

Redfern Legal Centre



Manager
Consumer Credit Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: enhancementsregulations@treasury.gov.au

7 September 2012

Attention: Mr Christian Mikula

Please find attached our policy submission:

RLC Submission on Small Amount Credit Contracts (SACC) Regulations,

in response to Treasury's call for comments on the Regulations to support provisions in the Consumer Credit Legislation Amendment (Enhancements) Bill 2012.

We would welcome the opportunity to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

A handwritten signature in black ink, appearing to read 'Jacquie Swinburne', is written over a light grey horizontal line.

Jacquie Swinburne
Acting Chief Executive Officer

Redfern Legal Centre



SUBMISSION:

RLC Submission on Payday Lending Regulations

AUTHOR: Michelle Schonstein

DATE: 7 September 2012

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in Credit & Debt

RLC identifies economic rights as important in the attainment of a just society. RLC has long recognised that, without the ability to exercise their economic rights, people are unable to maintain other rights. Economic rights are essential to effective and productive participation in society, including keeping families together, safe housing, jobs, and freedom. For this reason, RLC has continued to emphasise casework delivery to people in relation to banking, credit and debt problems. RLC provides specialist credit and debt face-to-face and telephone advice services.

RLC also provides a support service to financial counsellors in NSW, whereby financial counsellors are able to call or email our credit and debt solicitors to obtain legal information and assistance as they need it.

3. RLC's views in summary

We welcome the opportunity to comment on proposed regulations in this area. It is important that to ensure that consumer credit protections are consistent and workable, as this is an area where consumers are particularly vulnerable to unscrupulous practices. The consequences of poor industry practices impact significantly on consumers, and consumer debt problems can quickly spiral into other problems associated with indebtedness. Consumers are often at a disadvantage due to poor understanding of the consumer credit products they are signing up for, and may confuse sales techniques with financial advice. Strong regulation is necessary to prevent industry participants from taking advantage of this lack of understanding.

Comments on specific issues

28XXA -small amount credit contracts - requirements for warning on licensee's premises.

Schedule 7 – prescribed notice

- Are there comments on the requirements in respect of the location of the notice?
 - We suggest that the regulation 28XXA(d)(i) include a requirement that the notice be visible and prominently placed at the point of entry. The current drafting of the regulation would mean that a notice placed on the front door

would satisfy the regulations, even if the notice were not visible with the door open (e.g. if the door were kept open during business hours).

- Are there comments on the requirements in respect of the content of the notice?
 - Instead of “*may not solve your money problems*” we would prefer “*are unlikely to solve your money problems*”. This would better reflect the common experience of the majority of payday borrowers.
 - Otherwise, we are satisfied with the content of the notice. We note that a notice is unlikely to discourage payday borrowers from using payday lenders. Nonetheless providing such a warning may have a positive effect on at least some borrowers, in informing them of their options.

28XXB - small amount credit contracts - requirements for warning on licensee's website.

Schedule 8 – prescribed notice

- Are there comments on the requirements in respect of the location of the notice?
 - In relation to the first warning, we note that unless payday lenders’ websites are adequately monitored, this requirement is unlikely to be effective. Payday lenders’ websites are often visually confusing, with many images, flashing signs and symbols.
 - For example, if such a warning were to be included in the Cash Train website, we consider it unlikely that a consumer would notice it (<http://cashtrain.com.au/>), given the amount of information and images already present on the website.
 - Further, the Cash Train website already contains a warning: “A short-term, high cost loan may not always be your best option or appropriate for your needs. There may be cheaper borrowing options and/or other assistance available to you.” This warning is positioned at the very bottom of the home page, and is not visible unless the user scrolls all the way to the end of the homepage. Such a warning is not useful.
 - Consumers accessing small amount credit contracts may have poor literacy levels, or may not be from an English speaking background. A written warning may not be useful for such consumers. Including an image or images in the warning would assist consumers with low literacy levels to understand to proceed with caution, or seek advice.
 - It is our view that the regulations **must** contain a requirement that the website warning be prominently placed on the homepage and any other page that contains information about small amount credit contracts. We consider that a banner warning that appears at the top of the website and remains at the top as the consumer navigates through the website would be most beneficial. We note that unless the warning is prominently displayed, it is likely to be useless. As discussed above, warnings on website can otherwise easily be buried, rendering the regulations ineffective.

- In relation to the second warning, we agree that it is useful to provide consumers with a warning before they can proceed to submit their application for a small amount credit contract. However, unless the first warning is adequately displayed, it may be too late for a consumer to heed the second warning. By the time they see the second warning, the consumer has already made up their mind to make their application, and a warning at such a late stage is unlikely to have any effect.
- Are there comments on the requirements in respect of the content of the notice?
 - We make the same comments about the content of the wording as provided above, i.e. instead of “*may not solve your money problems*” we would prefer “*are unlikely to solve your money problems*”.

28XXC – Authorisation for deduction

Schedule 9 – prescribed form

- 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?
 - We note that many of our clients find coping with paperwork extremely burdensome. This is due to a number of reasons, including frequent changes of address, limited or no access to computers/printers, poor literacy skills, poor administrative/organisational skills etc.
 - However, requiring written consent is one way of limiting the extent to which lenders can convince consumers to agree to payment plans that may be contrary to their interests.
 - In view of the above, we do not consider it necessary to require a second form, provided that:
 - The lender has repeated to the consumer the statement included on the Schedule 9 form in relation to canceling the arrangement,
 - i.e. “You can cancel this deduction request directly with your employer at any time. If you cancel this deduction request you will be in default if you do not make alternative arrangements to make repayments;” and
 - The consumer has confirmed that they understand the warning; and
 - The consumer has given oral consent to return to the previous deduction arrangement.
- Should the credit provider or lessor be able to combine the form with their existing payment authorisation deductions?
 - There is not enough information provided in the commentary as to how this might work. We make no comment.

28S - Licensee must not enter into a small amount credit contract if the repayments do not meet the prescribed requirements

- What are stakeholders' views on whether the regulation should apply to consumers who are eligible for a Pensioners Concession Card?
 - We consider this to be appropriate.

- What are stakeholders' views on the formula in the regulation for determining the maximum amount of the repayments?
 - In our view, the 20% threshold is too high. Recipients of Centrelink payments struggle to meet day to day expenses, and accessing expensive and onerous small amount credit contracts to meet those expenses does not improve their financial situation.
 - Given recent research that shows that most individuals living on Centrelink benefits are unable to afford basic services and goods,¹ it seems unrealistic to expect that they would be able to afford to make repayments that amount to 20% of their income.

- Do stakeholders consider an alternative formula would be preferable, and if so why?
 - We consider 10% to be a more reasonable threshold. This is in line with the Centrelink Code of Operation with Participating Financial Institutions, which states that financial institutions cannot access more than 10 per cent of each pension, benefit or allowance payment to repay money owed to them. We refer to the comments made on this point in the recent Joint Submission that we along with other consumer organisations submitted to Treasury.²
 - However, we are wary of setting a maximum payment by percentage of income, because the individual circumstances of each borrower make it difficult to set a fixed limit as to what they can afford.
 - We are concerned that imposing a maximum payment by percentage of income would mean that the lender would simply use the limit as a de facto means of assessing the credit application, rather than taking the individual's circumstances into account. The regulations must not permit this to happen.

28XXD - Unsuitable credit contracts - prescribed circumstances

- Is the regulation effective in addressing potential avoidance through 'loan-splitting'?
 - It appears likely that the regulation would provide a remedy for consumers who find themselves in this situation. However in order to be effective, the regulations will have to be properly monitored and enforced. In our experience, many victims of unscrupulous payday lenders do not seek legal advice about their payday loans.

79AB - Credit provider or prescribed person must not require or accept payment of

¹ <http://www.smh.com.au/national/revealed-dole-recipients-too-poor-to-buy-food-medication-or-heating-20120828-24yvs.html>

² See Response to Treasury's Discussion paper - Proposed reforms relating to Small Amount Credit Contracts, Joint Submission prepared by Consumer Action Law Centre, Consumer Credit Legal Centre (NSW) and Financial Counselling Australia of 7 May 2012

fee or charge in relation to small amount credit contract etc

- Are there any situations where third party fees should be allowed?
 - We cannot see any need for exceptions to this requirement.
- Are there any other current avoidance practices in relation to existing caps under State legislation where fees should be prohibited?
 - Existing practices of which we are aware include:
 - Charging for DVDs (up to \$195) which must be purchased before the consumer is permitted to enter into the small amount credit contract; and
 - Selling diamonds to the consumer and buying them back as a means of avoiding the cap.

79AC - Prohibition relating to annual cost rate of credit contracts - later increases of annual percentage rate etc

- 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?
 - We make no comment.
- In relation to addressing avoidance of the cap through establishment fees, is the regulation effective in addressing this practice?
 - We make no comment.

79C - Default in payment by direct debit under small amount credit contract

- Is it sufficient to require a credit provider to contact the debtor to advise them the direct debit has been unsuccessful, or should the credit provider be under some additional obligation?
 - The credit provider should make reasonable attempts to contact the customer to let them know the payment has been unsuccessful, by telephone and in writing.
 - In our view, reasonable attempts would mean telephone contact should be attempted on 3 separate days, and written notice should be provided by email and/or post, according to the consumer's preferences (if stated). We do not consider this to be onerous, given that lenders are prepared to make repeated attempts to contact borrowers in other circumstances to recover debts.
 - **Case study:**
 - We recently assisted a client whose car was repossessed after her direct debit payment was not processed. The direct debit arrangement hadn't been set up properly, and so the payments were not processed. Realising this, our client made the payments manually, albeit a couple of days late. Our client was not contacted by the credit

provider to advise her of the failed direct debit payments before her car was repossessed.

- Should the obligation apply after two unsuccessful attempts, or after a greater number?
 - We consider it appropriate that contact should be made after two unsuccessful attempts.