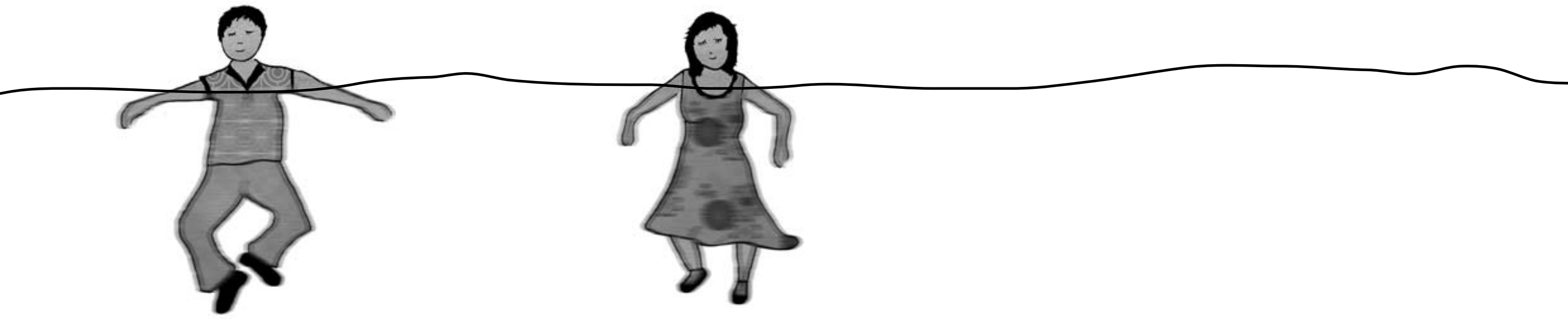


Pay Day Lending in Tasmania

Camilla Hughes
Social Action and Research Centre Anglicare Tasmania

Payday lending in Tasmania

Cover artwork by Clare Bradley

ISBN
PB: 978-1-921267-15-4
Web: 978-1-921267-14-7

For further information contact:
The Social Action and Research Centre
Anglicare Tasmania
GPO Box 1620
Hobart 7001

Tel: 6213 3555
Fax: 6231 9589
Email: j.flanagan@anglicare-tas.org.au
Web site: www.anglicare-tas.org.au

Quality System
Quality Endorsed Company
ISO 9001:2000
Cert. QEC13563

Acknowledgements

This research was undertaken by the Social Action and Research Centre at Anglicare Tasmania. The project was funded by Anglicare Tasmania and the Tasmanian Government, with funds provided through the Family Assistance Program.

Thanks are due to members of the Project Reference Group, Gerard Brody and Nicole Rich (Consumer Action Law Centre, Victoria), Kathleen Flanagan (Anglicare Tasmania), Rob Frew (Consumer Affairs and Fair Trading, Department of Justice), Bridget Hutton (Social Inclusion Unit, Department of Premier and Cabinet), Paul Mallett (Anglicare Tasmania) and Rick Tipping (NILS Network) for generosity with their expertise.

The research findings and recommendations of this report are those of Anglicare and should not be attributed to members of the Reference Group. Any errors in the report are the responsibility of the author.

The author would also like to thank the financial counsellors and other service providers who shared their knowledge of the operations of payday lenders and the impact on their clients. Much appreciation is also due to the Anglicare staff and members of the NILS Network who contacted us to report payday lending activity from all over the State.

Abbreviations

ADI	authorised deposit-taking institution
APR	annualised percentage rate
ASIC	Australian Securities and Investments Commission
BPD	Business Purpose Declaration
BSL	Brotherhood of St Laurence
CAFT	Consumer Affairs and Fair Trading, Tasmania
CALC	Consumer Action Law Centre
CLCV	Consumer Law Centre Victoria
COAG	Council of Australian Governments
EDR	external dispute resolution
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
ITSA	Insolvency and Trustee Service Australia
MCCA	Ministerial Council on Consumer Affairs
NAB	National Australia Bank
UCCC	Uniform Consumer Credit Code

Table of Contents

1. Executive Summary

This report explores one aspect of the consumer credit sector: payday loans. Payday loans are a 'fringe' credit product, operating outside the mainstream credit sector. In this report they are defined as loans that are small (no more than $1,000 but typically less than $250) and short-term (usually with repayment periods of 30 days or less). They are usually approved quickly and the borrower is charged a fee rather than an interest rate.

There has been rapid growth in the payday lending sector in Tasmania since 2003, and the market has been highly volatile, with significant turnover among providers. More recently, there appears to have been some stabilisation, partly due to one provider, Cash Converters, obtaining significant market share through the three outlets it has established in the state.

In addition to shopfront providers, there are internet-based providers of payday loans. Neither type of provider is currently required to hold a license to offer loans in Tasmania. This has two consequences. Firstly, the relevant regulator, Consumer Affairs and Fair Trading (CAFT), does not have any records of which operators are trading in the state and secondly, Tasmania can and does have overseas providers who operate in the state via a website, yet giving the impression that they are Australian-based companies. Following up on any problems that may arise is obviously more difficult with companies that do not have a local base.

In reviewing the payday lending sector, Anglicare has been mindful that there is significant demand for these products. Low income earners in particular use payday loans as a way to bridge gaps in their household budgets, for example, when an unexpectedly large bill is received or a major appliance breaks down. Payday loans are popular. They are quick and easy to obtain, with minimal paperwork required, and are available to a customer base that is excluded from accessing other, more mainstream forms of credit.

Some of the issues that have been raised in relation to payday lenders include the regulatory environment that is not consistent between the States and Territories; the requirement by lenders for direct debits from the borrower's bank account for repayment; the ease with which consumers appear to become reliant on the loans; and the high fees, charges and annualised interest rates associated with this form of credit.

We are now at a regulatory crossroads. The Council of Australian Governments (COAG) recently announced National Consumer Credit reforms by which the Australian Government is to take over regulation of credit providers, including fringe providers such as payday lenders. The regulatory framework is being developed now and phase one of the National Consumer Credit Action Plan will be in place in mid 2009 with phase two to be implemented by mid 2010. This provides an important opportunity for national consistency and to get it right.

Anglicare welcomes these reforms, noting particularly the likely value of licensing of credit providers and participation in mandated external dispute resolution mechanisms.

It is not yet clear the extent to which all payday lenders will be brought into the new credit regime. Australian Government communications suggest that consideration of specific controls over payday lenders will not occur until phase two of its implementation plan. Anglicare recommends that the recently announced National Consumer Credit reforms specifically include payday lending in its Action Plan. Payday lending should be part of a licensing regime, required to observe responsible lending practices and part of a mandatory external dispute resolution mechanism.

There are significant implications for current regulation around the interest rate caps that exist in some states, although not in Tasmania, because once the regulation of credit is transferred to the Commonwealth jurisdiction there will not be an obvious place for state-based interest rate caps to sit. Anglicare recommends further research into the efficacy and appropriateness of comprehensive caps on interest rates, fees and charges.

Consumer groups in states where caps exist (QLD, NSW ACT and Victoria) are concerned that consumers in those states will suddenly find themselves without protection. Anglicare recommends that COAG fund further research into interest rate caps but that, as Commonwealth jurisdiction over payday lending will not be in place for at least another 18 months, the Tasmanian Government enact legislation in the interim to provide the same protections as are afforded most low income Australians.

In developing regulatory responses to the issue, it is important to recognise that payday lenders are responding to a genuine demand which is primarily driven by inadequate incomes. It is the shortfall between the cost of essential items and the incomes people receive from government benefits or from casual, fluctuating employment that leads people to turn to payday lenders and other forms of expensive yet readily available credit. To tackle the issue head-on, what is really needed is an income support system that provides people with sufficient income to attain a decent standard of living. The core recommendation of this report is that the levels of all allowances and pensions be reviewed and increased to the point where they cover the cost of essentials. Other recommendations cover the need for alternative credit products for low income earners, for which a number of models exist, and additional resources for financial counselling services so that they are able to meet demand.

Summary of Recommendations

Recommendation 1: That the Minister for Families, Housing, Community Services and Indigenous Affairs and the Ministers responsible for the Department of Employment, Education and Workplace Relations act to review and increase all pensions and benefits to a level that covers the necessities of life and ensures a decent standard of living for all recipients.

Recommendation 2: That the Department of Health and Human Services continue to fund the NILS (No Interest Loans Scheme) Network of Tasmania at a level sufficient for NILS both to continue its present role of providing no-interest loans to low-income Tasmanians and to expand its capacity to provide innovative financial assistance to low-income Tasmanians.

Recommendation 3: That Tasmanian credit unions explore ways of offering some more affordable credit products to people living on low incomes.

Recommendation 4: That the Commonwealth negotiate with the States and Territories about the inclusion of provisions in its proposed national consumer credit legislation that cap the interest rates and fees allowed as credit charges, and that these negotiations follow a comprehensive evaluation of the efficacy of such caps and a benefit-cost analysis that specifically considers the benefits and costs to low income consumers.

Recommendation 5: That until the implementation of phase two of the National Consumer Credit Action Plan the Tasmanian government consider providing low income Tasmanians with the interest rate cap protection that is afforded the majority of low income Australians.

Recommendation 6: That membership of an ASIC Australian Securities and Investments Commission (ASIC) approved external dispute resolution body as outlined in the National Consumer Credit Regulation Action Plan be mandatory for all providers of credit, including payday lenders.

Recommendation 7: That the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) boost Commonwealth Financial Counselling funding to contribute to the employment of an additional 5.5 financial counsellors/community educators in Tasmania to meet the increased demand for assistance.

Recommendation 8: That the Tasmanian Department of Health and Human Services increase funding to contribute to the employment of an additional 5.5 financial counsellors/community educators in Tasmania to meet the increased demand for assistance.

2. Introduction

2.1. Methodology

The aims of the research were:

- to map the scale, operation and regulation of the payday lending industry in Tasmania;
- to provide information on the use of payday lenders in Tasmania; and
- to develop recommendations addressing both the reasons behind the rise in payday lending and the appropriate regulation of this form of credit.

The research included the following components:

- a review of research, policy and statistical information about payday lenders in Australia;
- a review of the regulatory arrangements in existence in other states in relation to payday lenders;
- a review of data from Anglicare's financial counselling service;
- an overview of the presence of payday lenders in Tasmania;
- a phone survey of payday lending businesses; and
- interviews with Tasmanian service providers who work with payday borrowers.

It was beyond the time and resources available to this project to conduct a survey of payday borrowers. However, we did speak to service providers working with clients who utilise payday loans, and drew on experiences of payday borrowers documented in the case studies presented to the Fast Finance Forum organised by Anglicare's Financial Counselling Service, TasCOSS, the No Interest Loans Scheme (NILS) Network, Hobart City Mission and the Hobart Community Legal Centre in Hobart in October 2007.

The Consumer Action Law Centre of Victoria as part of its current research into fringe lending has undertaken a survey of payday borrowers across Australia, including interviews with Tasmanian borrowers. Preliminary results have been published (CALC, 2008a, p.2) and we look forward to the release of the full research findings.

3. About payday lending

3.1. What is payday lending?

Payday lending has been described as the practice of lending small amounts of cash to consumers for short periods of time, so called because the money is at least theoretically lent on the security of the borrower's next pay cheque. In practice these lenders commonly derive security of payment by obtaining a direct debit authority from the borrower that effectively allows them first call over the borrower's income in their bank account (Office of Consumer Affairs and Business, 2006, p.1). It is often called 'fringe credit'.

This section reviews some of the terminology used in this area, before settling on a definition of payday lending.

In the field of consumer credit, lenders are either deposit-taking or non-deposit taking. Authorised deposit-taking institutions (ADIs) are corporations which are authorised under the Banking Act 1959. ADIs include banks, building societies and credit unions (Treasury 2008, p.v). All other lenders are called non-deposit taking institutions, or non-bank lenders, and they represent 20% of the total lending market in Australia (Treasury 2008, p.i).

A further differentiation is sometimes made between mainstream credit and fringe credit, although this is often not clearly drawn. The Ministerial Council on Consumer Affairs (MCCA) for example, states that:

> The mainstream market includes institutions such as banks, credit unions, building societies, non-bank mortgage lenders and national finance companies. The fringe credit market includes all those credit providers on the fringe of the market. Fringe credit providers, such as payday lenders, typically offer short term loans (from four weeks to 18 months) for small amounts (averaging less than $300), particularly to people unable to access credit from the mainstream lenders (MCCA 2007, Introduction).

According to this taxonomy, some of the non-bank lenders are considered to be part of the mainstream market and others, such as payday lenders, are not.

In the literature various terms are used to describe the small loans we have called payday loans, including 'micro loans' or 'microcredit'. The Brotherhood of St Laurence, in their report on a small loans pilot project, described these loans as microcredit while noting that '…microcredit schemes originated in the context of economic development to alleviate global poverty. These schemes focus on the provision of credit to fund microenterprise. Microcredit schemes in developed nations are slightly different in that many focus on consumer lending' (Scutella & Sheehan 2006, p.1).

The 2008 Treasury Green Paper on Financial Services and Credit Reform also uses the term micro loans interchangeably with payday loans, offering the following description:

> Micro loans tend to be offered by small businesses operating in one jurisdiction. Consumers tend to use micro loans to meet short-term loan requirements such as to pay off an unexpected expense. The average size of loans is $250 and the length of loans generally ranges from 7-62 days. Unlike other loans, instead of charging interest providers of micro loans tend to charge fees for their services (Treasury 2008, p. 47).

In Victoria the term 'small amount cash lending' has been used to describe small loans including payday loans. At the time of writing the Victorian Government is conducting a Small Amount Cash Lending Inquiry. Preliminary data from a survey of payday borrowers, and a substantial draft literature review have already been published (CALC 2008a, p.1; Ashton 2008).

For the purposes of this report however, the term 'payday loans' does usefully distinguish a particular kind of short term loan from other credit products. In this report when we use the term payday loan we are referring to a loan that is small, short-term, quickly approved and where fees and charges are applied rather than an interest rate.

3.2. A short history of payday lending

The modern payday lending industry is a relatively recent development, with a beginning generally placed in the early 1990s in the United States, 'where there are now more payday and cheque-cashing outlets than McDonalds, Burger King, Target, Sears and JCPenney stores combined' (Searle 2007, p.36). The industry is thought to have evolved from the cheque cashing industry although other writers trace the origins of payday lending much further back in US history to post Civil War loan practices (Ashton 2008, pp.3-4).

In Australia payday lending emerged in its current form in the late 1990s. The first payday lender commenced operations in Queensland in December 1998 (Wilson 2002, p.34). The Queensland Office of Fair Trading estimated in August 2000 that 82 payday lending businesses were operating throughout Australia in all States except Tasmania (cited in Wilson 2002, p. 34).

A variety of factors contributed to the emergence of payday lenders, including:

- the deregulation of the banking industry and subsequent withdrawal of services to low income consumers by the mainstream lenders;
- stagnating or declining incomes amongst low income consumers;
- rising levels of credit use and corresponding decreases in saving levels;
- rising levels of household debt and bankruptcy with consequent impairment of credit ratings that make it difficult to obtain mainstream credit; and
- destigmatisation of the moneylending business and of going into debt generally (Office of Consumer and Business Affairs 2006, p.2).

A full history of payday lending in Tasmania has not been attempted in this report, however it appears there was little payday activity prior to 2003 as there was effectively a legislative moratorium on payday lending in the State in 2001-2002 (CAFT 2007, p.1, and see also the section 'Regulatory Framework'). Community sector service providers such as financial counsellors indicate that they have observed a rapid growth in the number of clients presenting with payday loan difficulties since 2005 (e.g. Ryan 2007).

3.3. Payday loans in the context of the credit sector

Housing loans make up 86% of all personal debt in Australia (Treasury 2008, p.1). Loans to buy goods and services other than housing are therefore a small proportion of the market, but still represent a significant amount of money. According to Treasury's recent Green Paper on Financial Services and Credit Reform, Australians collectively have non-housing personal debt of $153.5 billion (Treasury 2008, p.2). Within this broader picture, the size of the payday lending industry is not known with any precision, although it is generally thought to be growing. An August 2007 feature on micro-lenders in Business Review Weekly described it as an industry that 'has flourished during the last decade' while noting that '[n]o statistics are kept on market size – some players estimate $800 million, although consulting firm and lobbyist Smiles Turner cites annual turnover of $220 million' (Searle 2007, p.36). Even if the share of the $153.5 billion of personal debt that belongs to payday lending is small, because of the low incomes of most payday lending customers, difficulties with repaying the loans can have a disproportionately large impact on household budgets.

As noted above in section 3.2, the growth of the payday lending sector is linked to changes in the mainstream credit sector. Commentators have pointed in particular to the deregulation of the Australian banking sector in the 1980s. Banks moved away from less-profitable activities such as the provision of credit to low income earners, and from providing small personal loans. Smaller credit amounts are now provided through credit cards rather than through conventional loans. But credit cards are not always accessible or appropriate for low income earners, who must then turn to other, less mainstream forms of credit, such as payday loans (Willis 2005a, p.16; see also Wilson 2002, p.19; Treasury 2008, p.1). At the same time, use of credit has become the norm in Australian society, with Wilson noting that it 'has expanded to such an extent that access to credit is crucial to an individual's ability to participate fully in society'. It should however be noted that credit is used for different purposes by different income groups, with lower income earners more likely to use credit to overcome financial problems, while higher income earners use it to enhance their lifestyles (Wilson 2002, p.36). Perhaps the point is that reliance on credit is now so acceptable that the wider community is less likely to see a problem with social structures that keep people on incomes so low that they are unable to meet even the basic costs of living without depending on credit.

3.4. Payday lending in Tasmania

As recently as August 2000 a survey of payday lenders throughout Australia conducted by the Queensland Office of Fair Trading found there were no payday lending businesses operating in Tasmania (Wilson 2002, p.34). In 2001 Tasmania passed the Pay Day Lenders Moratorium Act 2000 which effectively prevented pay day lenders from establishing in Tasmania until December 2002 (CAFT 2007, p.1). In the years since then a number of operators have established in Tasmania, although not all are still in the market.

In their report following a survey of the payday lending industry in Victoria in 2002, the Consumer Law Centre Victoria found that there was considerable volatility in the payday lending market and that name changes, closures and the appearance of new operators were a feature of the industry (Wilson 2002: 34). Conducting our own survey in Tasmania, Anglicare has found an industry characterised by these same features. Even in the relatively short period between late 2007 when this research project was conceived and August 2008 when Anglicare surveyed payday lenders, the payday lending landscape had completely changed in terms of lenders operating in Tasmania, and changes continued into the period during which this report was finalised.

3.4.1. Payday lenders in Tasmania in 2007

In 2007, an informal survey of payday lending conducted by the NILS Network of Tasmania found that the non-bank lending market in Tasmania at the time was divided into the personal finance lenders who charged an interest rate and the payday lenders, who were defined as lenders making small cash loans repayable within 62 days and charging a fee rather than interest (NILS 2007, p.1). The NILS Network found three companies operating as payday lenders:

- Cash Stop (in Hobart operating through 'Quality Second Hand' in Moonah)
- AMX Financial Services (in Hobart operating from a shopfront in the CBD)
- Cash Converters.

In August 2008 Anglicare found that only one of these businesses was still operating in Tasmania.

Cash Stop Financial Services previously operated out of shop fronts in Moonah in the south and Invermay in the north. The company originates from Canada, opened its first store in Petersham, Sydney in 2000 and in 2002 expanded into Victoria opening five outlets (Wilson 2002, p.43). The expansionary phase had also extended to two outlets in Tasmania but the company's website now indicates just one agent for Cash Stop in Tasmania, located in Burnie.

Australian Money Exchange (AMX) until recently had shop fronts in both the Launceston and Hobart city centres. This Queensland based franchise planned to expand across Australia and internationally and did initially do so; Wilson reports AMX opened six shop fronts in Melbourne in 2000-2001, although by 2002 only one remained (Wilson 2002, p.42). AMX is no longer offering loans in Tasmania and now operates only in Queensland, NSW and NT.

Cash Converters is still in the loan industry through their Personal Finance Centres discussed below.
Repayments of loans from Cash Converters are made to 'Advance Repay' which does not appear operate as an independent entity.

3.4.2. Payday lenders in Tasmania in 2008

Cash Converters is an Australian-based international franchise operation listed on the Australian Stock Exchange (Wilson 2002, p.42) with over 110 stores around Australia and 450 stores worldwide (www.cashconverters.com.au). Their Personal Finance Centres offer small loans, both secured and unsecured, and a product called Cash Advance which fits our definition of a payday loan.

In 2008 Cash Converters has come to dominate the Tasmanian market. Their Personal Finance Centres are available in three locations across the state: Kings Meadows, Moonah and Rosny. This emergence of Cash Converters appears to be happening across the country, with a preliminary finding of the Consumer Action Law Centre's 2008 Australia-wide survey of payday borrowers that 60% of payday loans were with Cash Converters (CALC 2008a, p.2).

The Cash Store is a new entrant in this market. It operates in Victoria and Queensland and now has 2 outlets in Tasmania – in Hobart and Launceston. In Hobart the business operates from the same premises where AMX was previously located. The Cash Store operates as a broker for unspecified lenders. While the interest rate is stated to be never higher than 48% per annum, a brokerage fee is charged in addition, stated to be typically 30% of the total amount of the loan. It has been suggested by such bodies as the Consumer Action Law Centre (2008a, p.3) that this approach is simply a means of circumventing interest rate caps where these exist.

Cash Stop was previously operating from at least two locations in Tasmania and now appears to have only one agent – **Tasmanian Cash Works** in Burnie.

In addition to shopfront lenders, there appear to be numerous on-line operators providing payday loans, although many are related companies. One apparently sizeable operation is **Cash Doctors** (www.cashdoctors.com.au), which is based in Queensland. The operators **Cash-in-1-Hour** and **Payday Online** provide the same address and phone number as Cash Doctors. Cash Doctors, Cash-in-1-Hour and Payday Online offer loans of $100-$600 following an on-line application process.

Payday Mate maintains an Australian website (www.mypaydaymate.com.au) but the corporations behind the operation, Northway Broker Limited and Northway Financial Corporation Limited, are registered in Malta, while their toll-free number reaches a call centre in Canada. An internet search of the Northway companies reveals them to be the subject of a number of consumer alerts around the globe. For example the State of Illinois has issued a Borrowers Beware alert that 'strongly' advises Illinois residents not to obtain a loan from the Northway companies (Illinois Department of Financial and Professional Regulation 2008).

Other lenders
There are also a number of non-bank lenders offering small ($300-$3,000), largely unsecured loans for relatively short periods of time (six months plus). Although they did not come within our definition of payday lenders it was instructive to see how many businesses were offering small, high cost loans. The category would include the Personal Finance Co. and Amazing Loans, both with offices state wide, ARN Loans, which has an office in Mornington, in suburban Hobart and mobile lenders servicing Hobart, Launceston and Burnie, as well as City Finance (previously Global Moneyline) which does not have an office in Tasmania but offers loans here.

3.4.3. Survey of payday lenders

Anglicare conducted a survey of all known payday lenders based in Tasmania and the on-line operators from whom Tasmanians would be able to borrow. We looked at the information that lenders supplied on-line and then telephoned them to ask outstanding questions, and in some cases to clarify or confirm information provided on their website. This work was mainly done in August 2008.

The survey sought to identify:

- the personal identification required to obtain a loan;
- the period of time within which a loan could be approved/obtained;
- whether the borrower needed to have a specified minimum income;
- whether loans were approved to people receiving Centrelink income support;
- the cost of borrowing;
- whether costs were expressed as fees, charges or interest;
- if direct debit was required;
- the consequences of not repaying the loan on the due date; and
- whether the borrower could have more than one loan at a time.

Anglicare's questionnaire was based on that designed and used by the Consumer Law Centre Victoria (CLCV) in their 2002 survey of payday lending operators in Victoria (Wilson 2002, p.14). While adding a few questions of our own, we thought it would be useful as a point of comparison to cover all the questions asked by CLCV in 2002.

Identification. Cash Converters require 'some items that identify you accurately, such as a passport, current driver's licence, and a letter that has your name and current address on it'. In practice this means three pieces of ID are required although the operator Anglicare spoke to said there may be some flexibility. Cash Doctors offer a paperless application process where the applicant provides some basic details such as name and address and must also provide the contact details of their payroll officer. Identification is then checked through the payroll officer. Payday Mate requires an applicant to fax a copy of their most recent bank statement and a pay-slip.

Loan approvals. The promise of a fast approval process by payday lenders seems to be universal.
Cash Converters promises approvals within 45 minutes; the operator Anglicare spoke to elaborated by saying that if a prospective borrower came in with all their documentation, their loan would usually be processed within an hour. Cash Doctors claims that 'you get paid within 60 minutes'. Payday Mate says that 'depending on your banking institution your money could be in your account the very same day'.

Borrower's income. Cash Converters does not specify a minimum income and the operator we spoke to told us 'no-one is refused' although the staff member later qualified this by saying that if a person's only income was Youth Allowance from Centrelink, they would not earn a sufficient amount to obtain a loan. The amount that Cash Converters lends, however, is tied to the borrower's income level, in particular the first loan or 'starter limit' which may be as little as $50. The amount is calculated by computer but the operator said that 'as a rough guide' a borrower on Newstart may be allowed a starter loan of $60 and a Disability Support Pensioner $60-$100.

To obtain a loan from Cash Doctors a borrower had to be employed and have a minimum income of $400 per week. To qualify for a loan from Payday Mate an applicant needed to earn a minimum of $667 'bi-weekly' or $1,334 monthly.

Borrowing costs. At Cash Converters loans are for a fixed period of 30 days, and a loan fee applies of 35 cents per dollar, so $100 would cost $135 for 30 days. That equates to an annualised percentage rate (APR) of around 420%. Cash Doctors charge 26 cents per dollar but for a shorter term: 'until your next payday'. The annualised rate will depend on the length of time the borrower has the money (i.e., the time remaining until their next pay day) but if it were two weeks the rate would be around 676% for a week, 1,352% or even more for a shorter period. Loans from Payday Mate are to the next pay day and fees charged are a loan administration fee of $1 and a broker fee of $29.98 for every $100 loaned, equating to APRs of 729 -1,560%.

Direct debit. All the payday lenders we reviewed required loans to be repaid via a direct debit facility. Cash Converters, while making it clear they required a direct debit to be authorised, did say that a customer could come into a shopfront and pay a particular instalment by cash if they had given advance notice that they intended to do so in order to enable the direct debit to be cancelled.

Loan defaults. Cash Converters and Cash Doctors both said that they charged a default fee if funds were not available in the borrower's account to pay the loan on the specified day. Cash Converters added that if this occurred it would affect the borrower's standing with them.

Multiple Loans. All the payday lenders said that they would offer only one loan at a time to a borrower. However, this would not rule out borrowers having multiple loans with different lenders. Payday Mate offers 'Reloans' – a new loan available on the day after the first loan has been paid.

3.5. What are payday loans used for?

The issue of what consumers use payday loans for is contentious, with the industry keen to contradict statements from consumer advocates that payday loans are primarily used to cover basic living expenses.

The Consumer Action Law Centre (CALC) has released some preliminary results from a survey conducted as a component of their current research into fringe lending. The May 2008 survey of 448 payday borrowers found that the main purposes for the loans were:

- car repairs (22%);
- utility bills (21%);
- food or other essential expense (17.6%); and
- rent (10.7%) (CALC 2008a, p.2).

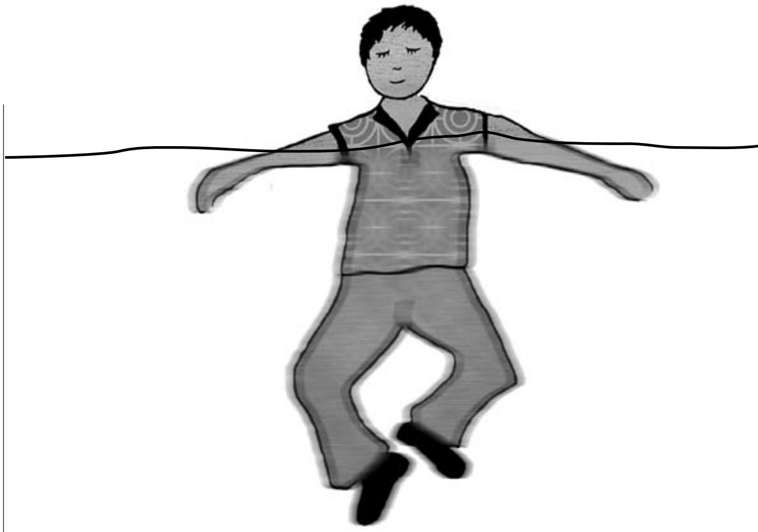
CALC concluded that:

> The purpose of the majority of these loans indicates that the credit is primarily used to supplement income. In fact, less than 5% of the loans were for the purchase of a lasting item or payment for once-off payments that don't necessarily involve financial hardship (such as holidays) (CALC 2008a, p.2).

These results are very similar to the findings of the earlier research conducted in Victoria in 2002, which concluded:

> …very few consumers are using this form of short-term credit for a 'lifestyle' purpose. Payday loans are used to buffer shocks to income created by large bills and in many cases simply to meet regular household expenses (Wilson 2002, pp.66-7).

In a 2007 *Business Review Weekly* article Carolyn Bond, Co-Chief Executive of CALC is quoted as saying that 'the majority of micro lenders' customers are serial borrowers who are already behind with bills or expenses' (Searle 2007, p.38). In the same article this statement is disputed by Phillip Smiles of the National Financial Services Federation, the peak industry body of the micro-lending industry, who says 'recent research conducted by his consultancy of 6,300 customers showed 80% borrowed for discretionary purposes' (Searle 2007, p.38). It is difficult to evaluate this finding given that 'discretionary' is undefined and the methodology and results are unpublished. In any case the statement seems at odds with information provided on the website of the National Financial Services Federation (2008) which states in the section 'FAQ on Payday Advances' that the most common reasons customers give for requesting a micro-loan or payday loan are car registration and insurance, urgent car repairs, rental bond, repairs, rental bond, fridge or washing machine replacement or repair, unexpected travel for funerals, funeral and medical costs, dental expenses, to avoid bank and credit card fees, multiple utility bills coinciding and traffic or parking fines and legal expenses. It is difficult to see how these expenses could be described as 'discretionary'.



4. Regulatory Framework

In Australia the Australian Government and State and Territory Governments currently share responsibility for regulating consumer credit. At the Commonwealth level regulation is undertaken by the Australian Securities and Investments Commission (ASIC), while for the States and Territories regulation is carried out by their respective fair trading offices. In Tasmania this office is the Office of Consumer Affairs and Fair Trading (CAFT), located within the Department of Justice.

Milestones in payday loan policy development and regulation

It is almost a decade since payday lending began operating in Australia with the first payday loans thought to have been offered in Queensland in December 1998 (Ashton 2008, pp.3-4). At a national level some policy and regulatory milestones in the last decade have been:

2002: The Consumer Law Centre Victoria produced a significant overview of the policy issues with *Payday lending in Victoria – a research report* (Wilson 2002).

2003: The Ministerial Council on Consumer Affairs (MCCA) launched *Fringe credit providers: discussion paper*, calling for submissions on its content (MCCA 2003).

2006: New South Wales introduced a comprehensive interest rate cap (inclusive of fees and charges), followed by the ACT and then Queensland in **2008**. South Australia had previously announced its intention to do the same.

Early 2008: Victoria launched an Inquiry into Small Amount Cash Lending.

May 2008: The Productivity Commission released Review of *Australia's consumer policy framework: inquiry report* (Productivity Commission 2008).

June 2008: The Treasury released a Green Paper on credit reform, *Financial services and credit reform: improving, simplifying and standardising financial services and credit regulation* (Treasury 2008).

July 2008: COAG agreed to transfer responsibility for all consumer credit to the Commonwealth, including payday lending and micro loans.

October 2008: The Australian Government announced a two stage plan for single, standard national regulation of credit

4.1. Current Commonwealth legislation

Current Commonwealth legislation covers some consumer protection aspects of consumer credit. Conduct that is misleading or deceptive, or is likely to mislead or deceive, in relation to credit products and services is prohibited under s.12DA(1) of the *Australian Securities and Investments Commission Act 2001*. Unconscionable conduct, in relation to the supply of financial services, is also prohibited by s.12CB[1].

4.2. Current State legislation

The States and Territories regulate credit and consumer lending largely through the legislative mechanism of the Uniform Consumer Credit Code (UCCC). The UCCC developed from a 1993 agreement between the States and Territories, known as the Uniform Credit Laws Agreement, that consumer credit laws should be uniform throughout Australia (Treasury 2008, p.5).
The UCCC is called 'template' legislation. The *Consumer Credit (Queensland) Act 1994* was enacted and then the same legislative format followed in other States and Territories through various arrangements (Treasury 2008, p.6).
In Tasmania the UCCC was enacted by the *Consumer Credit (Tasmania) Act 1996*.

Prior to 2002 payday loans escaped regulation in most jurisdictions as the UCCC did not cover loans for periods less than 62 days. In 2000, as moves were underway nationally to amend the UCCC to cover short-term loans, Tasmania took the step of passing legislation to effectively ban payday lending in order to protect Tasmanian consumers until national provisions could be adopted. Amendments to the UCCC take longer to adopt in Tasmania than in some other jurisdictions as a proclamation must be approved by both Houses of Parliament (CAFT 2007, p.1). The Tasmanian *Payday Lenders Moratorium Act 2000* was passed in April 2001 (CAFT 2007, p.1) with s.5 prohibiting fees and charges exceeding 10% of the credit provided or interest over 60% per annum. The Payday Lenders Moratorium Act had a sunset clause and expired on 1 December 2002. By this time Tasmania had passed the short-term loan amendments to the UCCC.

These amendments meant that short-term loans (62 days or less) became subject to the UCCC where the fees and charges were greater than 5% of the credit loaned or the rate of interest imposed was greater than 24% per annum (UCCC s.7[1]). As payday lenders almost invariably charge rates higher than these, this amendment served to make the majority of payday loans throughout Australia subject to the UCCC.

The current provisions of the UCCC that now became relevant to payday lending focus on 'truth in lending' or pre-contract disclosure. Credit providers are required to truthfully disclose all relevant information about the credit arrangement in a written contract, including interest rates, fees, commissions and other information. For example, pursuant to sections 14-15 of the UCCC, a credit provider must disclose all relevant terms of the contract, including disclosure of the annual percentage interest rate. A comparison rate must also be included in any advertisement for fixed term consumer credit which contains an interest rate (UCCC s.143). Comparison rates are calculated in accordance with a standard formula, which takes into account the amount and term of the loan, repayment frequency and the interest rate; and the fees and charges connected with the loan, with some exceptions.

The UCCC also gives borrowers the legal capacity to challenge unjust or unconscionable contracts in some circumstances. A consumer may be able to challenge a credit contract as unjust and a court can re-open the credit transaction. One factor the court is able to consider in deciding if a credit contract is unjust is, for example, 'whether at the time the contract was entered into or changed, the credit provider knew, or could have ascertained by reasonable inquiry of the debtor at the time, that the debtor could not pay in accordance with its terms or not without substantial hardship' (UCCC s.70[2][l]), or in other words, whether or not the debtor could afford the credit. A court also has power under the UCCC to review unconscionable interest rates, fees and charges, and to reduce or annul them (UCCC s.72).

4.3. Current legislative differences between the states and territories

While the States and Territories agreed through the Uniform Credit Laws Agreement to establish a uniform scheme to regulate consumer credit, the Agreement also allows non-conformity in certain specified areas. For example the states and territories are able to introduce non-conforming legislation in relation to the licensing of credit providers. Under these provisions, **Western Australia** has banned people from carrying on the business of providing credit unless they hold a credit provider's licence (*Credit (Administration) Act 1984* s.6[1]). No other state currently licences non-bank credit providers.

States and territories are also able to legislate independently in relation to fixing interest rates and there is no uniformity across Australia in relation to controls on interest rates, fees and charges. In particular, the states and territories divide into two groups on the question of the utility of imposing a cap on interest rates, fees and charges. **New South Wales** was the first state to introduce a comprehensive 48% cap on the cost of credit with legislation passed in 2005. New South Wales already had a maximum annual percentage rate of 48% on credit contracts, but 2005 amendments to the C*onsumer Credit (New South Wales) Act 1995* required a credit provider to include all credit fees and charges (with some exceptions) in the calculation of the maximum annual percentage rate.

In the **Australian Capital Territory** the *Justice and Community Safety Legislation Amendment Act 2006 (ACT)* amended the *Consumer Credit Regulation 1996 (ACT)* to impose a comprehensive 48% cap. A new formula for working out the maximum annual percentage rate was added requiring the inclusion of ascertainable fees and charges payable by the debtor in calculating the maximum annual percentage rate. In **Queensland** the *Consumer Credit (Queensland) and Other Acts Amendment Bill 2008* amended the *Consumer Credit (Queensland) Act 1994* to implement a maximum annual percentage rate that capped interest, fees and charges. The amending Bill passed in 2008 and came into operation on 31 July 2008. In **South Australia** the *Consumer Credit (South Australia) (Maximum Annual Percentage Rate) Amendment Bill 2006* had its First Reading on 15 November 2006, meaning that the draft legislation was introduced into Parliament, but it has not yet been passed. The effect of the Bill would be to amend the *Consumer Credit (South Australia) Act 1995* to impose a comprehensive 48% cap on interest rates, fees and charges.

Victoria has a 48% cap on interest rates charged in consumer credit contracts but the cap is not comprehensive, meaning that payday lenders are effectively able to avoid the cap by charging fees instead of interest. The question of a comprehensive cap has been the subject of extensive debate in Victoria. It was considered by the 2006 Consumer Credit Review (Consumer Affairs Victoria 2006) and in early 2008 the Inquiry into Small Amount Cash Lending was established to look further at the issue of regulation of high cost lending.

4.4. Regulatory challenges

The protections provided by the UCCC to consumers appear to be extensive. However in practice there are a number of factors that limit the effectiveness of these protections for payday loan customers.

An important objective of the UCCC is to promote 'truth in lending' so that credit providers are required to disclose all the relevant terms of the credit contract prior to the contract being finalised. Willis points out the difficulty of relying on a 'free-market' regulatory system in the context of consumer vulnerability:

> The Code's core aim of "truth in lending" is predicated on the classical liberal theory that optimum social outcomes are achieved by enabling individuals to make their own choices. Thus disclosure is required in order to provide consumers with the information necessary to make meaningful decisions, but after that, it assumes that market forces will ensure fair practices… The reality is that many payday borrowers are in need and unable to access alternative forms of credit. For these people information and disclosure do not amount to choice because they are not "free" to decline a loan, even when it is on plainly unfavourable terms (Willis 2005b, p.22-3).

The Consumer Action Legal Centre, citing earlier research by the Consumer Law Centre Victoria states that payday borrowers have an average annual income of $24,500, are renting, mainly in public housing, borrow to pay bills or for day-to-day living expenses and are unable to access mainstream credit. This leaves consumers in a position of limited choice, and may mean consumers will not be influenced by the disclosure of interest rates and charges. The Consumer Action Legal Centre concluded that prioritising disclosure as a means of protecting consumers is misconceived (Brody 2007).

Australia's consumer credit legislation also envisages consumers carefully examining the credit contract terms on offer. But with payday loans a key feature is the fast approval times for loans: 'Get $100 to $600 in your hand in 60 minutes' (Cash Doctors 2008) is one example. This approach is clearly not conducive to measured consideration of the credit contract.

A further question raised by the practices of payday lenders is the timing of the pre-contract disclosure required by consumer credit legislation. Technically pre-contract disclosure requires that a consumer is provided with the terms of the contract prior to finalising the contract, which would usually mean prior to signing the contract. Ideally consumers would be provided with information about the contract early in the negotiation of the actual contract terms, if the legislation is to fulfil its stated purpose of allowing borrowers to make informed choices. However, early disclosure of contract terms is not a feature of payday lending. It is noticeable, for example, on examining the websites of on-line payday lenders, that none disclose the contract terms on offer although clearly it would be straightforward to include a web page with the standard terms. On a number of web sites it was necessary to commence a loan application, including the provision of very private information such as the borrower's bank account details, prior to accessing even basic information about the loan on offer, such as the nature of the fees. In practice this means there is significant 'buy-in' from the consumer before they become aware of the terms of the loan, reducing the probability that they will reject the credit contract even if the terms are unfavourable.

The UCCC requires that a credit provider must disclose all relevant terms of the contract including that an interest rate charged must be converted and declared as an annualised percentage rate (APR). The purpose is to give the consumer a basis for comparison with other interest rates. For example if a consumer takes out a loan of $100 for a fortnight at an interest rate of 20%, they must be informed that they are being charged an APR of 520%. However, payday lenders generally charge fees rather than interest rates, and thus a significant loophole is available to payday lenders in Tasmania and those other jurisdictions without a comprehensive cap on rates and fees as it is not required that fees be expressed as an APR. For example, Cash Converters charge a 'fee' of 35 cents for each dollar loaned – for a 30 day loan this could be expressed as an APR of approximately 425%. This would be useful information for a consumer to have when evaluating the real cost of a short term loan from a payday lender. However, lenders argue that small amount, short term credit would be unviable to offer and hence unavailable if only the equivalent of 'mainstream' interest rates could be charged.

In a 2005 study of payday lending in South Australia Willis found it was 'debatable' (Willis 2005b, p.22) whether payday loan fees should be classified as interest. The argument for their classification as interest is that if interest is defined as the profit produced by the loan and fees incorporate both cost-recovery and profit components, then fees do include interest, and should be stated as an APR. The study found that none of the 20 payday lenders operating in South Australia at that time disclosed an APR. So the UCCC is evidently not interpreted by lenders to require disclosure of flat fees as an annualised rate. At the very least the UCCC would need to be clearer in order to achieve this outcome.

All of these factors suggest technical compliance by payday lenders with the requirements of the UCCC but little support for the intent of the legislation, which is to assist borrowers to make informed choices when purchasing credit.

4.4.2 Access to redress

Part 5 of the UCCC provides for ending and enforcing credit contracts. Section 70 provides for a court to find a credit contract unjust, including for example on the basis that the borrower could not afford the credit. This provision would seem to be relevant to the situations of low-income payday borrowers who take out loans they have great difficulty repaying. A further provision empowers a court to review unconscionable interest rates, fees and charges (UCCC s.72). However, in real terms these legislative provisions have not been effective in protecting borrowers.

Consumer credit lawyers at Victoria's Consumer Action Law Centre (CALC) suggest some reasons for this (Brody 2007). Firstly, the provisions rely on the consumer taking individual action in a court or tribunal. As Willis points out (2005b, p.23) this '…is ineffective in the context of payday lending because borrowers are unlikely to have the skills, funds or time to bring court actions. Moreover, the small values involved make court proceedings inefficient'. Secondly, there is no provision for regulators to enforce these obligations – a body such as Consumer Affairs and Fair Trading in Tasmania is not able to conduct litigation either on behalf of consumers, or in its own right. This means that the issue cannot be tackled on an industry-wide basis. Willis notes that there is no provision for class and representative actions in these sections and minimal funding for civil actions, and concludes that 'litigation in this area is unlikely' (Willis 2005b, p.23). Further, on the occasions when it has been considered by a court, the unjust transaction provision in the UCCC has not been interpreted as a positive obligation to assess a consumer's capacity to pay (Brody 2007).

4.5. The regulatory horizon

4.5.1 2007 draft legislation

At the Commonwealth level, a number of amendments to the UCCC that would tighten up the regulation of payday lenders have been under consideration for some time, within the wider context of national consumer regulation. The Ministerial Council on Consumer Affairs (MCCA) released a discussion paper in 2003 (MCCA 2003) which discussed a number of possible amendments to the UCCC and called for submissions. A Consultation Package (MCCA 2007) including draft legislation was released in August 2007. Proposed amendments included:

- Requiring disclosure of an annualised percentage rate to include charges which, although not portrayed by the credit provider as interest, are in fact interest (to be based on the NSW legislative provision).
- Allowing regulation of the total cost to a consumer of a loan, by capturing fees and charges whether or not they are set out in the credit contract or paid to a third party, such as a broker.
- Clarifying the use of the Business Purpose Declaration (BPD), with the intent of removing a well-known loophole whereby consumers are required to sign a BPD for what is clearly a personal loan, removing the loan from coverage by the UCCC.
- Changing the terminology used in section 72 of the UCCC from 'unconscionable' to 'unreasonable' to enable the court to review unreasonable interest and other charges.
- Permitting Government consumer agencies to make applications under sections 70 and 72 of the UCCC to challenge unjust or unconscionable contracts.
- Allowing challenges to establishment or default fees on the basis that they exceed costs.
- Requiring consumers to be given information about the lender's requirement that borrowers repay the loans only by direct debit from their bank account.
- Prohibiting credit providers from asking or taking security over essential household goods.

These proposals generated considerable interest and some controversy. In particular, the suggestion that courts be empowered to review unreasonable interest and other charges excited controversy as the provision would apply to mainstream as well as to fringe credit providers. It attracted the ire of some banks and other mainstream credit providers (e.g. ANZ 2007).

4.5.2 2008 national consumer credit regulation

In October 2008 the Commonwealth government announced a single, standard, national regulation for consumer credit for Australia. This new national consumer credit regime is to be implemented through a two phase action plan.

Key elements of **phase one** of the Action Plan include:

- Enacting the existing state legislation, the Uniform Consumer Credit Code (UCCC), into Commonwealth legislation.
- Establishing a national licensing regime to require providers of consumer credit and credit-related brokering services and advice to obtain a licence from ASIC.
- Extending the powers of ASIC to be the sole regulator of the new national credit framework with enhanced enforcement powers.
- Requiring licensees to observe a number of general conduct requirements, including responsible lending practices.

- Requiring mandatory membership of an external dispute resolution (EDR) body by all providers of consumer credit and credit- related brokering services and advice.

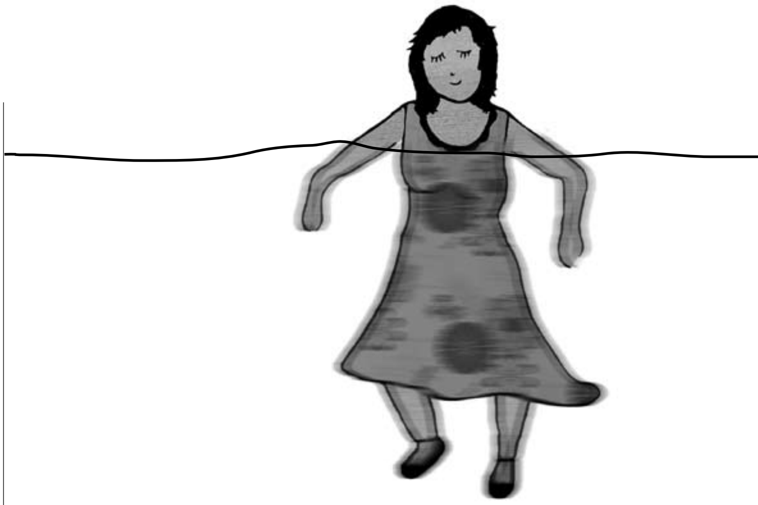
Phase one will be completed by mid 2009.

Key elements of **phase two** of the Action Plan include:
- Enhancements to specific conduct obligations to stem unfavourable lending practices, such as a review of credit card limit extension offers, an examination of State approaches to interest rate caps; and other fringe lending issues as they arise.
- Reform of mandatory comparison rates and default notices.
- Examination of remaining existing State and Territory reform projects.

Phase two will be completed by mid 2010.

4.5.3 Tasmanian Legislation

Consumer Affairs and Fair Trading in Tasmania had foreshadowed legislation to regulate some aspects of the advertising of payday lending. In late 2008 this legislation was ready for introduction into Parliament. However, the decision of COAG to bring consumer credit legislation under a single national regulatory regime led to the proposed Tasmanian legislation being put aside. It was felt that the licensing requirements for all credit providers that would come into effect in the middle of 2009 would provide a sufficient brake on unscrupulous payday lenders, and it was inefficient to bring legislation into effect for only a few months.



5. Problems identified with payday lending

What is it about payday loans that triggers such concern? They are clearly a product popular with low-income consumers, although arguments have been made about the capacity of consumers to make a free choice in relation to take up of this credit product in a context of dire need and limited options (see section 4.4.1 above), and it has been suggested that it is the easy availability of payday loans which in fact drives their demand (CALC 2008a, p.3). Researchers, commentators and consumer advocates have identified a number of problems with the payday lending sector, including the use by lenders of direct debit as a payment method, the speed and ease with which loans can be obtained and the high cost of this form of credit.

5.1. Reliance on direct debit

A feature of payday lending is the use of direct debit as a payment method. Payday lenders generally insist on customers signing a direct debit authority that operates on the day the customer is paid, whether by an employer or Centrelink. Clearly this maximises the possibility of the payday lender being repaid. Our study of Tasmanian payday lenders confirmed the insistence on direct debit. Cash Converters, for example, say it is possible for customers to repay with cash, but still insist on holding a direct debit authority, so that any customer who paid directly in cash would have to arrange to have the direct debit cancelled for that pay period.

Several problems have been identified with this use of direct debit:

- A direct debit on payday ensures the payday lender has first call on the borrower's income, before housing, food and other essentials are covered.
- A direct debit held by the payday lender and exercised on payday also ensures that, in the event of default, the payday lender is paid before other unsecured creditors, thus the cost of payday borrowing is externalised onto other creditors (Ashton 2008, p.23).
- If the borrower does withdraw their money prior to the direct debit (or for whatever reason, the money is not in the account) they face a double imposition of fees: both a bank dishonour fee for having insufficient funds to cover the direct debit and also a penalty fee from the payday lender.

A 54 year old man recently separated and on a carer's pension had taken out two unsecured loans for $100 each in separate instances to help with food and fuel, as his rent of $320 did not leave enough to live on. With the first loan he was charged an extra $11 for a card with his photo. His repayments were $74 a fortnight for two fortnights. The repayments for the second loan were $64 a fortnight over two fortnights. Unfortunately he did not leave enough money in his account for the second payment on his second loan and was charged a $16 fee by the company and a $30 default fee by the bank. He has now found himself overdrawn by $125 and is having difficulty in repaying the loan. He needed to access an emergency relief agency for food and fuel. (Case study presented at the Fast Finance Forum held in Hobart in October 2007)

- Borrowers may well be unaware of their legal rights in relation to direct debits, strengthening the position of payday lenders and the likelihood they will be paid first. The Consumer Law Centre Victoria found that most people were unaware that they had the right to cancel a direct debit authority without informing or obtaining permission from the lender (Wilson 2002, p.48).
- Any administrative errors made in direct debits could have disastrous results for payday borrowers who have no 'leeway' in their budgets.

A single mother with two children receiving Parenting Payment and Family Tax Benefit accessed a same day approval personal loan for $400 without any credit check being done. This was to help with her daughter's birthday celebrations. Payments were to be direct debited at $78 per week from her bank account; however the company took $300 from her account in one withdrawal, eventually leaving her with three separate $30 default fees charged by her bank. Her total repayments should have been

$550 ($150 in fees). She needed to access an emergency relief agency for food assistance. (Case study presented at the Fast Finance Forum held in Hobart in October 2007)

5.2. Easy to start, hard to stop

Service providers who work with payday borrowers expressed concern that it was so quick and too easy for borrowers to obtain loans from payday lenders. Most lenders quote times of less than one hour to finalise the loan. Minimal documentation is required and generally credit checks are not required. This leaves little time for reflection between deciding to obtain a loan, being given the funds and spending them.

For some clients, they can't get mainstream money as they have too much debt and not enough income. They can't afford the rego or the power bill, or the payments on existing debt, so they jump into one of these loans to alleviate immediate financial stress, and worry about the consequences – or not – later. (Financial counsellor, speaking at the Fast Finance Forum held in Hobart in October 2007)

The first loan that a borrower obtains from a payday lender is approved quickly enough, but of course subsequent loans from the same lender can be approved even faster as the lender already has all the applicant's details including personal identification and a direct debit authority has already been provided. Once a borrower has had one loan they can then be subject to 'back-to-back' or even 'concurrent' loan offers.

Joan has eight children, five still living at home. She is an excellent manager of the money she receives and has taken out a number of NILS loans to purchase essential household items for herself and now for her older children who have left home. She takes pride in having helped them 'get set up'. While trying to help the latest child into his own place she had the chance to buy some second hand furniture. She needed to pay in cash because the seller was leaving the area so she went to Cash Converters to borrow $270. The loan was provided, to be repaid at $124.75 per week over 4 weeks – a total cost of $499. Joan says she was offered a concurrent loan of $600 repayable over 6 months, with repayments of $200 per month – a total cost of $1200. (Case study from NILS Network of Tasmania, November 2008)

'Back-to-back' loans describe the practice of borrowers taking out a further loan as soon as they have repaid a loan and thereby getting onto a treadmill of debt. Service providers described how it was very easy for clients on a fixed, low income such as income support from Centrelink, to get into a continual cycle of debt. For example, a client may borrow $100, but when the repayment comes out of her pension, she can no longer afford to pay for food or other necessities due to the $135 gap in her budget. Therefore she may borrow a further amount. This process can become a long-term cycle.

People are using loans to make ends meet – to pay the rego to keep the car on the road, to eat because "all the money had to go to the bills", to get through Christmas, to pay the power bill, to pay doctors' bills, to get to the dentist, to pay rent arrears, to pay the rates, to pay their minimum credit card payment to keep it going. Some clients get to the point that there is nothing left to use as security and having food on the table and petrol in the car that week is contingent on that rollover happening. (Financial counsellor, speaking at the Fast Finance Forum held in Hobart in October 2007)

A survey of payday borrowers conducted in Victoria in 2002 which included a street survey of payday borrowers and then follow up interviews with a proportion of these made a series of findings about the nature of payday borrowing, including that:

- consumers repeatedly spoke of the 'addictive' nature of the loans;
- the greatest incentive encouraging repeat borrowing was the speed with which subsequent loans were processed;
- consumers suggested that the ease of subsequent borrowing was worrying and even amounted to a temptation;
- consumers who have obtained numerous

loans frequently reach a stage where they become aware that their payday loans are becoming problematic; and
- several consumers were actively attempting to stop using payday loans but hadn't done so as yet (Wilson 2002, pp.14-17, 75).

It is certainly surprising to have payday lending discussed in terms more often heard in relation to gambling rather than to a credit product. These rather worrying findings suggest payday lending is in a different category from other consumer credit products and raise the question that a different scheme of regulation may be justified.

5.3. Simply too expensive?

When the fees and charges are converted to an annual percentage rate and compared to other credit products, payday lending is undoubtedly an expensive form of credit.

However, payday lenders contend that the high APR reflects the true cost of lending small amounts to customers at a high risk of defaulting. The payday lending industry argues it is serving demand and filling a void in the marketplace by offering credit to those for whom credit would otherwise be unavailable (Searle 2007, p.36; Wilson 2002, p.33). It is argued that even people on a very low income or with a poor credit history need access to credit. This credit is not being provided by the mainstream credit providers, so payday lenders are providing a necessary service in offering loans to this customer group.

However, the form of credit offered by payday lenders is in many cases unaffordable for their customers. Accordingly there is a real question mark over whether payday loans serve to alleviate financial hardship, or in fact to exacerbate it. We need to ask if the substantial fees being charged by payday lenders are really something that individuals can afford.

A 28 year old single mother, who was on Newstart Allowance and living in a caravan, had her child in the care of relatives until she was able to secure housing. When the child recently returned to her care, she applied to Centrelink for Family Tax Benefit and Parenting Payment, but had to wait before she was able to receive her full entitlements. Her rent takes 50% of her income and she did not have any money for food so she approached a lender for an advance of $100. On top of this there were fees totalling $50. She was to pay $75 a fortnight for two fortnights in order to repay the advance. She was told that if she defaulted she would receive a default fee of $55 plus a bank fee of $30. She felt she had no option but to borrow in this way, but she was very sorry she had and said it was something she would never do again. Because of her low income, the cost of servicing the loan has impacted heavily on her budget and made it difficult to get back on her feet. (Case study presented at the Fast Finance Forum held in Hobart in October 2007)

6. Conclusions and recommendations

6.1. Income support

There is a clear link between poverty and demand for payday loans (Willis 2005, p.16). Australia's income support system fails to provide an adequate standard of living. The Brotherhood of St Laurence has compared the Centrelink entitlements of households in a variety of life circumstances with the Henderson Poverty Line and found that, with the exception of couples on the Age or Disability Support Pension, every household type was living below the poverty line, in some cases by significant amounts (BSL 2007). Poverty means that people have limited capacity to protect themselves against unexpected financial costs, such as the breakdown of a major appliance, or even against expected large expenses, such as car registration, by setting aside money. In 2006, more than one in ten (12.9%) of Tasmanians reported that they would be unable to obtain $2,000 within a week for something important (Tasmania Together 2007). The growing casualisation of the workforce also means that low income earners often experience considerable income fluctuations (Madden 2003). Income instability causes people to be ineligible for mainstream credit, yet they may need access to small amounts of credit to cover financial commitments in periods where their income has fallen or to 'smooth' the impact of fluctuations in income, and in such instances, they may be likely to turn to payday lenders (Willis 2005, p.16).

Anglicare commends the current Pension Review being conducted, as part of the Australian Government's broader review of Australia's Future Tax System, to investigate measures to strengthen the financial security of seniors, carers and people with a disability (FaHCSIA 2008b). Anglicare would like to see other Centrelink benefits and payments reviewed as, along with pensioners and carers, other income support recipients are entitled to a decent standard of living.

Recommendation 1: That the Minister for Families, Housing, Community Services and Indigenous Affairs and the Ministers responsible for the Department of Employment, Education and Workplace Relations act to review and increase all pensions and benefits to a level that covers the necessities of life and ensures a decent standard of living for all recipients.

6.2. Supporting affordable credit options

Consideration of the reasons that people use very expensive credit options such as payday lending indicates that many on a low income need access to affordable credit. While there is currently no not-for-profit payday loan option, there are some more affordable credit options available to people on low incomes.

6.2.1 The NILS Network of Tasmania

In Tasmania the No Interest Loans Scheme (NILS) Network plays an important role. NILS provides small loans (usually under $1,000) without interest or charges to low income earners, enabling them to purchase essential household items such as white goods. NILS aims to offer an alternative for low-income consumers who face barriers gaining access to credit on reasonable terms.

Recommendation 2: That the Department of Health and Human Services continue to fund the NILS (No Interest Loans Scheme) Network of Tasmania at a level sufficient for NILS both to continue its present role of providing no-interest loans to low-income Tasmanians and to expand its capacity to provide innovative financial assistance to low-income Tasmanians.

6.2.2 Other 'affordable credit' alternatives

Anglicare notes that, in addition to NILS, a number of other 'affordable credit' alternatives operate in Australia, although not all are available in Tasmania.

StepUP loans (NILS/NAB)
NILS has established a partnership with the National Australia Bank (NAB) to make step up loans available to low-income Tasmanians.

StepUP loans are 'low interest' NAB loans of up to $3,000 to assist people on low incomes to pay for household items, cars and car repairs, household repairs and maintenance and medical and dental expenses. NILS workers help applicants to complete the loan application which is then assessed by the bank.

Centrelink advance payments
Most Centrelink income support recipients are eligible to apply for an advance payment of between $250 and $500 of their social security entitlement once in each 12 month period (FaHCSIA 2008, s. 5.4.1.10) as long as they have repaid any previous advance and have no other debts to the Commonwealth. The amount is then repaid by regular deductions from the recipient's income support, and so operates like an interest-free loan. Formerly Centrelink recipients could apply for another loan once the first had been repaid. There was concern that this approach virtually amounted to a continuous reduction in income and now people can only apply once in 12 months.

Progress Loans
Progress Loans is a program developed by ANZ and the **Brotherhood of St Laurence**, launched in May 2006. It provides people on low incomes with loans of between $500 and $3,000 to pay for essential household items such as white goods (ANZ 2008). The loans are offered for terms of six months to three years and are charged at 12.70% per annum with an approval fee of $40. The loans are currently only available in a few Victorian locations. The program arose out of an earlier pilot between the Brotherhood of St Laurence and Community Sector Banking which was evaluated in the report *To their credit: evaluating an experiment with personal loans for people on low incomes* (Scutella & Sheehan 2006, p.6).

NAB Small Loans Pilot
In May 2008 the **National Australia Bank (NAB)** together with credit provider **Mobile Finance Pty Ltd** (trading as Money Fast) launched a **small loans pilot** providing personal loans of between $1,000 and $5,000 for one year terms at an annual interest rate of 28.25%. 'The pilot aims to demonstrate the break-even costs of offering short-term, small loans in the fringe credit market and to draw attention to the high interest rates and charges prevalent in that market' (NAB 2008, p.1). Comparing their credit product to payday loans, NAB observes that '[t]he pilot will only look at one segment of the fringe credit market – loans between $1,000 and $5,000 for a term of 12 months. NAB notes that a high proportion of lending in the fringe credit market is, however, for payday loans of less than $350 for short periods of two to four weeks' (NAB 2008, p.2). The NAB/Money Fast loans are available to Tasmanians (and other Australian residents) from Money Fast by phone or on-line (www.moneyfast.com.au).

Credit unions
Some credit unions in Australia have developed more affordable loans for people on low incomes. The New England Credit Union based in Armidale has previously asserted that they succeeded in keeping payday lenders out of Armidale (R Tipping 2008, pers. comm. 13 August) Another model is the Fitzroy and Carlton Credit Cooperative which encourages membership from people living on low incomes.

Recommendation 3: That Tasmanian credit unions explore ways of offering some more affordable credit products to people living on low incomes.

6.3. Price controls: capping fees and interest rates

Laws against usury have been long established and continue as a topic of debate in relation to payday lending. Today 'usury' means an excessive rate of interest charged on borrowed money, although historically the term referred to interest generally. The effectiveness of controlling the price of payday lending by capping the interest and fees has been debated in Australia for almost as long as we have had payday lending. Price controls have been one of the most contentious aspects of the regulation of payday lending, with the States and Territories divided on the best approach. New South Wales, the ACT and now Queensland have a comprehensive cap, while

Victoria caps interest rates and South Australia has drafted but not passed capping legislation. This leaves Tasmania, Western Australia and the Northern Territory as 'no price caps' jurisdictions.

One issue in contention in this debate is the cost of providing payday loans. Generally the cost of a payday loan is expressed as a fee rather than an interest rate, for example a fee of $35 for each $100 loaned for 30 days. When this fee is annualised, meaning it is expressed as an annual percentage rate (APR), the rate is, in this example, 420%. For some payday loans the rate can be as high as 700-1,500% and these certainly seem exorbitant.

On the other hand, payday loans are an expensive form of credit to provide. By their nature, payday loans are for relatively small amounts loaned for short periods of time. There is a labour and administrative cost for any loan which includes processing and assessing the loan application, transferring the loan amount and monitoring repayments. The process is simplified by payday lenders, in part through less rigorous assessment procedures, but there remains a cost attached to lending whether the loan is for two weeks or two years. Commenting to *Business Review Weekly* on the cost factor, Ian Day, the general manager of Cash Converters, said, 'On a 28 day loan, if you pay $35 for $100 and annualise the rate, it looks extraordinary. But that will never be annualised. The reality is, hundreds of customers find it a very valuable service and if [interest] rates are capped, it will cease to exist. Those [prices] are necessary to cover costs' (Searle 2007, p.37). Without necessarily accepting the industry assessment that the prices are necessary to cover costs it is nonetheless true that if consumers want a short term loan then proportionately the cost will be higher than a loan for a much longer period.

While there is a level of consensus that usurious fees should be outlawed, it is difficult to find an appropriate maximum rate. Willis explores this difficulty in a series of articles on payday lending (Willis 2005a, 2005b, 2005c), pointing out that the 48% cap (imposed in the Australian jurisdictions with caps) equates to a fee of 90 cents per $100 borrowed per week, 'probably not enough to cover the lender's variable costs' (Willis 2005c, p.18). Willis remains in favour of a cap, however, and reviews the regulatory experience of the United States to find some middle ground between caps that are so low as to effectively eradicate the payday industry and rates that are unethically high, concluding that caps ranging from $15 to $33.50 per $100 for 14 days (390-870% per annum) are high, but would allow the industry to survive while achieving an effective middle ground when considered together with other protective measures (Willis 2005c, p.18).

One of the reasons the NAB and Money Fast are operating their current small loans pilot (see section 6.2.2. above) is to draw attention to the high interest rates and charges prevalent in the fringe credit market (NAB 2008, p.1). But significantly:

- The loans offered by the pilot and described as short-term small loans are not really similar to payday loans. The pilot's minimum loan amount of $1,000 is much larger than the $50-$100 minimum available from a payday lender, and the minimum term of one year is 12-26 times longer than the typical payday loan, which is taken out for 14-30 days. Accordingly the attractive APR quoted by the NAB and Money Fast is not in fact for a comparable product.
- The NAB says the Small Loans Pilot 'is not a commercial venture for NAB' (NAB 2008b) but instead one of their corporate responsibility projects. The pilot is testing a 'breakeven' interest rate. (NAB 2008c, p.3). *Fairer lending on the fringe,* the first quarterly report of the pilot covering 1 June 2008 – 31 August 2008 shows that only 92 of 1001 applications were approved, with more than 70% of approvals being for $3,000 and more. The report concluded that administrative costs have been higher than predicted, as had the profit margin and additional fee revenue and that the actual break-even rate had been 28.62%, slightly higher than predicted

> although this 'remains well below current industry practice'. In fact, it is the additional fee revenue (for late payments and collections) which has had the effect of lowering the 'breakeven' interest rate, which would otherwise have been about 32% (NAB 2008c, p.7).

It is argued that capping interest rates and fees would provide certainty for both lenders and borrowers; without a comprehensive cap the alternative is for consumers to challenge fees on a case-by-case basis (Brody 2007). This is not ideal as payday borrowers often lack the funds, expertise, skills or time to mount the necessary legal challenges. Willis also points out that it is more efficient to have maximum allowable charges than to have courts consider this case by case (Willis 2005c, p.18). But the difficulty with a cap on fees and charges is that, if effectively enforced, it would almost certainly eradicate at least the very short term loans of 30 days or less. From the consumer's point of view it is also unclear whether regulating short term loans out of existence is a desirable outcome. In Willis's view consumers will continue to demand small value loans as 'it will be a better option to obtain expensive credit than have the electricity cut off' (Willis 2005c, p.18). So the issue then becomes an argument about whether this kind of prohibition is desirable. Is it reasonable to say that this is a socially undesirable product posing too great a risk of social harm and should be banned?

One argument against such a de facto ban is that it is unlikely to eliminate all exorbitantly-priced credit products – borrowers can still use pawnbrokers and may turn to illegal lenders. Payday lenders have also proved to be quite adept at circumventing attempts to regulate them and have expressed their intention to do so again. Ian Day from Cash Converters has stated, 'If rates were capped [nationally] it would make many businesses unviable, but we would look at alternate ways of providing the service that are perfectly legal… we have other means of offering the service through broking arrangements or in a promissory note environment' (Searle 2007, p.37). It is certainly possible to get payday loans in New South Wales and Queensland (states where caps apply) but the providers seem to be working around the laws by acting as brokers rather than as financers. The fees they charge still seem to be the same as are charged in jurisdictions without caps. CALC notes that in New South Wales, regulation appears to have has resulted in the most expensive pay day loans being withdrawn from the market. However a loophole has developed involving the imposition of brokers in the transaction between consumer and the lender who will charge fees (commissions or 'cheque cashing fees'). As these fees are not charged 'under a credit contract', they are not included for the purposes of calculating the maximum annual percentage rate (CALC 2008a, p.4).

The Productivity Commission has recommended that provisions from state or territory legislation that are outside the UCCC, such as capping interest rates and fees, should be incorporated into the national credit regime where they pass a benefit-cost test (Productivity Commission 2008, p.108). This seems a useful way forward. What is needed is policy with a strong evidence base. We have a situation where there are jurisdictions that have had a cap on interest rates and fees for a considerable time while others have capped only interest rates and others have no caps. This provides a good opportunity to evaluate caps, both in terms of whether they can be effectively enforced and whether they provide benefits for consumers. A poor outcome of introducing a national consumer credit regime would be a rush to a 'lowest common denominator' position, with some jurisdictions states and territories losing the caps put in place with the aim of protecting consumers, without first independently assessing their effectiveness.

However, Tasmanian consumer groups and service providers have noted with concern that the unregulated way in which payday lending operates within Tasmania is having very detrimental effects on consumers and are of the view that interim protective legislation at the state level would be appropriate during the transition phase.

Recommendation 4: That the Commonwealth negotiate with the States and Territories about the inclusion of provisions in its proposed national consumer credit legislation that cap the interest rates and fees allowed as credit charges, and that these negotiations follow a comprehensive evaluation of the efficacy of such caps and a benefit-cost analysis that specifically considers the benefits and costs to low income consumers.

Recommendation 5: That until the implementation of phase two of the National Consumer Credit Action Plan the Tasmanian government consider providing low income Tasmanians with the interest rate cap protection that is afforded the majority of low income Australians.

6.4. Licensing of credit providers

Licensing of credit providers is a reform that appears to be widely supported. It has also been recommended by the Productivity Commission (Productivity Commission 2008, p.107) and is supported by consumer advocates (e.g. Brody 2007) and at least some sectors of the industry (e.g. Cash Converters 2008, p.12). It is now an agreed position that phase one of the National Consumer Credit Action Plan will require licensing by ASIC of providers of consumer credit.

Legislation from Western Australia and Victoria provides examples of licensing regimes, and elements from the Commonwealth scheme for licensing financial service providers would also be applicable. Under the Commonwealth scheme, a financial services licensee has obligations in relation to conduct and disclosure, the competence and good character of managers, compliance with legislation and a number of other matters including a general obligation to ensure that their services are provided efficiently, honestly and fairly (ASIC 2008b). It is Anglicare's understanding that the system proposed in the National Consumer Credit Regulation Action Plan for licensing by ASIC of credit providers will apply to all providers of credit, including payday lenders, a proposal that is very much endorsed.

6.5. External dispute resolution

Alternative dispute resolution, which, in relation to financial services is generally termed external dispute resolution (EDR), has gained acceptance as an affordable and accessible process for resolving disputes between consumers and credit providers. It would of benefit to payday borrowers to be able to access such a scheme to resolve disputes with lenders, without having to resort to the formal court system.

It is vital that industry-based customer dispute resolution schemes provide a quality service and are independent and accountable. ASIC has developed detailed policy in relation to dispute resolution schemes. To be approved by ASIC, EDR schemes must meet ASIC's requirements as set out in Policy Statement 139 (ASIC 2008a).

Recommendation 6: That membership of an Australian Securities and Investments Commission (ASIC) approved external dispute resolution body as outlined in the National Consumer Credit Regulation Action Plan be mandatory for all providers of credit, including payday lenders.

6.6. Financial counsellors

The available research on payday lending indicates that people are frequently turning to payday lenders to manage day-to-day expenses such as utility bills and periodic but routine expenses such as car registration costs. This suggests that consumers need greater support with financial management, so that financial management doesn't turn into crisis management.

Community-based financial counsellors can assist people to develop and manage budgets, improve skills in household financial management and can help people to negotiate their way through financial crises and then work to re-build their credit rating.

Anglicare provides financial counselling in Tasmania with funding from both the Australian and Tasmanian governments. Anglicare Financial Counselling Service (AFCS) is a state-wide service operating from offices in Hobart, Launceston, Devonport and Burnie. In the last year AFCS has recorded both an increased demand for services and noted increasing case complexity. AFCS has estimated that:

- an additional 3.5 FTE financial counsellors would be required to reduce current waiting times from an average of 20 business days to a benchmark of fewer than five days for a first appointment; and
- an additional 2 FTE counsellors/ community education workers would enable the service to deliver a scheduled program of community education on budgeting and household financial management throughout Tasmania and thereby build financial literacy through the community.

Commonwealth funding increases in the May 2008 budget provided an additional 0.4 FTE financial counselling position for AFCS. The Commonwealth has further called for tenders for an additional 0.6 FTE position for Tasmania, which will be allocated early in 2009. These much needed increases do not however meet the already identified need for proactive community education nor for direct service to individuals, demand for which is only predicted to increase in the current economic environment.

Recommendation 7: That the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) boost Commonwealth Financial Counselling funding to contribute to the employment of an additional 5.5 financial counsellors/community educators in Tasmania to meet the increased demand for assistance.

Recommendation 8: That the Department of Health and Human Services increase funding to contribute to the employment of an additional 5.5 financial counsellors/community educators in Tasmania to meet the increased demand for assistance.

7. References

ANZ 2007, *Consumer Credit Code Amendment Bill 2007 and Consumer Credit Amendment Regulations 2007 Consultation Package: Submission to the Ministerial Council of Consumer Affairs, ANZ*, viewed 20 August 2008 http://www.creditcode.gov.au/content/downloads/creditcodesubmissions/ANZ.pdf

ANZ 2008, *Progress loans* (on-line), ANZ, viewed 13 August 2008 http://www.anz.com/aus/values/community/progress_loans.asp

Ashton, N 2008, *Payday lending report – draft literature review*, Consumer Action Law Centre, Melbourne, viewed 24 June 2008 http://www.consumeraction.org.au/downloads/AttA-Draftpaydaylendingliteraturereview100608.pdf

Australian Securities and Investments Commission (ASIC) 2008a, *Approval of external complaints resolution schemes* (on-line), ASIC, viewed 21 August 2008 http://www.fics.asn.au/about/asic_policy_statement_139.pdf

Australian Securities and Investments Commission (ASIC) 2008b, *Complying with your AFS licence and the law* (on-line), ASIC, viewed 18 August 2008 http://asic.gov.au/asic/asic.nsf/byheadline/Compliance?openDocument#afs_licensees

Brody, G 2007, *Fringe lending – how consumer law can and cannot help*, Presentation to NILS State Coordinator Meeting, Hobart 5 October 2007, Consumer Action Law Centre, Melbourne.

BSL (Brotherhood of St Laurence) 2007, *Poverty line update*, Information Sheet 3, Brotherhood of St Laurence, Melbourne

Carmody, D 2007, BFSO – *an industry based alternative dispute resolution scheme*, presentation to the Fast Finance forum, Hobart, 18 October.

Cash Converters 2008, *Response to the Federal Government's green paper on financial services and credit reform: improving, simplifying and standardising financial services and credit regulation*, Cash Converters Pty Ltd, Perth, viewed 18 August 2008 http://www.treasury.gov.au/documents/1399/PDF/Cash_Converters_1.pdf

Cash Doctors, website viewed 12 November 2008 http://www.cashdoctors.com.au/

Consumer Action Law Centre, 2008a, *Submission to the Small Amount Cash Lending Inquiry*, CALC, Melbourne, viewed 5 August 2008 http://www.consumeraction.org.au/downloads/Submission-toSmallCashLendingInquiry130608.pdf

Consumer Action Law Centre, 2008b, *Submission to the Small Amount Cash Lending Inquiry: appendix a draft literature review*, CALC, Melbourne, viewed 5 August 2008 www.consumeraction.org.au/downloads/AttA-Draftpaydaylendingliteraturereview100608.pdf

Consumer Affairs and Fair Trading (Tasmania) 2007, unpublished note, *Status of payday lending following expiry of the Pay Day Lenders Moratorium Act 2000*, Department of Justice, Hobart.

Consumer Affairs Victoria, 2006, *Summary of the report of the consumer credit review*, State of Victoria, Melbourne, viewed 1 August 2008 http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Credit_Review_Documents/$file/credit_review_summary.pdf

Department of Family, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008a, *Guide to Social Security Law* (on-line), Commonwealth of Australia, Canberra, viewed 13 August 2008 http://www.facsia.gov.au/guides_acts/ssg/ssguide-5/ssguide-5.4/ssguide-5.4.1/ssguide-5.4.1.10.html

Department of Family, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008b, *Pension review background paper*, Commonwealth of Australia, Canberra, viewed 20 August 2008 http://www.facsia.gov.au/seniors/pension_review/

Illinois Department of Financial and Professional Regulation 2008, *Borrowers beware: protect yourself from internet loan abuse* (on-line), State of Illinois, viewed 26 August 2008 http://www.idfpr.com/DFI/BorrowerBeware.asp

Insolvency Trustee Service Australia, 2007, unpublished data, ITSA, Hobart.

Madden, K. 2003, *Blue collared: The shrinking world of work in Tasmania*, Anglicare Tasmania, Hobart

Minister for Superannuation & Corporate Law, 2008, *COAG agree to transfer responsibility for all consumer credit to the Commonwealth*, media release, Treasury, Canberra, 3 July, viewed 24 July 2008
http://minscl.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/042.htm&pageID=003&min=njs&Year=&DocType=0

Ministerial Council on Consumer Affairs, 2003, *Fringe credit providers: discussion paper*, Commonwealth of Australia, Canberra, viewed 23 June 2008 http://www.consumer.gov.au/html/download/fringe_discussion_paper.pdf

Ministerial Council on *Consumer Affairs, 2007, Consumer Credit Code Amendment Bill 2007: Consumer Credit Amendment Regulation 2007: consultation package*, Department of Tourism, Fair Trading and Wine Industry Development, Queensland, viewed 2 December 2008 http://www.creditcode.gov.au/content/downloads/Fringe_Credit_Discussion_Paper_Bill%20_%20and_regulation_Aug07.pdf

National Australia Bank, 2008a, *NAB to pilot fair loans in the fringe lending sector*, media release, NAB, Melbourne, 30 May, viewed 13 August 2008 http://www.nab.com.au/vgnmedia/downld/NAB_SMALL_LOANS_PILOT_MEDIA_RELEASE.pdf

National Australia Bank, 2008b, *NAB small loans pilot,* NAB website, viewed 15 August 2008 http://www.nab.com.au/About_Us/0,,94184,00.html

National Australia Bank, 2008c, *NAB small loans pilot*, NAB website, viewed 25 November 2008 http://www.nab.com.au/vgnmedia/downld/Community_Fairer_Lending_in_the_Fringe(JUNE,JULY,AUGUST2008).pdf

National Financial Services Federation 2008, Frequently Asked Questions online, viewed 9 January 2009
http://www.nfsf.org.au/faq-microlending.htm

Office of Consumer and Business Affairs 2006, *Payday lending in South Australia - options to increase consumer protection. discussion paper*, Government of South Australia, Adelaide, viewed 12 November 2008
http://www.ocba.sa.gov.au/assets/files/Discussion_Payday_Ar.pdf

Petschler, L 2001, 'How to borrow at 972%', *Choice* (online) January 2001, viewed 14 July 2008 http://www.choice.com.au/viewArticleAsOnePage.aspx?id=101947

Productivity Commission 2008, *Review of Australia's consumer policy framework: inquiry report*, Commonwealth of Australia, Canberra, viewed 9 July 2008 http://www.pc.gov.au/inquiry/consumer/docs/finalreport

Queensland Government 2000, *Pay day lending: a report to the Minister for Fair Trading*, State of Queensland, Brisbane, viewed 10 July 2008 http://www.fairtrading.qld.gov.au/OFT/oftweb.nsf/web+pages/3A1B0FBCF63EE9FA4A256B4400317450?OpenDocument&L1=Publications

Ryan, E 2007, F*ast finance forum – a slippery slope*, presentation to the Fast Finance Forum held in October 2007 in Hobart.

Searle, J 2007, Cash in Demand, *Business Review Weekly*, August 22-29, Sydney.

Scutella, R & Sheehan, G 2006, *To their credit: evaluating an experiment with personal loans for people on low incomes*, Brotherhood of St Laurence, Fitzroy, viewed 14 July 2008 http://www.bsl.org.au/pdfs/To_their_credit_personal_loans_final.pdf

Tasmania Together 2007, *Benchmark reports*, online, viewed 3 October 2008 http://www.tasmaniatogether.tas.gov.au/obr

The Treasury 2008, *Financial services and credit reform: improving, simplifying and standardising financial services and credit regulation, green paper,* Commonwealth of Australia, Canberra, viewed 18 June 2008 http://www.treasury.gov.au/documents/1381/PDF/Green_Paper_on_Financial_Services_and_Credit_Reform.pdf

Willis, F 2005a, Pay day lending: the case for re-regulation of the fringe-credit market [Series of three parts]: Part 1, *Bulletin (Law Society of South Australia)*, v.27, no.7, July 2005: 15-17. Viewed 20 June 2008 http://search.informit.com.au/fullText;dn=200509283;res=APAFT

Willis, F 2005b, Pay day lending: the case for re-regulation of the fringe-credit market [Series of three parts]: Part 2, *Bulletin (Law Society of South Australia)*, v.27, no.8, Sept 2005: 22-23. Viewed 20 June 2008 http://search.informit.com.au/fullText;dn=200608684;res=APAFT

Willis, F 2005c, Pay day lending: the case for re-regulation of the fringe-credit market [Series of three parts]: Part 3, *Bulletin (Law Society of South Australia)*, v.27, no.9, Oct 2005: 16-19. Viewed 20 June 2008 http://search.informit.com.au/fullText;dn=200608685;res=APAFT

Wilson, D 2002, *Payday lending in Victoria – a research report*, Consumer Law Centre Victoria, Melbourne, viewed 23 June 2008 http://www.consumeraction.org.au/downloads/DL65.pdf

Legislation referred to:

Consumer Credit (New South Wales) Act 1995
Consumer Credit (Queensland) Act 1994
Consumer Credit Regulation 1996 (ACT)
Consumer Credit (Tasmania) Act 1996
Justice and Community Safety Legislation Amendment Act 2006 (ACT)
Payday Lenders Moratorium Act 2000 (TAS)
Uniform Consumer Credit Code