RBR 14/01 Regulating Pay Day Lending : The Consumer Credit (Queensland) Amendment Bill 2001

The Consumer Credit (Queensland) Amendment Bill 2001 was introduced into the Qld Legislative Assembly on 29 May 2001 by Hon M Rose MP, Minister for Tourism and Racing and Minister for Fair Trading. The primary objective of the Bill is to regulate payday lending by closing a loophole in the current Consumer Credit Code.

This Research Brief defines and describes payday lending, traces the rise of this relatively recent phenomenon, both here in Australia and overseas, and discusses the pitfalls that are perceived to be associated with the practice, before outlining the provisions of the amending Bill. Appendices include relevant news items and media releases discussing the practice of pay day lending.

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Research Brief 14/01
June 2001

ISSN 1443-7902
ISBN 0 7242 7919 9

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1. INTRODUCTION

The Consumer Credit (Queensland) Amendment Bill 2001 was introduced into the Qld Legislative Assembly on 29 May 2001 by Hon M Rose MP, Minister for Tourism and Racing and Minister for Fair Trading. The primary objective of the Bill is to regulate pay day lending by closing a loophole in the current Consumer Credit Code.

This Brief defines and describes pay day lending, traces the rise of this relatively recent phenomenon, both here in Australia and overseas, and discusses the pitfalls that are perceived to be associated with the practice, before outlining the provisions of the amending Bill. The Appendices to the Brief includes relevant news items and media releases discussing the practice of pay day lending.

2. BACKGROUND

Pay day lending refers to the practice of lending money to a consumer, until their next pay day, in exchange for a fee. The amounts loaned are usually relatively small. Typically, the pay day lender's fee is set at $20 or $25 for each $100 advanced.

Both the amount borrowed and the fee must be repaid before the next pay day. Most commonly, at least in the Australian context, the form of repayment is through a direct debit authority by the borrower. In some cases, security for the loan is required from the borrower.

Currently, such loans, which tend to be short-term (typically one or two weeks), are unlikely to be regulated by the provisions of the uniform Consumer Credit Code which does not apply to the provision of credit for a period of 62 days or less: s 7(1).

The major problems perceived to be associated with pay day lending include:

- The high cost to borrowers
- Rolling over of loans
- Requiring security for the loan which is far in excess of the amount borrowed
- Unconscionable conduct.[1]

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[1] *Pay Day Lending – A Report to the Queensland Minister for Fair Trading*, August 2000, Executive Summary, p iii, <http://www.consumer.qld.gov.au/scripts/publications.exe>

These points are discussed more fully in Part 5 of this Research Brief.

3. THE PAY DAY LENDING INDUSTRY

The development of the pay day lending industry is relatively recent in Australia. Described by Federal Minister for Financial Services and Regulation Joe Hockey as the "twilight zone" of financial services,[2] it dates back only two to three years. A Working Party's report, prepared for the Queensland Office of Fair Trading, and published in August 2000, concluded that there appeared to be only about three major operators,[3] with 80 outlets in all states except Tasmania.[4] However, according to the report prepared for the Office of Fair Trading, predictions are that there will be as many as ten times the number of outlets within as little as five years.[5]

Pay day lending organisations reported to be operating outlets in Australia include Cheque Exchange, Australian Money Exchange and Cash Converters.[6] In America, the move towards pay day lending is more pronounced. A study of the pay day lending industry published in February 2000 estimated that over 10,000 pay day loan outlets were operating. One trade group representative was reported as projecting in excess of $2 billion in loan revenue by 2001. Stephens Inc, a Little Rock, Arkansas pay day loan company was reported as forecasting a market for 25,000 stores generating $6.75 billion in fees per annum in 2002 and an annual volume of 180 million transactions. In the United States, pay day loans are available through outlets including national chains of pay day stores, established cash checking locations, convenience stores, pawn shops, petrol stations, "800" numbers and the Internet (see eg Checkstop at http://www.checkloan.com and LoanGenie: www.loangenie.com).

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2 Commonwealth. Minister for Financial Services and Regulation, 'Action needed on payday lending', *Press Release*, 3 April 2001.

3 *Pay Day Lending – A Report to the Queensland Minister for Fair Trading*, August 2000, Executive Summary, p 1.

4 where it is reported that the Tasmanian Parliament has legislatively imposed a moratorium on payday lenders until December 2002 in order to allow time to regulate the industry. R Bowerman, 'Time running out for 'payday lenders', 5 April 2001, CPA Australia: <http://www.cpaonline.com.au>

5 *Pay Day Lending*, Executive Summary, p i.

6 'Pay-day loans', 26 July 2000 <http://finance.ninemsn.com.au/money/Loans/stories/story_634.asp>

It is anticipated that such loans will also be available through automatic teller machines in the near future.[7]

4. TYPES OF BORROWERS

In discussing the types of consumers to whom pay day loans may be attractive, the concept of "vulnerability" is usually introduced. Pay day loans are perceived to appeal particularly to those who are unable to access mainstream credit because of poor credit ratings, or unemployment or job dislocation, and to people in need of immediate cash because of unexpected bills, or gambling problems.[8] According to submissions made by pay day lenders to the working party convened by the Queensland Minister for Fair Trading, one pay day lender has, via its advertising, specifically targeted gamblers as potential customers.[9]

However, other evidence (from an overseas context) suggests that pay day borrowers are not necessarily drawn from the lowest income level. In an industry response published in 1999, the US National Cash Checkers Association (now the Financial Service Centers of America (FiSCA)) stated:

> *Although the deferred deposit services customer comes in many sizes, shapes and from various backgrounds, the industry has recognized certain general characteristics. The average user has a personal, or family income in the range of from $20,000 to $25,000 on the low side to $35,000 to $45,000 on the high side. The clientele is nowhere near the poverty line, but rather part of the self-sustaining American middle class.*
>
> *By and large these customers are independent gainfully employed individuals holding stable full-time jobs. Also they are often Americans who are moving upward economically, but have not yet been able to satisfy the benchmark criteria for credit facilities from banks and credit card companies. National statistics show that among deferred deposit services customers the average length of residence is almost 4.4 years (53 months), the average tenure in current employment is almost 4 years (46 months) and 35.8% are homeowners.* California Financial Service Providers, *The Payday Advance Process (1999). A March 1999 survey of Californian residents found that 29% were willing to obtain an advance on their paycheck for a fee. Of this group, 57% enjoyed annual household incomes over $30,000.00 and fewer*

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7 *Show Me the Money!: A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures*, The State PIRGs and CFA, February 2000, p 8.

8 *Pay Day Lending* , Executive Summary, p ii; *Show me the Money!*, p 3.

9 *Pay Day Lending*, p 9.

> *than 18% had annual household incomes below $20,000.* California Financial Service Providers, *Payday Advance Industry's Growth (1999).*[10]

In Canada, a study conducted by Money Mart found that 82% of pay day loan customers earned $40,000 or under. 20% were classified as professional people, 18% were employed in skilled trades and between 4-12% were drawn from each of the categories of labourer, business, retail clerk and restaurant/hotel.[11]

The uses for which pay day loans are sought appear to be varied. An article published in the *New York Times* in 1999 suggested that pay day lenders are servicing "*people who need small sums to get over a hump, like paying for a medical prescription or buying tires for a car*".[12] Elsewhere, a US focus group suggested payday loans were used for car or home repairs.[13] In the survey Money Mart conducted, it found that the most common reason cited was " *no real reason, just wanted some extra cash for a few days*" (42%); 17% cited an unexpected emergency and 29% said paying off overdue bills.[14]

5. PROBLEMS WITH PAYDAY LENDING

As outlined in Part 1 of this Brief, a number of problems have been identified with the provision of pay day loans to customers, some of which are discussed in more detail below.

5.1 ANNUAL PERCENTAGE RATE

According to calculations prepared for the Queensland Office of Fair Trading, when converted to annual percentage rate terms, the cost of pay day loans may vary between

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10 National Check Cashers Association (NaCCA), Response Paper: *Freedom of Choice for Consumers: The Truth about Deferred Deposit Services – A Reasoned Response to the CFA's Misrepresentations*, 1999: <http://www.nacca.org/ddresponse.htm>, p 5.

11 Iain Ramsay, *Access to Credit in the Alternative Consumer Credit Market*, prepared for Office of Consumer Affairs, Industry Canada and Ministry of the Attorney General, British Columbia, 1 February 2000, p 8.

12 Peter T Kilborn, "New lenders with huge fees thrive on workers with debts', *New York Times*, 18 June 1999, quoted in Ramsay, p 8.

13 Ramsay, p 8.

14 Quoted in Ramsay, fn 63.

235% and 1,300%, depending upon the fee which is charged and the length of time over which the fee and the loan are to be repaid.[15]

Industry spokespeople have sought to argue that the concept of an annual percentage rate is not appropriate to small, short-term loans like pay day loans; for example, in the United States, the National Check Cashers Association has been quoted as stating that:

> *Using an APR* (annual percentage rate) *analysis for deferred deposit services* (pay day loans) *is comparable to a pedestrian in New York City hailing a cab and asking about the fare to San Francisco. There is a theoretical fare, just as there is a theoretical APR for a deferred deposit service advance, but nobody enters into a transaction with the intent to pay or receive anything like that amount.*[16]

By contrast, in the report prepared for the Queensland Minister for Fair Trading, the view was expressed that:

> *… an annual percentage rate is the norm for comparing the cost of lending. Members of the public generally understand that the cost of borrowing money is represented by an annual interest rate.*
>
> *Further, recent research on consumer behaviour in the consumer credit market indicates that a vast majority of people compare interest rates between lenders in deciding which lender to borrow from and a majority of consumers find it relatively easy to compare interest rates. As a generality, more people found it easy to compare interest rates than fees and charges.*
>
> *Consumer groups point out that consumers are unaware of the true cost of pay day loans when compared to other types of loans and, based upon admittedly limited anecdotal evidence, consumers are generally shocked and surprised when informed of the effective annual interest rate of a pay day loan.*[17]

5.2 TRUTH IN LENDING

The Consumer Credit Code, which is national uniform legislation originating with Queensland, has been adopted by all other states and territories except Western

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15 *Pay Day Lending*, p 14.

16 Quoted in *Pay Day Lending*, p 12.

17 *Pay Day Lending*, pp 12-13.

Australia. It regulates all forms of personal lending in Australia, including personal loans, home loans, credit card transactions and in-store finance.[18] When the 1994 legislation was introduced, the *Explanatory Notes* described its aims as follows:

> *The legislation is based on the principle of truth-in-lending which will allow borrowers to make informed choices when purchasing credit.*
>
> *The Bill applies rules which regulate the credit provider's conduct throughout the life of a loan, but without restricting product flexibility and consumer choice. The policy of the legislation is to rely generally on competitive forces to provide price restraint but to provide significant redress mechanisms for borrowers in the event that credit providers fail to comply with the legislation.*

In line with its emphasis upon truth-in-lending, the Consumer Credit Code (Part 2) requires that lenders:

- Provide loan contracts in writing: s 12
- Provide certain specified information (including the annual percentage rate), before the contract is entered into and in the contract itself: ss 14 and 15
- Provide the borrower with a copy of the contract: s 18.

However, as pointed out in the report to the Queensland Minister for Fair Trading, presently pay day lenders are not required to fulfil any of the above requirements as payday loans generally fall outside the scope of the Code:

> *There is nothing to prevent a pay day lender from avoiding some or all of those requirements.*
>
> *In fact, the working party heard of this occurring in practice. Most pay day lenders reported they do not provide the borrower with a copy of the contract unless requested and, more worryingly, one pay day lender does not currently disclose the fees charged in the contract documentation.*
>
> *Further, the working party believes the reluctance of most pay day lenders to convert the fees charged to an annual percentage rate is at least in part motivated by a desire to avoid having to fully and frankly disclose to consumers the cost of pay day loans. The working party believes this is due to the potential to deter some borrowers upon discovering the effective annual interest rate and how expensive pay day loans are in comparison with other forms of credit, especially credit cards.*[19]

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[18] Hon M Rose MP, Consumer Credit (Queensland) Amendment Bill 2001, Second Reading Speech, pp 1140-1141 at p 1141.

[19] *Pay Day Lending*, pp 16-17.

5.3 ROLLING OVER LOANS

Under usual pay day loan arrangements, a borrower who is unable to repay the loan and the fee charged may choose to "roll-over" the loan (ie extend the loan until the next payday). To take a simple example:

> *The catch here is that if you borrow, say, $200 for a fortnight with a fee of $40 (total $240) and need to roll it over, your debt will now increase to $288 as another 20% fee is extracted. It is the beginning for many of an uncontrollable debt spiral.*[20]

Information from the American context, in particular, suggests that consumers may get caught up in a cycle of perpetual debt. In 1999 in Indiana, the state's Department of Financial Institutions reviewed 5,350 customers' files and 54,508 loans. The Department found an average of 10.19 pay day loans per year per customer; 77% of pay day loans were roll-overs of existing loans.[21]

5.4 UNCONSCIONABILITY

Sections 70 to 72 of the Consumer Credit Code allow for unjust transactions to be re-opened and for unconscionable interest and other charges to be reviewed. Provisions such as s 70(2)(l) of the Code enable a court, in determining whether a contractual term is unjust, to consider whether, at the time the contract was entered into, the credit provider knew or could have reasonably ascertained from the potential borrower that he or she could not repay the loan or could not repay it without substantial hardship. Because pay day loans, by their nature, are likely not to be regulated by the Code, the Code's protective provisions often cannot be availed of by pay day borrowers.

5.5 SECURITY OVER GOODS

Concerns have also been expressed in relation to lenders' practices of taking security for pay day loans, and of requiring security disproportionate to the amount loaned. In its report to the Queensland Minister for Fair Trading, the Working Party stated:

> *… the practice of "over-securitising", in which a lender requires a mortgage over goods worth thousands of dollars (such as a motor vehicle) to secure a loan worth significantly less (such as a few hundred dollars) is seen by the working party as a major problem. The working party considers that it is*

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[20] Paul Syvret, 'The quick and the debt', *The Bulletin*, 6 February 2001, pp 30-31 at p 30.

[21] *Show me the Money!*, p 8.

> *generally unnecessary and unreasonable for a lender to take security over a motor vehicle to secure a pay day loan.*[22]

Indeed, the Working Party criticised the practice of requiring security generally:

> *Generally, the working party sees no justification for a pay day lender requiring security for relatively small loans over a short period of time such as one month or less.*
>
> *The working party believes requiring security for such a small loan over such a short period of time is, to use the terminology of section 70 of the Code in relation to determining whether a term of a contract is unjust:*
>
> > *"… not reasonably necessary for the protection of the legitimate interests of a party to the contract* (the lender)*"*
>
> *The working party sees the practice of requiring security particularly unnecessary given most pay day lenders organise a direct debit from the customer's bank account on the customer's next pay day. The practical effect of the pay day lender obtaining a direct debit authority from the customer's bank account when the pay day lender knows the date of the customer's next pay day is the pay day lender having first access to the customer's pay.*[23]

6. CONSUMER CONVENIENCE

Despite the problems perceived to be associated with the provision of pay day loans to customers, there are, however, also reasons why pay day loans may be attractive to consumers. According to an industry response paper prepared by the National Cash Checkers Association (NaCCA) in America:

> *Many consumers prefer deferred deposit services over credit cards for short-term loans based on repayment discipline. Consumers consistently indicate that credit card debt, although less expensive than deferred deposit services, is a less advantageous means of solving the short-term debt problem because deferred deposit service arrangements discipline the consumer to make immediate repayment of the debt. See, e.g., Check into Cash Customers: An Evaluation of Attitudes and Perceptions, K Schutt (January 28, 1999), p 7. Credit cards encourage building larger and larger debt until the debt overwhelms the consumer.*
>
> …

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22 *Pay Day Lending*, p 19.

23 *Pay Day Lending*, p 18.

> *The option of using deferred deposit services is clearly preferred by a substantial number of consumers to those short-term credit arrangements which are offered by pawnbrokers. Through deferred deposit services stop-gap credit is available without depriving the consumers of the use of their own household appliances and personal assets or possessions.*
>
> *The use of the deferred deposit service may enhance the financial standing of the consumer. An individual who needs $300 to pay for the cost of the repairs to his or her automobile, which is essential to getting to and from work, will benefit greatly by retaining the employment at the cost of the short-term investment in a deferred deposit transaction. Most of those who utilize deferred deposit services have only pledgeable assets in the form of televisions, VCRs, other home appliances or collectibles such as items of sentimental value. Often the consumer would prefer to maintain possession of the television, VCR or stereo and have the use of that asset during the period in which stop-gap credit is needed by the consumer.*[24]

7. THE CONSUMER CREDIT (QLD) AMENDMENT BILL 2001

The Consumer Credit (Qld) Amendment Bill 2001 amends the Consumer Credit Code,[25] which forms an appendix to the *Consumer Credit (Queensland) Act 1994*.

Although the Consumer Credit Code has a wide application, there are certain limited situations to which the Code does not apply,[26] including the provision of short term credit (ie for a period of 62 days or less): s 7(1). The aim of the Consumer Credit (Queensland) Amendment Bill 2001 is to amend s 7(1) of the Code to add two additional conditions to the 62 day exemption. Under **proposed new s 7(1)**, inserted by **Clause 4**, the Code will apply unless all of the three conditions below are satisfied:

- The loan is for a period not greater than 62 days; and
- The credit fees and charges do not exceed 5% of the loan, and
- The interest rate does not exceed 24% per annum.

To calculate the annual percentage rate, the provisions of the Code eg s 26 may be used: s 7(1)(c).[27]

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24 NaCCA Response Paper, pp 3-4 and 7.

25 **Clause 3**.

26 RB Vermeesch and KE Lindgren, *Business Law of Australia*, 10th edn, Butterworths, Australia, 2001, pp 790-793.

27 See the *Explanatory Notes* to the Consumer Credit (Queensland) Amendment Bill 2001 (Qld), p 4.

Clause 5 of the Bill inserts a **proposed new Part 12** into the Code, which makes provision for a transitional period, as a result of which the Code will not apply to the provision of short-term credit under contracts entered into before the commencement of the proposed Consumer Credit (Queensland) Amendment Act 2001.

Because the Consumer Credit Code is national template legislation with the other states and territories (except Western Australia[28]) having adopted the Queensland code, the amendments introduced by the Consumer Credit (Queensland) Amendment Bill will apply nationwide.[29] Prior to the introduction of the Queensland Bill, New South Wales had already moved to introduce its own Bill as an interim measure. The Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Bill 2001, introduced into the Legislative Assembly on 10 April 2001 contains the same caps on interest rates, and fees and charges, on payday loans as does the Queensland Bill. To date, the NSW Bill has passed through the Legislative Assembly; in the Legislative Council, the Standing Orders have been suspended to allow its introduction and progress up to and including the Minister's Second Reading Speech on 5 June 2001.

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28 Western Australia adopts a consistent but separate legislative approach: Vermeesch and Lindgren, pp 788-790.

29 Hon M Rose MP, Second Reading Speech, p 1141.

APPENDIX A – ARTICLES

Credit change to net loan sharks

Courier Mail, Edition 1 - First with the news

22 MAY 2001

Page 3

By: Jacob Greber

Loan sharks offering fast cash at exorbitant interest rates face fines of up to $10,000 under a State Government crackdown on money lenders.

In a push to eradicate shonky money lenders, Cabinet yesterday agreed to make small-term cash loans subject to the Consumer Credit Code. The decision comes after mounting consumer concern about lenders charging the equivalent of 250 per cent to 1300 per cent in interest.

Premier Peter Beattie said the Government would not allow loan sharks to prey on vulnerable people.

“What we're trying to do is stop battlers being ripped off and stopping their pay being savaged before they get to it,” Mr Beattie said.

Fair Trading Minister Merri Rose said including pay-day lenders under the credit code would give borrowers compulsory access to written contracts and the full disclosure of fees and interest rates. Under current laws, money lenders are not subject to the code if the loan period is less than 62 days -- a provision originally designed to allow banks to authorise bridging loans.

Pay-day lenders expressed dismay at the new restrictions which apply to loans carrying fees and charges that exceed 5 per cent of the principle and rates of more than 24 per cent.

Pawnbrokers Industry Federation secretary Susan Murray said restrictions on fees and interest rates were unrealistic and would make small loans unviable.

“It will put a lot of people out of business and the industry won't be able to sustain itself,”' Mr Murray said.

“The cost of doing these loans is very high. Credit checks on small loans of $100 are about $12, and then there is all the paper work and staff time at $15 per hour. Plus the risk of issuing unsecured loans for small amounts.”

Ms Murray said the changes would also create a community backlash.

“There is such a high demand for it because the banks are vacating the lower end of the market,”' she said.

“The community needs quick access to quick money from somewhere.”

But Ms Rose said desperate people, struggling to make ends meet, were being caught in debt traps.

“They're paying off one loan with another until the debt becomes unmanageable and consumers are at the mercy of the credit provider,” she said.

In one case, a couple borrowed $120 and three months later ended up owing $680, along with a fee of $272.

“They fell on even harder times, and just two days after their repayment was due the lender repossessed their car,” Ms Rose said.

On top of that, an extra

$500 “repossession'” fee was also charged.

Ms Rose said another customer negotiated a $50 advance with a two-week contract. Ten months later the borrower owed $900.

The CCC also imposes an obligation on lenders to determine whether borrowers can repay debts.

If this is shown to be an impossibility, the borrower can legally ignore the contract .

The legislation is likely to be introduced next week.

Time running out for 'payday lenders'

CPA Australia

http://www.cpaonline.com.au/01_information_centre/05_investment/1_5_0_rb_20010405.htm Downloaded 19 June 2001

By Robin Bowerman

The legislative noose is tightening on promoters of payday lending. Concerns about the unscrupulous and unregulated practices of some payday lending companies has provoked a response from both Federal and State parliamentarians.

Payday lending involves short term loans — typically a week or two — at extremely high rates of interest that can range from 300% to 1300% a year.

Because these loans are for less than 62 days the lenders are not required to comply with Uniform Consumer Credit Code. Because of that, fees conditions and interest rates do not have to be disclosed in a written contract.

The Queensland Office of Fair Trading prepared probably the most comprehensive report into the payday lending industry last year. It highlighted cases like one customer who borrowed $50 in July 1999 to be repaid in two weeks time. It was 'rolled over' with the amount increasing each time with the result that 10 months later they owed $900.

Payday lenders also may require customers to provide security against the loan. In one case a couple borrowed $120 and three months later without notice their car was repossessed to recover the $1000 outstanding debt.

Under the uniform consumer credit code lenders are required to give 30 days notice before repossession of assets can occur.

There are other reports of payday lenders getting customers to sign a bill of sale over household goods — and even children's toys. While the goods themselves may not be particularly valuable, they give the lender considerable leverage when trying to recover outstanding debts.

It may be fast and easy to get cash from payday lenders but it is certainly not cheap. The Federal Minister for Financial Services, Joe Hockey, has been agitating for the consumer code to be broadened to force payday lenders to comply.

However, because credit is a state jurisidiction, it requires all state governments to agree to the moves and the enabling legislation as the Uniform Consumer Credit Code is based on Queensland legislation.

The Queensland elections slowed the preparation of the amendments but it is now likely to be before Parliament within two to three months.

In NSW the Minister for Fair Trading, John Watkins, has decided not to wait and is pushing ahead with his own bill as an interim measure. A spokesman for his office says the bill may be introduced as early as Tuesday and would effectively cap interest rates and fees on payday loans at 48% per annum.

While 48% may still seem very high others argue it will effectively make the payday lending industry unviable. For example on a $100 loan for a week the interest bill would be 90 cents at 48% a year. A typical payday lender fee at the moment would be around $20.

But while NSW is moving to cap interest rates and fees it is not certain that that approach will carry through in the national code amendments that have to be passed by the Queensland Parliament.

Tasmania has also moved unilaterally with parliament legislating for a moratorium on payday lenders until December 2002 to allow it time to regulate the industry.

Federal minister Joe Hockey describes payday lending as in the "twilight zone" of financial services. But that twilight zone is estimated to be worth around $200 million with some 80 companies operating. One consumer affairs group estimates there will be 400 lenders by the end of next year if the legislative regime is not tightened quickly.

Robin Bowerman is editor of the monthly magazine Personal Investor.

State threatens to throw net around loan sharks

By: Matt Wade

Sydney Morning Herald, 4 April 2001

Available at **http://www.smh.com.au**

The NSW Government has promised to legislate within weeks to close a loophole that allows unscrupulous loan sharks to lend money at interest rates of more than 1,000 per cent per annum.

So-called "payday" lenders have mushroomed across Sydney offering desperate borrowers small loans at exorbitant rates for short periods.

A payday lender's fee can be up to $25 on a loan of $100 for a week – an effective annual rate of about 1,300 per cent.

A Uniform Consumer Credit code, administered by the States and territories, does not apply to loans of less than 62 days, allowing payday lenders to charge the excessive rates.

"Payday lenders arebottom feeders that charge crippling rates," the NSW Minister for Fair Trading, Mr Watkins, said.

"We will close down the loophole that allows payday lenders to charge such high rates of interest."

Mr Watkins said some payday lenders required secuirty worth thousands of dollars – for example, a bill of sale for a car – for a loan worth only a few hundred dollars.

The Australian Consumers Association staged a communkity protest against the growing industry at Bankstown yesterday and called for urgent action to cap the excessive fees being charged.

Both the Federal Government and the Opposition called on all States to crack down on the lenders.

The Minister for Financial Services, Mr Hockey, said the industry was part of the "twilight zone" of Australian finance and needed reform.

He said he had written to the States last November urging them to stamp out payday lending.

"[It] is an insidious practice that targets the less prosperous men and women of our society, the less financially savvy and the people who can least handle spiralling debt," Mr Hockey said.

Mr Watkins said the Queensland election had delayed a nationwide crackdown on payday lending but he was not prepared to wait any longer.

Big Pawns in the gambling game

By Alex Millmow

The Age, 7 October 2000

http://www.theage.com.au Downloaded 19 June 2001

Pawn shops are places most of us scurry past. Few ever stop to go inside these repositories of broken dreams.

But now they are on main streets, no longer confined to back alleys.

Moreland councillor Melanie Raymond says there has been a noticeable increase in the number of pawnbrokers in some outer Melbourne suburbs.

She links this development to poker machines and the general economic difficulties of some of the communities she represents.

Cr Raymond says that since the deregulation of gaming machines in 1992, the number of pawn shops operating in Moreland has, in league with poker machines, multiplied to eight.

Moreland now has the fifth largest number of pawn shops in Victoria. Cr Raymond is also concerned that there is a tendency for pawn shops to open around large gaming venues, especially around the lower reaches of Sydney Road.

Cr Raymond says the congregation in an area pits one neighborhood against another. "There are no pawn shops on Toorak Road," she says.

Gary Catheran, a spokesman for Cash Converters, denies that there has been an increase in pawnbroking outlets as far as his chain is concerned.

Fiona Hando, a spokeswoman for the Office of Fair Trading, which issues second-hand dealers' licences, says there are no more than 200 pawnbrokers in Victoria. Since pawnbrokers come under the rubric of second-hand dealers, it is difficult to obtain an exact figure.

Cr Raymond says the level of informal pawnbroking could mask a greater problem.

Lee Barrett, of Broadmeadows Uniting Care, who deals with problem gambling, says people he helps often fish pawnbroking dockets out of their pockets.

In a related development, Cr Raymond has also noticed the entry of fast-cash alternatives to pawnbrokers where one need not surrender assets like the family silver. Billed as a one-stop credit shop, ChequEXchange offers the convenience, as one spokesman put it, of "a payday advance".

ChequEXchange is an American-inspired concept set up in Australia as a franchise agreement. It operates in suburbs such as Dandenong, Frankston and seven other suburbs. A spokesman for the group says that the siting of the outlets reflects nothing other than where the "mums and dads, owners of the franchise live". The spokesman says that with their screening of clients, the profile of a gambler would be detected and they would be subsequently rejected.

But Mr Barrett says he "would not be surprised if some punters accessed these fringe credit operators" to feed poker machines.

The councillor links the presence of these one-stop cash borrowing agencies not only with areas of low income, but with poorer areas the banks no longer want to service.

Essentially the poor are being left with fringe credit operators who do not fall under the consumer credit code because they deal in small amounts of money recoverable within 60 days. No contracts need to be issued.

ChequEXchange charges "transaction fees" based on people's circumstances and financial history and irrespective of how long it takes them to repay within a 28-day period.

The marketing stresses "no assets no problem". The only requirement in applying for a short-term loan from $100 to $2000 is proof of employment, a regular income and some financial history.

Apart from offering this facility, ChequEXchange offers to cash cheques on the spot without having to wait for bank clearance. Again a commission is charged but not publicised.

The growth in cash-lending services continues on the Internet.

A local company has bought the rights to operate Loan Genie, an Internet form of cash-lending. Anything to feed the spinning wheels of the pokie.

Short term money lenders described as loan sharks

Transcript, 7:30 Report, ABC Television

21/12/00

MAXINE McKEW: It's a business that has attracted the likes of Alan Bond, the man convicted of Australia's biggest corporate fraud.

'Pay-day lending', as it's known, offers short-term loans of small sums of money at extraordinarily high interest rates in an arrangement that appears to attract those who can least afford it.

Mr Bond has bought into pay-day lending in Britain, but it continues to grow here in Australia as well.

While State governments warn consumers against using this pay-day lending they appear, for the moment, to be powerless to stop them. Mick Bunworth reports.

ANGELA CONLON: I've gone to my bank and there has been no money in my account.

It was pretty hard. I actually had to go back and borrow money off my mother again to sort of feed my kids.

CHRIS FIELD, CONSUMER LAW CENTRE: I think their practices are clearly exploitative. I class them effectively as loan sharks in the marketplace.

JUDY SPENCE, QUEENSLAND FAIR TRADING MINISTER: Well, I think their practices are immoral and unconscionable.

MICK BUNWORTH: They are money lenders that promise a quick fix to those facing financial crisis.

Known as pay-day lenders, these organisations are not a bank nor a credit union and, because of a loophole in the national uniform credit code, their practices are legal.

JUDY SPENCE: They are providing short-term loans at exorbitant interest rates because they are operating in an unregulated environment. They're not necessarily providing contracts to people. They're rolling over loans so that individuals find themselves caught in a spiralling credit trap. And they're repossessing goods that are worth thousands of dollars over loans that are worth a couple of hundred dollars.

MICK BUNWORTH: At the moment, if you offer a loan of less than 62 days duration in Australia, you're not subjected to the same regulation as other financial arrangements. It's this loophole which allows pay-day lenders to operate as they do.

CHRIS FIELD: My key concerns are, first, that it is exploitative of low income and vulnerable consumers. Second, that it involves significant interest rates -- around 500 per cent to 2,000 per cent. Third, that pay-day lenders don't offer information to consumers. They don't have disclosure of their documents generally. So there's information gaps for consumers.

MICK BUNWORTH: Lawyer Chris Field works for Australia's independent Consumer Law Centre, a non-profit advocacy group that wants pay-day lenders shut down.

CHRIS FIELD: A typical example of the collateral that consumers put up is a car. I've heard of examples of cars valued at $4,000 and $5,000 being offered as collateral of a loan for a couple of hundred dollars.

MICK BUNWORTH: Even Australia's Pawnbrokers' Association preach caution.

RUSSELL GREEN, AUSTRALIAN PAWNBROKERS ASSOCIATION: It's a debt trap for the client. Here in a pawnbroking situation they have the opportunity to forgo the debt by not redeeming the article whereas the pay-day lender is accessing a bank account and probably a bank account that's main input is from a pension.

MICK BUNWORTH: Single mother of two, Angela Conlon, lives in a Cairns caravan park, she's successfully paid off two loans she'd taken out with pay-day lender Australian Money Exchange.

ANGELA CONLON: Basically, for each $100 you borrow, you pay back an extra $22 and things like that. That seemed alright because I wasn't borrowing high amounts. For the first and my second loan, I signed a form saying they could direct debit from my account, that's right. On my third one, I asked them to let me pay cash.

MICK BUNWORTH: But Australian Money Exchange started attempting to directly debiting her account more than six weeks before her loan was due. Her records show that, on occasions, Angela was charged $35 by her bank. This was a penalty because she did not have sufficient funds to cover payments.

Angela says Australian Money Exchange had no right to pursue. The 7:30 Report approached Australian Money Exchange for an explanation. The manager's handwritten faxed response declined our request for an interview and stated, "Save for the fact that the information provided to you is seriously flawed and I caution your reliance on it, the matter is of no public interest." It's this signing over of bank account details and their alleged misuse which has the Consumer Law Centre so worried.

CHRIS FIELD: The direct debit facility is so worrying mainly because it really enhances the features of rollover of the loan. So it's possibly a little bit easier for consumers to get caught in a debt trap where the loan is rolled over every payday.

MICK BUNWORTH: The Ministerial Council on Consumer Affairs has discussed bringing pay-day lenders under the uniform credit code. But, with that unlikely to be signed off until next year, there's still plenty of time for consumers to find themselves in serious financial trouble.

CHRIS FIELD: I don't think it's appropriate to say to the most vulnerable people in our community "Beware in relation to your rights." I think we have a responsibility to make sure that those people are protected. We have a responsibility to make ensure that the most vulnerable members in our community are not exploited.

ANGELA CONLON: I would like to see places like that stopped because they're not helping any of us out here. They're just making it harder for us people that are in this predicament, that need money. They play on us and the government should stop it

APPENDIX B – MEDIA RELEASES

Beattie Government to kill off Pay-Day Loan Sharks

Premier & Trade

The Hon. Peter Beattie MP

21 May 2001

The State Government is slamming the door shut on pay-day loan sharks, Premier Peter Beattie announced today.

State Cabinet today agreed with a plan by Fair Trading Minister Merri Rose to introduce legislation to bring pay-day lenders under the Consumer Credit Code – the law that applies to all other forms of personal lending in Australia.

“These loan sharks prey on the vulnerable by offering cash loans at huge interest rates to battlers between pay days,” said Mr Beattie.

“Many of these sharks are charging the equivalent of 250 per cent interest, with some unfortunate people paying up to 1300 per cent.

“Often there is nothing in writing, no disclosure of the conditions and no assessment made of the borrower’s capacity to repay.

“These people have been ripping off battlers who through misfortune are forced to live from pay to pay, desperate to make ends meet

“They get caught in a debt trap by paying off one loan with another until the debt becomes unmanageable and consumers are at the mercy of the credit provider.”

Ms Rose said she was aware of a couple who borrowed $120 but ended up owing $680, plus a ‘fee’ of $272 three months later – a total of $952.

They fell on even harder times and, just two days after their repayment was due, the lender repossessed their car.

The lender then demanded an extra $500 in repossession and ‘late’ fees before the consumer could get the car back.

Ms Rose said another customer obtained a $50 pay-day advance to be repaid in two weeks.

This was ‘rolled over’ with the amount outstanding increasing each time, until 10 months later, the consumer owed $900.

So the $50 pay-day advance ended up attracting a fee of $192 a fortnight.

"When the Consumer Credit Code was introduced to offer the public protection from all forms of consumer credit, loans of less than 62 days were exempted to allow banks to provide short-term bridging finance and for trade credit arrangements," said Ms Rose.

"Pay-day lenders have exploited this exemption.

"Under the new legislation there will be no exemption from the code if the fees and charges for a loan exceed 5% of the loan amount and the interest rate exceeds 24% a year.

"This means that full disclosure will be required.

- Lenders will have to tell borrowers the fees and charges that are payable, whether security is required and the terms of the loan.
- Loan contracts have to be in writing and lenders will be required to give a copy to the borrower.
- Lenders will also be required to assess whether borrowers have the capacity to repay the loan.
- If it can be established later this was always an impossibility, the borrower has the legal right to walk away from the contract and all fees will be waived."

Ms Rose said once passed, the Bill would have national effect as the Queensland Consumer Credit Code was used as a template for all other states and territories in Australia.

"I will raise other proposals for strengthening consumer credit protection when I meet with State and Territory Ministers for Consumer Affairs in July," she said.

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Payday Predators Panned

Office of Fair Trading

Department of Equity and Fair Trading

31 August 2000

Minister for Fair Trading, Judy Spence today released a ground-breaking report on the phenomenon of payday lending at a national conference on credit law on the Gold Coast.

In a keynote address to the conference, the Minister said that in the past 12 to 18 months, Australia had seen the emergence of a new breed of fringe credit provider - the payday lender.

"This industry has sprung up almost overnight and is spreading like wildfire with franchises opening everywhere.

"Payday lenders target clients through newspaper ads that offer a loan in advance, in other words, quick cash till payday.

"They tend to lend a relatively small amount of money that is either repaid in cash, or direct debit from a bank account, within one to two weeks of taking out the loan.

"Because the loans are for less than 62 days, the consumer protection provisions of the law don't apply," Ms Spence said.

The Minister said payday lenders were exploiting loopholes in the Consumer Credit Code.

Ms Spence established a working party of key stakeholders to investigate the payday lending industry and to recommend ways of regulating it, not only in Queensland but all over Australia.

"The working party has recommended that the Code be amended to ensure payday loans are regulated.

"That seems to me to be the most logical, effective and workable regulatory response.

"There was another option to ban them outright, but then low income earners would be left with no avenue for obtaining loans, other than loan sharks.

"They're much worse than payday lenders in that they use threats, intimidation and violence to ensure repayments.

"The working party also found that while the payday lending market in Australia is still in its infancy, it's growing rapidly and is expected to continue to grow rapidly over the next five to ten years.

"The fees charged by payday lenders, when converted to an annual percentage rate are typically in the range of about 250% to over 1,300%.

"Payday loans are therefore up to 70 times more expensive than the current cost of credit cards," Ms Spence said.

The practices of payday lenders have been found wanting in a number of respects, mainly due to the lack of regulation. For example:

- Payday lenders generally do not disclose annual percentage rates for payday loans
- Most payday lenders do not provide a copy of the contracts to borrowers and some do not even disclose the fees in the contract
- Most organise a direct debit from the customer's bank account, which is utilised on the customer's next payday. This in effect gives the payday lender first priority on the customer's next pay, potentially at the expense of the necessities of life
- Some payday lenders require security in the form of a bill of sale over motor vehicles worth thousands of dollars to secure very small advances of, on average, $250
- Some payday lenders allow the customer to 'roll over' the advance. This means the customer can simply get a bigger advance the next time around in exchange
- For an additional fee. This sets the customer well and truly on the road to the debt trap
- Some payday lenders advance money for any purpose, including gambling. In fact, one payday lender's advertising specifically targets gamblers as potential customers.

The Minister said the Office of Fair Trading had received some worrying stories of consumer's experiences with payday loans.

"One customer obtained a $50 payday advance in July 1999 to be repaid in two week's time. This was 'rolled over' with the amount outstanding increasing each time, until ten months later the consumer owed $900.

This attracted a fee of $192 every fortnight. The loan was outstanding for 6 months for which the consumers were paying an effective interest rate of 555%."

"A couple borrowed $120 initially in August 1999. Again, this amount was 'rolled over'. Sometimes they managed to pay off some of the principal, but mostly the amount outstanding crept up each fortnight.

Eventually in November, three months later, they owed $680, which attracted a 'fee' of $272. They then fell into financial difficulty - the husband lost his job and their car broke down, in addition to the usual Christmas expenses.

Two days after the repayment was due, and without any notice whatsoever, the payday lender repossessed the consumers' car. The car was worth thousands. The amount owed was less than $1,000 including the fee.

The payday lender then demanded an extra $500 in repossession and 'late' fees before the consumer could get the car back.

The Minister said those stories highlighted the real and potential problems with payday lending - no truth in lending and unconscionable conduct and over-commitment.

"Regulation will address many of these issues and while it may seem to be a hindrance to industry, it is really aimed at controlling the negatives associated with credit.

"Lenders cannot just stand by blindly and lend money irresponsibly.

"Lenders therefore need to take some responsibility for ensuring that people do not become over-committed and caught in a debt trap.

"If industry does not take some responsibility to help ensure people don't become caught in an ever increasing spiral of debt with no way out, then Government will certainly continue to implement policies that are aimed at ensuring responsible lending," Ms Spence said.

This Publication:

RBR 14/01 ***Regulating Pay Day Lending : The Consumer Credit (Queensland) Amendment Bill 2001*** **(QPL June 2001)**

Related Publications: