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Consumer Credit
Attn: James Kelly
The Treasury
Langton Crescent
Parkes ACT 2600

By email: consumercredit@treasury.gov.au

Dear Mr Kelly,

Review of the Small Amount Credit Contract Laws – Final Report

Thank you for the opportunity to comment on the Review of the Small Amount Credit Contract Laws – Final Report March 2016.

We are a service provider to the finance industry engaging with clients in a growing range of markets including SACC. One aspect of our service is a live trading platform where, with the consumer's authority, lenders can submit leads that they have chosen not to fund and buy leads that fit their target customer profile. Our comments are limited to Recommendation 9 – Referrals to other SACC providers.

Recommendation 9 – Referrals to other SACC providers
SACC providers should not receive a payment or any other benefit for a referral made to another SACC Provider.

Objective 1 & 2

- *To prevent SACC providers referring applicants they reject onto other SACC providers.*
- *To reduce the ability of consumers already in financial difficulty to access further SACCs that may further disadvantage them.*

The discussion on Recommendation 9 suggests that if one lender chooses not to offer an applicant finance then that applicant is *"likely to be in hardship"*[1]. Objectives 1 & 2 suggest Recommendation 9 would be an effective mechanism to prevent consumers being offered finance that they cannot afford.

A consumer is not in hardship because a lender chooses not to offer them finance
There is considerable variation in the criteria each lender reviews as part of their credit assessment, including a range of elements not associated with affordability. The result is that a lender may choose not to offer an applicant finance for numerous reasons that are not associated with affordability e.g., the lender may not provide the type or size of facility the applicant is seeking, the applicant's source or reliability of income may not be acceptable to the lender or they may not live in a region the lender services. This does not mean the applicant is in hardship or that finance is not an appropriate option for them, it simply means the applicant does not meet that lenders lending criteria.

We note that the discussion section of Recommendation 9 includes a quote[2] that itself contains a quote from the report 'Trends in the Australian Small Loan Market'[3]. 'Trends in the Australian Loan Market' first mentions lead generation in its introduction at p.9 where it references the research article 'Into the Mainstream: The Australian Payday Loans Industry on the Move'[4].

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[1] Review of the Small Amount Credit Contract Laws – Final Report March 2016 p.37
[2] Sourced from the Financial Rights Legal Centre submission to the consultation paper p.22
[3] Banks, M, De Silva, A & Russell, R, Trends in the Australian Small Loan Market, *Australian Centre for Financial Studies, School of Economics, Finance and Marketing, RMIT University*, October 2015 pp.36-37
[4] Ali, J & Banks, M 2014, 'Into the Mainstream: The Australian Payday Loans Industry on the Move', *JASSA – The Finsia Journal of Applied Finance, no. 3, pp.35-42*

According to the 'Into the Mainstream: The Australian Payday Loans Industry on the Move' research article, the price of a lead depends on its 'quality' and that:

"…determining the exact basis and measure of 'quality' is difficult as there is considerable variation between lenders on risk allocation and other lending criteria."[5]

If a lender chooses not to offer an applicant finance it <u>does not mean the applicant is, or is likely to be in hardship.</u>

Recommendation 9 is not an effective mechanism to prevent consumers being offered finance they cannot afford
There are a large number of lenders in the SACC market, according to ASIC's Report 426 as at December 2014 there were approximately 1,136 participants[6]. Given the number of lenders in the industry and their significant online presence, if a consumer's finance application is unsuccessful it is reasonably easy for them to make an application with another lender.

The National Credit Act contains a range of general conduct, responsible lending and other obligations that are effective mechanisms to prevent consumers being offered finance that they cannot afford. We note, that the provisions of the National Credit Act apply to all consumer lending activities <u>regardless of how consumers are introduced to lenders.</u>

Recommendation 9 is <u>not an effective mechanism</u> to prevent consumers being offered finance they cannot afford.

The report referenced in Recommendation 9 does not support Recommendation 9
The report 'Trends in the Australian Small Loan Market' was referenced in the discussion section of Recommendation 9 and according to it:

*"**This overview is timely.** On 6th August 2015 the federal Government established a review of the small amount credit contract laws, in accordance with section 335A of the National Consumer Credit Protection Act 2009 (the Credit Act)."*

And states that it *"…aims to contribute to this vital policy debate."*[7]

This report makes three recommendations for the Review of Small Amount Credit Contract Laws to consider, <u>none of their recommendations relate to the practice of lenders selling leads.</u>

Further, the research article 'Into the Mainstream: The Australian Payday Loans Industry on the Move' whose research is referenced by 'Trends in the Australian Small Loan Market' states in its introduction:

"As the industry moves towards the mainstream of consumer finance, we believe that traditional views about the role of the industry must be updated to better reflect these developments. This will be essential to inform the much-anticipated policy debate ahead of the federal government review of the industry set to commence in July 2015."[8]

This report also <u>does not make any recommendations in relation to the practice of lenders selling leads.</u>

Lead trading between lenders benefits consumers and lenders
There are many benefits to lenders selling leads that they have attracted but chosen not to fund. Online advertising is a traditional lead generation activity for lenders, many using Google Adwords or similar services to attract consumers to their website, but however they attract new business - all forms of marketing represent a cost to the lender.

Lenders then assess all applications that are submitted. The degree to which an application is assessed will depend on how far it progresses in the lenders process, however - all assessment activities represent a cost to the lender.

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[5] Ali, J & Banks, M 2014, 'Into the Mainstream: The Australian Payday Loans Industry on the Move', *JASSA – The Finsia Journal of Applied Finance, no. 3, pp.40*
[6] Report 426: Payday lenders and the new small amount lending provisions, March 2015 *Australian Securities & Investments Commission, para.115, p.24*
[7] Banks, M, De Silva, A & Russell, R, Trends in the Australian Small Loan Market, *Australian Centre for Financial Studies, School of Economics, Finance and Marketing, RMIT University*, October 2015 pp.4-5
[8] Ali, J & Banks, M 2014, 'Into the Mainstream: The Australian Payday Loans Industry on the Move', *JASSA – The Finsia Journal of Applied Finance, no. 3, p.35*

Traditional lead generation requires that lenders pay to attract and assess consumers to find out if they meet their lending criteria, knowing very little about the consumer (other than they are seeking finance) until after they have incurred those costs. By buying leads through a service such as Lead Market, lenders can know whether the lead meets their key lending criteria *before they incur the cost* of attracting them. This achieves several positive outcomes for consumers and lenders:

1. By providing lenders with a compliant and effective avenue to sell leads that they have attracted, but do not meet their lending criteria, we:
    a. reduce the lenders regulatory compliance costs,
    b. reduce the pressure on lenders to convert leads that may not meet their lending criteria, and
    c. provide a mechanism to put consumers in touch with lenders that are genuinely interested in their business.
2. By providing lenders with a compliant and effective way to attract consumers that they know will meet their key lending criteria *before they pay for them*, we:
    a. improve the consumers access to appropriate finance,
    b. make the process more efficient for the consumer by connecting them with a lender who provides products that meet their needs,
    c. improve the lenders efficiency by connecting them with consumers that meet their key lending criteria, and
    d. reduce the lenders regulatory compliance costs.

We submit that by enabling the compliant and effective trading of leads between lenders we are driving innovation and positive outcomes in terms of competition, consumer protection, efficiency and consumer access to finance.

Objective 3

- *Ensure the cost of 'buying a lead' is not borne by the consumer.*

If objective three seeks to ensure the cost of buying a lead is not borne by the consumer <u>on top of</u> the existing costs of obtaining finance under a small amount credit contract, then the objective is already met by the existing fee caps in the National Credit Act.

If objective three seeks to ensure the cost of buying a lead is not borne by the consumer <u>at all</u>, we submit that <u>Recommendation 9 will not achieve the objective.</u> All costs incurred by a profitable business are ultimately borne by consumers as part of the cost of products they purchase. Implementing Recommendation 9 will effectively increase the lenders marketing costs that are borne by the consumer because the lender is left with no alternative mechanism to recover them.

Summary

We do not support Recommendation 9 and submit that its objectives are already met by the general conduct, responsible lending and other obligations contained in the National Credit Act. Further, the implementation of Recommendation 9 will have a negative impact on both lenders' regulatory compliance costs and consumers' ability to access finance.

- We support the sale of leads by lenders only where the <u>consumer has provided their authority</u> to do so.
- All consumer lending activity is regulated by the general conduct, responsible lending and other obligations of the National Credit Act <u>regardless of how the consumer is introduced to the lender.</u>
- A consumer is <u>not in hardship</u> simply because a lender chooses not to offer them finance.

Thank you again for the opportunity to comment on the Review of Small Amount Credit Contract Laws – Final Report. If you have any questions about this submission, please contact Wade Oakley on 07 3166 8860 or at admin@leadmarketonline.com.

Yours sincerely,

Wade Oakley
Director
Lead Market Australia