



**Abacus**  
Australian Mutuals

Association of Building Societies and Credit Unions

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The Hon. Jennifer Rankine MP  
Minister for Consumer Affairs  
Payday lending Discussion Paper  
Policy & Legal Unit  
Office of Consumer and Business Affairs  
GPO Box 1719  
ADELAIDE SA 5001

Per email: [ocba.webmaster@agd.sa.gov.au](mailto:ocba.webmaster@agd.sa.gov.au)

Dear Minister

## **PAYDAY LENDING IN SOUTH AUSTRALIA**

*Abacus – Australian Mutuals* appreciates the opportunity to contribute to the *Payday lending in South Australia – Options to increase consumer protection* discussion paper.

Formed in July 2006 in a merger between the *Credit Union Industry Association* (a part of Cuscal Ltd) and the *Australian Association of Permanent Building Societies* (AAPBS), *Abacus* is the peak association for the majority of mutual building societies and credit unions in Australia.

There are 146 credit unions and 9 mutual building societies across Australia – 10 of these are based in South Australia. Credit unions and mutual building societies play a critical role in the South Australian and national consumer and financial market, with more than four and a half million members nationwide and over 600,000 members in South Australia. Credit unions and building societies are Authorised Deposit-taking Institutions (ADI) regulated by APRA and by ASIC under the *Corporations Act 2001*. Members also comply with relevant State and Territory legislative and regulatory requirements.

*Abacus* represents mutual organisations – those owned by their customers. Unlike for-profit or private companies, our member institutions operate with a clear focus on the interests of their customers within a strong ethos of self-help, member-focus and community involvement. As mutuals, credit unions and building societies are owned by their customers and have a strong record of acting in their members' interests while promoting financial independence and stability and access to affordable and quality banking and credit services.

### **1. Uniformity of consumer credit regulation**

*Abacus* strongly supports a continued commitment to nationally consistent credit regulation. Uniformity across State and Territory jurisdictions is critical to the credit sector, which is very much a national industry and consumer marketplace. Departures

from national uniformity result in confusion and inconsistency for consumers, jurisdiction shopping by fringe providers and additional compliance costs for mainstream providers such as credit unions and building societies.

The Office of Consumer and Business Affairs (OCBA) would be aware that the *Ministerial Council on Consumer Affairs* (MCCA) and the *Standing Committee of Officials of Consumer Affairs* (SCOCA) have been reviewing payday lending since 2003. *Abacus* has made submissions to the *Fringe Credit Providers – Discussion Paper* as part of that review process.

*Abacus* argues that MCCA's role "to consider consumer affairs and fair trading matters of national significance and, where possible, develop a consistent approach to those issues" provides the best forum for consideration of payday lending. A national approach ensures consistency and certainty for consumers and reduces scope for expensive and duplicative processes in different States and Territories.

Credit unions and building societies strongly encourage the OCBA to use the existing national review of fringe lending at Ministerial Council level as the forum for addressing fringe credit policy concerns, including submissions and consultations to date. The credit union and building society industry have provided submissions and input to the review, and would be pleased to share these with OCBA if helpful.

## **2. *Abacus*' view on payday lending**

While *Abacus* and the mutual ADI sector strongly support nationally consistent approaches, the following comments are provided to assist the OCBA's examination of payday lending.

### ***Interest rate cap***

An interest rate cap is designed to prevent fringe lenders charging exorbitant rates. In principle, *Abacus* endorses measures designed to prevent the gouging of consumers through excessive or predatory rates, or their exploitation through predatory lending practices. However, the use of an interest rate cap has the potential to impact on a wider range of consumer credit products to the detriment of consumers and the market more generally.

Given these concerns *Abacus* does not endorse the use of a blanket interest rate cap as an effective regulatory response to the emergence of pay day lenders in the market. Should the South Australian Government advance a unilateral interest rate cap *Abacus* seeks a commitment to full consultation with mainstream credit providers and consumer representatives, including the credit union and building society sector, to limit the scope of the measure to have unintended impacts and seek to target it most effectively and pragmatically to OCBA's policy ambitions.

In NSW, the existing interest rate cap includes the total cost of credit. This captures payday lenders extending their terms beyond the 62-day threshold or loading costs into fees and charges. Importantly, the regime exempts temporary overdraft facilities and the overdrawing of a line of credit provided by mainstream ADI (APRA regulated)

lenders. If a cap were contemplated in South Australia, full and unambiguous relief for mainstream ADI lenders should be introduced.

A well-designed exemption for ADI lenders, which includes fees or charges for establishment or maintenance fees, is critical to ensure that short term, agreed consumer credit temporary facilities (such as overdrafts or short term extension of credit under an existing UCCC contract) continue to be available to the market. It is also critical to target any proposed payday lending regulation at the relevant groups – fringe credit providers – and to avoid creating additional costs and restrictions on ADI lenders. Again, *Abacus* strongly encourages the consideration of any general measures on consumer credit through the national UCCC process.

Additionally, *Abacus* anticipates that the South Australian Government would seek to adjust the measure to address the avoidance techniques fringe lenders adopted in NSW to bypass UCCC coverage.

On its own, an interest rate cap is no panacea in seeking to reduce excessive lending rates and predatory practices impacting vulnerable consumers. The *Report of the Consumer Credit Review* in Victoria observed that:

*“It is recognised that applying the Code and imposing an inclusive interest rate cap would not necessarily arrest the cost of this form of credit, since default and other contingent charges are a significant part of the problem.”*

As OCBA would be aware, the national fringe credit proposals opted against recommending a national uniform interest rate ceiling because interest rates are outside the Uniformity Agreement. However, although interest rate ceilings in some jurisdictions will not technically offend the Uniformity Agreement, they will pose compliance challenges for lenders that operate across State and Territory borders. As a result, *Abacus* does not endorse their adoption without detailed cost/benefit analysis and appropriate scoping and targeting.

For credit unions and building societies, the prospect of several jurisdictions imposing a cap on the total cost of credit risks undermining uniformity and the principles of the UCCC without obvious consumer benefit. Fringe providers may adjust product design or move jurisdictions to avoid capture by such a blunt measure.

### ***Prohibiting lending where there is no capacity to repay***

In principle, *Abacus* supports measures designed to limit access to credit where a vulnerable borrower does not have capacity to repay the loan. *Abacus* also supports the remedy that an inappropriate credit offering may be rendered unenforceable in these circumstances.

Credit unions and building societies already apply robust assessment processes to their credit offerings. This is a requirement of UCCC provisions and credit quality standards required by APRA under prudential regulation. It is not in credit unions' or building societies' interest to skip or avoid rigorous assessment processes before offering credit. *Abacus* believes comparable lending criteria and industry best practice approaches should apply to non-ADI lenders in the consumer credit market.

For mainstream lenders, the provision of credit is based on behavioural and credit scoring models that take into account not just a member's proven capacity to repay, but also their propensity to repay. For consumers, there is also a positive obligation to alert their credit providers when their circumstances change. This provides a solid platform for mainstream lenders to understand the repayment capacity of their customers.

Access to credit reporting data is critical to these assessments. In these circumstances, *Abacus* notes proposals to introduce positive or comprehensive credit reporting to improve the collection, accuracy and retention of credit data to assist in decision-making about credit worthiness.

The case for positive credit reporting is that it will improve the chances of low-income earners gaining access to mainstream credit, it will reduce defaults leading to lower cost of credit, it will promote competitive markets as consumers are less reliant on existing institutional relationships to obtain credit, it will provide more reliable identification of over-committed consumers, it will better identify under-served market segments and it will enhance predicability of scoring models. However, *Abacus* also recognises concerns relating to an increase in the amount of personal information held on consumers (that could lead to detailed customer profiling) or poor data quality.

Arguably, access to credit data would represent an important input into a payday lenders' ability to assess a consumer's capacity to repay a loan. However, if payday lenders and other fringe credit providers gain access to Part IIIA information under the *Privacy Act 1988* then *Abacus* believes this should be subject to the same - if not higher - standards and expectations as mainstream credit providers covered by s.11B(1) of that Act. *Abacus* argues that additional positive and enforceable obligations be attached to any proposal to extend additional access to private information to a section of the credit industry characterised to date by poor practice, predatory rates, use of direct debits to obtain first call of funds and claims of dubious collection practices.

The *Australian Law Reform Commission* (ALRC) is considering access to the Part IIIA consumer credit reporting information as a feature of its extensive review of the *Privacy Act 1988*. Further discussion should be undertaken with the *Office of the Federal Privacy Commissioner* as well as the ALRC in relation to what information should be considered by payday lenders and what conditions they should adhere to when assessing a borrower's capacity to repay a loan.

### ***Licensing/registration***

*Abacus* supports measures to apply a registration and licensing scheme to all credit providers operating in South Australia, subject to relief for ADIs. ADIs are already heavily regulated by the ASIC (through the Australian Financial Services (AFS) licensing regime) and APRA (through compliance with the *Banking Act 1959* as well as an extensive array of prudential standards, including several specific to credit practices), among others (including our codes of industry practice, the EFT Code of Conduct and Federal and State consumer and financial services legislation). Relief for

ADIs operates in other States where a licensing or registration scheme exists for certain credit providers. Accordingly, *Abacus* welcomes the acknowledgment in the discussion paper of the “*need to exclude the mainstream credit providers already licensed by the Commonwealth under other forms of regulation.*”

*Abacus* suggests that the proposed licensing or registration scheme look to FSR obligations as a useful model for standards of conduct. At the very least, licensing or registration should identify the credit provider and establish a platform for ongoing monitoring and policing and dispute resolution. *Abacus* made similar suggestions to Consumer Affairs Victoria (CAV) in response to their *Consumer Credit Review* in 2005.

### ***Education and awareness***

*Abacus* supports measures to raise education and awareness about credit products and providers. *Abacus* believes there should also be attention given to financial literacy measures that address saving and budgeting and the responsible use of credit.

Credit unions and building societies have a long-standing commitment to providing banking and financial services to low-income earners or people with financial difficulties. The mutual sector also has a long history of developing practical financial literacy measures for their members and the wider community. This includes contributing to the current national *Financial Literacy Foundation's* (FLS) *Understanding Money* campaign. Part of any awareness campaign should be the promotion of the services (including low and no-interest loan schemes) offered by reputable providers like credit unions and building societies.

*Abacus* also supports measures to encourage lenders to provide low cost short-term small loans to disadvantaged borrowers. Increased provision of low cost short-term credit to vulnerable or disadvantaged consumers is, arguably, the most effective deterrent to exploitative or predatory lending by fringe credit providers. The policy issues involved in extending the availability of such products are significant, and include:

- interaction and relationship with ‘capacity to repay’ measures and limitations (including proposed new measures canvassed in the OCBA discussion paper);
- compliance with APRA prudential standards and guides on credit policies, limits and lending practices (for ADIs);
- scheme design and funding, including scope for partnerships with Government agencies and community organisations for targeted schemes; and
- options for improved practice by fringe credit providers through positive initiatives by the sector itself, and enforcement of breaches (eg collections practice and misleading advertising) where appropriate.

*Abacus* suggests that OCBA may wish to consider the specific needs of the South Australian community, drawing on available research (for example, work by SACOSS), in considering options to promote a partnership approach that effectively targets the needs of the local community.

*Abacus* understands that the Victorian CAV is planning to host a summit on low and no-interest loan schemes. *Abacus* would be happy to contribute to any similar

measure and would welcome advance notice to enable consultation and planning with our members.

*Abacus* also encourages promotion of the need for consumers to approach their lenders if or when they experience financial stress or difficulties. This is preferable to exposure to further debts or the sharp practices of opportunistic fringe lenders.

### **3. Conclusion**

In summary, *Abacus* believes:

- payday lending should be covered by UCCC;
- reforms should be designed to support uniformity and national consistency;
- reforms should target detriment and avoid penalising the responsible and highly regulated ADI sector; and
- reforms should be complemented by financial literacy education and awareness raising about viable alternatives to fringe lending.

Thank you again for the opportunity to comment. *Abacus* looks forward to learning the outcomes of the OCBA's review and being included in further consultation.

In the meantime if you would like further information about *Abacus*, the South Australian credit union and mutual building society sector, or the comments in this response then please contact Josh Moyes, Senior Adviser, Public Affairs on (02) 8299 9033 or at [jmoyes@abacus.org.au](mailto:jmoyes@abacus.org.au).

Yours sincerely,

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