or people who sign overpriced credit contracts due to desperation.

The Bill also has not replicated a previously agreed position to enable credit fees and charges to be challenged on the basis of unreasonableness or unfairness (MCCA 2007). We suggest that the government re-consider the most effective approach to ensure lenders are not able to charge exorbitant fees, charges and interest. The government should also align remedies under the Bill with that proposed for unfair contract term laws under the new Australian Consumer Law (Treasury 2009).

## **Measures to promote affordable credit**

The Brotherhood notes that the enactment of the National Consumer Credit Protection Bill will result in additional regulatory obligations for those organisations involved in providing affordable credit for disadvantaged groups or people excluded from mainstream finance. Such obligations might perversely result in some providers reducing or ceasing the offering of affordable small amount loans. The Brotherhood's experience with Progress Loans suggests that there is a significant demand for low-repayment small amount personal loans, and would not support a regulatory regime that made it more difficult for microcredit providers to offer affordable loans. We are concerned that the government seeks the views of the providers of such services, and would suggest that Treasury make contact with the Australian Microfinance Network. The Brotherhood would be pleased to facilitate this dialogue.

The Victorian Consumer Credit Review, published in 2006, considered issues relating to the lack of availability of affordable, small amount credit (Merlino 2006). The review recommended that a summit be convened to explore ways to promote and encourage bank and non-bank lenders to provide more access to low-cost, small amount short-term credit. The Victorian Government convened such a summit in 2007 and subsequently established a task force to further examine issues raised. Unfortunately, the task force has been disbanded with the transfer of credit regulation to the Commonwealth.

The Brotherhood believes it is essential that the Commonwealth Government accompany its national consumer credit regulatory regime with other measures to promote the availability and accessibility of affordable, small amount credit. Measures could include providing support to existing programs developed by community agencies and the finance industry, or supporting the development of community development finance institutions. Regulatory mechanisms to support this sector could include monitoring frameworks, taxation incentives or the imposition of community service obligations. We would welcome the opportunity to further discuss these issues with the government.

## References

Merlino, J 2006, *Victorian Consumer Credit Review*, Consumer Affairs Victoria, Melbourne, Vic.

Ministerial Council on Consumer Affairs (MCCA) 2007, *Consumer Credit Code Amendment Bill 2007, Consumer Credit Amendment Regulation 2007: Consultation Package*, Department of Fair Trading & Wine Industry Development, Brisbane, Qld.

Scott, R 2008, *Small Amount Lending Inquiry 2008*, Report to Tony Robinson MP Minister for Consumer Affairs, Department of Justice, Melbourne, Vic.

Scutella, R & Sheehan G 2006, *To their credit: Evaluating an experiment with personal loans for people on low incomes*, Brotherhood of St Laurence, Fitzroy, Vic.

Sheehan, G, Wilson T & Howell, N 2008, *Coming to grips with credit contracts*, Brotherhood of St Laurence, Fitzroy, Vic.

Sherry, N & Tanner, L 2008, *Complexity to be Tackled in Financial Services Working Group to Start Immediately*, Joint media release from Minister for Superannuation and Corporate Governance and Minister for Finance and Deregulation, 4 February 2008,

[http://www.financeminister.gov.au/media/2008/mr\\_200802\\_joint.html](http://www.financeminister.gov.au/media/2008/mr_200802_joint.html).

Treasury 2009, *The Australian Consumer Law: Consultation on draft unfair contract terms provisions*, Commonwealth of Australia, Barton,

[http://treasury.gov.au/documents/1537/PDF/The\\_Australian\\_Consumer\\_Law\\_Consultation\\_Paper.pdf](http://treasury.gov.au/documents/1537/PDF/The_Australian_Consumer_Law_Consultation_Paper.pdf).