

QUESTION 3 - OTHER OPTIONS WHICH WOULD MEET POLICY OBJECTIVES

IN BRIEF

1. Government policy must leave lenders in existence.
2. There are a variety of options, providing an alternative to the introduction of any form of cap.

What are the Policy Objectives?

The Federation acknowledges the policy objectives included in the Minister's comments on Page 5 of the Discussion Paper. These are:

1. The Beattie Government is committed to ensuring that all Queenslanders have access to credit on fair and reasonable terms;
2. The Minister was *"focussed on finding an outcome that balances consumer welfare with the continuing financial viability of lenders"*;
3. The Minister was concerned to seek assistance for the government to find *"the best solution for the whole of the community"*.

In this context, the Federation notes the challenges provided in finalising an outcome to this Review, by the National Competition Policy and the Queensland Statutory Instruments Act.

In regard to the National Competition Policy, the Federation is very aware that Queensland is committed not to restrict competition, unless the benefits of so doing outweigh the costs. The Federation would argue that the options suggested in this Section of the Submission provide clear benefits to the community, whereas the opportunity to drive the payday/microlending industry out of Consumer Credit Code compliant business in Queensland, by way of an all inclusive cap, has a substantially detrimental effect on the community. Such detrimental effect, as explored elsewhere in this Submission, would drive the people the Minister is so concerned to protect - the borrowers - into the arms of the criminal loan shark, or towards charity and government, seeking assistance.

In regard to the National Competition Policy, the Federation notes that if legislation is considered which restricts competition, such must be assessed in accordance with the purported objectives stated on page 4 of the Discussion Paper. As the Minister will be aware, these objectives are:

- a. to ensure that fees and charges relating to the provision of consumer credit are fair and reasonable;
- b. ensure that vulnerable consumers are not exploited through the imposition of unfairly high rates of interest and/or excessive fees and charges;

It is to be noted that the above constitute two objectives, not an inter-related single objective. In other words, to introduce draconian legislation, based only on an assumption that it will protect vulnerable consumers, may have a deleterious outcome. The majority of payday/microborrowers, who do not see themselves as vulnerable, would be denied Consumer Credit Code compliant borrowing opportunities, which they currently regard as reasonable for their circumstances (see discussion concerning Customer Survey respondents and the cost of their current borrowing, elsewhere in this Submission). The risk is that the only recourse with which they may be left would involve much higher fees and charges.

Similarly, with objective b. above, the same risk applies to vulnerable consumers, unless the Minister can introduce a regime involving substantial financial support for the charities and/or considerable government welfare participation in the provision of credit for these people (see the consideration of no-interest loan and low-interest loan schemes, in response to Questions 7 and 8, in this Submission).

What are the Alternatives to Protect Consumers?

“To protect customers from predatory lending, governments may pass consumer protection laws or schemes. Such strategies provide a desirable safeguard without the negative effects of interest rate ceilings. Consumer protection laws generally cover a set of non-prudential regulations including mandatory disclosure on total loan costs; clearly defined complaint resolution procedures; consumer education to prevent abuse; and effective enforcement mechanisms.”

Ref: Consultative Group to Assist the Poor (CGAP), “Donor Brief”, No. 18, May 2004 www.cgap.org/direct.

As the Minister acknowledged on page 5 of the Discussion Paper, the concept of an interest rate cap is highly complex. The Federation advises the Minister that, because of its inherent complexity, there is a substantial likelihood that the introduction of such a cap will fail. The following options are presented for consideration as more appropriate alternatives, involving a considerably lesser possibility of failure in their implementation, and minimal detrimental impact on the payday/microborrowers of Queensland.

Option 1: Fees and Charges Declaration

A mandatory declaration of fees and charges, as a percentage of the loan. This percentage will vary between companies, but such declaration will help enormously to assist the borrower with price comparison.

Such a regime talks to the customer in dollar terms, which is the measure to which customer’s naturally relate. In this context, it is interesting to note that only 30.32% of respondents to the Federation’s Customer Survey indicated that “the comparison rate of interest (was) a factor in applying for today’s loan”.

Given research by the writers, in Victoria and South Australia, the Federation has a suspicion that a number of respondents may not have noted the prescription “comparison” and simply read this question as referring to the interest rate. If this suspicion is well founded, it adds to the fact that the comparison rate regime is highly complex and difficult for the average customer to understand.

Notwithstanding this suspicion, the Survey still leaves us with nearly 70% who did not consider the comparison rate as an issue in applying for the loan. This, in the context where 40.86%, in response to a later question, indicated that the cost of the loan influenced their decision and 95.91% believed that the fees and charges had been clearly explained.

Option 2: Assessment of Capacity to Pay

The Federation acknowledges that some industry critics believe that payday lenders make an inadequate assessment of the customers’ ability to pay.

As mentioned previously in this submission, only the foolhardy or very high risk-taking lender does not make every reasonable and legal attempt to assess

ability to pay. A non-performing loan risks valuable working capital, alternate and successful opportunities to lend the money are lost (opportunity cost), and it takes further lending of some 4-7 similar payday/microloans to achieve break even, after a first loan goes substantially bad.

Queensland Federation members and supporters employ a total of 16 different criteria and the average number of criteria used in strictly enforced protocols, by each payday lender, is 3.74 (with a range of between 3 and 7).

In this context, it is useful to reflect on Appendix 1, which outlines the affordability assessment criteria employed by 27 of the Federation's members, who participated in the Industry Analysis Survey. As the Appendix indicates, 66.66% refer to bank statements, 74.07% refer to personal budget information, 49.52% undertake an income check and 33.33% undertake a credit check and/or employment confirmation. In addition, 11 other methodologies are employed by the different lenders.

In an effort to provide the Queensland community with greater confidence that payday/microlenders are employing acceptable methods of assessment, the Federation could be attracted to a mandated assessment regime including, as a minimum, examination of:

- a) 2 immediate past bank statements.
- b) Driver's licence.
- c) Current pay slip or other income indication documentation.
- d) A current rent/mortgage receipt.
- e) Passport, if any.
- f) Lease or other loan, hire purchase etc. documentation indicating outgoings.

The Minister may care to note that, presumably, such would require a "satisfactory assessment process" of the debtor's position, which would satisfy the ACT Fair Trading Act Section 28(A)(3) test – *"is an assessment of the debtor's financial situation sufficient to satisfy a diligent and prudent credit provider that the debtor has a reasonable ability to repay the amount of credit provided or to be provided"* – whatever that means.

The ACT Act attempts to define "satisfactory" as being the credit provider asking the debtor for a statement of the debtor's financial situation. This places a substantial obligation on the debtor/potential borrower to be informed, truthful, and analytically competent - a very weighty combination.

The Federation believes that it might be useful for the Minister to consider introducing some mandatory protocols for acceptable and satisfactory affordability assessments for all loan applications.

Option 3: Contract Review

As the Minister would be aware, all loan contracts under the Consumer Credit Code are subject to review on the basis that they are unconscionable [Sections 70(1) and 70(2)(I)]. In this context, that is whether the lender knew, or could have found out by reasonable enquiry of the borrower, that the borrower could not make the repayments without substantial hardship. The Federation encourages the Minister to consider the opportunity to introduce greater definition in this area.

Recent cases considering whether circumstances are unjust or demonstrate recklessness may be useful to review in this context.

For example, the case of *Permanent Mortgages Pty Limited v Cook* in which the judgement was delivered on 24th October 2006, provides some useful comment concerning the responsibilities of a lender. This may have some bearing in the future on deciding whether assessment of capacity to pay has been adequately undertaken by a lender.

In this case the court held that, even if the actual terms of a credit contract are not unjust, a credit contract can still be categorised as unjust within Section 70 of the Code, because of the circumstances surrounding its formation.

Further, the court found the lender was aware, or should have been aware, that the borrowers could not service the loan and would need to sell the property they had mortgaged to repay it. The court also found that the lender would have been aware that, as the borrowers were likely to default, they were likely to incur higher interest rate penalties.

Significantly, even though one of the borrowers falsely declared that the loan was for business purposes, it was held that, while that person knew he was making a false statement of significance, he was unaware of the nature of that significance. In addition, the Supreme Court held that the lender was indifferent to the underlying factual situation and so, while the court took the false statement into consideration, because of the indifference it was not found to be decisive.

Even more significantly, while the court recognised that the borrowers were foolish, it found that the lender (or its agents) who were, or should have been aware of the foolishness had, in effect, encouraged it.

The result of this decision was that the contract was held to be unjust within Section 70, the fees were reduced and the borrower was not obliged to pay the penalty interest rates or the lenders' default costs.

This landmark case absolutely reinforces the need for lenders to have clearly established protocols for assessing capacity to pay and to be able to demonstrate that they have rigidly followed these protocols. This approach is strongly encouraged by the Federation and, as an example of co-regulation, it is hoped the Federation and the Minister could develop some standard, transparent protocols.

Option 4: The Introduction of a Maximum Percentage Income Criteria for Loan Repayments

22, or 68.75% of the companies that responded to the Federation's Industry Analysis Survey, favoured the introduction of such criteria.

When responding to the question "Should there be a maximum percentage of income criteria for loan repayments?" - 37.5% of those companies favoured a 20-35% limit. A further 31.84% favoured a limit less than 25%.

In this context, it is interesting to note that three major companies, with a number of outlets, responding to the Industry Analysis Survey, indicated that they already had a self-imposed limit.

Option 5: Three-monthly statements

At present, the Consumer Credit Code prescribes an exemption for the provision of statements for loans where the interest rate remains constant [Section 31(3)(a)]. The Federation invites the Minister to consider the removal of this exemption.

In August 2006, the UK Competition Commission released a report adopting the three-monthly statement concept, because it provided an opportunity “to provide clear, standardised information to customers on their loans and also to assist them in demonstrating credit-worthiness to lenders.” Reference: News Release 18th August 2006, www.competition-commission.org.uk

The Federation believes that this is an appropriate strategy for all loans in excess of 3 months and would support its introduction in Queensland.

Option 6: The Introduction of Positive Credit Reporting

27 of the 32 companies responding to the Federation’s Industry Analysis Survey (84.38%) favoured the introduction of positive credit reporting. The reasons given were very diverse, but all deserving of consideration. It is the Federation’s view that this issue is fundamental to a more constructive approach to the haphazard, and significantly inadequate, negative credit reporting approach currently in practice. The responding companies, in support of their strongly held view favouring such introduction, made the following comments:

- Lenders are better able to assess the risk for the individual borrower.
- Allows identification of undeclared expenses, thereby avoiding client over-commitment.
- Provides a tool for accurate assessment of consumers’ current debt and repayment commitments.
- Gives people a chance to show that one or two problems were isolated issues and not the norm.
- At present, no one can see the borrower’s commitments.
- Better indication of a person’s credit worthiness.
- Clients can reap the benefits of a positive credit history.
- Better ability to assess if clients are habitual/multiple borrowers.
- Would give indication that customer has the discipline to repay a loan.
- Would give indication of reliance on credit and living beyond their means.
- Better chance of being sure the customer could afford the loan.
- Avoidance of customer overloading themselves in an attempt to get more credit than they can support.
- Would provide evidence of current borrowings and status of these commitments.
- Good payers should be rewarded and recognised.
- Enable lender to truly access client’s history. Currently, does not take into account client’s good history.
- Currently, consumers can apply multiple times in a short period. This makes it difficult to determine what the consumer actually owes.
- If person had problems in the past and can prove they have changed for the better, they deserve to be given a second chance.
- It shows a client’s true credit history, not just the loans they have applied for.

- Our clients are using us, partially, to rebuild their credit. Their good records are never shown – only the negative which keeps them in the high risk category.
- We only see defaults now, but not good behaviour.
- Would give a better overall picture of clients' financial position.

Of the four lending companies who did not want positive credit reporting introduced, two were concerned about privacy, one was concerned about administrative costs and one felt that it was “anti individualism”.

UK Competition Commission

In its August 2006 report, the UK Competition Commission recommended that lenders share data on customers' payment records “to encourage price competition by reducing the advantage enjoyed by existing lenders – and to allow customers to demonstrate information about their credit-worthiness to lenders” Reference: News Release 18th August 2006, www.competition-commission.org.uk.

Addressing the Australian Consumers' Association Concerns

The Federation respects the views of ACA, as expressed in Choice magazine and published in the Consumer's Federation of Australia magazine, “Consuming Interest”, in February 2004.

This report was predicated on three existing credit reporting companies continuing to be the managers of Australian credit reporting. This assumption should not be considered a valid one.

The Federation believes that, because privacy is such a central issue, government cannot continue to be ‘hands off’ with regard to credit reporting. There is an opportunity for co-regulation and there is certainly an opportunity to prefer a credit reporting agency which operates under pro-consumer, as well as pro-lender protocols and has no association whatsoever with a debt collection function.

The Federation accepts and supports ACA's view that the current circumstances cannot be allowed to continue.

Arguments in Favour of Positive Credit Reporting

The Federation members' views are endorsed by the following general arguments in support of positive credit reporting:

1. It will improve the chances of low income earners gaining access to mainstream credit;
2. It will reduce defaults, leading to lower cost of credit;
3. It will promote competition, as borrowers will be less reliant on existing institutional relationships to obtain credit;
4. It will provide more reliable identification of over-committed consumers;
5. It will improve the identification of under-served market segments;
6. It will enhance predictability of scoring models;
7. It would be a significant improvement on the current credit reference model, which has a number of systemic flaws;

8. It would have a significant impact on payday and microlenders' ability to assess a consumer's capacity to repay.

Notwithstanding the overwhelming support for the introduction of positive credit reporting, the Federation does recognise three downsides:

- a) The threat to privacy, with an increase in the amount of personal information held on consumers.
- b) The opportunity that the greater collection of data would have to assist detailed customer profiling. Note, the Federation believes that ill-informed attempts at such profiling are already made and at least positive credit reporting would reduce the element of inaccuracy.
- c) Poor data quality. Note, the Federation believes the Queensland community is already under threat in this regard, with the current conduct of negative credit reporting.

The opportunity for the Minister to show leadership amongst the states, as has been the traditional role for Queensland in matters of consumer credit, is available.

The Federation understands that the Australian Law Reform Commission is to review access to Part IIIA of the Privacy Act 1988, concerning consumer credit reporting information, as part of its substantial review of this Act. The Minister's input into this review, presenting the state perspective, given state responsibility for Offices of Fair Trading, would be timely.

If the Minister could facilitate the introduction of positive credit reporting, she would be pioneering the adoption of the most important method for protecting consumers, that is currently available. Access to holistic information is what lenders need to avoid lending to people who have not been totally frank in circumstances where, under the current regime of negative credit reporting, it is not possible for the intending lender to check the customer's whole story. At the moment, there is too little information and, as a result, too much opportunity for borrowers to be less than honest and to borrow more than they can afford to repay.

Supplementary Considerations

In any consideration of positive credit reporting, the Federation requests that the following be included for review:

- a) The encouragement of one credit reporting agency. The current circumstance, where there are three, only leads to a dilution of the information and makes it harder for credit providers to accurately assess a consumer's past credit history. This may well involve government administration.
- b) Where there are three credit reporting agencies, there is often a conflict in the information each provides, also making an accurate assessment difficult.

Option 7: Introducing a Centralised, State-wide Database

This option was presented to the community, for consideration, by the South Australian Minister. While the Federation recognises that it enjoys many parallels with positive credit reporting, the Federation has adopted the South Australian approach of considering it separately.

26 of the lending companies (81.25%), participating in the Federation's Industry Analysis Survey, approved of such a concept. Concerning access to this database, the responses varied and were as follows:

Who should have access	No. of lenders agreeing	% of lenders
Lenders	21	65.65%
Government agencies	7	21.88%
Rental agents	7	21.88%
Credit reporting agencies	2	6.25%
All stakeholders	2	6.25%
Contributors to database	1	3.13%
Those registered with Baycorp	1	3.13%
Debt Collectors	1	3.13%

Note: some companies gave more than one response.

In the absence of the establishment of positive credit reporting, this database would be a substantial supplement to the services provided by the existing negative credit reporting organisations.

Option 8: Total Charge for Credit

Consumers may be far more sensitive to the expression of cost in dollar terms. Commenting on this phenomena, the UK Competition Commission, at 3.14 in the provisional findings report of its Home Credit Market Inquiry noted,

“...the TCC (Total Charge for Credit) appears to us to be a more appropriate basis for comparison ...it is readily comprehensible. It is less sensitive than APR to small differences in the period over which the loan is offered. And over the relatively short period ...of most (small) ...credit loans, it approximates, to the net present value, of a loan to the borrower.”

To that end, the Federation would argue that the average consumer is not comfortable calculating a percentage to cost ratio, but that same group of consumers knows how to compare a cost of \$5, as opposed to a cost of \$6, and make a decision in an instant.

UK Competition Commission Strongly Supports Total Charge for Credit

While the payday/microlending industry in Queensland is forced to use APR's, the consumers will continue to suffer a detriment as a result of the government-imposed system, as opposed to any result of high interest/high cost loans.

It is interesting to note that the UK Competition Commission in its report noted that, because the APR is hard, if not impossible, to calculate from the percentage to real dollar cost for consumers, those consumers suffer restricted consumer choice. They feel comfortable with their current lender because they don't understand how to compare the loans.

The UK Commission regards this as restricting the market and consumer choice.

The UK Competition Commission, 2006 Report, Item 6:

“we consider the total charge for credit (TCC) to be a better price measure for home credit loans (small personal loans) than the APR, especially for loans of less than a year. We found that the prices of home credit loans, however measured, were high by comparison with the prices of other credit products (though, given the differences in the product offerings, that does not necessarily imply that a home credit loan represents worse value for money.”

Option 9: OFT as a Reference Centre

One of the current challenges faced by the industry throughout Australia, as is the case in Queensland, is that you cannot simply contact the Office of Fair Trading and seek advice as to whether your interpretation of the Legislation and Regulations, administered by the Office, is in accordance with Government policy. The response from Fair Trading Officers is, universally, “we cannot give legal advice”.

This creates an environment where there is absolutely no certainty as to the Government’s policy implications, until a lender faces prosecution. In these circumstances an intruding third party, a court, generally without knowledge of the industry or the circumstances that may have led the Office of Fair Trading to recommend a particular policy direction to the Minister, determines what “the law” really means.

In Victoria, some attempt has been made, by Consumer Affairs, to overcome this quandary. On an irregular basis Mr Ian Clyde, the senior Officer associated with credit compliance in Victoria, invites industry representatives to a briefing session.

In Queensland in 2001-2, there was a false start to addressing this quandary. One of the writers and the, then, National President of one of the organisations which was a predecessor of the National Financial Services Federation, were invited to participate in a joint OFT/industry committee. There may have been one informal meeting of that committee, but nothing was subsequently finalised.

The Minister is encouraged to authorise some activity to address this problem. As she would appreciate, an informed industry potentially means less workload on the compliance officers of the Office of Fair Trade, a greater impost in the practical responsibility of lenders being absolutely compliant and greater success in any prosecution action that the OFT might deem appropriate. It would also save considerable OFT time in reducing the number of rejections of documentation, which is a time consuming task, unnecessarily utilising precious OFT resources.

Option 10: Alternate Dispute Resolution Scheme

An issue of national significance, which has generated considerable debate and research in the Federation’s South Australian, NSW and Queensland Divisions, is the issue of Alternate Dispute Resolution.

Notwithstanding discussion at two recent Queensland Federation General Meetings and a resolution passed to adopt such a scheme nationally with the other state divisions of the Federation, questions concerning this concept were included in the Federation’s Industry Analysis Survey.

Although the Federation members and supporters have a reputation for successfully, and amicably, resolving disputes with customers, should such

internal approaches fail, it would be most useful to have an easily accessed Alternate Dispute Resolution (ADR) facility to fall back on.

In fact, the Queensland and New South Wales Divisions of the Federation are currently reviewing the various schemes available and the South Australian Division has the concept listed for discussion at its next general meeting. Further, on behalf of the Federation's National Council, the writers are currently exploring an economical scheme which will be free to the borrower and available nationally, with leading Brisbane academic and consumer credit lawyer, Mr Paul O'Shea.

As the Victorian Credit Review Report identified, at page 243, there are four good reasons for requiring credit providers to belong to an approved ADR scheme:

1. *"The main gap in ADR coverage affects vulnerable and disadvantaged consumers, such as those who have recourse to small amount credit providers or those who use 'non-conforming' credit providers.*
2. *Given that so much of the market already provides access to ADR (as a result of the federal financial services requirements or otherwise), the burden on the sector would be modest.*
3. *It makes sense to align the rights of consumers accessing credit with the rights of those who access other financial services.*
4. *ADR can deliver practical, responsive outcomes for consumers faster than courts or tribunals can, without the formality and at a cheaper cost to the credit provider or broker."*

It is the Federation's view that, notwithstanding different jurisdictions, it is inappropriate that part of Queensland's financial service providers, within the meaning of the Commonwealth Corporations Act 2001, should be obliged to be members of an Australian Securities and Investments' Commission's approved ADR scheme as a condition of their licence, while the payday and microlending sectors of the industry, albeit under state jurisdiction, is under no similar obligation.

The Federation believes that the Minister should contemplate the development of a suitability criteria list which, in the state jurisdiction, emulates the ASIC Policy Statement 139. As the Minister would be aware, this statement sets out the principles for assessing ADR Schemes handling complaints concerning financial products. ADR schemes attract approval in accordance with:

- Their independence
- Their coverage
- A free service to the consumer
- Procedural fairness in decision making
- Compliance by scheme members with scheme decisions
- Reporting to ASIC
- Data collection by the ADR scheme
- Timeliness in handling and decision making
- Periodic independent reviews.

This issue was explored in the Federation's Industry Analysis Survey, with the following results:

Question	Yes/No	Respondents	%
Are you aware of alternate dispute resolution schemes?	Yes	20	62.5%
Have you had any experience with them?	Yes	2	6.25%
If yes, was that experience positive?	Yes	1	3.13%
Would you support the introduction of a scheme in Queensland?	Yes	32	100%

Option 11: Licensing

The Federation is aware of the licensing models currently employed in Victoria and Western Australia. This option is currently being considered in South Australia and the Federation believes the circumstances in South Australia, and in Queensland, are appropriate for the introduction of a licensing regime.

The concept of licensing lenders is favoured by 100% of the respondents to the Federation's Industry Analysis Survey.

The industry was asked to list the requirements they would expect a lender to satisfy, before being granted a licence. Responses included the following:

- Police check.
- Credit check.
- Demonstrated knowledge of Uniform Consumer Credit Code.
- Solid financial backing.
- Full disclosure of business operation.
- Federation membership.
- Good citizenship.
- Previous financial service experience.
- Business details, as in Victoria.

Licensing introduces a number of issues which must be addressed before an evaluation of the scheme can be made:

1. It can be simply a nuisance, rather than offer anything positive, particularly if the scheme that is introduced has no teeth and is arbitrary.
2. Can be rorted when criteria such as the provision of references are called for.
3. May be too subjective, as in Western Australia, with its "fit and proper person test".
4. What right of appeal will a lender have if refused?
5. Does it serve a purpose of creating a comprehensive list of lenders in the state, which assists the Office of Fair Trading in their communications with the industry?
6. How do you introduce a capital adequacy criteria, when there are various levels of business efficiency and different business models concerning the length and amount of loans?
7. Further, what effect has the applicant being a franchisee have on your criteria?

8. What training will be required to both achieve and maintain the lenders' licence?
9. What weight will being Consumer Credit Code compliant have?
10. If financials are to be required with the licence application, how much financial information should be provided?

As the Minister would be aware, in Victoria it is unlawful to provide consumer credit without being registered. However, it is easy to become registered. The Registrar of the Business Licensing Authority requires only basic details and notification if the lender's details change. There are no fees involved.

The register of credit providers is publicly available in hard copy. Unfortunately, it does not include any information concerning investigation and/or disciplinary action involving a payday lender, except for undertakings obtained by the Director of Consumer Affairs Victoria, and it does not include information about the products or services offered by registered payday lenders.

The Federation would encourage the Minister to explore a similar form of registration, including:

1. Public announcements seeking objections to any intending registrant.
2. A redefinition of the Director General's role in regard to reprimands, warnings, penalties, conditions or restrictions.
3. Accreditation involving short course attainment, e.g. that offered by the Perth-based company, AAMC Training Group.

Such is recommended for the following reasons:

- a) The State Office of Fair Trading could supervise an intended participant's public announcement, inviting the public to indicate any objection to such participant entering the industry.
- b) The Office to be given clearer powers to issue a reprimand or warning; impose a penalty; impose a condition or restriction on registration; require an undertaking; cancel or suspend registration; or order that a person be disqualified from holding a licence, either temporarily or permanently.
- c) That such decisions, (b. above) be published after an appeal process has either expired in time, or been unsuccessful for the lender.
- d) A database of lenders could be developed, allowing for appropriate monitoring of lending activity in general.
- e) At present a lender can continue in the marketplace, despite insolvency.
- f) Such would assist the Department to seek reports and collect information from the micro-lending industry, for the benefit of all.

Note: It may be useful to refer to the South Australian Second Hand Dealers and Pawnbrokers Act 1996 and the Queensland Pawnbrokers Act 1984, Section 11 and following.

The Federation is not in favour of replicating the more detailed licensing scheme to be found in Western Australia, which involves department officers making highly subjective decisions concerning whether or not an applicant is a "*fit and proper person*" and making enquiry into the applicant's personal assets and liabilities in a way that has little relevance to judging commercial viability. There are also arguments of privacy involved.

Further, the Federation does not favour the Commonwealth's scheme that applies to other financial services providers, under the *Commonwealth Corporations Act 2001*, because of its onerous requirements, including those of training, which may be suitable for publicly listed companies but are very difficult to justify in the small business environment of the payday lender.

Lender Comments

The 32 respondent companies participating in the Federation's Industry Analysis Survey were asked to consider the concept of a licence and the companies commented, in response to the question "What requirements would you expect a lender to satisfy, before being granted a licence?", as follows:

Criteria Used	No. of lenders using
Police checks, no criminal history relevant to finance or violence	18
Membership of the National Financial Services Federation	16
Credit file checks	12
Review of loan documentation by Office of Fair Trading	4
Business experience	4
Membership of an external dispute resolution scheme	3
Financial substance, financial ability to lend	3
Legal training – knowledge of relevant legislation and regulation	3
Standard collection procedures	2
Character reference	2
Office of Fair Trading Business Registration	1
Demonstrating understanding of how interest rates work	1
Demonstrating knowledge of Part ix and bankruptcy	1
Budgeting skills	1
Lodging of a bond	1
Adequate training provided by either the Federation or the OFT	1
Final approval by OFT before a new store can be opened	1
Basic fitness	1
ASIC search	1
OFT Audit	1
Business plan	1
Must have premises	1
Accurate accounting methods	1

One lender commented "*If these conditions are at about the same level as pawnbrokers or motor dealers or real estate agents, we would support a licensing regime*".

Option 12: Industry Participation in Stakeholder meetings

The Federation now believes, given its established status, that it would be most useful to set up a dialogue with the Office of Fair Trading and other credit stakeholders, by way of two initiatives:

- a) A 6-monthly meeting of stakeholders to discuss general issues specific to the industry. The Federation hopes that this forum would provide an opportunity for stakeholders to present quantitative data on relevant issues, to replace the extreme one-off cases, rarely researched and generally inaccurately portrayed, being presented as a credible indication of general industry practice.
- b) Participation, by industry representatives, on a Ministerial Advisory Committee.

The latter has recently been successfully established in South Australia and the President of the South Australian Division of the National Financial Services Federation is the industry representative on that committee.

The South Australian committee has six other members, including the Government Whip, the Minister's policy adviser and representatives of Centacare, the Australian Financial Conference, the National Australia Bank, and the Office of Consumer and Business Affairs.

This committee is currently reviewing the submissions to the South Australian Discussion Paper and reports directly to the Minister.

Option 13: Assistance with No Interest (NILS) and Low Interest Loan Schemes (LILS)

Given that the payday and microlending industry is frequently a first point of contact for people who, in fact, do not have the capacity to repay the loan they seek, it seems appropriate that the Office of Fair Trading should be using the industry to promote its consumer protection messages and refer people to the no-interest and low-interest schemes. With the Minister's obvious interest in expanding the availability of the current, very limited schemes, as discussed elsewhere in this Submission, it could be considered appropriate to have the industry refer people to such schemes, when people do not satisfy the industry's criteria for loan provision.

The Federation's Queensland Division has already circulated details of known schemes to its members, to assist in this regard.

Option 14: Better Court Opportunities

One of the most pleasing aspects of the South Australian review was the inclusion for comment, in the Discussion Paper, of a consideration for changing the court system in that state, to make it easier, cheaper and fairer to resolve consumer credit issues, involving payday and microlenders, in the courts.

It could be useful to have the Queensland review also consider this issue. At present, the lender is drawn into a lengthy process, which puts all the onus of pursuing the defaulting borrower, back to the lender. Claims for minor or small debt, are long and drawn out, with many "escape" opportunities for the debtor. Consequently, the lender faces many additional costs. Even with a positive outcome, with a court order demanding the borrower pay, the lender is left attempting to get "blood out of a stone". This is why, contrary to industry critic's beliefs, Queensland lenders are careful in their lending process and frequently reject substantial numbers of potential borrowers.

The Federation encourages the Minister to liaise with her South Australian counterpart. This is a significant issue, which covers both states and early indications are that the South Australian Minister and her Attorney General colleague will be introducing significant changes in this area.

Option 15: Code of Practice

As either an integral part of a self-regulation or co-regulation regime, or as an adjunct to continuing the present system of government control, resources permitting, via Office of Fair Trading enforcement of compliance, the opportunity for the Queensland Government to recognise, encourage observance and incorporate in its performance assessment criteria, an industry Code of Practice should not be overlooked.

Such an opportunity exists with the Federation and its, now widely circulating, code of practice, the "National Financial Services Federation Code of Ethics/Customer Charter" (see Appendix 2).

I have been with [REDACTED] for several years now and would recommend them and had done on several occasions. They explain every little detail to you and only give the loan to a person if they think that you can cover the repayments and still live on your income as such.

I have heard that they are support to prey on pensioners and low income earners -- this is rubbish. Without this Loan Company I would have had no other outlet to approach that would have lent me money. I am a working person with no photo identification or the security of a car or a house.

I applied to both Westpac & Bank of Queensland and couldn't even get my foot in the door for someone to listen to me.

I have custody of my two grandchildren and without [REDACTED] I wouldn't have been able to purchase beds, clothes and school needs for them because no bank or such places would look at my application without prejudice.

In my opinion [REDACTED] should be operating as a bank as their service and business manner rivals any bank I have dealt with. Their customer relations are also beyond reproach.