



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 198

# Review of the effectiveness of an online database for small amount lenders

January 2013

## About this paper

This consultation paper explains the background and scope of ASIC's review of whether an online database or similar system would be of assistance in determining whether consumers applying for a small amount loan have outstanding small amount debts and whether the contracts offered by the credit licensee are consistent with regulations.

The purpose of this paper is to seek the views of consumers, consumer representatives, industry and other interested stakeholders so that we may assess whether any amendments to the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* are necessary and provide a report to Government.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 25 January 2013 and is based on the consumer credit legislation as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the issues in this paper, which are only an indication of the approach we may take in reporting to Government on this review.

As well as responding to the specific issues, we also ask you to describe any alternative approaches you think are relevant.

We are keen to fully understand and assess the financial and other impacts of an online database and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us conduct this review. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account in our report to Government on the effectiveness of an online database or similar system.

### Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 21 February 2013 to:

Melanie Spong  
 Senior Specialist  
 Deposit Takers, Credit and Insurers  
 Australian Securities and Investments Commission  
 GPO Box 9827  
 Sydney NSW 2001  
 facsimile: (02) 9911 2414  
 email: melanie.spong@asic.gov.au

### What will happen next?

<b>Stage 1</b>	25 January 2013	ASIC consultation paper released
<b>Stage 2</b>	21 February 2013	Comments due on the consultation paper
	February 2013	Drafting of report for Government
<b>Stage 3</b>	March 2013	Report released

## A Background to our review

### Key points

The *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Enhancements Act) contains provisions on small amount loans. These provisions include a 'presumption of unsuitability' that will require a credit licensee to ascertain details of a consumer's recent and existing small amount loans as well as requirements relating to a cap on interest and fees.

ASIC has been asked to review whether an online database or similar system would be effective in assisting providers of small amount credit contracts to determine whether consumers applying for such loans have any recent outstanding small amount debts and whether the contracts offered by the credit provider are consistent with regulations.

There are some overseas jurisdictions where a database of small amount loans is mandated.

Currently, small amount lenders seek to comply with the responsible lending and other requirements in the *National Consumer Credit Protection Act 2009* (National Credit Act), using a number of approaches including various indexes and surveys as well as credit reporting.

### Minister's request for ASIC review

- 1 In November 2012, the Hon Bill Shorten MP, Minister for Financial Services and Superannuation, wrote to the ASIC Chairman requesting that ASIC undertake a review addressing the following matters:
  - (a) the effectiveness or otherwise of an online database or similar system that would assist providers of small amount credit contracts to determine whether consumers applying for such loans have any outstanding small amount debts, and whether the contracts offered by the provider are consistent with regulations;
  - (b) the existence of any limitations in the provisions applying to small amount credit contracts in the Enhancements Act which would prevent ASIC from taking court action against small amount lenders, or severely restrict our capacity to do so (including the inability to obtain evidence, either documentary or from debtors, to establish the requirements necessary to prove an offence); and
  - (c) any recommendations for amendments to the Enhancements Act arising from ASIC's review of the matters listed above.
- 2 This consultation relates only to the effectiveness or otherwise of an online database or similar system.

## Legislative and regulatory background

- 3           The National Credit Act commenced in July 2010, imposing licensing requirements and responsible lending obligations on credit providers who provide small amount loans (small amount lenders) to:
- (a) make reasonable inquiries into a consumer’s requirements and objectives;
  - (b) make reasonable inquiries into a consumer’s financial situation;
  - (c) take reasonable steps to verify a consumer’s financial situation;
  - (d) assess whether a proposed credit contract will meet the consumer’s requirements and objectives; and
  - (e) assess whether a consumer will be unable to meet their obligations under a proposed credit contract without suffering substantial hardship.
- 4           There is also a prohibition on a credit licensee entering into a credit contract with a consumer that would be unsuitable—that is, the contract does not meet the consumer’s requirements and objectives, or the consumer would be unable to comply with the financial obligations under the contract without substantial hardship.
- 5           Under the National Credit Act, small amount lenders (including payday lenders) were brought under a national licensing regime for the first time because the Government was concerned about the high fees and charges levied on small loans and cash advances to some of the most financially vulnerable people in the community—those who would not normally qualify for credit from a bank or other financial institution.<sup>1</sup>
- Note: Payday lenders are credit providers who offer loans with a repayment date of the consumer’s next pay (payday loans).
- 6           In 2010 we undertook a review of small amount lenders and released a report of our findings in Report 264 *Review of micro lenders’ responsible lending conduct and disclosure obligations* (REP 264).
- Note: Micro lenders is a term previously used to identify small amount lenders and payday lenders.
- 7           Our review found that, while small amount lenders had introduced new procedures to meet the responsible lending obligations, they were failing to comply with requirements consistently on all loans.
- 8           The problems identified in the review included instances of small amount lenders not recording the actual purpose of the loan, undertaking very

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<sup>1</sup> Prime Minister Kevin Rudd and Nick Sherry, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Joint Media Release No. 064, *New measures for Australian financial services*, 3 October 2008.

limited verification of a consumer's financial circumstances, and not taking steps to clarify conflicting information in loan applications.

- 9 Over the review period, we reported that 'micro lenders continued to assess their responsible lending practices and may have updated their procedures in response to the experience they gained from working under the new provisions and answering ASIC's inquiries'.<sup>2</sup>
- 10 Despite the introduction of the responsible lending provisions, the Government remained concerned about the repeated use of small amount credit contracts—particularly the risk to consumers of falling into a debt spiral (multiple small amount contracts, refinancing an existing loan before it is paid out, or increasing the credit limit).<sup>3</sup>
- 11 The Government was also concerned that the responsible lending obligations may not, on their own, be satisfactory in ensuring effective consumer protection in the short-term lending market for the most vulnerable consumers. Relying solely on the responsible lending obligations raises the risk of inconsistent lending practices across the industry, and the continued detriment for those consumers who deal with lenders with less robust practices.<sup>4</sup>
- 12 Treasury released a discussion paper in April 2012, which canvassed several approaches to addressing these concerns. After public consultation and reports from two Parliamentary committees, the Enhancements Act received assent on 17 September 2012.
- 13 The Enhancements Act contains provisions (among others) on small amount credit contracts—that is, loans that are for \$2,000 or less, and are for a term of between 16 days and one year. These provisions commence in two tranches—on 1 March 2013 and 1 July 2013.
- 14 The Enhancements Act establishes a presumption in s131(3A)—which will apply from 1 March 2013—that a small amount credit contract will be unsuitable if either of the following apply:
- (a) at the time of the assessment:
    - (i) the consumer is a debtor under another small amount credit contract; and
    - (ii) the consumer is in default in payment of an amount under that other contract;

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<sup>2</sup> REP 264, paragraph 15.

<sup>3</sup> Department of Treasury, *Consumer Credit Corporations Legislation Amendment (Enhancements) Bill 2011: Reforms in relation to small amount credit contracts*, discussion paper, April 2012.

<sup>4</sup> See footnote 3.

- (b) in the 90-day period before the time of the assessment, the consumer has been a debtor under two or more other small amount credit contracts.

Note: In this paper, we refer to the presumption contained in s131(3A) as the 'presumption of unsuitability'.

- 15 The presumption of unsuitability has been introduced to address concerns in relation to both debt spirals and the recurrent use of small amount credit contracts. The use of a presumption, rather than a prohibition, allows for greater flexibility and acknowledges that there may be situations where refinancing would not result in financial hardship (e.g. where this results in lower repayments that the consumer can afford).<sup>5</sup>
- 16 The Enhancements Act also contains a requirement for credit licensees to conduct particular inquiries into the borrower's financial circumstances to ensure that the credit provided meets their requirements and objectives—that is, the licensee must, in verifying the consumer's financial situation for the purposes of s115(1)(d) of the National Credit Act, obtain and consider account statements that cover at least the immediately preceding period of 90 days if:
- (a) the credit contract is a small amount credit contract; and
  - (b) the consumer holds (whether alone or jointly with another person) an account with an authorised deposit-taking institution (ADI) into which income payable to the consumer is credited.
- 17 From 1 March 2013, credit licensees offering small amount credit contracts must display a warning, both at their premises and on their website, which alerts consumers to alternative options available to taking out a small amount loan. In addition, there is a prohibition on entering into a small amount credit contract where the consumer receives at least 50% of their gross income from the Department of Human Services (Centrelink) and the repayments under the proposed small amount credit contract would exceed 20% of the consumer's gross income.
- 18 Further provisions relating to small amount credit contracts in the Enhancements Act that commence on 1 July 2013 include:
- (a) that consumers who default under a small amount credit contract must not be charged an amount that exceeds twice the adjusted credit amount; and

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<sup>5</sup> The Consumer Credit Legislation Amendment (Enhancements) Bill 2012, Revised Explanatory Memorandum, page 58.



- (b) a cap on fees and charges of a one-off establishment fee (20% of the adjusted credit amount) and a monthly account-keeping fee (4% of the adjusted credit amount).<sup>6</sup>

## Overseas experience

- 19 In the United States, approximately 14 states currently regulate payday lending, which includes mandating the use of a centralised database of payday loans. The laws that they are seeking to regulate are state-based and thus vary from state to state.
- 20 The Office of Fair Trading in the United Kingdom, where it has been recommended by the Centre for Responsible Credit that a national payday lending database be established, is currently undertaking a review of the payday lending industry.

### United States: Florida

- 21 Florida was the first US state to utilise a database. In 2001, a database system was introduced to assist regulators in enforcing new regulations on payday lending. These regulations included imposing a maximum loan amount of \$500, limiting transaction fees to 10% of the amount borrowed, banning the rolling over of loans, restricting loan terms to a period between seven and 31 days, and imposing a cooling-off period of 24 hours between loans.
- 22 The database is a real-time database of all outstanding payday loan transactions. Licensed payday lenders (deferred presentment providers) are assigned a user ID (identification) and password to access the database. When a consumer applies for a loan, the lender enters the database to verify that the consumer has no current payday loans and has not terminated a payday loan in the previous 24 hours.
- 23 A database inquiry will result in the deferred presentment provider being given a response about whether the consumer is eligible or ineligible for a new loan, and a brief description of the reason. Only the consumer can request a more detailed reason about why they are ineligible for a new loan.
- 24 A deferred presentment provider may rely on the information contained in the database as being accurate, and the provider is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

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<sup>6</sup> The adjusted credit amount in relation to a small amount credit contract means the first amount of credit that is, or is to be, provided under the contract: Enhancements Act, Sch 4.

- 25 Once verification is successful, the borrower is required to sign a statement confirming that no payday loan is outstanding and that no loan has been terminated in the previous 24 hours (cooling-off period).
- 26 The law allows the lender to be charged a fee not exceeding US\$1 per transaction for data required to be submitted to the database, and the lender is allowed by statute to pass this cost on to the consumer. There is no charge to the lender for making an inquiry from the database.
- 27 The information required to be entered into the database for each payday loan includes the consumer's name, their social security number or employment authorisation alien number, their address and driver's licence number, the amount and date of the transaction, and the date the transaction is closed.
- 28 All information held in the database is confidential, is not subject to public inspection and is not a public record. The information is therefore not subject to the disclosure requirements of the freedom of information laws. Further, the information is not subject to discovery, subpoena or other compulsory process, except in very limited circumstances, and cannot be disclosed to any person other than the Commissioner of the Florida Office of Finance Regulation.
- 29 The Commissioner administers the database, which is only able to be accessed by the Florida Office of Finance Regulation (the regulator) or lenders. Data is deleted after three years (after a transaction is closed or any action relating to a dispute is resolved).
- 30 Consumer complaints about information held in the database are assessed by the regulator and, if it is unable to confirm the details of the information (e.g. the lender fails to reply or has ceased operations), the regulator administratively updates the information held in the database.
- 31 The Florida Office of Finance Regulation advises that the database allows it to understand the volume and demographics of payday lending usage within the state, and to ensure that excessive fees are not charged. The database also provides it with advance information about the use of payday lending when conducting an examination or investigation.<sup>7</sup>

### **United States: Washington**

- 32 A database operates in Washington in a similar manner to the system used in Florida.

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<sup>7</sup> Email to ASIC from J Paul Newton, Certified Fraud Examiner (CFE), Certified Professional Manager (CPM), 12 December 2012.

- 33 In Washington, payday lending laws requiring information to be registered in a state-wide database to ensure lenders have up-to-date loan information commenced in 2010. These laws include a prohibition on taking out more than eight payday loans in a 12-month period.
- 34 The Department of Financial Institutions in Washington (the regulator) has reported that the number of payday loans decreased by 40% between 2010 and 2011. Information sourced by the regulator from 15 companies (representing 96% of the state's payday loans) showed some variation between 2010 and 2011 in the frequency of payday loans being taken out by consumers, with the percentage of consumers taking out the maximum amount of loans possible under the law (eight) reducing from 8.51% in 2010 to 6.89% in 2011.<sup>8</sup>
- 35 The Director notes that regulating under the payday lending laws using the state-wide database has been considerably easier.<sup>9</sup>

### United Kingdom

- 36 The Office of Fair Trading (OFT)—the agency that oversees the credit laws in the United Kingdom—is currently undertaking a compliance review of the payday lending industry. The OFT has advised that it will publish a full report in 2013 setting out its findings on compliance, including whether wider action is needed to tackle problems in the sector.
- 37 While the United Kingdom does not currently have a database of payday loans in place, the Centre for Responsible Credit recommends, in its policy briefing *How to regulate payday lending: Learning from international best practice* (December 2011), that:
- ... the Office of Fair Trading and the payday lending industry agree to put in place a national payday lending database by April 2013, paid for by a levy on transactions, and modelled on the best practices of the US by also providing people applying for payday loans with access to money advice services.

### Current approach by small amount lenders

- 38 While the presumption of unsuitability does not commence until 1 March 2013, other responsible lending obligations currently apply and will continue to apply after the presumption commences on 1 March 2013.
- 39 Under s131 of the National Credit Act, a credit contract must be assessed as 'unsuitable' if, at the time of the assessment, it is likely that:

<sup>8</sup> The Washington State Department of Financial Institutions (DFI), *2011 payday lending report*.

<sup>9</sup> Correspondence from Mr Scott Jarvis, Director, DFI, to Mr David Burtzlaff, Chartered Financial Analyst (CFA), 21 July 2011.

- (a) the consumer will be unable to comply with their financial obligations under the contract, or could only comply with substantial hardship, if the contract is entered into or the credit limit is increased in the period covered by the assessment;
- (b) the contract will not meet the consumer's requirements or objectives if the contract is entered into or the credit limit is increased in the period covered by the assessment; or
- (c) if the National Consumer Credit Protection Regulations 2010 (National Credit Regulations) prescribe circumstances in which a credit contract is unsuitable—these circumstances will apply to the contract if the contract is entered into or the credit limit is increased in the period covered by the assessment.

40 Currently, small amount lenders use one or more of the following sources of information in meeting their responsible lending obligations:

- (a) an application form;
- (b) bank statements;
- (c) a credit report;
- (d) budget assessment tools;
- (e) Centrelink statements;
- (f) payslips;
- (g) the Henderson Poverty Index;
- (h) the Australian Bureau of Statistics' household expenditure surveys; and
- (i) automated software systems.

41 We have seen a large range of approaches undertaken by small amount lenders using a mixture of the above resources, with some lenders utilising measures such as the Henderson Poverty Index or the Australian Bureau of Statistics' household expenditure surveys as a basis for the early rejection of consumers who may already be suffering financial hardship.

42 Good industry practice for small amount lenders is to make inquiries of a consumer in the first instance and seek to verify this information through contacting employers directly, and obtaining payslips, Centrelink statements, a credit report and bank statements. In cases where there is conflicting information, further inquiries are then undertaken.

43 Our early review and subsequent surveillance work has identified that there are instances where some small amount lenders are at risk of not being able to demonstrate that they have met their responsible lending obligations.

## Credit reporting

- 44 A small amount lender may choose to subscribe to a credit reporting agency—however, membership is voluntary not mandatory. There is a cost to a credit licensee of subscribing to a credit reporting agency, both in having the systems in place to submit information and in obtaining credit reports.
- 45 There are currently three credit reporting agencies in Australia, with each agency only holding the data provided by the credit licensees that subscribe to that individual agency. A credit licensee can only obtain a credit report from a credit reporting agency if the licensee also provides that agency with information on any credit inquiries it receives from consumers.
- 46 If the credit licensee subscribes to a credit reporting agency and the licensee requests a consumer’s credit report, this will provide the licensee with limited details, such as information about a consumer’s identity, their last known address, any credit inquiries they have made, and any listed defaults and whether these have been rectified.
- 47 Currently, some but not all small amount lenders access a consumer’s credit report. Even when a credit report is obtained, this may not list all the small amount loans that a consumer has entered into; so while this information may assist the lender to meet the existing responsible lending obligations, it is unlikely to assist with ascertaining whether the presumption of unsuitability is triggered.
- 48 There have been recent amendments proposed to credit reporting in Australia. The Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (Privacy Bill) seeks (among other proposals) to introduce a comprehensive credit reporting system and enable the Privacy Commissioner to develop and register codes of practice that are binding on specified agencies and organisations.
- 49 The information—referred to as ‘consumer credit liability information’—that the Privacy Bill proposes to be made available to small amount lenders includes:
- (a) the name of the credit provider;
  - (b) whether the provider is a credit licensee;
  - (c) the type of credit provided;
  - (d) the day the credit contract is entered into;
  - (e) the terms or conditions of the credit contract that relate to the repayment of the credit and that are prescribed by the associated regulations;
  - (f) the maximum amount of credit available under the contract; and

- (g) the day the credit contract is terminated or otherwise ceases to be in force.

50 The Privacy Bill is awaiting Royal assent and will commence 15 months after assent is granted. Despite the introduction of this positive credit reporting, because subscribing to a credit reporting agency is not mandatory, the information that lenders can obtain from one of these agencies still may not assist them to ascertain whether the presumption of unsuitability is triggered when assessing a small amount loan application.

## B Online database or similar system

### Key points

We are seeking comment on whether it should be mandatory for a credit licensee to register all small amount loans in a database and to make an inquiry from the database to determine whether the consumer has entered into any current or recent small amount loans.

If a database of small amount loans were to be created in Australia, we are seeking comment on what information it should hold.

We are also seeking comment as to whether there are any other regulatory requirements that a database could be usefully and practically used to test proposed loan contracts against.

### An online database or similar system

#### Question

**B1** Should it be mandatory for credit licensees:

- (a) to register all small amount loans in a database; and
- (b) to make an inquiry from the database to determine whether a consumer has two or more small amount loans in the preceding 90 days or whether a consumer has a current small amount loan that is in default before entering into a new small amount loan?

#### *Your feedback*

- B1Q1 Would such a requirement be an effective means of enabling small amount lenders to determine whether consumers trigger the presumption of unsuitability?
- B1Q2 What would be the likely cost to credit licensees or to consumers of such a requirement? We are interested in the likely cost of entering data into the database as well as the cost of making a database inquiry.
- B1Q3 Are there potential flow-on effects or consequences from making such a requirement? For example, would credit licensees be less likely to subscribe to credit reporting agencies because this is not mandatory and would incur an additional cost?
- B1Q4 Does the fact that the Australian responsible lending obligations involve a principles-based approach, plus specific rebuttable presumptions for short-term loans, mean that a database would be less useful than in overseas jurisdictions where the legal requirements are more definitive?
- B1Q5 Would such a requirement lead to avoidance, such as structuring loans that fall outside the definition of a small amount credit contract?

## Question

**B2** If a database of small amount loans is in place in Australia, what information should be recorded in it and made available to a small amount lender on inquiry?

Possible options for information to be included on the database are:

- (a) the identity of the borrower;
- (b) the loan amount;
- (c) the loan start date;
- (d) the loan contracted completion date;
- (e) the actual loan completion date; and
- (f) whether an existing small amount loan is in default.

### *Your feedback*

B2Q1 Are there any practical difficulties in obtaining the relevant information to be included in the database?

B2Q2 Does entering the actual completion date of a small amount loan raise practical difficulties?

B2Q3 Would it be problematic for lenders to include information on the default of small amount loans in the database, noting that this would require a credit licensee to provide information to the database during the course of the loan (rather than only at the commencement and completion of the loan).

B2Q4 What information should be provided to the lender who makes an inquiry of the database? For example, should the database provide the inquiring lender with a response as to whether the consumer triggers the presumption of unsuitability and a brief reason, or should more details of the relevant small amount loans held in the database be released?

B2Q5 Should a consumer have access to the database and, if so, what information should a consumer be able to obtain?

B2Q6 How can the accuracy of the database be assured?

B2Q7 How should consumer concerns about the accuracy of the database be addressed? For example, should there be internal and external dispute resolution requirements?

B2Q8 Are there any concerns relating to the *Privacy Act 1988* because of information held in the database and the details given to a lender in response to an inquiry?

## Question

**B3** Are there regulatory requirements beyond those addressed in Question B1 that the database could be usefully and practically used to test proposed loan contracts against?



*Your feedback*

- B3Q1 What are those requirements (e.g. there are requirements in the Enhancements Act relating to a cap on fees and charges on small amount loans)?
- B3Q2 What additional information would need to be collected in order to test the consistency of loan contracts against those requirements?
- B3Q3 What are the cost, privacy and practical implications for lenders and consumers, if any, in collecting and using that information?

**Discussion**

- 51 There have been concerns that having a number of short-term loans in a short period of time may mean that these loans are not meeting borrowers' requirements and objectives and may indicate a need for longer term credit or the ability to service loans without obtaining new finance. These concerns have been significant and have led to the measures adopted in the Enhancements Act.
- 52 Credit licensees need to be able to identify a borrower's short-term loan history to assess whether the presumption of unsuitability has been triggered.
- 53 Currently, small amount lenders must assess a small amount credit contract as unsuitable if the consumer will be unable to comply with their financial obligations or could only comply with substantial hardship.
- 54 Small amount lenders are not required to list any loans they enter into with a consumer in a database or similar system, nor with any credit reporting agency, and are currently unable to share details with other credit licensees about any credit they have entered into because of privacy law restrictions.
- 55 From 1 March 2013, all small amount lenders will be required to obtain and consider account statements (if the consumer holds an account with an ADI into which the consumer's income is credited) that cover the preceding 90 days. Short-term loans (those of 15 days or less) will be prohibited from that date.
- 56 Noting that a high proportion of small amount loans are repaid using direct debit facilities, interrogating a consumer's bank statements should provide small amount lenders with relevant information for a significant proportion of their customers on any current or previous small amount loans in the preceding 90 days (if they are paid from the same bank account).
- 57 While small amount lenders may review a consumer's bank statements, this may not identify small amount loans that are being repaid through cash payments, employer deductions or a secondary bank account.

- 58 Not all small amount lenders use the existing credit reporting system because of the costs involved or for other reasons. Further, a credit report does not provide a comprehensive source of information for assessing the presumption of unsuitability.
- 59 While credit reporting has recently been subject to reform, these reforms do not propose to make credit reporting compulsory, so gaining a credit report will not ensure that a credit licensee has identified all relevant small amount loans a consumer has entered into.
- 60 A database may provide a definitive and reliable source of information for credit licensees to know whether the presumption of unsuitability has been triggered.
- 61 Further, a database may be able to hold additional information to assist small amount lenders in determining whether the contracts they offer are consistent with other obligations and requirements in the credit legislation. For example, the Enhancements Act includes a cap on fees and charges for small amount loans and also includes a prohibition on entering into a small amount credit contract in some circumstances where the consumer receives income from Centrelink.

## Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution—has the meaning given in s5 of the National Credit Act
ASIC	Australian Securities and Investment Commission
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act
Enhancements Act	<i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i>
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
payday lenders	Credit providers who offer payday loans
payday loans	Loans with a repayment date of the consumer's next pay
presumption of unsuitability	The presumption of unsuitability contained in s131(3A) of the Enhancements Act
Privacy Bill	Privacy Amendment (Enhancing Privacy Protection) Bill 2012
s35 (for example)	A section of the National Credit Act (in this example numbered 35), unless otherwise specified
small amount credit contract or loan	Has the meaning given to 'small amount credit contract' in Sch 3 of the Enhancements Act
small amount lender	A credit provider who provides small amount loans

## List of questions

Question	Your feedback
<p>B1 Should it be mandatory for credit licensees:</p> <p>(a) to register all small amount loans in a database; and</p> <p>(b) to make an inquiry from the database to determine whether a consumer has two or more small amount loans in the preceding 90 days or whether a consumer has a current small amount loan that is in default before entering into a new small amount loan?</p>	<p>B1Q1 Would such a requirement be an effective means of enabling small amount lenders to determine whether consumers trigger the presumption of unsuitability?</p> <p>B1Q2 What would be the likely cost to credit licensees or to consumers of such a requirement? We are interested in the likely cost of entering data into the database as well as the cost of making a database inquiry.</p> <p>B1Q3 Are there potential flow-on effects or consequences from making such a requirement? For example, would credit licensees be less likely to subscribe to credit reporting agencies because this is not mandatory and would incur an additional cost?</p> <p>B1Q4 Does the fact that the Australian responsible lending obligations involve a principles-based approach, plus specific rebuttable presumptions for short-term loans, mean that a database would be less useful than in overseas jurisdictions where the legal requirements are more definitive?</p> <p>B1Q5 Would such a requirement lead to avoidance, such as structuring loans that fall outside the definition of a small amount credit contract?</p>
<p>B2 If a database of small amount loans is in place in Australia, what information should be recorded in it and made available to a small amount lender on inquiry?</p> <p>Possible options for information to be included on the database are:</p> <p>(a) the identity of the borrower;</p> <p>(b) the loan amount;</p> <p>(c) the loan start date;</p> <p>(d) the loan contracted completion date;</p> <p>(e) the actual loan completion date; and</p> <p>(f) whether an existing small amount loan is in default.</p>	<p>B2Q1 Are there any practical difficulties in obtaining the relevant information to be included in the database?</p> <p>B2Q2 Does entering the actual completion date of a small amount loan raise practical difficulties?</p> <p>B2Q3 Would it be problematic for lenders to include information on the default of small amount loans in the database, noting that this would require a credit licensee to provide information to the database during the course of the loan (rather than only at the commencement and completion of the loan).</p> <p>B2Q4 What information should be provided to the lender who makes an inquiry of the database? For example, should the database provide the inquiring lender with a response as to whether the consumer triggers the presumption of unsuitability and a brief reason, or should more details of the relevant small amount loans held in the database be released?</p>

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	<p>B2Q5 Should a consumer have access to the database and, if so, what information should a consumer be able to obtain?</p> <p>B2Q6 How can the accuracy of the database be assured?</p> <p>B2Q7 How should consumer concerns about the accuracy of the database be addressed? For example, should there be internal and external dispute resolution requirements?</p> <p>B2Q8 Are there any concerns relating to the Privacy Act 1988 because of information held in the database and the details given to a lender in response to an inquiry?</p>
<p>B3 Are there regulatory requirements beyond those addressed in Question B1 that the database could be usefully and practically used to test proposed loan contracts against?</p>	<p>B3Q1 What are those requirements (e.g. there are requirements in the Enhancements Act relating to a cap on fees and charges on small amount loans)?</p> <p>B3Q2 What additional information would need to be collected in order to test the consistency of loan contracts against those requirements?</p> <p>B3Q3 What are the cost, privacy and practical implications for lenders and consumers, if any, in collecting and using that information?</p>