



*Promoting Responsible Consumer Lending*

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Submission to

**Financial System Inquiry**

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*In a couple of minutes without you knowing it, I will steal your identity and set you up for a financial scam. I will take all your personal details, home address, driver's license information, details of your closest friends, your work, your income, banking and financial information, and by the way, you happily just gave me all of that information willingly.*

*Not only that, in some cases, after you gave me all of that information, you willingly gave me money as well. I might even decide to replicate your passport because you most likely gave that information to me as well.*

*In a couple of hours I will have all the same information for many more consumers, in a week I should have thousands of consumers' details.*

*I now own your financial and personal identity.*

**Who am I?**

**But more to the point,**

**Why can I do this?**



## **PURPOSE OF SUBMISSION**

The purpose of this submission is to provide a high level overview of an emerging online issue that most likely affects many other financial products, not just credit, in the Australian Financial Services system.

If the Inquiry wishes to proceed to investigate this issue, the Federation can supply further detailed information.

## **BACKGROUND TO THE FEDERATION**

The National Financial Services Federation is the peak national industry association representing over 180 ASIC-licensed short-term credit providers serving over 750,000 consumers each year. The Federation has a diverse membership covering franchisors, franchisees, private, and publicly listed companies, all of which offer consumer credit (as opposed to business credit). Member products range from small amount credit contracts (pre 1 July 2010 referred to as payday loans) to personal longer term loans from both retail outlets and dedicated online platforms.

The Federation provides ongoing guidance to its members as they strive to improve the provision of consumer credit.

The Federation has, and continues to be, heavily involved in Government consultation processes since July 2008 when the Commonwealth began taking over regulation of consumer credit from the States.

## **INFORMATION ABOUT FEDERATION MEMBERS**

Federation members are holders of Australian Credit Licences issued by ASIC pursuant to the *National Consumer Credit Protection Act 2009* ("the Act"). The vast majority of them are credit providers lending their own money to consumer applicants for small loans. Individual members range

from operators having one office staffed by as few as one or two persons to larger entities which may have multiple outlets or which may offer borrowing facilities online. Amounts lent for these consumer loans range from \$50 to \$5,000, for terms generally from a number of weeks up to 2 years. Some members provide just one type of loan and some provide a range of loan services and other financial products.

All of the Federation's members rely on the banking system to trade. Disbursements of credit to borrowers by the Federation's members are made in the majority by direct deposits into the borrower's bank account or cash over the counter. In excess of 98% of all repayments made by borrowers to the Federation's members are made by the use of direct debit facilities operated either by the Federation's member's own arrangements with a bank, or through the engagement of a third party Direct Debit supplier.

All electronic transactions of the Federation's members are ultimately made through an Approved Deposit Taking Institution (ADI).

## **WHAT IS THE PROBLEM?**

*Illegal, unlicensed 'lenders'* have been allowed to infiltrate the market.

These illegal and unlicensed 'lenders' fall into two groups.

- (1) those which are no more than scam websites to steal a consumer's identity and financial information; and
- (2) those which are actual lenders but are unlicensed and quite often operate from overseas which effectively puts them outside Australia's jurisdiction (notwithstanding the National Credit Act's expressed intention to cover them).

The following factors have contributed to the unintended effects of compounding this issue which has created the market environment ripe for the above activity:

- A. The original Treasury policy development for the NCCP Act 2009 incorrectly assumed that all lenders would apply for and obtain a licence and hence comply with the new Act. As a result, the penalties for unlicensed activity are manifestly inadequate to discourage unlicensed activities.
- B. It appears that the 'prime directive' for the regulator (ASIC) is to focus on the licensed lenders (who are continually bending over backwards to comply with the law) and not the illegal unlicensed entities which were in, or have entered, the market.
- C. Over burdening legislation and unviable restrictive price controls (for all but the largest lenders) has seen a dramatic decrease in the visible shopfront retail presence of licensed lenders. This has dramatically reduced consumer retail choice and is effectively pushing consumers more and more to seek credit online. This forced change in consumer behaviour has made it easy for online illegal unlicensed entities to operate including those that are nothing but scam websites.
- D. ASIC's current processes for dealing with blatantly obvious online illegal activity appears to be too slow and inflexible for the modern online world. This is especially true for the scamming websites considering the damage that can be done in such a short period of time to so many consumers while these websites and/or advertisements are running. Often the websites are removed before ASIC's internal procedures can even formalise a complaint by a consumer.

- E. Legislative compliance has created a lack of ability for licensed lenders to sufficiently differentiate themselves from unlicensed illegal entities.

## **BACKGROUND TO THE PROBLEM**

The National Consumer Credit Protection Act 2009 commenced operation on the 1<sup>st</sup> July 2010 after many years of consultation. Policy developed by Treasury for this Act focused on the incorrect assumption that all 'lenders' in the market place would simply license. This did not occur.

The Act and Regulations were developed accordingly with the core focus of the regulator (ASIC) to monitor and review 'licensed' activity. Penalties also focus on breaches of licensed activity, rather than unlicensed activity.

Civil and Criminal penalties are now so onerous for licensed lenders complying with the Act for responsible provision of consumer credit that Australian Credit License holders dare not operate outside the Act.

Further-more, after spending ten's, sometimes hundreds of thousands of dollars to gain an Australian Credit License, lenders may have their business shut down for non-compliance. The "incentive" for licensed lender to do the right thing cannot be overstated.

Although ASIC's continued review of licensed lenders' compliance is needed, it is not required at the current activity level and resources should in all cases be directed to shutting down unlicensed or scam activity in the first instance for maximum consumer protection.

The maximum penalty for licensed lenders not complying with the Act is \$340,000.00. In addition there is a criminal penalty of up to 200 penalty units (\$34,000.00) with up to 2 years imprisonment.

Inconceivably, the same maximum penalty applies to unlicensed activity that provides no consumer protection. In all cases penalties for unlicensed activity should be many times that of those who go to the trouble of applying for a licence and becoming licensed, but who may fall foul of the law.

As in other regulated markets, the most harm and detriment to consumers will occur from non-licensed illegal operators. Such operations put consumers outside the bounds of normal protection provided by regulations; in this case protection provided by the National Consumer Credit Protection Act.

The majority of these unlicensed illegal activities appear to occur in the online environment.

## **WHY IS GOVERNMENT ACTION NEEDED?**

Preliminary data gathered for a research project about to start at RMIT University in Victoria suggests approximately 1 in 10 online websites claiming to be a lender, appear to be an unlicensed, non-compliant or an illegal entity. It would not be unexpected that this issue of unlicensed and scam websites lies across all financial service products and therefore our proposed policy amendments could be implemented across all products in the entire financial services sector.

Apart from the online lenders who are just not licensed, if someone wants to steal your identity and set you up for a financial scam, the best way to do this is to ask you to apply for a loan. During the 'lending application process' you will part with all your personal information including: address; driver's license; work details; banking; and other financial information. When loan applicants are 'declined', most think nothing of it and move to the next 'lender' and part with the same information again.

It is possibly the only data gathering exercise where a consumer exposes all of their sensitive and personal data in one transaction.

The Federation considers that an Australian consumer's credit and personal identity information should be seen as a national asset worthy of greater proactive protection by regulators.

On the 12 March 2014, long awaited changes to the Privacy Act commenced in an attempt to tighten up security around a consumer's personal and credit information. The Federation made submissions and participated in the development of the new Privacy Act.

However, again, only those entities who operate legitimately will seek to comply. Greater focus must in all cases be on those entities, Australian based or otherwise, who do not comply or those that actively seek to gather this information for criminal purposes.

## **PROPOSED POLICY CHANGES**

1. Impose mandatory requirements for banks (all ADI's) and specialist Direct Debit Service provider companies to fully investigate and confirm the Australian Credit License details of any company claiming to be a 'lender' before granting Direct Debit services to take funds from a consumer's bank account.
2. Restrict access and use of the '.au' high level domain. Ensure all Australian registered domains that contain key words related to credit are registered to an Australian Credit License Holder.
3. Change the 'prime directive' of the regulator (ASIC) to focus on online unlicensed and illegal activity.

4. Increase the penalties for unlicensed activity to be (at least) 10 times that of any non-compliance issue imposed on a licensed operator. Licensed lenders have complied with legislation whereas any illegal activity blatantly defies the legislation.
5. Create a 'crack technical flying squad' within ASIC to shutdown traffic to blatantly obvious non-compliant and illegal credit websites to limit consumer detriment. ASIC has this power and has done this before in other sectors. Currently time-focussed concepts such as 'due process', and 'natural justice', means this can take months.
6. Ensure both print and online media cannot accept and run credit advertisements unless the lending entity holds a valid Australian Credit License.
7. Re-establish the ability of licensed lenders to say they are ASIC licensed lenders in association with the ASIC logo; a brand of which consumers are at least aware. ASIC (the issuer of Australian Credit Licenses) must reverse the ruling banning use of their logo which previously helped licensed lenders differentiate themselves from unlicensed lenders on their website and on other material.
8. Re-establish the ability of licensed lenders to refer to their chosen External Dispute Resolution scheme. The Federation is aware that one of the two External Dispute Resolution schemes, COSL, (which is approved by ASIC) has also banned the use of their logo on members' websites. Reverse this ruling from the ASIC approved EDR scheme to allow lenders to say they are part of a licensed EDR scheme in association with the EDR scheme's logo.



### **Who else should be consulted?**

1. ASIC.
2. ACCC.
3. AUSTRAC.
4. Australian Federal Police.
5. Australian Crime Commission.
6. Commonwealth Treasury.