

## Responsible Lending Checklist – Payday Loans

### PART A

Complete this while your client is with you.

This will assist in identifying whether there is an argument that the payday lender breached the responsible lending laws

#### 1. THRESHOLD QUESTIONS

##### Are the loan(s) payday loans? (Small Amount Credit Contracts)

NB: A payday loan is \$2,000 or less AND the loan term is between 16 days and one year. If the transaction involves 'pawned' goods, it is a pawn agreement NOT a pay day loan.

- YES** If yes, keep answering the questions in this checklist
- NO** If no, this Guide and Checklist do not apply to the transactions

##### Has your client had loans with any other payday lenders before?

- YES** If yes, note approximately how many times, when and from whom
- NO**

#### 2. YOUR CLIENT'S CAPACITY TO PAY

##### Did your client obtain the loan when they were having difficulty repaying bills and other necessary expenses?

- Yes       No

##### Has your client had difficulty making the payments?

- Yes       No

##### Have they fallen behind on bills for essential services or had to go without basic necessities to make the payday loan repayments?

- Yes       No

If the answer is yes to any of these questions, it is definitely worth getting the loan documents

### 3. THE LENDING ASSESSMENT BY THE PAYDAY LENDER

**Did the payday lender ask your client why they wanted the loan?**

**YES** If yes, what did they tell them: \_\_\_\_\_

**NO** If no, payday lender may have breached the credit law.

**Record any additional concerns or comments your client has about the transactions, these can be added to their complaint if relevant**

#### **OVERALL ASSESSMENT**

If the above answers indicate that there are grounds to complain about the payday lender's conduct you can include a complaint letter.

If you feel more information is needed, you can ask the lender for all the loan and assessment documentation it has on record. If this does not include your client's bank statements from the time of the loan(s), obtain these from your client's bank to check for any other pay day loans and any defaults on these.

## PART B

Complete this after you have received the loan documents, using these to answer the questions

### 1. COST CAP

**Do the charges under the loan fall within the maximum cost cap?**

NB: the cost cap is: an establishment fee being no more than 20% of the principal, plus a monthly charge of 4% of the principal. You can check the costs using the ASIC payday loan calculator

**YES**

**NO** If no, the lender has breached the credit law. Add this complaint to the complaint letter

### 2. USE OF BENCHMARK EXPENSES

**Has a 'default' percentage of income been used to calculate the rent (25% of income) and the living expenses (15% of income) in the loan application?**

**YES** If yes, and the client's actual rent and/or actual living expenses are more than the amount calculated, you may be able to argue that the lender has breached the credit law by failing to taking into account

**NO**

### 3. THE REBUTTABLE PRESUMPTION ABOUT PREVIOUS LOANS

**Check your client's bank statements from the time of the loan to answer the following**

N.B: There is a rebuttable presumption in the credit law that a payday loan may be unsuitable in some circumstances (as below).

a) At the time of the payday loan, did your client already have another payday loan that was in default?

Yes / No

b) For the 90 days before the payday loan, had your client already had two or more other payday loans?

Yes / No

**If the answer is "yes" to either of the above questions the lender may have breached the credit law**

### 4. YOUR CLIENT'S CAPACITY TO PAY

**Now you have the documents from the time of the payday loan(s), you can use them and this table to work out your client's ability to afford the loan at the time it was entered**

<p>At the <u>time</u> of the payday loan, your client's <u>after tax income</u> was</p>	<p>\$</p> <p>per / wk / fnight / month</p>
<p>LESS your client's <u>fixed and regular expenses</u> (rent/mortgage, bills, other debt repayments, etc)*</p>	<p>\$</p> <p>per / wk / fnight / month</p>
<p>LESS <u>repayments on the payday loan</u></p>	<p>\$</p> <p>per / wk / fnight / month</p>
<p>Amount client was left to live on (if any)</p> <p><b>* you can get an idea of the amount your client needed for basic living expenses by looking at the Henderson Poverty Index (HPI) for the relevant quarter as at the time of the loan.</b></p>	<p>\$</p> <p>per / wk / fnight / month</p>
<p><b>Could your client live on what is left without substantial hardship taking into account unexpected expenses?</b></p> <p><input type="checkbox"/> <b>YES</b></p> <p><input type="checkbox"/> <b>NO</b> If no, payday lender may have breached the credit law.</p>	

## 5. THE LENDING ASSESSMENT

**Use the loan assessment documents to answer these questions**

Did the payday lender obtain your client's actual income and actual fixed expenses	Yes / No
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Did the payday lender obtain documents verifying your client's income and expenses (eg. pay slips, rent receipts)?	Yes / No
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Did the payday lender accurately record the reason for the loan?	Yes / No
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Did the payday lender obtain bank statements for the previous 90 days?	Yes / No
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**If the answer to any of these questions is "no", it is arguable the payday lender has breached the credit law**

### OVERALL ASSESSMENT

If the above answers indicate that your client has grounds to complain about the loans, you can lodge a dispute with payday lenders internal dispute resolution scheme or provide further details of your client's complaint if you have already lodged one.

If payday lender does not respond within 45 days of the complaint or their response is not satisfactory, you can lodge a complaint with the AFCA.

See template letter to pay day lender on CALC website [here](#)