What is the National Financial Services Federation:

The National Financial Services Federation Limited is the peak industry body representing micro-lenders and payday lenders in Australia. It governed nationally by a board of directors representing each of the states.

Our members are non-bank, non-ADI lenders, and their market can generally be described as loans up to $5,000 over terms of up to 2 years. The Federation represents over 300 credit provider outlets in this segment of the finance market. All members are required to subscribe to, and abide by, the Federation's own Code of Ethics.

The Federation welcomes the opportunity to contribute to the "Application of Unfair Contract Terms Legislation to Consumer Credit Contracts in Regard to Small Amount Loans".

Over the past few years, the Federation has been conducting research and providing submissions and recommendations at state government level. These recommendations include major credit reforms including ;

1. Investigation of a "total cost of credit" cap as opposed to an unworkable capping of fees and interest rates which can not stop debit spirals;
2. External dispute resolution as an industry requirement;
3. Membership of a professional industry body with code of Ethics such as the NFSF as an industry requirement;
4. Licensing of all credit providers;
5. Positive credit reporting to help reduce the level of over-indebtedness being experienced by consumers;
6. Regulators working closely with industry representatives to manage beneficial outcomes rather than waiting for problems to arise; and
7. Commonwealth control and a truly Uniform Consumer Credit Code.

We have also heavily campaigned against the interest rate caps in the New South Wales and ACT (legislated in Queensland and mooted in South Australia), which we feel rely on a false perception of the industry, its practices and returns.

The National Financial Services Federation has recently held seats at these conferences and committees:

1. Griffith University – Regulating the Cost of Credit 7 December 2006
2. Ministerial Payday Lending Working Party – SA, November 2006 to March 2007
3. Consumer Credit Code Amendment Bill – Roundtable Discussion April 2008
4. Roundtable Small Amount Cash Lending Inquiry – Vic, June 2008

The Federation holds a wealth of industry information that can assist with the discussion to be undertaken. This information includes statistics, facts and relevant further research into the industry and represents large amounts of input from many industry stakeholders over the past two years. The information we are able to provide will accurately reflect the realities of our industry and the members of the community who choose to be its customers.

Scope of Reply:

The NFSF reply addresses issues raised around the Small Amount Loans industry segment and does not represent any businesses or views on Consumer Leases.

Opening comments.

Laws applies equally to all credit providers:

To focus on the Small Amount Loans industry segment without including all lending institutions in the guidelines being developed is discriminatory. The guidelines should either apply to all credit providers or no credit providers.

> Dr Elizabeth Lanyon, Senior Policy Advisor, Consumer Affairs Victoria, in her Keynote Address at The Australian Credit at the Crossroads Conference 8th-9th November 2004, Melbourne Australia reviewed the objectives as laid out in the Code;
>
> *The objectives of the code are to provide laws which apply equally to all forms of consumer lending and to all credit providers, and which are uniform in all jurisdictions in Australia.*

The NFSF supports the objectives of the code and that the code and related laws should apply to all credit providers in the market equally.

Unintended non compliance in relation to unfair terms:

The NFSF can not comment directly on the specific cases, however, it is very important to note that some of our members with best intentions to be fully compliant have discovered that they are, in fact, non compliant due to incorrect legal or other professional advise in regard to contracts or the Consumer Credit Code.

Many credit providers invest hundreds of thousands of dollars in setup, shopfront and staff before they open. To put that investment at risk for knowingly breaching any law is illogical. It is erroneous for CAV or consumer advocates to assume that credit providers set out to be non compliant or that the individual cases sited are common in the small amount loan market segment.

Base decision on researched facts, not fear:

The statement by the author(s) of the consultation paper on page six that *"It is not uncommon for small-amount loans to spiral out of control as consumers miss payments deadlines or incur additional fees and charges"*, is unfounded and is an unreferenced comment. What study of the small amount loan market in Victorian supports this comment?

How can a comment be made that "it is not uncommon" (implying it is common) when the author(s) state they do not know the size of the market ("probably between $50-$100 million per year)? No assessment of the term "common" can be made in this context unless the entirety of the market is known, including the number of consumers and the number of transactions in this market segment.

The NFSF acknowledges that there are consumer issues to be fixed in the small amount loan market segment and NFSF fully supports any programs which will reduce consumer complaints and detriment. However, decisions must be based on fully researched facts.

The NFSF fully supports the introduction of External Dispute Resolution and Licensing of credit providers, not only in Victoria but also in the rest of Australia.

Debt Spiral can not be controlled by current methods:

The NFSF feels that it is important to point out that the all inclusive interest and fee cap in NSW and ACT and adopted in QLD **can not** stop a debt spiral. The only 'cap' model that can give consumers absolute protection is the "100% Total Cost of Credit" cap model. The NFSF believes that this model provides world's best practice to protect consumers, whilst maintaining a viable industry - an industry that is an important part of the financial services in today's modern financial market.

Root cause of Consumer Financial Detriment in Australia:

A major contributing cause of consumer financial detriment in Australia is that fact that Australia does not have a positive credit reporting scheme. The absence of such a scheme causes a misrepresentation of a borrower's current financial position, possibly allowing them to access more credit than they can service.

It is not only Small Amount Credit providers who suffer from this lack of positive credit reporting, but also banks, credit unions and building societies – every type of credit provider in Australia.

No credit provider wants to lend funds to consumers that can not be repaid. Credit providers are in business to run it viably. It makes absolutely no sense to lend funds to consumers on the basis that you have to use a debt collector, repossess security or instigate litigation. This almost always results in a loss situation to the credit provider.

The current negative credit reporting system in Australia does not allow a credit provider to ascertain whether a consumer has declared all of their existing personal, business or credit card debt, hence the credit provider's ability to fully assess a consumer's capacity to repay is severely limited.

Part A: apply unfair contract terms legislation to small amount loans.

DEFAULT / ENFORCEMENT COSTS.

The NFSF agrees that any default or enforcement costs should be clearly expressed. As to the dollar value of any default, that may vary vastly due to overhead costs of each individual credit provider. It would be very hard to compare default charges from one credit provider to another credit provider for the same item.

The same logic and guidelines must also apply to the banks reversal / dishonour fee charges. A transaction which costs cents is being charged to consumer at the rate of $25-$60 for account overdraws. The same law applies to all credit providers.

CONCLUSIVE EVIDENCE PROVISIONS

It is not clear from the discussion paper what is being implied by section 32X(1) of the Fair Trading Act in relation to small amount loans - "limiting the evidence the consumer can lead in proceedings on the contract", as no examples are given.

The NFSF agrees that credit providers should provide consumers with statements of amounts owed and other information held on file if requested or as per the requirements of the code. A commercial cost (like any other function in business) will be charged for that service in most cases, just like the banks or government departments charge for copies of documents or photocopying services.

This process can not be deemed unfair.

ASSIGNMENTS WITHOUT NOTICE

Agreed. The NFSF fails to understand why this is even being raised as this is already covered by the code. This is a simple education, compliance and then enforcement issue by Consumer Affairs Victoria with the respective credit provider(s).

ACKNOWLEDGEMENTS THAT CONSUMERS HAVE UNDERSTOOD THE CONTRACT

In the alternative
Do consumers sign a declaration that they have not understood the contract?
Do consumers go and spend $300-$500 on legal advice prior to entering into the contract?
This issue has massive implications for any consumer loans and credit cards the banks process.

The NFSF looks forward the guidelines recommended by CAV on this issue.

UNLIMTED ASSIGNMENT OF WAGES

Agreed. This again is already covered by the code, this is a simple education, compliance and then enforcement issue by CAV with the respective credit provider(s).

MORTGAGE OVER HOUSEHOLD PROPERTY, WORK TOOLS AND MEANS OF TRANSPORT

Key issues to consider;

1. Repossession of items that are secured by a bill of sale or secured by an encumbrance is not a judgment debt.
2. We are not dealing with bankrupts and the issue of other creditors may not exist.

It is a fundamental principle of lending that a credit provider is entitled to security for their lending which is more than a mere "promise to pay". If this was not the case, a bank would never secure the home you live in and would just accept "your promise to pay".

The NFSF does support the protection of essential household items, but notes that second (or more) fridges, stereo's, televisions and other electrical goods should be available for the lender to take as security under such a proposal.

In March/April 2007, the Federation, in its preparation for a submission to the Standing Committee of Attorneys General, in regard to that Committee's Personal Property Securities Review, undertook a survey of 368 lending outlets across Australia. 81.52% of these outlets take security on their personal loans. The majority of the security items involved were motor vehicles. Household security (that is the subject of this proposal) was only used by 22.35% of the credit providers.

Complexity of the issue:

CAV needs to address the challenge in the possible difference between the circumstances that applied when the security was first given and the date of repossession, e.g. a second television became the only television during the term of the loan. This dilemma can only be resolved by adopting the general principles of the Consumer Credit Code. On that basis, the relevant status of the chattel must be at the time of entering into the credit contract.

In Regard to Antiques:

The NFSF notes the following practical problems:

1. with attributing a value to the age of the item; and/or
2. attributing historic significance to the item; and/or
3. assessing what is "a substantial part of its market value".

This introduces potentially substantial evidentiary problems and includes a number of criteria demanding a high level of expertise. Most small amount loan credit providers do not

have appropriate experience with antiques and are therefore highly reliant on the claims of the borrowers, when it comes to the use of such as security.

Unintended Outcomes – dealing with reality.
Although the concept to ban household items (at first glance) seems like a good and well intended initiative, Consumer Affairs Victoria also needs to consider the unintended outcomes that this may present. The demand for credit will not cease because of a change at law.

What happens when a consumer requires finance, but is now limited and does not have vehicle that can be used as security? In the alternative, is the consumer just going to pawn those exact same household items that are "protected" under the bankruptcy act? The benefit with a loan product, of course, is that fact the consumer retains possession and use of the item during the period of the loan.

Following this illogical process further, nothing then stops a consumer who has gone bankrupt from pawning those exact same items.
Ironically, the banks can repossess the house consumers live in - the roof over their head but that is OK. However, you propose that small amount non bank credit providers can not repossess item of far lesser value and far lesser importance for a consumer who is not bankrupt.

Powers of entry without consent

Agreed. This is already covered by the code, this is a simple education, compliance and then enforcement issue by CAV with the respective credit provider(s).

Powers of sale of mortgaged goods

Agreed. This is already covered by the code, this is a simple education, compliance and then enforcement issue by CAV with the respective credit provider(s).

Accounting to consumers for sales of mortgaged goods

Agreed. This is already covered by the code, this is a simple education, compliance and then enforcement issue by CAV with the respective credit provider(s).

Unlimited assignments of insurance proceeds

Agreed in principal, but not in practicality when dealing with insurance companies.

Assignment of insurance proceeds should only be for items or vehicles secured on the credit contract and not future property, unless that property is property replacing the items secured

on the loan contract.

CAV should note that in cases where a vehicle is secured by a REVS encumbrance, most insurance companies will only pay the entity with the 'registered interest' in the vehicle whether the consumer is in default or not. The insurance companies do not care about the status of consumer's loan. It is our experience that insurance companies will not "part pay" the consumer or the credit provider. This is beyond the control of the lender. Federation members have unsuccessfully tried to negotiate with insurance companies just for the outstanding amount owed.

CAV may need to investigate this issue with insurance companies as it may be the only way they operate under insurance law and hence the drafting of such terms by the professional advisors to these credit providers.

Unilateral variation of powers

Issues around *"frequency, time of payment, method of payment and number of repayments under this contract"*

Is this a case of bad wording of a contract or bad business logic? If you change any of these items without the knowledge of the consumer they are not going to know when to pay if they are not given sufficient notice (normally 20 days as per the Consumer Credit Code). If the consumer is paying via a Direct Debit, the credit provider can not change these items in any case as the consumer has to sign a new direct debit authority form and thus would be giving consent and be informed about the changes.

Issues around *"changing or introducing a new fees or charges"*

Due to the short term nature of small amount loan credit contracts (4-6 weeks), it seems both illogical and impractical to even consider changing or introducing a new fee or charge for such a short term loan. This may be a case of legal advisors not understanding the credit providers business?

Notice requirements are covered under the code. This is a simple education, compliance and then enforcement issue by CAV with the respective credit provider(s).

IN SUMMARY:

The objectives of the code are to provide laws which apply equally to all forms of consumer lending and to all credit providers, and which are uniform in all jurisdictions in Australia.