

Credit Union Industry Association (CUIA)

*Submission on the Report of the Consumer
Credit Review*

12 May 2006



Credit Union
Industry Association

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More information:

Josh Moyes
Adviser – Policy & Public Affairs
Credit Union Industry Association (CUIA)
(02) 8299 9033
jmoyes@cuscal.com.au

Louise petschler
Head of Public Affairs
Credit Union Industry Association (CUIA)
(02) 8299 9046
lpetschler@cuscal.com.au

Summary

Credit Union Industry Association (CUIA) welcomes the opportunity to comment on Consumer Affairs Victoria's (CAV) *Report of the Consumer Credit Review* (the *Report*).

CUIA (formally CUSCAL Industry Association) is the major industry body for credit unions. Collectively, Australia's 149 credit unions have over 3.6 million members and over \$31 billion in assets. In Victoria, there are 37 credit unions, with nearly 600,000 members and assets that value over \$4.3 billion.

CUIA welcomes and supports the Victorian Government's objective to improve access to affordable credit so as to prevent vulnerable consumers being forced into excessively costly or unsustainable credit. The credit union sector also supports the finding that consumer detriment generally affects only a small percentage of consumers.

As supporters of consumers in the marketplace, credit unions support effective and sound credit laws and efforts to improve and widen the national coverage of *Uniform Consumer Credit Code* (UCCC). The Australian credit union sector has a proud tradition of encouraging thrift, investing in financial literacy and promoting financial prudence amongst more than three and a half million members nationwide. Credit unions would welcome a focus by Government and regulators on effective credit regulation that supports affordable and sustainable credit provision in Australia.

At the same time, credit unions strongly support national consistency in the regulation of this national market and regulation that promotes proportionate, sensible and reasonable compliance obligations for mainstream credit providers.

The *Report* provides a useful measure for industry and other stakeholders about current and proposed areas for credit reform in Victoria and at a national level. It also reinforces the importance of national consistency in credit reforms as well as the importance of appropriately targeting proposals for regulatory focus and reform.

CAV will be aware that a comprehensive regulatory framework already covers credit unions. In addition to UCCC coverage, this includes regulation by the *Australian Securities and Investments Commission* (ASIC) as Australian Financial Services (AFS) licensees and includes a range of disclosure and consumer protection requirements; supervision by the *Australian Prudential Regulation Authority* (APRA) as Authorised Deposit-taking Institutions (ADIs), which includes capital adequacy obligations. Privacy, trade practices, taxation, anti-money laundering and other legislation also cover credit unions.

As relatively small institutions in the financial services landscape, credit unions also operate as mutuals – with a focus on returning value to members through services and pricing rather than profit generation distributed to shareholders via dividends. These important differences contribute to the sector's concern about excessive compliance costs; as these costs are generally fixed in nature, they have a high impact on smaller institutions.

Given the breadth of regulatory, licensing and compliance obligations placed on credit unions, the industry is naturally cautious about unproven or untargeted regulatory requirements that reduce scope for service provision to members or may unduly impact mainstream lenders.

A number of recent State and Commonwealth government reviews have focused on options for reducing red tape costs and ensuring new and existing regulations operate effectively and efficiently. In principle, the credit union industry strongly supports such proposals and encourages credit unions.

The impact of regulatory costs can be seen in the high levels of consolidation across the credit union sector over recent years¹. Further pressures on cost by way of excessive or poorly targeted regulation would have a negative impact on competition and choice in the credit and financial services market – together with the community cost of losing credit unions that often service regional areas and vulnerable consumers.

While endorsing the principles behind many of the options proposed in the *Report*, CUIA has reservations about the capacity of the proposed options, as currently drafted, to deliver on the Victorian Government's objectives of affordable, accessible and trustworthy credit.

Among others, CUIA is concerned about details and impacts of:

- the willingness to reform independent of the uniform national approach;
- mandating low or no interest loan schemes by mainstream providers;
- mandating that fees and chargers be based on cost recovery;
- mandating processes for credit limit increases;
- mandating personalised credit health warnings;
- mandating credit advertising practices; and
- regulating unfair contract terms independently.

Expensive and complex compliance requirements may not add materially to efforts to improve the protection or comprehension of consumers in relation to their receipt of credit, especially if applied at a broad level without sensitivity to the relationship base and customer strengths of credit providers. Instead, CUIA encourages a genuine consultation approach involving identification of market failure or regulatory gaps, active engagement with stakeholders (including responsible credit providers) and sensible and targeted responses as appropriate.

These and other matters are explored below by reference to the chapter headings from the *Report*. CUIA acknowledges that some of these matters remain the subject of ongoing discussion and debate with Government and regulators, including through the *Ministerial Council on Consumer Affairs (MCCA)* and *UCCC Management Committee (UCCCMC)*.

CUIA has raised these and other matters throughout the consultation process. This has included our submission to the earlier *Consumer Credit Review* and through our

¹ Credit unions have experienced considerable consolidation over the past decade; this is despite strongly growing total assets and member numbers. Whilst this consolidation is partly explained by industry evolution and a competitive market, a significant reason for consolidation in the sector is the steadily increasing regulatory compliance burden placed on credit unions, which are less able to absorb the fixed costs associated with regulatory compliance. Since 1990 credit union numbers have dropped from around 400 to 150 in 2006.

participation in the series of consultation forums hosted by Mr James Merlino MP (Member for Monbulk). CUIA appreciates and strongly endorses the consultative process by the Member for Monbulk and the Minister for Consumer Affairs, Marsha Thomson MP, and will continue to contribute to these constructive processes.

UCCC uniformity and consultation processes

CUIA welcomes the Victorian Government's support "*for nationally uniform regulation of consumer credit*" and acknowledges that the *Report* "*adopts this approach and, where suitable, flags national responses to consumer problems.*" However, despite these positive observations, one of the more disturbing aspects of the *Report* is the suggestion Victoria should pursue a number of legislative changes separate to the national uniform approach.

CAV will be aware of the existing reviews by:

- MCCA in terms of unfair contracts;
- MCCA in terms of finance and mortgage broker regulation;
- MCCA in terms of mandatory comparison rates;
- UCCCMC in terms of fringe credit providers;
- UCCCMC in terms of pre-contractual disclosure statements;
- UCCCMC exploring vendor and tiny term credit contracts; and
- UCCCMC in terms of bill facilities.

Additionally, other matters covered in the *Report* are also subject to concurrent review, these include:

- refinement of the disclosure regime under the *Corporations Act 2001*;
- the *NSW Office of Fair Trading* co-ordinating research into credit card over-commitment;
- the *Office of the Federal Privacy Commissioner's* review of the *Privacy Act 1988*;
- *Senate Legal & Constitutional Committee* review of privacy
- *Senate Economics Committee* inquiry into household debt, imported goods and Australia's current account deficit; and
- the Commonwealth Attorney General's review of personal property securities.

Uniformity

CUIA is concerned that some of the measures outlined in the *Report* are pre-emptive of the outcomes of these existing reviews. Given the history of the uniform scheme, which has included delays in terms of reaching agreement for uniform reform as well as implementing changes uniformly, it is almost certain that history will repeat itself with some of these proposals.

Seeking State-based reforms to work around these delays is an impractical, potentially costly and ill-considered response that may undermine the objective of a strong and consistent regulatory framework for credit in Australia.

This is a real concern for credit providers trading in multiple jurisdictions as it creates a tiered regulatory regime that would add compliance costs, complexity and duplication. A differential regime would undermine product and service innovation, costs efficiencies and distribution. For those consumers in jurisdictions that differ to the national approach, the costs of the differential approach will need to be passed

on in terms of higher fees or charges or – where lenders are not profit driven – a reduction in the products and services offered to market. This would be a perverse outcome of the *Report* as it would defeat the objectives of providing low cost and accessible credit to Victorian consumers and may ultimately force some vulnerable consumers towards opportunistic and predatory lenders.

Some jurisdictions have already sought to regulate separately, such as the NSW approach to maximum annual percentage rates and the ACT Government's decision to implement the *Fair trading Amendment Act 2002*. However, a curtailment of this separate activity is needed rather than the expansion signalled in the *Report*.

Consultation process

A disparate reform process is indicative of a wider concern CUIA has about the engagement by States and the UCCCMC with industry and other stakeholders. A preferable approach would be for Victoria to work with these national reviews and UCC processes. Working together is critical to the development of a credible, robust, proportionate and effective credit framework.

CUIA has and will continue to participate in the policy process by making considered and constructive submissions and representations. But in return, CUIA expects the consultation process to actively include credit providers.

CUIA is also concerned that industry contributions (often with very little lead time – thus diminishing the capacity to consult effectively with members) largely go unacknowledged. CUIA encourages CAV, as the chair of UCCMC, to implement transparent consultation processes that include recognition of submissions received and more up to date and timely information on the progress of policy considerations.

As it stands, industry must rely on information provided on the Credit Code website. It is disconcerting when policy responses or indeed Exposure Drafts are released months and sometimes years after submissions have closed, with no forewarning of the release to industry or advice on issues and positions taken as a result of prior consultation.

CUIA is keen to discuss options to improve this process in further detail. For example, establishing an email contact group, quarterly roundtables where UCCCMC representatives provide updates on policy proposals under considerations and feedback and progress on existing reforms.

5. Small Amount Lending

Low and no interest loan schemes (option 5.1 and 5.2)

Credit unions have a long-standing commitment to providing banking and financial services to low-income earners or people with financial difficulties. Historically, many credit unions were founded on the basis of people in need coming together to provide services to consumers who otherwise could not access mainstream credit. In addition to these origins, the credit union sector offers low or no interest loans to

assist members and the community. Recognised examples include the *Fitzroy & Carlton Community Credit Co-operative (FCCC)*, a community-managed credit union providing financial services to people on low incomes.

CUIA welcomes the proposals for Government to consider options for providing funding for no and low interest loan schemes in Victoria. Funding support in their delivery of much needed services to their local community would certainly assist providers like FCCC.

Measures to encourage lenders to provide low cost short-term small loans to disadvantaged borrowers are also strongly supported. However, any proposal to mandate that mainstream credit providers develop, fund and offer low or no interest schemes is ill-considered. A preferable approach is to promote, sponsor and support institutions already demonstrating a strong commitment to these activities.

A particular issue for ADIs is the need to ensure their capital provisions under the *Banking Act 1959* satisfy APRA's prudential standards. Any attempt to force ADIs to offer certain products may have a direct bearing on their capital requirements, which will be a direct cost to individual providers. Alternatively, if such schemes are mandated then they may need to be subsidised in terms of other product and service offerings or they could have an opportunity cost in terms of the range of banking and financial services made available.

Credit unions pride themselves on being responsible corporate citizens with a focus on customer service. Credit union values set their approach and services apart from other providers as offering a different kind of banking. In these circumstances, credit unions have responded to the community need for low and no interest loan schemes. This involvement is a direct result of credit unions' mutual structure, which has evolved through community co-operation and is not the result of forced, blunt regulatory policy.

Additionally, reforms should be considered in terms of where the consumer detriment arises. CAV is concerned that without mainstream lenders providing low cost credit vulnerable consumers will be drawn towards predatory lenders to the fringe of the market. If this is the primary risk then policy responses should target these concerns. Accordingly, CUIA points to the existing examination of fringe credit providers and waits with interest for the *Regulatory Impact Statement (RIS)* on fringe credit, which is currently before MCCA.

Further discussion is required to explore low cost credit, how it can be funded, to whom it should be delivered and what, if any, mandatory obligations should be imposed on mainstream or fringe credit providers. A further consideration is the existing reforms to the UCCC on solicitor lending, installment and tiny terms contracts. CUIA would be pleased to support consultation with interested credit unions on such proposals.

Fees and charges (option 5.3)

Members choose credit unions for their fairer fees and better services. Almost two thirds of credit union members do not pay any transaction or account fees at all. In

2004, CANNEX ascribed \$110 per year in extra member value in terms of lower interest rates and fees. This approach is derived from credit unions' mutual structure, where their members are both owners and customers and profits are returned to members in the form of lower fees and a commitment to the local community.

Establishment fees and early repayment fees are already subject to review against a test of reasonableness under s.72 of the UCCC. However, the inference in the *Report* that all fees should be adjudged against cost-of-service criteria when determining reasonableness would be an unwelcome and unworkable intrusion into the operation of the market.

While CUIA agrees that default fees should, *prima facie*, align to cost recovery criteria, the focus in regulatory responses should be on the most effective and efficient means of delivering reasonable fee outcomes. Heavy handed price interventions will impose high costs on mainstream or conservative lenders, while encouraging market manipulation by other parties to avoid capture or jurisdiction.

Additionally, Credit unions, and all other ASIC regulated entities, are already subject to the misleading and deception and unconscionability provisions of the *ASIC Act 2001*.

CUIA strongly argues that CAV's options on fees require further discussion and detailed review. This is particularly the case as the *Report* has not outlined any particular consumer detriment attributable to the fees and charges of mainstream providers. Again, CUIA urges CAV to focus reform options squarely on identifiable consumer disadvantage – including instances where consumers have no or poor access to remedy or redress – before seeking to make mandatory and potentially ineffective changes for all providers.

Any proposal to limit fees and charges to cost recovery should also consider the corollary pressure to increase interest rates on some products. Similarly, proposals to address excessive fees charged by certain providers or in certain product lines (e.g. fringe credit) could be more effectively dealt with via specific enforcement action of existing provisions and the unconscionability tests.

House goods as security for consumer credit (option 5.4)

Credit unions support measures to prohibit the taking of security over household goods. CUIA has previously suggested in submissions on fringe credit providers that the definition of household goods should be taken from Reg 6.03 of the *Bankruptcy Regulations (Cth)* in the interest of consistency with other laws. Additionally, CUIA points to the current *Review of the law on Personal Property Securities* being undertaken by the Commonwealth Attorney-General through the *Standing Committee of Attorneys-General (SCAG)*.

Bill facilities (option 5.5)

CUIA notes that the UCCCMC is already seeking to reform the bill facilities relief to remove the s7(5) exemption for all credit providers, other than ADIs. The effect of these reforms is intended to prevent fringe credit providers usurping the UCCC

protections when offering bill facilities (promissory notes or bills of exchange) in their dealings with vulnerable consumers.

Aligning this product use with the requirements of the UCCC is a positive step against predatory and opportunistic credit providers, who undermine the broader credit market. CUIA welcomes these proposals. These measures also afford users of these products equal protection under the UCCC.

Notwithstanding these individual measures, CUIA anticipates the fringe credit *RIS*, which is currently subject to review by MCCA, to offer a more complete package of reforms to address this area of risk to consumers and the market. This is the appropriate mechanism for advancing reform in this area.

Business purpose declarations (option 5.6)

No case has been made in terms of a blanket removal of the conclusive presumption in terms of the business purpose declaration. If there is consumer detriment through misuse then regulators need to undertake appropriate compliance and enforcement action.

Any option to remove the conclusive presumption should clearly be targeted at credit providers and others known to be abusing the declaration. Mainstream credit providers, behaving within the UCCC, should not be targeted by such measures, particularly as there is no evidence to suggest mainstream providers, such as credit unions, are perpetrating such misuse or abuse.

CUIA urges CAV wait to consider the more complete coverage of this concern when the fringe credit *RIS* is released. If proposals for unilateral action are to be made, CUIA will expect consultation with individual credit providers in Victoria including Victorian credit unions on a much more detailed scale.

6. Responsible lending practices and advertising

Any increase in personal debt as a result of over-commitment is a concern to the community, and for responsible credit providers. As mutual organisations, credit unions take an active interest in assisting their members to avoid incurring bad debt. Because credit unions rely on retained earnings, with little if any recourse to capital markets, they are especially minded to ensure capital lent to members is sensible, proportionate and appropriate to make certain it is repaid.

As an industry body, CUIA would be pleased to work with CAV and other State credit regulators to develop and support effective measures to encourage responsible lending practices. Again, CUIA urges CAV to consider the benefits of working groups and detailed consultation to ensure such measures are effective rather than merely imposing an additional layer of regulation or disclosure that is of limited use to consumers and brings new cost to industry.

Banning unsolicited credit card increases (option 6.1)

CUIA anticipates that national consultations with credit providers would be part of any detailed consideration of blanket bans for credit card limit increases.

CUIA notes that mecu, a Victorian credit union, has issued a socially responsible credit card that offers consumers a “100% No Marketing Guarantee”². This unique promise means mecu will never send marketing (or incentives or rewards) to members to encourage them to take-up a pre-approved increase to their credit limit or increase their level of spending. mecu’s rationale for this promise is for members to use their cards responsibly and to be equipped to manage their debt and not be burdened by it.

The mecu promise, together with other examples from the mainstream credit market, indicates that industry-driven initiatives are already reforming lending practices.

With this in mind, CUIA is not convinced the case has been made for more extensive reforms. If CAV remains concerned about lending practices then appropriate enforcement responses can be made in relation to those credit providers making unrealistic and indefensible offers of credit limit increases (and we encourage such action by the States). The focus of option 6.1 should be on the consumer detriment rather than a blanket regulation affecting sensible, responsible and mature credit providers.

Assess capacity to repay credit or to repay credit increase (option 6.2)

CUIA welcomes the call on all credit providers to assess borrower’s capacity to pay, both in terms of credit sought and in relation to any subsequent credit increases. CUIA also supports the remedy that an inappropriate credit offering may be rendered unenforceable in these circumstances.

Credit unions already apply robust assessment processes to their credit offerings – a requirement not just of UCCC provisions, but also of credit quality standards imposed by APRA under prudential regulation. Because credible mainstream lenders would not rely on blackmail securities when offering credit it would not be in their interest to skip or avoid rigorous assessment processes before offering credit.

CUIA’s concern with the options proposed by CAV is that without evidence that mainstream providers are failing to undertake appropriate credit assessments legislative amendment appears to be a premature and poorly targeted response.

The experience of the credit union industry is that unsolicited offers for credit limit increases are based on behavioural scoring models that take into account not just the member’s proven capacity to repay, but also their propensity to repay. CUIA understand this to be in line with industry best practice.

In this context, CUIA is uneasy about the assertion in option 6.2 that when a credit provider assesses a consumer’s capacity to repay credit or increases in credits limit that “*behavioural scoring alone would not be sufficient.*” The *Report* claims that behavioural scoring fails to capture changes in the consumer’s income.

CUIA accepts this may be the case but behavioural scoring – together with positive obligations on consumers to alert their credit providers when their circumstances

² http://www.mecu.com.au/index_news.asp?art_id=777&menuid=060.020.040&size=normal

change – are the best available method when seeking to determine a member's credit capacity. CAV should also consider other methods for addressing those consumers that can satisfy their debts yet may be struggling, with financial literacy – such as saving and budgeting or responsible use of credit – being obvious areas for investigation.

Again, CUIA is troubled by the assertion that *"in the event of undue delay"* on the part of MCCA to address these options, Victoria may seek to legislate on its own. CUIA reiterates the primacy of the uniform approach to credit reform and the potentially costly and counter-productive impact of different State-based measures.

Health warning and credit limit and credit cards (options 6.3 and 6.5)

In principle, CUIA welcomes and supports the proposed option to introduce credit health warnings for certain revolving credit products. CUIA agrees that MCCA are the appropriate body to investigate the relative merits of applying health warnings on credit card limit increases, continuing credit contracts and credit card account statements. Further, the credit union sector, via CUIA, looks forward to working as part of a genuine industry consultation group to consider workable models and effective outcomes for consumers from such proposals.

CUIA points to the recent observations of ASIC³ and the *Australian Consumers' Association*⁴, which have cast doubt over the effectiveness of disclosure. CUIA also points to Paul O'Shea's (Griffith University) previously published cognitive research that explores the difficulties of consumer comprehension of disclosure materials. CUIA remains committed to open disclosure as a key stanchion of credit offerings to keep consumers informed and providers honest, but CUIA also urges consideration of these post-FSR lessons.

Clearly, further research into the proposed effectiveness of the credit health warnings is warranted prior to imposing these reforms. This is not an argument against reform but a call for testing what measures and messages might be the most useful for consumers compared to the costs to industry.

On the particular proposals, credit unions are concerned about the degree of personalisation that possible warnings may require. A personalised message will add significantly to systems costs without adding real benefits to consumers, when compared to a simple and straightforward plain-English warning.

Assessing *"how long it will take to repay the current limit if it is fully drawn and only minimum payments are made"* would be an overly personalised warning. It would add significantly to core banking system costs and increase statement production costs. It would also risk misleading consumers, by being tied to a specific (and past) balance amount and interest calculation. Alternatively, a more generic but sensible health warning would involve a one-off impost on industry but has the potential to continue to provide consumers with continuously useful, meaningful and constructive information.

³ Garnaut J., *'ASIC says disclosure rules not working'*, SMH 06/02/06 at 19

⁴ Coates N., *'What will the red tape review mean for you?'*, Money & Rights (Feb/March 2006) at 5

CUIA points to the possible implications for credit providers in meeting these requirements. Either a personalised health message or a generic statement will involve changes to core banking systems. That being the case, this option should be considered together with the pre-contractual disclosure proposal (see option 6.4 discussion below). The types of disclosure required will be a similar, therefore the system changes required for these changes will be similar. It would be more efficient and cost effective for credit providers if these proposed changes could be integrated. The same comments apply to any proposals to include health warnings on credit card statements.

Accordingly, CUIA supports the application of a generic credit health warning. Such a warning could be specific to the limit and interest calculation without adjusting to individual balances and retain many positive elements of the proposal. Clearly, exploration of the systems and cost impacts should be a focus of further consultation on this proposal.

However, again, CUIA is troubled by the assertion that *"in the event of undue delay and where practical"* Victoria should proceed on its own. This is counter to the nationally uniform approach, which is a fundamental stanchion of the UCCC.

Health warnings and pre-contractual disclosure statements (option 6.4)

The *Report* urges MCCA to expand its current pre-contractual disclosure statement proposals to include details of the time it would take to repay a fully drawn credit exposure based on minimum payments. Apart from querying the effectiveness of such an amendment, CUIA believes this adds weight to the need for the pre-contractual disclosure proposal to be modelled and scenario tested before being implemented.

Currently, the pre-contractual statement proposal excludes a pre-testing process with consumers and makes no reference to a post implementation review. Given the high costs likely to be imposed on industry this is an unsatisfactory outcome and one with disproportionate impacts on smaller providers such as credit unions. CUIA strongly opposes introducing new forms of disclosure without State-sponsored testing to assess its usefulness to consumers.

Credit advertising practices and standards (option 6.6)

Advertising of credit needs to meet certain standards of truth and openness to ensure consumers have access to appropriate and complete information. However, in setting the standards and any regulatory frameworks any proposals should also seek to be commercially viable and effective.

It would be unfortunate if measures designed to prevent the portrayal of credit as a status symbol actually created barriers to providers from advertising their products to the vast majority of consumers that use and rely on credit as a convenient, practical and sensible cash management tool. Credit is an accepted and essential feature of most household budgets and a significant tool for enabling consumers to participate in the economy. Limiting its access is contrary to the principles underpinning CAV's work.

CUIA points to concerns about the advertising of credit as a fashionable accessory, as raised at the 11 April 2006 industry consultation forum. CUIA asks what impact the measures being suggested in option 6.6 might have on the advertising of sensible and worthy credit products such as:

Savings & Loans Credit Union's Women's and Children's Hospital Visa Card. This is a community-minded card that at no cost to the cardholder provides a percentage of all Visa purchases towards the upgrade of the Hospital's emergency department. Over \$1.5 million has been raised.

mecu is the first Australian financial institution to produce its cards from PETG (Polyethylene Terephthalate, Glycol-modified), which is environmentally friendly as it virtually eliminates toxic chlorine compounds found in standard cards.

Additionally, existing measures affecting credit advertisements are telling. Under Hawkless Consulting's review of the mandatory comparison rate (MCR) regime an assessment has already been done in terms of advertising practices, at least in relation to the use of comparison rates. In CUIA's submission to that review, it was noted that:

Credit unions have either abandoned or significantly curtailed their television and radio advertising where any interest rates are mentioned. Press advertisements continue to refer to interest rates but the space for disclaimers and extra cost associated with MCR can be prohibitive, although recent disclaimer concessions make this more feasible.

"We have reduced radio advertising to practically zero because of the warning obligation. Print advertising now has less space to carry useful information to members. The need to carry general warning in radio and TV advertising interferes with the communication, without materially benefiting consumers. We agree the true cost of a loan must be disclosed at the point of sale but not in general advertising."

A mid-size credit union believes that, even when they have a leading rate, they are unable to advertise it effectively due to the constraints of the MCR regime. Another mid-size credit union believes that quoting both a comparison rate and warning statement in advertising materials confuses rather than assists consumers. Large credit unions have also reduced their advertising and re-directed their advertising to focus on product features and avoid MCR obligations by excluding any reference to interest rates. For small credit unions, which advertise infrequently, the MCR regimes means when they do advertise they tend to be careful to exclude any reference to an interest rate.

Cuscal highlights some effects that this withdrawal of advertising has had on the market:

- *to remove information on rates and pricing that consumers seek and want to aid their decision making;*
- *to provide an advantage to larger institutions who are better equipped to fund the additional space requirements and warnings under MCR for advertising, exacerbating competitive dominance by the larger providers;*
- *ironically, to make consumers less informed and able to compare pricing.*

We acknowledge the changes to warnings, which have had a positive impact on particularly regional advertising, but encourage further reforms in this area if the MCR regime is retained.

The irony that a measure designed to increase consumer information actually resulted in less information for consumers has not been lost on the credit union sector. At the same time, CUIA has seen no diminishment in advertising by fringe credit and leasing companies promoting much more expensive and sometimes predatory credit to consumers.

Curtailing mainstream credit advertising should not be the goal. Clear, accurate and comparable cost information is a measure that credit unions would continue to support but the MCR experience has left us with very little confidence that any proposals would be effectively promoted, supported or enforced by States.

The unintended consequences of applying stricter advertising standards on credit – both in terms of preventing worthy and innovative products from being promoted as well as possible curtailment of information that would otherwise benefit consumers – should be carefully considered before option 6.6 is progressed.

Accordingly, CUIA welcomes the framing of option 6.6 to encourage MCCA to commission appropriate research and looks forward to consultation on further options.

7. Alternative housing finance

Equity release products (option 7.4)

Some credit unions offer limited reverse mortgage products where members can borrow against their home and repayments are made from the owner's estate or on vacating the property. These are very specific types of loans and precise applicability conditions apply (along with additional prudential obligations).

Utmost in the offering of these products is provision to members of comprehensive and accurate information about the features of the reverse mortgage and the implications for members. Accordingly, CUIA welcomes the proposal to use the *Report*, together with ASIC's recent '*Equity release products*' paper, as the starting point for further analysis by MCCA on reverse mortgages.

8. Finance and mortgage brokers

Currently only nominal regulation of the broking market operates across various State jurisdictions and in those States where it does exist there are distinct differences in regulatory responses.

This remains a highly unsatisfactory outcome, exposing consumers to poor practices by some finance and mortgage brokers. Incentives can be unclear, consumers are potentially misled and responsibility for conduct and dispute management remains uncertain.

It is critical that adequate and uniform laws are in place to deliver consistent, fair and effective consumer protection in this area.

CUIA has supported proposals to establish nationally consistent regulation of finance and mortgage brokers as raised in option 8.1. CUIA strongly supports measures to ensure both ADI and non-ADI lenders are subject to equivalently high regulatory standards.

CUIA notes that MCCA is already considering finance and mortgage broker reform with mandated competency, disclosure and conduct requirements. It is very important that broker regulation be as consistent as possible nationally and CUIA supports the MCCA review.

9. Unfair contract terms

MCCA and SCOCA are currently reviewing unfair contract terms and CUIA has made, in good faith, numerous submissions to that process.

It would be counter to that existing consultative process, as well as the national framework for credit regulation, if Victoria were to pursue independent reforms to deal with unfair contract terms. As to the proposals themselves, any proposition to apply Part 2B of the *Fair Trading Act 1999* (Vic) to mainstream credit providers does not appear to be a viable option.

The *Report* does not identify any problems with mainstream providers in the context of unfair contract terms and applying the Victorian Act (at least as currently drafted) will create uncertainty as the scope for determining unfair contract terms are very broad. Part 2B also casts doubt over whether a unilateral right to vary interest rates and fees and charges would be viewed as an unfair contract term.

If unfair contract terms are to be prohibited, as opposed to the current situation where they could be subject to review by a court, marginal borrowers could be disadvantaged as mainstream providers may be reluctant to risk lending to them if any of the terms of the contract may not be enforced.

The focus on any work in relation to unfair contracts must be on identifying whether there is a problem before starting to put forward remedies. If evidence of particular detriment is identified then appropriately targeted responses, including enforcement action where relevant, should be the first response.

10. Information and education

CUIA will support measures that provide relevant, useful and practical information to consumers. CUIA points to the wealth of existing work by credit unions in terms of life-event and other targeted financial literacy initiatives. For example:

Berrima District Credit Union in New South Wales developed workshops on money skills for year 6 primary school students and year 12 high school students in the Southern Highlands and Tablelands.

Community First Credit Union in New South Wales has developed their FirstEducation scheme, which produces educational materials for members, but is not a sales tool.

Horizon Credit Union in New South Wales has provided seminars with Bridges on pre-retirement strategies, financial planning and investments.

Police and Nurses Credit Society in Western Australia has a range of initiatives designed to assist members gain financial freedom, these include:

- *Member Advice Officers visit members in their workplaces to provide seminars about financial products, fee free banking and how to access their accounts in different ways;*
- *talks to the Retired Police Association about pre-retirement and retirement issues associated with money management and planning;*
- *the Financial Planning arm of Police and Nurses Credit Union hosts seminars to inform members about superannuation; and*
- *a planned initiative to provide money management advice to local high school students in the Perth metropolitan area.*

Queenslanders Credit Union in Queensland run Personal Better Budgeting sessions to equip families and individuals with skills to establish and successfully run budgets – this is not a sales activity. Budgeting sessions are also offered in collaboration with Brisbane City Council.

Queensland Teachers Credit Union in Queensland has implemented a financial coaching program for secondary school students to teach basic money management skills encourages students to develop healthy financial habits.

Traditional Credit Union in the Northern Territory has a significant range of positive, effective and culturally appropriate financial literacy initiatives. Many of these were highlighted and recognised in the Parliamentary Joint Committee on Corporations and Financial Services' report 'Money matters in the bush'.

WAW Credit Union in Victoria produced a children's book entitled 'Buck's Big Adventure', which is designed to educate children about the importance of money and how it works in the local community.

Further, through credit unions, CUIA provides a series of award-winning financial literacy books called *Take Control* as well as a youth book called *The Good Dosh*. These publications were recognised with a *Fair Trading Award* in NSW in 2004.

CUIA also points to the wide-ranging financial literacy measures being undertaken by the Commonwealth's *Financial Literacy Foundation* and specific measures via bodies such as the *Indigenous Banking Reference Group (IBRG)* through Reconciliation Australia.

11. Registration

CUIA supports measures to apply a registration and licensing scheme for credit providers operating in Victoria, subject to the necessary relief for ADIs, which are already heavily regulated by ASIC and APRA among others. The new standards should look to FSR obligations as a useful model for conduct standards.

12. Counselling and ADR

Financial counselling (options 12.1 and 12.2)

Credit unions support early intervention whenever their members face financial difficulty. This is important for the financial wellbeing of their members but also for the financial health and capital reserves of the credit union itself.

Credit unions always encourage their members to take early action before they get into difficulty. When members act promptly they are generally better placed to protect their own interests and minimise their debt exposure. While financial counsellors provide a valuable service in these circumstances, credit unions believe members should first approach their credit union and seek to find a workable solution at first instance.

CUIA supports measures to ensure benchmarked quality standards are applied to financial counsellors and would be interested in hearing further the Government's plans in this regard.

Alternative dispute resolution (options 12.3 and 12.4)

CUIA endorses proposals to require all credit providers operating in Victoria to offer an ADR to their customers. Any measures to prescribe ADR subscription should be drafted with reference to these existing obligations on AFS licensees to avoid unnecessary duplication or cost.

As AFS licensees, credit unions subscribe to external dispute resolution schemes such as the *Credit Union Dispute Resolution Centre* (CUDRC), which is administered through the *Banking and Financial Services Ombudsman* (BFSO).

Credit union commitment to alternate dispute resolution (ADR) is also embodied in the *Credit Union Code of Practice* (CUCOP) and the sector's subscription to the *Electronic Funds Transfer (EFT) Code of Conduct*. Cuscal credit unions have been members of a formal ADR scheme since the mid 1990s, led by adoption of CUCOP.

13. Credit reporting

CUIA supports efforts to improve the collection, accuracy and retention of credit data as well as the continued protection of consumer information and privacy. Accordingly, CUIA welcomes the proposal in option 13.2 to commission research into credit reporting schemes.

However, before research is undertaken regard should be made to the existing efforts by the *Office of the Federal Privacy Commissioner*, the *Senate Legal and Constitutional Committee* and *Senate Economics Committee*, each of which cover – to a greater or lesser degree – credit reporting.

CUIA believes any research on credit reporting should focus on identifying whether there are any missing elements to the current credit picture and the consequences of such omissions and then consider whether broader credit reporting will resolve those problems.

14. Compliance and enforcement

CUIA believes it is difficult to see how class actions under s70 of the UCCC, as proposed in option 14.1, would be a viable option.

This section is not only about unjust terms in contracts; it is also about the parties' behaviour before and at the time the contract is entered into. Therefore, the circumstances of each case will be different, requiring an individual application by the debtor, mortgagor or guarantor.

Arguably, s70 was drafted this way to restrict applications to individuals.

Conclusion

CUIA appreciates the opportunity to continue working with CAV to develop an effective credit regime that does not unnecessarily increase the regulatory compliance burden on credit unions or unnecessarily reduce the consumer protection of credit union members.

CUIA urges a consistent policy emphasis on the importance of uniformity and on the need to promote competition and choice and to avoid anti-competitive outcomes irrespective of where credit providers do business.

Equally, it is important that consumers in all jurisdictions can access the same high standards of protection in the credit market.

We reiterate our desire to work with all States and Territories to ensure:

- a sound and robust credit market, with competition and choice for consumers;
- clear and effective regulations that are effectively targeted and deliver real consumer benefits;
- enforcement to address evidence of poor practice and fringe activities; and
- full consideration of systems and costs impacts from proposals for reforms.

The credit union sector looks forward to continuing to contribute to the development of these proposed credit reforms.