Charity gives, justice changes.

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# Submission to the National Consumer Credit Protection Amendment (Small Amount Credit Contracts) Regulation 2014 – Exposure draft

Good Shepherd appreciates the opportunity to provide comments on the exposure draft regarding Small Amount Credit Contracts (SACCs) and the increase in avoidance activity since the 1 July 2013 introduction of the cap on interest costs and a restriction on fees for SACCs.

Good Shepherd commends the Commonwealth Government's actions to reform the payday lending market, to help Australians who are financially excluded from mainstream financial services and protect those who are most vulnerable. These changes will go some way towards protecting the interests of more vulnerable consumers. However, Good Shepherd acknowledges that there is significant room for improvement to the mainstream financial system and great scope to increase products that offer safe, affordable and small loans credit. We strongly believe that the payday lending industry should not be filling the gap for the lack of availability of small amounts of credit for low income and vulnerable consumers.

## Submission Summary

- Good Shepherd believes that all Australians should be financially included as a basic right, with access to affordable, appropriate financial products and services.
- There is significant room for improvement to the mainstream financial system and great scope to offer small loans products that are safe and affordable.
- We recommend that a broad anti-avoidance provision and the strengthening of ASIC's ability to respond would help to put the wellbeing of the client first.

## Introduction to Good Shepherd

Good Shepherd is a national community organisation established by the Sisters of Good Shepherd. Since 1981, the organisation has worked to address financial exclusion through the innovative delivery of microfinance solutions and through providing support to financially vulnerable consumers through financial counselling and financial education.

**Good Shepherd Microfinance** works with over 250 accredited agencies in over 650 locations across Australia. Since its establishment, Good Shepherd Microfinance has reached over 125,000 Australians through its loans and savings programs. Good Shepherd believes that individuals and families living on low incomes can make sustainable and responsible financial decisions if they have access to the right resources and are protected from exploitative lending arrangements. Good Shepherd Microfinance has a range of programs, each providing safe, fair and affordable credit to people who are excluded from the mainstream financial providers. These programs include the No Interest Loan Scheme (NILS®); StepUp; Good Money; Adds Up and Debt Deduct. Our low and no interest loans programs enable people to build assets, engage in community life as well as find and keep jobs. Independent evaluations of our microfinance products have shown that they reduce the reliance on fringe credit and short term loans[1].

The communities in and around Melbourne in which **Good Shepherd Youth & Family Service** operates experience financial disadvantage, and our programs directly address this and many of the accompanying challenges. These programs include financial counselling, microfinance, family support, youth emergency housing, family violence support services and refuge accommodation, and community education. The Good Shepherd Victorian Buying Service has helped address financial exclusion since 1990.

Many NILS and StepUp clients have often had prior small amount credit contracts with payday lenders. Many clients who present for financial counselling have also had these loans, or are currently try to pay them off. These dealings with payday lenders have ended up worsening their already precarious financial situations by recurrent loans and spiralling debt cycles[2]. Therefore, our submission is informed by our direct experience nationally with the harmful outcomes of people in receipt of small amount, payday loans.

## Impacts of payday loans on consumers

It is important to identify the differences between microfinance loans and payday lending and the implications of both for financial inclusion and for consumer protection and public policy direction.

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[1] According to the 2014 CSI NILS evaluation, 42% or 105 of the 250 respondents who had obtained fringe credit in the past either stopped or reduced their use of fringe credit due to their NILS loan;
According to the 2013 CSI StepUP evaluation, 65% or 73 out of 113 respondents stopped using fringe lenders after receiving the StepUP Loan;
According to the 2013 RMIT Interim Good Money Report, after visiting a Good Money store, 53% or 78 out of 148 respondents said they do not intend on using a payday lender in the future.

[2] Banks, Marcus; Marston, Greg; Karger, Russell; Russel, Rosslyn (2012) *Caught Short: Exploring the role of small, short term loans in the lives of Australians,* The University of Queensland, Brisbane

NILS and StepUp loans adhere to responsible and ethical lending practices. These products assess each applicant's capacity to repay in a way that does not result in increased financial hardship for them. We believe that fringe lenders also need to adhere to responsible and ethical lending practices.

Although we understand the need for people to access small amounts of credit, we do not believe an under-regulated fringe lending market is best placed to fill that gap. More often these loans create more financial hardship than they remedy due to the exorbitant costs associated. Given the access to alternative forms of support, the fringe market should be that of last resort and should be regulated to that effect.

Good Shepherd financial counsellors see firsthand the impacts of both financial hardship and financial exclusion. We believe it is a combination of these factors that lead to the demand for payday loans.

While many people who present to financial counselling do not always disclose at the outset that they have a payday loan (because of shame etc.), our financial counsellors estimate that 40 per cent of financial counselling clients have payday loans. This causes people to get into a debt spiral, reducing their capacity to pay for essential items such as food, utilities and rents.

## Treasury's proposed amendments

The joint submission between Good Shepherd Youth & Family Service and Good Shepherd Microfinance to the SACC discussion paper in 2012 contended that only effective way of protecting consumers from high cost loans is by regulating the fringe lending sector to ensure safer lending practices.[3] We strongly rejected the idea that reform in the payday lending industry would make it unprofitable. We did, however, believe it necessary to limit how much money could be made from people who are financially disadvantaged.

We therefore welcome Treasury's proposed Amendment Regulation and attempt to clarify the boundaries between small amount and medium amount credit contracts and to address the exemption for unlicensed credit providers. We are in support of the joint submission of the Consumer Action Law Centre and the Consumer Credit Legal Centre (NSW) and their position on the specific amendments to the proposed Regulation.

## Broad anti-avoidance provisions and enforcement

Providers in the fringe lending sector stand at the interface of the most immediate financial needs of quite desperate consumers. It is therefore inevitable that avoidance of regulatory requirements and unlawful lending will be a continuing challenge. As Good Shepherd Youth & Family Service mentioned in our submission to the National Credit Reform Green Paper, it has to be conceded that keeping up with this very creative industry has been no small task.[4]

[3] Good Shepherd Youth and Family Service & Good Shepherd Microfinance (2012). Submission to the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 – Discussion Paper

[4] Good Shepherd Youth and Family Service (2010). "Enhancing confidence and fairness in Australia's credit law - Submission to National Credit Reform Green Paper 2010."

As the Assistant Treasurer's Explanatory Statement notes, some credit providers are using existing exemptions in the national credit legislation more broadly than they were intended for.[5] It is also the experience of the community finance sector that payday lenders will seek to avoid any regulation that affects their business. Even if this current exposure draft closes all the loopholes, it is likely that lenders will continue to find more ways of avoiding the law.

When consumer protections are adopted, it is also important that attempts at avoidance can be countered by regulators. We therefore recommend that:

- Treasury includes a broad anti-avoidance provision, and considers the merits of placing these provisions in the National Credit Code rather than as regulations to the Credit Act; and
- ASIC be given the resources necessary to make enforcement of payday lending regulation a priority.

Our direct experience with the harmful outcomes of people in receipt of small amount loans shows us that, by the time courts and regulators have identified and reacted to an avoidance scheme, significant damage has already been done to individuals and families. Currently a consumer must suffer significant harm before avoidance practices and exploitative business models can be addressed by the regulator.

A general anti-avoidance provision, and the strengthening of ASIC's ability to respond, would mean that action could be taken before individuals and families in already precarious situations have even more financial hardship and stress inflicted on them by a scheme or trader designed to avoid the operation of the Credit Code. This anti-avoidance provision would put the customer or client first and also make it less likely that we will need further regulatory amendments in the future.

**A comprehensive approach to reduce harm**

While we believe these Amendments are important in tightening up the existing legislation and regulations, we maintain the view that the only effective way of protecting consumers from the harm caused by high cost loans is a comprehensive approach that includes:

- Providing access to safer alternatives;
- Improving access to financial education;
- Ensuring people have enough money to meet their living costs;
- A comprehensive package of consumer protection measures;
- A responsible referral framework where banks refer clients appropriately to fair, safe and affordable alternative financial service providers; and
- Regulating the payday lending sector to ensure safer lending practices.

[5] The Treasury (2014) "Explanatory Statement for the National Consumer Credit Protection Amendment (Small Amount Credit Contract) Regulation 2014 Exposure Draft."

As key consumer advocates in the sector have stated, “If Government simply selects a disconnected collection of protections, it will create at best piecemeal protection and not achieve meaningful reform.” [6]

Good Shepherd Microfinance and Good Shepherd Youth & Family Service believe that all Australians should be financially included as a basic right, with access to affordable, appropriate basic products as a minimum while being protected from predatory, unfair and inappropriate products.

We reiterate our call to the Government to ensure that the unsafe, unfair and predatory practices within the payday and short-term credit lending market are curtailed and that small amount credit contracts do not increase the financial hardship of their already vulnerable customers.

In line with our values of human dignity, respect, social justice, compassion, audacity and reconciliation, Good Shepherd will continue to advocate for and provide access to increase financial inclusion.

Thank you in advance for your time.

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[6] Consumer Action Law Centre, Consumer Credit Legal Centre (NSW) and Financial Counselling Australia (2012). “Joint submission in response to the Proposed reforms relating to Small Amount Credit Contracts Discussion Paper.”