FINANCE INDUSTRY DELEGATION SUBMISSION

in regard to the

DRAFT

NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT REGULATIONS 2012

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FINANCE INDUSTRY DELEGATION RESPONSE

The Finance Industry Delegation (abbreviated from the former Financiers' Association of Australia/Industry/Smiles Turner Delegation) provides this response to Treasury's invitation to comment on the draft regulations.

While it is highly likely that there will be few current lenders still involved in lending following the commencement of the recently passed legislation, it is important to note that, in total, the draft regulations will make it even harder for commercial lenders to attain and maintain viability.

We ask that Treasury also seek substantial involvement from the not-for-profit sector, in the consideration of the draft regulations, as this sector will have to replace the commercial lenders next year and will need to fully understand and remain compliant with the Legislation and final Regulations. Consultation with this sector may be important, given the different culture and its impact on the evolution of suitable Regulations.

The Delegation conducted a survey during the week commencing Monday 20th August. This was amongst Delegation supporters and presented Treasury's questions in a quantitative manner where appropriate and, otherwise, asked for qualitative comment. 35 Delegation supporters responded and both the quantitative and qualitative content of their responses is included in this submission (presented in blue, immediately under the relevant question).

The responses included an appropriate range of small and medium-sized lenders, with one relatively large lender participating. It is acknowledged that the sample may have introduced a bias towards the views of small and medium-sized lenders. These represent owners of a little over 62% of all lending outlets. The writers have no way of knowing whether the owners or franchisors of the other larger companies in the market segment share the views of the one larger company that responded, or of their smaller colleagues. In this context, we are pleased to note that respondents included franchisees of the two major franchise systems.

Summary - Changes Needed

The Delegation seeks the following changes:

1. The warning notices - placement should be limited to inside the premises and only once on a website. Content should be modified to acknowledge the credit provider as not being responsible for implied misrepresentations (with the alternatives not necessarily being available or able to assist the borrower).
2. Payroll/employer deductions - modification to cancellation message, so that clear alternative repayment arrangements have to be made prior to cancellation. Second form for deductions commencing after a default.
3. Protected earnings concept - lower percentage protected and calculations based on likely earnings during term of loan, replacing unbelievably complex current proposal.
4. Third party fees for small amount contracts - allowed as additional when associated with promoting responsible lending assessments.

5. Fees allowed outside the cap - any that a consumer may select as a service to facilitate a loan, but which are not essential to obtaining credit under the credit contract.
6. Default numbers - minimum of 3 consecutive defaults before a halt in direct debits.

RESPONSE IN DETAIL

REGULATION AND COMMENTARY	QUESTIONS FOR STAKEHOLDERS
28XXA -small amount credit contracts - requirements for warning on licensee's premises. **Schedule 7 – prescribed notice** As set out in the Consumer Credit Legislation Amendments (Enhancements) Bill 2012 (Enhancements Bill), in subsections 124B(1) and 133CB(1), small amount lenders are subject to disclosure requirements on their premises. The regulation sets out the requirements for the location of the notice, and the content. A licensee must display a clearly visible warning as set out in **Schedule 7**, with the typeface, font size and location of the warning prescribed.	• **Are there comments on the requirements in respect of the location of the notice?** Q: Do you think having to display such a notice on your door or window is appropriate? A: Yes - 2; No - 33. Q: Do you think having to display such a notice in your premises is appropriate? A: Yes - 3; No - 32. The currently prescribed locations are excessive and should be limited to one location inside the public area or foyer, capable of being easily noticed by all potential borrowers who enter the premises to satisfy the regulator. The current requirements are far too prescriptive and demanding, with many premises being unable or unsuitable for such multiple display, because of their physical layout and design. Please note, the notice will confuse people who want bigger loans, which will not be available from the suggested alternatives. It is also expected that the 1800 helpline operator staff will experience a very high turnover rate, as the level of abuse from would be borrowers who cannot be helped through their system due to the borrower being outside the alternate lenders' guidelines, or because the alternate has insufficient resources to offer any help, will be substantial. The Delegation supporters are going to support this hotline by referring to them all people who are found to be "unsuitable". The Delegation looks forward to receiving information concerning the extra resources that the Government is going to allocate to the listed alternatives, in order for them to cope with the massive increase in demand that can be expected. This is particularly important, given the strong risk that consumers will presume the credit provider is not intending to be deceptive by displaying a notice that implies a variety of alternatives are easily accessible and available to each individual consumer.

	One Delegation supporter is waiting for Treasury to suggest to the Minister for Health that cake shops be required to carry a notice warning people they are in danger of getting fat. • **Are there comments on the requirements in respect of the content of the notice?** As the Delegation has previously commented in Treasury submissions on this topic any information notice, of any kind, should be considered an unfair burden. However, the proposed notice is anti-competitive, in that it implies that there are advantages associated with the alternatives that may not exist in relation to that particular borrower, while discouraging that borrower from doing business with the lender who can help. It is an aggressive attempt to scare custom away. The Delegation has previously provided the following under the subheading "Websites" in the May 2012 submission in response to the second Exposure Draft of the Bill. "*Lenders now report marketing costs ranging from $26.60 to $76 per enquiry, with some internet lenders involved in paying Google for priority listing, reporting costs of up to $98 per lead. After rejection of the greater number of enquiries to satisfy responsible lending, NCCP Act requirements and good business practice, marketing costs per actual credit contract offered and accepted currently ranges from $79.50 to $260, excluding those internet advertisers paying very high listing fees*". It is anticipated that the proposed contents will be unsettling to consumers. As the notice is currently worded it will represent a misleading and biased message, which will cause many potential borrowers distress if they attempt to action the messages. The notice should at least warn of the time delay and criteria imposed, associated with any loan facilitated through the hotline. The Delegation reminds the Minister and Treasury of a concern included in the Delegation's submission in May 2012, regarding the Exposure Draft of the Bill. In that submission the Delegation emphasised lenders' concerns, in regard to websites, to be protected from any allegation of publishing false information. As you would be aware, Section 160D in that Draft provided that the individual could attract a fine of $11,000 and/or a two year gaol term. As we warned the Minister and Treasury in the Delegation's submission concerning the first Exposure Draft in September 2011, there is a very important usage issue to bear in mind when prescribing a "hotline". As Smiles Turner consumer research, conducted in 2006, 2007, 2010 and 2011 has consistently demonstrated, consumers are locality and convenience driven. Out of area lending opportunities (generally anything in excess of 12 kilometres) will have limited impact. The Minister and Treasury will recall that the Delegation estimated that funding of towards $800 million would be required to duplicate the approximately 620 existing commercial lenders' outlets across Australia.

	We note that the Delegation's figures are supported by the $7.5 million set up costs (net of ANZ or NAB provided loan funds) that the 5 (only) Community Development Finance Institutions' consumer lending outlets - established in 2010 by Minister Jenny Macklin, in her role as Minister for Community Affairs - cost Australian taxpayers. It should be noted that the Delegation has previously presented Treasury with substantial research results indicating that approaching 80% of all consumers simply do not want to read any more information, including notices such as this. As previously reported to Treasury, so dramatic has been the increase in mandated documentation under the Commonwealth regulatory regime that, despite being advised to do so by the lender, at least 83% are not reading all their current documentation (Smiles Turner research March/April 2011). In 2010, 75.6% of the consumer respondents indicated that they did not read every document given or shown to them when they took out their loan. The proposed notice assumes that all potential applicants are already in hardship application situations. Smiles Turner industry research consistently shows that less than 1% of loans end up with any form of hardship application. As one Delegation supporter noted - regardless of where a warning notice is displayed, this will not help the consumer who needs cash quickly. Treasury will recall being provided with Smiles Turner research that indicated the high proportion of borrowers who seek funds in urgent and/or emergency circumstances (May/June 2012 - 68.7% borrowed in an emergency and 85.8% borrowed in circumstances that were urgent). In addition, a number of Delegation supporters have noted consumers approaching them after receiving a Centrelink advance and, due to current Centrelink policies, having the option to return to Centrelink for a second advance precluded. The credit provider will be perceived to have knowledge of the options, when such is not demanded and there is no indication that the options will fully and continually inform the credit providers of the not-for-profits' contemporary circumstances. The current copy does not specify that the options are accountable to the consumer, not the credit provider. The current copy promotes services that may not be available to the applicant and without any clarification of this issue. In addition, the content does not entirely satisfy the heading "*Short-term loans are expensive and may not solve your money problems*". As one lender responded: "*It is an embarrassment when a lender is also lending loans that have no relevance to the notice, but those consumers are also exposed to the notice and its contents*".

	We remind the Minister and Treasury that, with few exceptions, the consumers do not regard the loans as expensive - as revealed by Smiles Turner May/June 2012 research, previously provided, which found consumer thought their loan was expensive - 3.88%; a bit expensive - 9.54%; OK - 69.62%; Cheap - 11.28%; OK and cheap - 16%.
28XXB - small amount credit contracts - requirements for warning on licensee's website. **Schedule 8 – prescribed notice** As set out in the Enhancements Bill (in subsections 124B(1) and 133CB(1)), small amount lenders are subject to disclosure requirements on their website. The regulation sets out the requirements for the location of the notice. The licensee's website must display on access by the consumer, two separate warnings as set out in **Schedule 8**, with the typeface, font size and location of the warning prescribed. The first warning must be in the form of an icon displaying the words 'Warning About Borrowing' and must be visible on pages of the website referring predominantly to small amount credit contracts (this recognises that some small amount lenders also operate in different business areas). Clicking on the link would bring up the relevant warning. The second warning would appear whenever a consumer clicks on the relevant link which would take them directly to an application form, and must be physically closed before they can access the application form.	• **Are there comments on the requirements in respect of the location of the notice?** Q: Is the regulation asking too much in respect of the location of the notice for websites? A: Yes - 22; No - 5; Not applicable - 8. Q: Do you approve of the content of the notice for both premises and/or websites? A: Yes - 7; No - 28. Given that, with the word "Warning", the proposed notice carries a bias from the beginning, it is suggested a more neutral heading be adopted, e.g. "Information", for "For your Information". A fair, informative notice required as a "gateway" to application forms might be acceptable. The current aggressive attempt to scare custom away is <u>not</u> acceptable. If the Minister supports such an approach, please encourage him to seek funding from the Treasurer to run a government campaign on the matter, not expect lenders to spend substantial sums advertising their existence, only to have people responding to those advertisements being blatantly told to go away by the alternatives. This will again demonstrate the falsehood included in the commencement to all versions of the Explanatory Memorandum and in the very dated Regulation Impact Statement, which erroneously states that lenders will not suffer any adverse financial consequences from the legislation (and, by implication, associated regulations). Insofar as these notices might have any effect, it is suggested that one location is sufficient. As with the excessive documentation that lenders are now required to give the consumers - repeated inclusions will do little more than clutter the overall site and turn the consumer off reading anything. The more the consumer advocates - who have never done any research into readership and are not inclined to do so - pile on the amount that is expected to be read and hoodwink the Minister and Treasury into thinking that it has any impact, the fewer "notices" or documents the consumers will actually read. Treasury might care to ask its officers and the consumer advocates themselves whether they have actually read their entire house mortgage documents - before signing for the biggest loan of their lives. It is suggested there should be a link that takes the consumer to the notice, in the same manner as they are taken to the terms and conditions, and the consumer would not be able to proceed to apply for a loan online unless they tick the box confirming

	they have read the notice. One survey respondent summarised the views of all who responded: "*I don't approve on principle - it discriminates against our industry sector. I am unaware of any such prescription for the banks*". Concerning the impact on consumers - the comments of one survey respondent summarises the general view: "*I do believe that most of our clients aren't going to be influenced one way or the other by it (the notice). If they need cash they will take the easiest way to get it regardless of any notice. Those that do make an effort to achieve cheaper funds are going to be disappointed in the length of the process (if they get the funds at all) and will most likely come back to us*". • **Are there comments on the requirements in respect of the content of the notice?** **In regard to website regulation:** Please see comments concerning Schedule 7. In regard to the visual presentation of the prescribed notice on credit providers' websites, the Delegation is concerned that the proposed regulation stipulates "*reasonably visible*" and of a "*significant proportion*". As the Minister and Treasury would appreciate, although expressed as mandatory requirements, these terms are highly subjective and capable of a variety of interpretations. In addition, the font size and style has been prescribed, which may lead to issues of total website appearance in relation to the remainder of the website's content. It must be noted that there are technical issues associated with font sizes, styles and applications which must also be addressed if the specification is to be effective. The Delegation recommends that the font style and size be prescribed as that of the predominant font style and size to be found on the homepage. **Regulation notices in general** Delegation supporters regard these notices as being a contribution to the overall strategy of banning payday lending. This will discourage lenders from continuing to lend small amount contracts and they will move to medium and larger amount contracts. The content conflicts with the lenders' Corporations Act duties to act responsibly for their shareholders. Discouraging business is not what is anticipated as appropriate.

	The inequity of the local milk bar not having to display signage when the price of their milk is higher than Woolworth's is noted. There will be little impact from these signs in regard to NILS and LILS, given the vast majority of people want their loan on the day they visit the credit provider's outlet or website. The appropriate vehicle to promote these options is via Centrelink communications. As one lender responded: "*None of my customers qualify for NILS and LILS, so I would be presenting a deceptive notice*". As one lender respondent commented: "*The belief that NILS, LILS and Centrelink advances are some sort of cure-all is delusional*". It must be remembered that for many borrowers, these notices will be "*pointless*". One major multi-outlet lender commented: "*My clients... don't need to be treated like idiots*". This statement was supported by a smaller lender who, in response to the Delegation's research on this matter, commented: "*The content is deplorable and implies that the consumer is stupid. If this is to apply to small amount contracts, it should also apply to credit cards and other personal loans issued by the banks*". Other Delegation supporters referred to the content and approach associated with the suggested regulation as "*patronising*". A smaller lender commented: "*I doubt whether many of our customers would read the notice anyway*". One lender noted that, as their company advertised the alternatives, it would be appropriate for them to be paid a referral fee. The Delegation asks - if the alternatives to commercial lenders are unable to assist, will they provide information on the availability of commercial lenders? The proposed regulation presumes that potential consumers will be receptive to the mandated warning. Any optimism that this might be the case should be tempered by the following: As indicated elsewhere, 86.25% of the 1,906 consumers surveyed in May/June 2012 did not regard their loan as either expensive, or even a bit expensive. The Smiles Turner lenders' survey in 2011 indicated that 77.6% of all outlets already had a high cost warning. 89% of Min-It Software and all Smiles Turner documentary clients already have such a warning included in their contract documentation.

	41% of the 2011 consumer research respondents indicated that their contracts already contained "*a warning that your credit may be high priced compared to other sources*". The above statistics cannot be explained away as being generated by consumer ignorance. In the 2010 Smiles Turner research, when asked "*Today, or whenever you last took out a loan, was the total cost of your loan fully explained to your satisfaction*", 99% of consumers replied "*Yes*". In this context, unlike the medical research supporting the use of warning notices on cigarette packets, the Delegation notes that neither the Minister nor Treasury were able to provide any research results indicating that there was a major social problem associated with the small amount, short term lending industry, or that this warning signage would be effective in solving any social problems. With the above in mind, the issue of the sign is not one of stopping people from borrowing, it is whether or not the other three suggested alternatives in the mandatory warning sign will attract interest from the consumers viewing the sign and whether or not this interest can be satisfied by these alternatives. This will be the central issue given that from 1 March next year, under the proposed protected earnings regulation, up to 224,000 Centrelink recipient beneficiaries will be seeking assistance from one of these three alternatives. This will be before the proportion of the other borrowers who believe the notice and also seek to contact the alternatives, follow suit.
28XXC – Authorisation for deduction **Schedule 9 – prescribed form** The regulation prescribes a form that must be provided to the employer when a credit provider or lessor is arranging to have repayments made directly from the employee's salary. Deductions need to commence within one month of the form being signed by the lessee or the debtor.	• **As deductions need to commence within one month of the form being signed by the lessee or the debtor, is there a need to provide a second form where the lessee or debtor may be in default?** Q: Is there a need for a different form where a default occurs via another method of repayment and there is a switch to employer deductions? A: Yes - 27; No - 1; Not applicable - 7. Yes, this because of the current one month restriction. Consequently, it could be avoided if the Minister and Treasury were to consider an all-purpose form. It is noted that the one month provision is a contradiction to the Minister's declared policy of encouraging longer loans. Further, it introduces continuing inconvenience for the employer, let alone the other parties, to have to be involved in potential multiple signing occasions. We must ask - why does Treasury overlook the "innocent" employer in such a circumstance?

	• **Should the credit provider or lessor be able to combine the form with their existing payment authorisation deductions?** YES. The suggested form offers limited explanation and does not offer any courtesy toward the "innocent" employer. It may be useful to remember that this methodology is no more onerous than a direct debit, or a Centrepay deduction. **Further Comment** The Delegation is strongly of the view that the boxed "IMPORTANT" sign is inappropriately placed and the order and content of the message could convey the wrong impression to the consumer. The current suggested wording excludes the entity at commercial risk from the cancellation process. It fails to present a fair circumstance where alternative arrangements for repayment are a necessary first step in the cancellation of the employer authority process, not an afterthought. It is suggested: (a) A more appropriate placement is at the end of the prescribed form after all signatures. Credit provider experience with consumers is that, if Treasury and the Minister leave it where it is, many presented forms will not include the debtor's signature. (b) The copy to read, "*Provided the borrower makes alternative repayment arrangements prior to doing so, and immediately informs the credit provider, this deduction request may be cancelled by contacting the employer after these arrangements are in place. Please note that you must follow through on your alternative repayment arrangements, so that all repayments due after the cancellation are received by the credit provider on time, or you will be in default*". The Delegation is pleased to note that the suggested form addresses both the employer and the employee and, if the regulation proceeds, this combined approach will avoid the generation of yet another form for which the credit provider must be responsible. It should be remembered that employer deductions can be attractive to consumers, because they do not attract any direct debit fees. They also assist the consumer to budget more efficiently. The consumer can be reassured because they know their obligations are being met, while also knowing exactly how much they will receive on which to live until the next payday.

28S - Licensee must not enter into a small amount credit contract if the repayments do not meet the prescribed requirements The regulation provides that a licensee will not be permitted to enter a consumer into a small amount credit contract if the consumer is eligible for a Pensioners Concession Card, over 50 per cent of their income is from social security payments and the repayments going towards small amount loans exceeds 20 per cent of their total income (Protected Income Amount). The proposed formula for determining a person's income (and therefore the amount of the repayments) is based on calculating the consumer's average daily income against the average daily repayment for all existing and proposed small amount contracts.	• **What are stakeholders' views on whether the regulation should apply to consumers who are eligible for a Pensioners Concession Card?** Q: Do you currently lend to Centrelink benefit recipients that come under this regulation? A: Yes - 27; No - 8. Q: For those who lend to Centrelink benefit recipients, will it be worth it for the extra monthly permitted fee/s, generated by the longer terms created by the regulation? A: Yes - 1; No - 26; Not applicable - 8. Q: Is the concept of singling out people with pension concession cards appropriate? A: Yes - Nil; No - 22; Don't know/not sure - 5; Not applicable - 8. Based on relevant parliamentary speeches and discussion during Treasury Consultation Group meetings, for the following analysis, the Delegation has assumed that the reference to "*income*" is in fact a reference to gross income. The Delegation notes that, of the 1,906 consumers who responded to the Smiles Turner May/June 2012 consumer research, 36.04% were borrowers that would have been included in the category of borrower relevant for this proposed regulation. The application to all Pension Concession Card holders, given the 80% protected earnings amount involved and the complexities in calculation currently demanded, will effectively prohibit viable lending to this sector. Please alert the Budget Policy Division of Treasury, the Centrelink advances payments' management and the charities and not-for-profit sector, to this impact. The Delegation is concerned that the current suggestion is little more than an attempt to hide an intention that loans to these cardholders should be prohibited. If adopted, it will join other provisions in the regulations and/or legislation, which are similarly duplicitous. One Delegation supporter reported that they already met this criteria, but their standard loan is over 12 months. From a lender who does not lend to Centrelink benefit recipients: "*The intended regulation is inappropriate. These people have the greatest need to fund short term cash flow problems, such as meeting their private rent payments, bills not budgeted for and emergency repair costs to motor vehicles, etc. The most disadvantaged will be even more disadvantaged*". The impact on the those lenders who currently lend to Centrelink benefit recipients is not only anticipated to be "*quite negative*", but for most will be devastating.

	In regard to the Centrelink consumer's eligibility, the Delegation presumes that the fact the applicant has the requisite Pensioner Concession Card will suffice. The Delegation does not accept that the credit provider should be responsible for going behind the presentation of such a card, to explore whether or not the applicant is "*entitled*", or "*qualified*" to receive such a card under the relevant Social Security legislation. • **What are stakeholders' views on the formula in the regulation for determining the maximum amount of the repayments?** Q: (Referring to a simple 20%) Do you find the formula for calculation acceptable? A: Yes - 5; No - 22; Not applicable - 8. The lenders responding were unanimously critical of the currently proposed, very complex formula. A fundamental error in the proposed approach is to assume income earned over a preceding 12 month period has relevance to the income projected to be earned during the contract term. There are many opportunities for significant variation to emerge, including: (a) the possibility that the consumer was not on the same Centrelink benefit, if any, during the whole or part of the preceding 12 months; (b) that the consumer was or was not in some form of employment that excluded payment of a Centrelink benefit; and (c) that some form of employment significantly enhanced the consumer's income during some part of the last 12 months; with all the above not beingh duplicated during the proposed term of the loan. Consideration of the formula reveals that it is so complex that it, alone, would force lenders to abandon lending to this sector. In reality, as a general rule, it is impossible to embrace a potential 'prior 12 month' consideration. Given the impact of the proposed calculation complexity and the 20% of gross income, this will definitely discourage lenders from lending to this segment. It opens up major opportunities for unintentional mistakes, with unconscionable severe penalties. Should this not be amended, the Delegation will recommend that all Delegation supporters cease lending to this sector. If this recommendation is generally adopted, Treasury and the Government will have the opportunity of observing Part 1 of the impending socioeconomic disaster. As one respondent stated, "*It is impossible to calculate and works on past earnings, when it should be related to future earnings. Debts are paid moving forward, not*

backwards".

The provision of 20% is too low. Compare the banks, who work on 30% of gross income. The Delegation considers that further guidance on what constitutes "*income*" will be important if the complex calculations expected proceed. For example, will income include the Household Assistance payment, child support, rental assistance and the like.

This proposal overlooks the fact that small amount lenders already have to do a more comprehensive assessment of the ability to repay than the banks and that no lender is interested in lending if they think they will not be repaid. The issue here was multiple loans, which has now been solved with the 2 loans/90 day rule.

The formula also denies the opportunity for the lender and borrower to jointly assess what is appropriate in the borrower's circumstances.

The concept overlooks the variables associated with the diverse range of consumers involved. Why should consumers who live at home with parents to economize on costs, or the frugal and responsible consumer, be discriminated against by being put in the same box as others.

The proposal envisages a calculation of the 20% on total income, not disposable income, which again discriminates against the frugal and responsible.

- **Do stakeholders consider an alternative formula would be preferable, and if so why?**

The formula should be abandoned for the employment of already established responsible lending standards.

If the circumstances are appropriate within responsible lending requirements, an alternative formula must allow for a higher percentage and should be based on quantifiable expenses.

Further, the formula should relate to disposable income. Reference to gross income is too simplistic and fails to recognise consumer diversity.

Two Delegation supporters suggested gross income, less rent, less repayment of other loans - 30% of balance maximum.

The calculation should be based on a reasonable assessment of future earnings. The Delegation suggests that the appropriate term and amount provides income and repayment amount relevance, i.e. future income should be projected over the term of the loan, with reference to a Centrelink income statement.

There is also a presumption that a concession card has been appropriately allocated. This may be according to criteria that have little to do with a loan application.

	It should be noted that the enforcement of longer term loans under these suggested provisions will increase the rate of default. As such, this new category of lending restriction will discourage lenders from lending to this borrower segment. The concept overlooks possible contributions out of savings, or contributions from other income earning members of the debtor's household. It also overlooks the debtor who does not want to incur an extra 4% cost, when they can arrange their financial affairs to pay the small loans off within the one month. Under the proposed concept and formula, funding costs will be a deterrent to credit providers continuing with these loans. Further, the inability to be certain that consumers do not have loan obligations elsewhere and repay by cash, will be a deterrent to credit providers continuing with these loans. As one credit provider commented: "*The compliance obligation makes it too risky for my business to entertain these low value/high risk Centrelink clients*". We draw the Minister and Treasury's attention to the likely reality that, if these proposed regulations proceed, they will definitely introduce the first major wave of substantial increase in demand on Centrelink advance payment and NILS and LILS options. As this will occur from 1st March next year, the Minister and Treasury would be very wise to actually investigate the capacity of these options to cope with this wave of extra demand, if there is no inclination to substantially amend the proposed Regulation. As Smiles Turner May/June 2012 research, previously reported to you in detail, indicates, this will be approximately 36.04% of all small amount short term loans. It would be useful to anticipate that, on the figures used by the parliamentarians in their speeches on the Credit Enhancements Bill recently - most seemingly based on Smiles Turner 2006-7 research - at least $150 million and, on Smiles Turner's 2011 research figures, somewhere closer to $360 million will be required to fund these options' loan books March 2013 to March 2014.
28XXD - Unsuitable credit contracts - prescribed circumstances This regulation addresses potential avoidance of the caps on costs through 'loan-splitting', where the consumer would be provided with two concurrent loans for smaller amounts instead of a single loan for a higher amount. The regulation provides that such credit contracts will be unsuitable under the responsible lending obligations.	• **Is the regulation effective in addressing potential avoidance through 'loan-splitting'?** YES. One Delegation supporter noted that this suggested regulation fails to recognise that there may be a very legitimate reason for having two concurrent small amount credit contracts.

79AB - Credit provider or prescribed person must not require or accept payment of fee or charge in relation to small amount credit contract etc This regulation addresses potential avoidance of the cap on costs in respect of small amount credit contracts, by prohibiting arrangements where the consumer incurs costs charged by a third party. The provision extends to small amount credit contracts the prohibition that applies to other credit contracts in subparagraph 32B(3)(b)(ii).	• **Are there any situations where third party fees should be allowed?** Q: Are there any situations where third party fees should be allowed? A: Yes - 31; No - 2; No answer - 2. In general, all costs relating to the particular service should be capable of being passed on. In particular, Delegation members are seeking the exclusion of the consumer's bank fees and charges, to eliminate comparative disadvantage where the banks have different amounts for the same service. Given the 90 day bank statement provisions and the 12 month Centrelink recipient provisions, together with the propensity of consumers to throw away, lose or destroy their bank statements, it is proposed that the cost of replacement bank statements be excluded. Other fees that should be excluded are the costs of credit reports, Austrac required identification checks and the like. It must be remembered that these fees are beyond the control of credit providers. For example, Veda charges different amounts to different lenders and their fees have increased by 40% over the last 2 years. • **Are there any other current avoidance practices in relation to existing caps under State legislation where fees should be prohibited?** The draft regulations have covered them all.
79AC - Prohibition relating to annual cost rate of credit contracts - later increases of annual percentage rate etc This regulation addresses potential avoidance of the cap on costs in respect of credit contracts other than small amount credit contracts. The regulation provides that two classes of fees will be taken into account in determining whether a credit provider has exceeded the annual cost rate over the life of the contract under subsection 32AA(1) (even where they may not have done so before entering into the contract, under subsection	• **In relation to medium amount credit contracts, are there any fees or charges that fall within the definition in subsection 32B(3) that should be allowed in calculating the annual cost rate?** Q: In relation to medium amount credit contracts, are there any fees or charges that fall within the definition in subsection 32B(3) that should be allowed in calculating the annual cost rate? A: Yes - 28; No - 2; Not applicable - 5. The regulation overlooks the number of credit providers who do not have the resources to spend on advertising and rely on brokers to introduce consumers. The limits on gross income prohibit any sharing of currently approved fees between the credit

32A(1)). The classes of fees to be taken into account are: • in relation to medium amount credit contracts – any fee or charge that falls within the definition in subsection 32B(3); and • in relation to credit contracts other than medium amount credit contracts – an establishment fee or deferred establishment fee where the debtor increases the amount of their repayments as a result of a request by the credit provider.	provider and the broker. The other fees and charges that should be allowed are those for services that make a positive contribution to responsible lending. For the consumer's sake, expenditure on these should be encouraged - not discouraged by making them a direct reduction in credit provider income. These fees should include credit checks, postage, unique finance costs, the full cost of PPSR fees (including that portion charged by a facilitating service company), additional administration fees when a customer requests an extension which is not related to a hardship application, as well as the Government fees and bank direct debit fees. • **In relation to addressing avoidance of the cap through establishment fees, is the regulation effective in addressing this practice?** YES.
79C - Default in payment by direct debit under small amount credit contract This regulation addresses the risk of fees accruing to a debtor's account through repeated unsuccessful use of a direct debit. The regulation requires the credit provider to make reasonable attempts to contact the debtor in order to clarify why the direct debit is being rejected (in circumstances where a debtor is in default and likely to be in financial hardship). The regulation imposes this obligation once a credit provider has twice sought to obtain a specific repayment through reliance on the direct debit (that is, the attempt must be made in respect of the same repayment). The obligation does not apply where there has been an unsuccessful attempt in relation to a repayment and then a successful debiting, followed later by a second unsuccessful attempt in relation to a different repayment.	• **Is it sufficient to require a credit provider contacts the debtor and advise them the direct debit has been unsuccessful, or should the credit provider be under some additional obligation?** YES. In this context, the Delegation reminds Treasury that we are dealing with circumstances where the consumer has (presumably) made no attempt to contact the credit provider and has deliberately allowed an act to occur that breaches their legal liabilities under a contract. We note that, in these circumstances, the consumer's behaviour must continue to be viewed from the point of view that the consumer freely entered into the contract, happily spent the money they borrowed and live in our society as people of legal age with the right to vote. The credit provider should not be held at fault if the debtor chooses not to respond to email, voicemail, sms messages or letters. • **Should the obligation apply after two unsuccessful attempts, or after a greater number?** Q: Should the obligation apply after a greater number? A: Yes - 32; No - 2; No answer - 1. Q: If yes, how many? A: 3 Defaults - 3; 4 Defaults - 18; More than 4 defaults - 8; Alternate methods - 4; No answer - 2. Q: Should the defaults be consecutive? A: Yes - 27; No - 2; Don't know - 5; No answer - 1.

	The Minister and Treasury must address the confusion created in interpreting this draft regulation. In Treasury Consultation Group discussion and as a topic covered in a previous Discussion Paper, there was an assumption that the issue was one of a default on an initial repayment amount. This then followed by another default being created when the subsequent repayment amount was due. Given the preference for at least three defaults indicated by the industry research, there would be a third occasion where the two earlier defaults were not repaired and the repayment due on the third scheduled date was also not paid. Unfortunately, this draft regulation does not reflect those circumstances. There is also the situation where a default has not been repaired before the subsequent scheduled repayment date, where an amount to cover one of the two equal repayments is allocated to the second repayment - but leaving the earlier repayment still unpaid. The Minister and Treasury will have to clarify this issue. For convenience, the rest of this section is written on the basis of the first and most likely circumstance, where the defaults accumulate and there is no repayment on any one of the suggested three consecutive scheduled repayment dates. The obligation should be for at least 3 defaults. Limiting the number to 2 overlooks the delay before the credit provider is made aware of the default by the bank, the time it can take to chase the debtor and the subsequent time it can take the debtor to attempt to repair the default - a total period which can bring the process up to the second default date, if not longer - particularly with weekly repayments. Further, limiting the defaults to 2 does not acknowledge circumstances where an employer may pay late, fails to recognise public holidays interfering with repayments, or where there are bank processing problems due to breakdowns in the bank's systems, e.g. in relation to weekly direct debit consumers, the process of changing banking details with a payroll officer often takes longer than a week, or the 48 hours bank processing requires to cancel or reschedule a direct debit, could cause the second direct debit default to occur during that time. The proposed regulation is predicated on monthly instalments, not weekly or fortnightly. Forms 11 and 12, for the first default, may not even have been received by the debtor before the second default occurs. The problem with a fixed number, no matter what the size or term of the loan (within the small amount loan limits), is that prescribing a number for any loan does not reflect an appreciation of the different fixed and variable costs attracted to the different loans. They are simply not homogeneous.

	These defaults should be <u>clearly prescribed as consecutive</u>, to clarify that they are not merely any two defaults, at any time during the term of the contract. Unless they are specified as consecutive, irrelevant single defaults - long since repaired - will be included. Consecutive defaults recognises one off default situations such as when tradesmen are unable to work in wet weather, or there is a temporary health crisis. It must be noted that consecutive dishonours flags problems with the consumer's ability to repay and allows the lender to send appropriate notices to the consumer before the opportunity for repayment stops. This also allows the lender to identify potential hardship situations. This is not the case if the defaults are a considerable time apart, even if the first is appropriately rectified before the second occurs. The Delegation notes that 2 defaults over a 12 month period, with repayments made fortnightly, is in a very different league to 2 defaults during a one month loan, repaid via weekly or fortnightly repayments. It must be remembered that, until their new money management habit is established, it is not unusual for some new clients to leave insufficient money in their bank account to meet their first loan repayment, especially those receiving their income on a fortnightly or monthly basis. A number of respondents reported that customers often change their repayment date without advising them, so that the non-payment is more glitch than a genuine default. It should be particularly noted that it is not uncommon for debtors to miss some payments due to holidays, sickness or other priorities and then resume the repayments. This renders the provision demanding full repayment of arrears impractical and unnecessary. If the defaults are not going to be consecutive, the demand that the defaulting payments be repaired before continuing with the loan will mean that, in many cases, the debtor will simply get further behind and attract further costs. It is sometimes far better to incorporate these defaulted payments over the rest of the periodic repayments, or simply extend the loan. Clarification as to what constitutes "*reasonable attempts*" must be provided. This in the context of the number of defaulting people who deliberately "lose" their mobile phone, put the phone on restricted access and otherwise undertaken avoidance techniques. Similarly, those who are deliberately "out", when field officers visit.

The Delegation's comments on penalties	The Delegation notes that the penalties listed in the draft are draconian, unconscionable and totally out of proportion to the proposed offence. The 2 years' imprisonment for breaching Regulation 28S is an obscenity that one would only expected of totalitarian regimes. The non-inclusion of a fair and reasonable civil penalty option for Regulations 79AB, 79AC and 79C is also very distressing, given the regulation is supposed to be for Australia and not for Putin's Russia.
Delegation's General Comments	1. Given the potential new actual and likely restrictions - will the Government be providing any new incentives for the lenders, such as access to Centrepay? 2. Given the new actual and likely restrictions - will the Government give our debt collectors more rights with defaulters? 3. Would the Government consider an advertising campaign featuring NILS, LILS and other Not-For-Profit opportunities - <u>before</u> they close all lenders down - to test the availability and suitability of the alternates as a replacement for the commercial lenders, including their capacity to cope? **4. The Review of "Strategies for reducing reliance on high-cost, short-term, small amount (commercial) lending" should be completed, the results circulated to stakeholders and considered by both Treasury and the Minister, before the Regulations are finalised.**