



The Productivity Commission's Review of Australia's Consumer Policy Framework

Written Submission 2 Brief comments on the Draft Report – 19 February 2008.

About AFCCRA:

Financial counselling in an Australian context refers to the provision of information, support and advocacy services to low income and disadvantaged consumers experiencing problems with credit and debt. Key characteristics of financial counselling services and those providing the services include:

- being community based and 'not-for-profit';
- being free of charge to service users and
- acting exclusively in the interests of service users, free from conflict.

There are somewhere between 450 and 500 financial counsellors practicing in Australia, in a variety of full-time, part-time and volunteer roles¹. The majority of resources for financial counselling activities are provided by governments, although there is wide disparity in the manner of delivery and sufficiency of those resources.

AFCCRA is the national peak body for financial counsellors. It adopts a federated system of membership, with each state and territory represented on the Association's National Council. Formed in the early 1980s AFCCRA received funding from the Commonwealth to operate a Secretariat in Canberra until 1996. Since that time however, AFCCRA has received no recurrent or reliable source of funding for its activities and relies largely on the efforts and energy of its volunteer council. More details regarding AFCCRA can be found on its website www.afccra.org.

Preparation of this submission has been facilitated by Care Inc Financial Counselling Service and the Consumer Law Centre of the ACT.

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¹ More information about the sector can be found in Sharon Barker's presentation, 'An overview of the financial counselling landscape in Australia', delivered at the AFCCRA Conference Melbourne 17 June 2005. A copy is available on AFCCRA's web-site www.afccra.org.

About this supplementary submission:

AFFCRA provided a written response to the Issues Paper released in January 2007² and appeared at the Commission's initial round of hearings in March 2007³. Resource constraints and demand pressures inhibit AFCCRA's capacity to make a further detailed written submission to the Review. The Association however:

- Refers to its earlier comments; and
- Supports the broader commentary in a joint consumer submission dealing with 'institutional' issues being coordinated by CHOICE and to be provided to the Commission in the coming weeks.

In general terms, the financial counselling community in Australia welcomes the Draft Report. The following brief observations focus on several issues of key importance to financial counsellors and their clients raised in the Draft Report.

1) Draft Recommendation 9.6:

AFFCRA and financial counsellors around Australia have warmly welcomed draft recommendation 9.6:

Australian Governments should provide enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counselling services, especially for vulnerable and disadvantaged consumers.

The need for increased resources for frontline consumer support services is urgent. In particular, financial counselling services in some parts of Australia face immediate threat to their ongoing viability unless there are significant medium to long term investments in their capacity to recruit, train and retain qualified practitioners.

The recommendation is however poorly developed. For example, in AFCCRA's view:

- o It fails to recognise the disparity between industry resourcing of advocacy at both an individual product and service provider level and within and across industry segments in comparison to consumer capacity;
- o Only limited reference is made to the role that direct consumer information and advocacy can play in the development of safe, fair markets;
- o Limited regard is paid to the additional community costs involved in either addressing instances where poor market conduct produces significant

² AFCCRA, *Submission in response to the Issues Paper*, Canberra, 17 May 2007

³ AFCCRA's Chairperson and Secretary appeared at the Canberra Initial Hearing on 29 March 2007.

- consumer detriment, or in providing additional services to those that markets exclude or exploit; and
- There is little recognition that competitive markets can produce winners and losers and whilst markets can choose to ignore losers, civil society cannot.

Financial counsellors appreciate that the Commission has no particular expertise in the development and delivery of community services. Perhaps as a result, whilst the language of Draft Recommendation 9.6 is clear, the explanation and discussion surrounding it is not, or is unnecessarily reserved.⁴

Appropriate support for effective and skilled consumer support services makes compelling economic sense. As well as providing a capacity to address individual consumer needs that the state would struggle to provide at first instance or would end up paying more subsequently if left unresolved, consumer services provide critical early warning signals on market dysfunction that might require broader intervention.

2) The understatement of current levels of personal financial stress in Australia and the role of imprudent credit provision in producing that outcome:

Since the Commission commenced this Review, recognition of the dangers Australian consumers are facing from record levels of personal debt has increased considerably. Nowhere is this recognition clearer than in the mortgage market, with its inter-relationship of dramatic increases in housing costs and the amount being borrowed either to break into that market or refinance existing commitments.

The Commission has largely accepted the views expressed by commentators insisting the growth of debt levels is not a cause for particular concern⁵. Even those most sanguine about the current situation must acknowledge however that it is without historical precedent, as can be seen from the graph below tracking the growth in credit commitments to GDP which appeared in a speech by RBA Deputy Governor Ric Battellino in September 2007⁶:

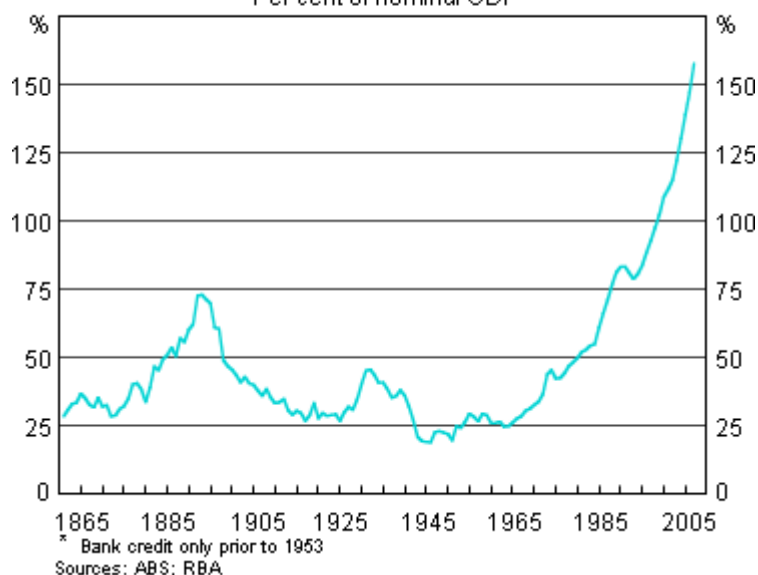
⁴ For example, in the Volume 1 Summary to the Draft Report, the Commission notes *‘The extent of such extra funding must of course take account of the many other competing claims for taxpayer support.’* The clear implication from this comment is that resourcing financial counselling and legal aid activities is a drain on the public purse. In reality not funding direct consumer services appropriately can produce a much worse net financial outcome for communities. There is also no recognition that other funding models are available, apart from or in addition to direct Government support (including for example the payment of penalties for poor conduct into dedicated Trust Funds, the strategic use of levies attached to specific industries, product or service provision etc).

⁵ In particular the Reserve Bank of Australia and the Report of the House of Representatives Standing Committee on Economics, Finance and Public Administration’s Inquiry into Home Loan Lending Practices and Processes.

⁶ Battellino Ric, *Some observations on Financial Trends – Address to Finsia-Melbourne Centre for Financial Studies*, 12th Banking and Finance Conference, Melbourne 25 September 2007.

Credit – Australia*

Per cent of nominal GDP



AFFCRA noted in its initial submission that at an aggregate level most consumers have been carrying the additional level of debt comfortably. A significant minority have not. For some, the cause of their payment difficulties is a change in circumstances over which they have no control. In the view of AFCCRA's membership, informed by providing services to consumers experiencing problems with debt levels, there is evidence of a diminution of appropriate standards in the provision of credit.

There is also considerable additional evidence emerging that the size and makeup of the minority unable to keep pace with debt commitments is changing. The changes are occurring rapidly and are considerable. Industry commentators and analysts have dramatically reviewed upwards their estimations of households in or likely to experience financial stress⁷. Financial counsellors have noted continued shifts in their client intake⁸.

Since AFCCRA provided its previous written submission in May 2007, there have been three further increases in official interest rates, each of 0.25 per cent in August 2007, November 2007 and February 2008. In addition, a significant number of major lenders have increased their rates more and more often than movements in official rates. There are expectations of further increases in the months ahead and if delivered those will exacerbate the problems already being felt by mortgage holders and borrowers generally with variable rate credit

⁷ There are a variety of industry commentators that have made similar observations, including credit reporting and debt collection agencies (Veda Advantage; Dun and Bradstreet); financial services analysts (Fujitsu and JP Morgan) and industry groups (the Housing Industry Association).

⁸ For example in its 05/06 Annual Report Care Inc Financial Counselling Service noted 10 per cent of its new client intake reported incomes over \$45,000. In the following Annual Report for 06/07 the proportion of clients reporting incomes over \$45,000 had risen to 15 per cent. In the last 6 months of 2007, the proportion of clients reporting incomes over \$45,000 to Care's general services had reached 19 per cent.

facilities. Similarly, there will be knock on consequences in other markets impacted by movements in the cost of credit, for example in the cost and availability of rental accommodation.

From AFCCRA's perspective the Review Report should:

- Acknowledge that debt levels and the increasing cost of servicing debt has the potential to deliver considerable additional stress to many more ordinary households;
- Recognise the need for sufficiently flexible systems to evolve, providing appropriate responses as needs alter; and
- Encourage a greater depth of analysis and understanding of how these problems were allowed to grow in the manner they have, to the point where they represent a major risk to Australia's economy.

In relation to the final of the preceding dot points, the manner in which credit providers make decisions about how and when to lend requires considerable attention. AFCCRA understands that the Commission's current review is largely concerned with landscape issues, however the diminution in responsible lending standards and over-confidence in market forces to deliver suitable outcomes provides an excellent example of when consumer policy intervention was required but not forthcoming.

The Commission makes specific reference in the Draft Report to legislation enacted in the ACT in 2002⁹, requiring credit providers in that jurisdiction to undertake an assessment of a borrower's capacity before providing new or additional credit on a card facility. Accepting submissions from the Australian Bankers' Association (ABA), the Commission has concluded that the ACT legislation was a poor intervention, leading to '*perverse outcomes*' including the claim that consumers were prevented from obtaining additional credit in the wake of the 2003 Canberra bushfires because of the change to the law.

AFCCRA strongly refutes the ABA's claims and is disappointed on this issue that the Commission has departed from its own approach to evidence based policy comment. Canberra based financial counselling service Care Inc was closely involved in the development of the ACT credit card legislation. Care Inc was also directly involved in the design and delivery of community responses to the 2003 bushfire crisis, details of which can be provided at hearing.

Since section 28A of the ACT Fair Trading Act commenced, Care Inc and the collocated Consumer Law Centre of the ACT have been directly involved in many cases involving alleged and sometimes conceded breaches of the legislation. The most significant change in the negotiations that follow allegations of breach reported by Care Inc is that driven by the existence of a positive

⁹ Section 28A was inserted into the ACT Fair Trading Act 1992 by the Fair Trading Amendment Act 2002. The substantive provisions commenced on 25 November 2002.

obligation on the part of the credit provider. Failing to meet the obligation to assess payment capacity produces a very different approach to discussions with affected consumers – one based on a failure to follow the law, rather than establishment of a consumer’s ‘worthiness’ to be considered as eligible for relief from the credit provider, at its discretion.

It is AFCCRA’s view that a requirement to properly and prudently assess a consumer’s capacity to repay the credit being offered should be a responsibility of all providers of consumer credit across all consumer credit products.

3) Greater connection to the needs of vulnerable and disadvantaged consumers:

AFFCRA was pleased that the needs of vulnerable and disadvantaged consumers were specifically flagged in the Review. There is a very useful discussion of the causes and effects of vulnerability and disadvantage in the Draft Report. AFCCRA is however disappointed that these issues are not picked up in how policy is formed, the design and delivery of effective regulatory oversight and establishing enforcement priorities.

We understand that this failure will be expanded in the CHOICE coordinated submission and will defer further comment on that basis. There are however many examples of markets where the needs of vulnerable and disadvantaged consumers are dealt with as ‘add-ons’ where they should be central to initial policy design. Energy provision is an excellent example and the Commission’s Draft Recommendations 5.3 and 5.4 risk repeating failures already evident in the design and delivery of the move toward national markets that continue to fail low income consumers in fundamental ways.

AFFCRA again thanks the Commission for the opportunity to comment and looks forward to expanding on these points at hearing on 21 February 2008.