



Establishing an ACT Mortgage Relief Scheme

Options Paper – October 2008

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By the Centre for Commercial Law
The Australian National University
Canberra ACT 0200 Australia**

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1. Executive Summary and Recommendations:

Increasing numbers of Australian households are struggling with their debt commitments, which have grown to levels without historical precedent. In particular, people and families previously considered insulated from the experience of financial difficulty, have seen their capacity to keep pace with financial commitments challenged. This is especially true for the many households currently in or at risk of mortgage stress. In a growing minority of cases, problems in sustaining mortgage commitments has led to the loss of a home, with the additional stresses and costs that produces for the individuals involved and flow-on implications for entire communities.

Problems with credit and debt have had less impact in the ACT than other jurisdictions. The ACT is not however immune from those problems. Whilst the numbers of ACT consumers who have already, or are at risk of, losing their homes because of an inability to maintain payments on housing loans is small, there is evidence to suggest that number has increased significantly in recent years.

A number of governments in Australia already offer mortgage relief assistance to people at risk of losing their homes, because a change of circumstances has affected their ability to maintain home loan payments. The ACT is considering the introduction of a similar scheme. This paper explores the need for developing and implementing an ACT mortgage relief scheme. A number of recommendations relating to the location and structural design of such a scheme are provided, along with consideration of a variety of operational and relationship issues that are likely to arise.

Recommendations:

- 1. The ACT should develop and implement a mortgage relief scheme as soon as practicable to meet a need that is small in total number but significant in personal impact.**
- 2. It is preferable to locate and host a mortgage relief scheme internal to ACT Government.**
- 3. ACT Revenue would be a suitable host agency for the scheme due to its considerable experience in managing compatible application-based processes and the repayment of debt obligations.**
- 4. Further investigations could be undertaken to test the development potential of the model operated by Community Housing Canberra to offer alternative forms of targeted support and advice for moderate income households wanting to enter or remain in the housing market.**

- 5. Information about the mortgage relief scheme should be easy to locate for potential applicants and linked to material regarding other support services available in the ACT.**
- 6. In setting the key eligibility criteria for the scheme, the following principles will support integrity without unnecessarily limiting access:**
 - a) the home loan must relate to the applicant's residence and the applicant should not own other property;**
 - b) any financial and income caps should be aimed at facilitating access where it might genuinely be useful;**
 - c) the central reason for seeking assistance should be financial distress threatening continuing home ownership; and**
 - d) there should be a formal, written application process.**
- 7. The application for mortgage relief should involve two parts:**
 - a) detailed personal and financial information from all applicants; and**
 - b) material from credit providers, including an acknowledgement that efforts have been made to consider and respond to the applicants' difficulty.**
- 8. The financial information sought in the Rates Deferral (Hardship) Application currently used by ACT Revenue should be considered as a template for the relevant section in any Mortgage Relief Scheme Application.**
- 9. Consideration should be given to discussing the development of the scheme with local financial counsellors, accountants and financial planners to see what assistance they might provide in preparing, filing and following-up applications.**
- 10. The assistance should be provided by way of repayable, non-interest bearing loans, however consideration might be given to extending the benefit of that assistance, for example:**
 - a. by providing discounts for repayments in full within specified time frames; and**
 - b. not pursuing shortfalls in the event that a property is sold and there is insufficient equity to repay both the outstanding home loan and mortgage assistance.**

11. The assistance available should have two possible elements:

- a. a capped lump sum to be used toward home loan arrears, fees and charges; and**
- b. ongoing supplementary payments for up to 6 months to assist borrowers to regain control of their financial situation;**

With \$10,000 and \$5,000 recommended as appropriate caps respectively for the two elements, adding to a total of \$15,000 as the maximum relief available.

12. The lodgment of a caveat on the title of a recipient's home is a sufficient and cost effective way of securing the repayment of the assistance.

13. The ACT might consider asking the Commonwealth to investigate the potential for ongoing market distortions to be created by the first home buyer grants.

14. Mortgage relief should be repaid within 10 years of the date of the last assistance provided but payments should not be required within the first 6 months of that period.

15. The consequences of non-payment should be made clear to all applicants however sale of a borrower's home to satisfy the debt should be a position of last resort.

16. The managers of the scheme should explore appropriate ways to establish links with relevant regulators to pass on information regarding potential problems in the ACT home mortgage market that may become evident in delivering the scheme.

2. Background and Terms of Reference:

In the lead-up to the recent ACT election, Chief Minister Jon Stanhope announced Labor's intention to introduce a scheme providing monetary assistance to home loan borrowers in financial difficulty and at risk of losing their homes.¹

Typically assistance of this nature is delivered by way of a no-interest loan, to a capped amount, which is used to reduce immediate home loan arrears and provide the borrower with the opportunity to maintain possession of their home. To secure repayment of the advance, an additional interest is normally noted on the title of the borrower's mortgaged property.

Schemes with similar objectives currently operate in a number of other jurisdictions in Australia² and the ACT has previously provided support of this type.³

The Centre for Commercial Law provided a proposal to ACT Treasury to research, canvass options and make recommendations regarding the operation of a mortgage relief scheme in the ACT. The agreed Terms of Reference for the project appear at Annexure 1.

The scope and timeframe for the project are both modest. A separate note has been made in the recommendations where further development or investigative work is required or might be of benefit. Where useful and appropriate, the views of external stakeholders have been sought. A list of the individuals and organisations consulted in the course of the project is contained in Annexure 3.

¹ Australian Labor Party, ACT Branch, *\$10,000 interest-free loans for Canberrans at risk of losing their homes*, Media Release, Canberra, 13 October 2008

² A brief comparison table of schemes operating elsewhere in Australia is provided at Annexure 2.

³ In 1992 the "Homesafe Housing Assistance Program" was introduced, via Instrument (DI1992-131) under the Housing Assistance Act 1987. The program was amongst a number of programs specifically noted as concluded in the Housing Assistance Redundant Programs 2006 (No 1) DI2006-68.

3. Setting the context:

Problems in credit markets around the world, including Australia, are well documented. Similarly, significant increases in personal debt, particularly over the last decade, are widely acknowledged as having reached levels without historical precedent.⁴

Debt financing the purchase of housing is the largest component of personal credit provision in Australia, representing approximately 86 per cent of the overall credit market.⁵ The rate of increase in housing finance has been linked to a sustained period of increase in property values.⁶

On the whole Australian consumers appeared to be dealing comfortably with their increased level of indebtedness. Increases in the cost of maintaining those debts have however combined with a number of other factors, including:

- Significant changes in the manner in which housing finance was sold, particularly the proportion of loans involving a broker/intermediary;⁷
- A general reduction in the quality of assessments of borrowers' credit worthiness and capacity to repay the credit being offered;⁸
- Changes in the market for those providing housing credit, and the type of facilities provided;⁹ and
- Signs of softening in the housing market.¹⁰

The combined effect of these changes has contributed to an increase in the numbers of households experiencing financial difficulty and in particular mortgage stress. Fujitsu Consulting has been tracking the changes in households' relative level of comfort in maintaining debt commitments for several years and has predicted that as many as 1 million households may be experiencing mortgage stress by the end of 2008.¹¹

⁴ See for example a paper by RBA Deputy Governor Ric Battelino, *Some Observations on Financial Trends, Address to Finsia-Melbourne Centre for Financial Studies*; 12th Banking and Finance Conference, Melbourne, 25 September 2007.

⁵ The Treasury, *Financial Services and Credit Reform – Improving Simplifying and Standardising Financial Services and Credit Regulation, Green Paper*, Canberra, June 2008, page 2

⁶ The growth in property values has been presented by the RBA as a reason why the level of personal debt in Australia should not be seen as alarming. See for example the comments of Assistant Governor Guy Debelle, *A comparison of the US and Australian Housing Markets – Address to the Subprime Mortgage Meltdown Symposium*, Adelaide, 16 May 2008.

⁷ The Treasury, *Financial Services and Credit Reform, Green Paper*, *ibid*, pages 3 & 4.

⁸ See for example the comments of APRA Chairperson John Laker in, *Credit Standards in Housing Lending – some further insights*, Speech presented to the Institute of Chartered Accountants in Australia, Melbourne, 20 June 2007 (in particular page 2).

⁹ The Treasury, *Financial Services and Credit Reform, Green Paper*, *ibid*, page 3.

¹⁰ The potential for property price falls to lead to situations of negative equity has featured in a number of media articles in recent months, for example Kelsy Munro's, *Weather the perfect storm*, which appeared in the Money sections of the Age and Sydney Morning Herald on 23 April 2008.

¹¹ Fujitsu Consulting, *Anatomy of Australian Mortgage Stress – Observations from our omnibus survey 2006-2008*, Sydney, March 2008. Estimations of the numbers of households in mortgage stress by the end of 2008 were widely reported, including in an article by Katherine Jimenez, *Mortgage Stress may affect 1 million households*, which appeared in The Australian on 4 July 2008.

Analysis of demand for a mortgage relief scheme:

According to information provided by ACT Revenue, there are currently 130,234 properties in the ACT subject to general rates. Of that number 28,172 raise a liability for land tax and 12,746 are properties owned by pension recipients, with a concession entitlement.¹²

The most recent ABC Census data from 2006 noted 45,313 ACT dwellings were in the process of being purchased and therefore subject to a mortgage.¹³

Overview of mortgage stress in the ACT

In many ways the ACT is a fortunate community, with residents enjoying higher per capita incomes than their counterparts in other jurisdictions. Although they also carry higher per capita debt levels, ACT residents are generally considered to be less financially stressed than people living elsewhere in Australia.¹⁴

In a February 2005 paper prepared for the ACT Chief Minister's Department, Stakelum and Galang noted that high levels of mortgage debt are often carried by higher income households with greater capacity to keep pace with their commitments.¹⁵ A greater proportion of high value mortgages in the ACT in comparison to elsewhere in Australia was offset by higher incomes and rising property values. Stakelum and Galang suggested that those who struggle the most with credit commitments are often in receipt of lower incomes and generally do not have the asset base that home purchasers enjoy.¹⁶ There was however a note of caution:

There are substantial numbers of people who are not currently experiencing financial stress because of debt, but who could slip into financial stress if their personal circumstances, their employment situation, or the economy deteriorated.¹⁷

Regardless of relative levels of comfort across borders, as the cost of credit increased and the loosening of credit standards exposed loans that proved unsustainable the ACT, like other places in Australia, has experienced an increase in mortgage stress.

¹² Information provided by ACT Revenue, ACT Department of Treasury, 24 October 2008.

¹³ Australian Bureau of Statistics (ABS), *2006 Census QuickStats: Australian Capital Territory*, Canberra 25 October 2007, page 6. This total may include investor finance but the categories are not broken down further.

¹⁴ ABS, *Financial Stress in the ACT Lower than National Figure*, Media Release, Canberra 10 May 2005. The release referred to information from the 2002 ABS General Social Survey (GSS).

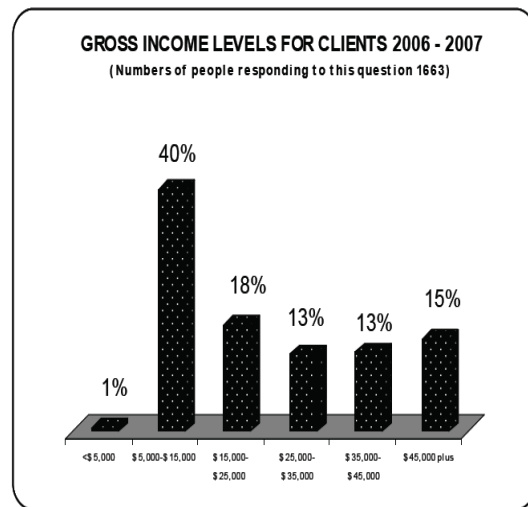
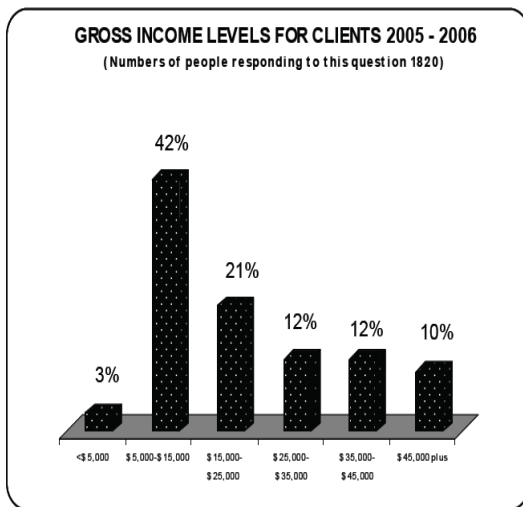
¹⁵ Stakelum, Patrick and Galang, Leila, *The ACT Community Inclusion and Household Debt Pilot Project*, Refereed Paper presented to the Transitions and Risk: New Directions in Social Policy Conference, Melbourne, February 2005, page 6.

¹⁶ Stakelum and Galang, *ibid*, page 5.

¹⁷ Stakelum and Galang, *ibid*, page 7.

Care Inc Financial Counselling Service (Care Inc) and the collocated Consumer Law Centre of the ACT (the CLC) note increased demand for assistance from borrowers struggling with home loan repayments.¹⁸ The change in Care Inc's demand has also been reflected in a shift in the demographic profiles of the people seeking assistance. Traditionally the preserve of very low income people, financial counselling support in the ACT is being sought more readily by those in receipt of moderate incomes.

The following graphs illustrate the increase in the proportion of clients making contact with Care Inc in the 05/06 and 06/07 financial years and reporting incomes over \$45,000.¹⁹



Care Inc is yet to release its Annual Report for 07/08. In its six-monthly reporting to the ACT Department of Disability, Housing and Community Services however Care Inc noted that the proportion of clients reporting incomes over \$45,000 increased to 19 per cent in each of the July to December 07 and January to June 08 periods. Problems with home loans appeared in Care Inc's 'top ten' list of reasons clients report for seeking assistance for the first time in the July to December 2006 period and has remained in the list ever since.²⁰

There is other material confirming the shifts exhibited in Care Inc's data. For example, joint research undertaken by the CLC and the Centre for Commercial Law in relation to actions to enforce debts against real property security through the ACT

¹⁸ Care Inc Financial Counselling Service, *Annual Report 2005/2006 & Annual Report 2006/2007*, Canberra, November 2006 and 2007 (respectively). Copies of the reports are available on Care's website www.carefcs.org.

¹⁹ Care Inc, *Annual Report 2006/2007*, *ibid*, page 7.

²⁰ Care Inc, *Performance Reports to the ACT Department of Disability, Housing and Community Services 1/7/07 – 31/12/07 & 1/1/08 – 30/6/08 (unpublished)*, Annexures 1 and 4, Canberra, January 2008 and July 2008.

Supreme Court, recorded the following numbers of actions commenced between 2002 and 2006:²¹

Year	Number of Actions
2002	53
2003	58
2004	55
2005	90
2006	83
Total	339

The total number of foreclosure actions in the ACT is still very low²² however the increase in 2005 exhibited in the above table was marked. The easing in 2006 appears to have continued and in communications with the ACT Supreme Court Registry in the course of preparing this paper a manual count undertaken by Court staff revealed only 61 actions lodged in the 2007 calendar year. There has however been a modest increase again in 2008, with 66 actions lodged so far, from 1 January 2008 to 30 October 2008.²³

The Reserve Bank made reference to the increasing incidence of housing loan arrears in its September 2008 Financial Stability Review:

Across all housing loan types, it is estimated that around 17,000 borrowers are 90 days or more behind on their mortgage repayments. This compares with an estimate of around 15,000 borrowers that were 90 or more days in arrears earlier in the year.²⁴

The proportion of all ACT housing loans 90 days or more in arrears at the end of July 2008 was 0.219 per cent, much lower than the NSW figure of 0.843 per cent. An historical comparison with previous ACT numbers is not however so flattering. Two years ago, at the end of July 2006, the proportion of ACT housing loans 90 days in arrears was 0.134 per cent. Five years ago the proportion was 0.022 per cent.²⁵

In summary:

- The ACT generally fares better than other jurisdictions in relation to the proportion of its population experiencing financial difficulty.
- In the ACT, as is the case elsewhere, being able to purchase a home can be an indicator of relative financial comfort.

²¹ The Consumer Law Centre of the ACT and the Centre for Commercial Law (ANU), *They still want to take our house – A further investigation into house reposessions in the ACT Supreme Court*, Canberra, December 2007, page 10.

²² In comparison CLC and CCL report, *They still want to take our House*, reported the number of actions brought seeking possession of real property in NSW in 2006 as 5368 and in Victoria 2765 (ibid, page 11).

²³ Information provided by the ACT Supreme Court Registry, 31 October 2008.

²⁴ Reserve Bank of Australia, *Financial Stability Review September 2008*, Sydney, page 45.

²⁵ The RBA's *Financial Stability Review* (ibid) provides a graph of 90 day housing loan arrears by State on page 46. The ACT figures are not however disaggregated in that graph. The ACT numbers referred to were provided in communications with the Reserve Bank directly, in an additional table sent by email. The data in the table was attributed to the RBA and Perpetual.

- The incidence of financial difficulty has increased in recent years and broadened to include demographic groups that might previously have been considered less likely to be impacted.
- Whilst off a low base and at a rate proportionally less than has been the case in other parts of Australia, there has been an increase in the number of ACT residents experiencing difficulties in meeting commitments on housing loans.

Likely level of usage

There are clear limitations on the circumstances in which assistance provided through a mortgage relief scheme will be useful and appropriate. For example, not all home loan accounts that are in or at risk of accruing significant arrears will be capable of being made sustainable even if assistance were to be provided. Similarly where there are genuine questions about whether a home loan should have been provided from the outset, because it was unfair or unaffordable, it would be inappropriate to provide assistance until such questions are resolved.

Data regarding the emergence of financial stress in the ACT is a useful indicator of potential demand for a mortgage relief scheme. So too is information about the applications made to and assistance approved by schemes in other jurisdictions. The NSW, Victorian and Queensland schemes are the most useful for that purpose, however accessing up-to-date information is not easy. In communications during the preparation of this paper, only the NSW scheme provided estimates for the number of approvals for mortgage relief in 2007/08, with indications similar to the previous financial year. The Housing NSW Annual Report for 2006/07 indicated that \$1.385 million in assistance was provided to 229 new households.²⁶ Housing NSW indicated that approximately half the applications received by the scheme are approved.²⁷

The public reporting of the Victorian scheme suggests very low take-up. Only 26 applications were received in 2005/06 with 9 approvals. In 2006/07 38 applications resulted in only 11 advances.²⁸ It may be that low take-up levels in Victoria are related to that scheme's eligibility criteria. For example, as at 30 June 2007 to be eligible for assistance in Victoria, the original loan must have been below \$264,150.²⁹ Victorian applicants are ineligible if the subject home is on the market.³⁰

It has not been possible to locate any public reporting of Housing Queensland's scheme and requests for information regarding usage of the scheme did not receive a reply in the course of the project.

Having regard to:

- The total number of properties subject to mortgage in the ACT (between 45,000 and 50,000);

²⁶ Housing NSW, *Annual Report 2006/07*, page 45.

²⁷ Telephone interview, Housing NSW Mortgage Relief Team staff, 28 October 2008.

²⁸ Housing Victoria, *Summary of Housing Assistance Programs 2006/07*, page 38.

²⁹ Housing Victoria, *Summary of Housing Assistance Programs 2006/07*, *ibid.* Note this amount has since been increased \$337,500 but is still curiously linked to the amount of the initial advance.

³⁰ <http://www.housing.vic.gov.au/private-rental-ownership/mortgage-relief-scheme>

- The current proportion of housing loans 90 days or more in arrears in the ACT (0.219 per cent at the end of July 2008);
- The number of foreclosure actions commenced in the ACT Supreme Court;
- Other data concerning the changes in the incidence and experience of financial difficulty in the ACT; and
- Data regarding the provision of mortgage relief assistance in NSW and Victoria;

It is likely that the number of applications for assistance in the ACT would be quite low. Whilst it is no more than an informed guess and would be influenced by continuing variations in economic conditions, an estimation of between 40 and 100 mortgage relief advances in the ACT per annum appears reasonable.

Recommendation:

- 1. The ACT should develop and implement a mortgage relief scheme as soon as practicable to meet a need that is small in total number but significant in personal impact.**

4. Options for an ACT Mortgage Relief Scheme:

This section will explore the options for establishing a mortgage relief scheme suitable to the ACT context. It will cover the key elements of:

- Location;
- Scheme design; and
- Relationships with scheme users.

Location:

There appear to be three options for the location/hosting of a mortgage relief scheme:³¹

a) Internal to Government:

Resourcing, locating and managing the delivery of mortgage relief internal to government is the most prevalent model for the schemes currently in operation in Australia. The NSW, Victorian and Queensland schemes are located in the respective Housing Departments in each of those jurisdictions. The previous ACT Scheme, withdrawn by instrument in 2006,³² was also operated on behalf of the ACT by Housing ACT.

In general governments tend to eschew the delivery of services that are readily available in the general market. There is a multi-layered home loan market in Australia, including emerging sub-markets for products that have a social as well as for-profit focus.³³ Mortgage relief is however distinguishable from other market-based services.³⁴ The support is required because the market cannot or will not provide the specific solution without external intervention.

b) Resourced by but operated external to and separate from Government:

There does not appear to be any mortgage relief scheme currently in operation in Australia that is resourced by a government but delivered externally and separately from government control. It would however be theoretically possible for the ACT Government to seed a fund for the purpose of providing mortgage relief assistance and have the management of that fund, including the oversight of the repayment of the assistance, separate to Government.

Assuming the provision of assistance would be application-based and require repayment of the money advanced, similar to other mortgage relief schemes, an external system would require sufficient ongoing administrative resourcing to

³¹ There is potentially an additional option, where the funding and operation of a mortgage relief scheme could be provided by sources entirely separate from government. This option has not been considered further because it appears so remote in the current economic environment.

³² Note although the ACT “Homesafe Housing Assistance Program” was officially discontinued in 2006 it appears not to have been in active operation for several years previous. More detailed information about the previous scheme was not available for the preparation of this report.

³³ Examples of social/market hybrids include initiatives like the ACT Land Rental and Equity Share approaches.

³⁴ For example insurance is often sold with home loans to assist with a later change of circumstances.

fulfill the roles adequately and provide certainty to both users and the service provider. In some instances it may take many years for repayment to occur, suggesting it would be hard to place temporal limits on the ongoing administrative resourcing, again presumably provided by Government.³⁵

Because the ACT is a small jurisdiction and the number of applications is likely to be within a low range, it would be impractical and inefficient to develop a specific purpose external provider. Collocation with other services is a possibility. There are however few if any obvious places such a scheme might be located in the ACT apart from the for-profit market, where the necessary skills to properly assess and approve applications and manage accounts already exist.

Other related challenges in considering an operational model external to ACT Government include the limited opportunities to achieve 'scale' benefits, in aligning 'like' services. Similarly, there are few practical options by which the ACT could seek external funding contributions to defray or supplement the costs of seeding and administering a scheme, for example by inviting or mandating credit industry contributions. Finally, the potential problems associated with ensuring that an external and independent provider operates as intended when distributing public funds are not easily tackled or overcome.

An external and separate scheme funded by Government is likely be the least practical and most expensive option.

c) Funded *and* owned by Government but delivered through an intermediary or manager:

An example of a model of this type is the Keystart Housing Scheme Trust in Western Australia.³⁶ An initiative of the West Australian Government, Keystart is owned by the WA Department of Housing and Works.³⁷ It is primarily a home finance provider and the mortgage relief element of Keystart's business, known as *Restart* is very small, essentially offering refinance with Keystart, where loans made by third party providers are in arrears. The Keystart Annual Report 2007/2008 noted only 5 *Restart* loans were made in the financial year.³⁸ Only 34 *Restart* loans in total have been made since the option commenced in 2003.³⁹

In a similar vein, Homestart Finance was established by the South Australian Government in 1989 to, amongst other things, help low to moderate income households enter the home purchase market. Included in the list of Homestart's functions is:

³⁵ For example, communications with Housing NSW in the course of preparing this paper indicated the scheme had accumulated carry over debts of in the order of \$3 million over it years of operation.

³⁶ The comparison table in Annexure 2 provides information about Keystart's *Restart* loan.

³⁷ 'Owned by' is the description provided on Keystart's web-site www.keystart.com.au/key/about-keystart.htm. It has not been necessary for the purpose of this report to explore the nature of the relationship between Keystart and the WA Department of Housing and Works.

³⁸ Keystart Housing Scheme Trust, *Director's Report for the Year Ended 30 June 2008*, Perth 29 August 2008, Page 2.

³⁹ Information provided through direct enquiry to Keystart, October 2008.

*...to provide, manage or facilitate mortgage relief schemes.*⁴⁰

Unlike the West Australian scheme however, Homestart does not offer a mortgage relief option and no other facility of that type appears to be available in South Australia.

The purpose of discussing the West and South Australian experiences is twofold:

- The type of organisation that would be well suited to managing a mortgage relief fund in terms of skills and experience is likely to be one focused on providing services to assist people enter or remain in the housing market.
- The services that have been developed by governments to date in this area have been primarily interested in the direct provision of housing finance, rather than assisting borrowers to reestablish loans with other providers.

The focus in both West and South Australia therefore appears quite different. Specifically, the income-generating lending activities of the alternate, though Government owned and backed providers, are the priority.

There is no active home lending undertaken by ACT Government at present, either directly or through another agency.⁴¹ Community Housing Canberra (CHC) might offer a model of service provision that could be adapted to include the provision of mortgage relief. At present however CHC does not offer loans, or advice on housing finance, so there would likely be significant investment required to develop the capacity. Time did not permit discussing the option with CHC in the course of the project.

In the ACT, the 2008 pre-election commitment by ACT Labor to establish a scheme noted the following:

*The Mortgage Relief Fund will be managed by the community sector. ACT Labor will provide \$50,000 a year for the management of the Fund and financial counselling for households who access a loan.*⁴²

Managing a loan facility, including receiving and determining applications and overseeing repayments, would represent a conflict of interest for a financial counselling service. Financial counselling is designed to assist people experiencing problems with credit and debt, including advocacy and ongoing case management.

Care Inc, as the ACT's main provider of financial counselling since 1983, has however operated a no-interest loans scheme (NILS) since 1997 to resource the

⁴⁰ Housing and Urban Development (Administrative Arrangements) (Homestart Finance) Regulations 2007, Regulation 6(1)(d).

⁴¹ ACT Revenue does have the management responsibility for the ACT Home Loan Portfolio, left over when the ACT exited the home lending market approximately a decade ago.

⁴² Australian Labor Party ACT Branch, *\$10,000 interest-free loans for Canberrans at risk of losing their homes*, Media Release, Canberra, 13 October 2008.

purchase of essential household items, primarily white-goods.⁴³ In this instance the conflict for Care Inc and its clients is adequately managed by ensuring that no current clients of the financial counselling service can also be NILS borrowers.

There are several other steps to ensure that the NILS relationship is not incompatible with Care's Inc's core roles and duties, including:

- loans are to a capped maximum value of \$650; and
- there is no formal collection action in the event of default.

Mortgage relief assistance involves much larger sums of money and creates a repayment obligation that is likely to be pursued. It is therefore hard to see how a model of that type could be delivered and overseen by a financial counselling agency, without compromising the financial counselling role.

Managing decisions to lend, how much and on what terms, are also likely to be steps that would present challenges for other community providers that, whilst not insurmountable, would require careful consideration. The considerations would include the structural and cost implications of appropriate training, supervision, compliance and financial controls.

Notwithstanding, it is likely that applicants for assistance from a mortgage relief fund would benefit from access to appropriate community sector support, particularly from financial counselling services. The support needs of scheme users are likely to range from the preparation of application material, through to potential ongoing assistance regardless of whether the application for resources from the scheme is successful. Rather than the scheme being managed by a financial counselling or other community service provider, perhaps more benefit can be gained by establishing useful referral and relationship support for applicants from within the community sector. This issue is also raised in the Relationship section to follow.

Summary:

Of the three options canvassed, the most straightforward would be the first, with ACT Government funding and hosting the scheme. Government is best placed and arguably most appropriate to supervise the distribution of public resources and to report on the outcomes. The obvious next question is where within ACT Government would be the most appropriate place to locate a mortgage relief scheme. As noted earlier, the Housing Departments of NSW, Victoria and Queensland are the hosts of the Australian schemes currently in operation and entirely internal to government. The previous mortgage relief scheme operated in the ACT was hosted by Housing ACT.

There are a number of ACT Government Departments or Offices that provide material aid in various forms. There are really only two however with the necessary infrastructure to comfortably absorb the functions of a mortgage relief scheme, without the need for significant additional investment to prepare for and deliver the scheme and where the delivery of such a program would make logical sense - Housing ACT and ACT Revenue.

⁴³ Details of Care Inc's NILS can be found in the agency's Annual Reports. Several recent Annual Reports are available on Care Inc's web-site www.carefcs.org.

Housing ACT:

As the provider of public housing in the ACT and the host of the previous mortgage relief scheme, Housing ACT would have considerable understanding of the issues to be addressed. Housing ACT also hosts the current ACT Rental Bond Loan Scheme suggesting the capacity to manage the receipt and processing of applications, as well as the repayment of advances, already exists in some form.

ACT Revenue:

Currently ACT Revenue manages the ACT Home Loan Portfolio. The Territory ceased providing home loans some time ago, but ACT Revenue has for some time managed long term repayment obligations, secured by an interest in the borrower's home. The Revenue office also administers a variety of other programs that have synergies with the operation of a mortgage relief fund, including the First Home Buyers' Grant, Concessional Stamp Duty arrangements and the process for deferring Rates obligations on account of financial hardship. The Rates Deferral (Hardship) Application form currently used by ACT Revenue could be readily adapted for use as a mortgage relief application, with significant overlap in the information required and already being processed.⁴⁴

Although it is likely that either Housing ACT or ACT Revenue could conduct the mortgage relief scheme on behalf of Government, ACT Revenue does not have the added pressure of balancing competing housing needs at a service delivery level. ACT Revenue is an agency that is well suited to conducting financial assessments, based on clear criteria and has considerable experience and expertise in managing ongoing, often long term debts, secured by an interest in residential property.

Recommendations:

- 2. It is preferable to locate and host a mortgage relief scheme internal to ACT Government.**
- 3. ACT Revenue would be a suitable host agency for the scheme due to its considerable experience in managing compatible application-based processes and the repayment of debt obligations.**
- 4. Further investigations could be undertaken to test the development potential of the model operated by Community Housing Canberra to offer alternative forms of targeted support and advice for moderate income households wanting to enter or remain in the housing market.**

⁴⁴ The ACT Revenue Office Rates Deferral (Hardship) Application can be found at <http://www.legislation.act.gov.au/af/2006-79/current/pdf/2006-79.pdf>

Design of the scheme:

A mortgage relief scheme is essentially a public support service, providing financial assistance to struggling home loan borrowers. Being clear about the goals and design features of the scheme is an important way of ensuring that service users, scheme administrators, key stakeholders, including the general public, have a good understanding of what the scheme is setting out to achieve and how it will go about delivering on that intention.

At the most basic level, in order to reach the intended target group at the time the support is required and might be useful, the scheme must be effectively advertised and readily accessible.

In spite of its relatively small size, which would tend to support effective distribution of information, the ACT has sometimes struggled to ensure that details about available support services are easy to locate. For example, a key finding from the Review of ACT Government Concessions concluded in early 2008 was that:

All jurisdictions, except the ACT, have a comprehensive guide to concessions available through the one source, either in hard copy or on the internet.⁴⁵

The ACT Government response to the Concessions Review agreed with this finding and undertook to develop a communications strategy that would better inform the community of the services available.⁴⁶ Although distinguishable from standard concession arrangements, it is likely that potential mortgage relief applicants would also be interested in and eligible for other assistance and support. It would therefore be important to make reference to a mortgage relief scheme in a revised communication approach or access portal.

Recommendation:

5. Information about the mortgage relief scheme should be easy to locate for potential applicants and linked to material regarding other support services available in the ACT.

Easily accessible information about the scheme's existence should be supported by effective detail on the key elements of the scheme, which would match the key design features:

- Eligibility;
- How to apply;
- The relief available; and
- Responsibilities.

⁴⁵ ACT Department of Disability, Housing and Community Services, *Review of ACT Government Concessions*, Canberra, February 2008, Finding 6, page 33.

⁴⁶ ACT Department of Disability, Housing and Community Services, *Review of ACT Government Concessions – ACT Government Response*, Canberra, February 2008, page 7.

Eligibility

The comparison table in Annexure 2 describes key eligibility criteria that apply in similar schemes operating in other Australian jurisdictions. Broadly speaking the criteria fall into 4 categories.

a) *Confirmation of the personal (ie non-investment) nature of the assistance:*

All current Australian schemes require borrower/applicants confirm that:

- The home loan for which assistance is sought relates to the borrower's principal place of residence; and
- The borrower does not own additional real property.

Both of these requirements appear uncontroversial. It is inappropriate for public assistance of this type to be used to sustain ownership of an investment property. Similarly, if an applicant owns other real property, they arguably have further options available to them to address their financial difficulties, either by offering additional security to their credit providers to support varied loan obligations, or through the sale of the additional assets.

b) *Meeting any financial limitations set by the schemes (for example the value of the property, the size of the debt, the borrower's income and repayment levels):*

Each of the current Australian schemes adopts one or more financial limitations on eligibility. Rather than comparing and contrasting the individual elements of the financial caps that are currently applied elsewhere, it is potentially more useful to consider the policy rationale that might inform development and adoption of caps in the first place.

The starting point might be to question whether there is a need for or benefit to having caps at all. If the main intention of a mortgage relief scheme is to provide assistance to people experiencing problems with a home loan, where not providing assistance would place those people at risk of losing their home, why limit access to assistance on the basis of property values, loan balances, income and the like? Providing assistance to very high income borrowers, or to assist in the retention of what might be considered luxury accommodation raises broader equity issues. Those issues are arguably just as prevalent in the first home buyers market, where access to eligibility for a grant is:

...not means tested either by income, assets or property valuation.⁴⁷

Regardless of whether other programs are effectively targeted, in relation to the provision of mortgage relief there is clearly a balance to be struck to

⁴⁷ ACT Department of Treasury, *First Home Owner Grant General Information*, available at http://www.revenue.act.gov.au/home_buyer_assistance_mp/7/general_information

ensure the relief targets genuine need, but is not unnecessarily onerous or potentially judgmental as to exclude circumstances where homes could be saved and additional stress and cost avoided. As noted earlier, the rate of take up of the Victorian scheme suggests that the caps to entry may be too tightly constrained.

Thoughtful initial design could ensure that the intended purpose, rather than the caps themselves become the focus. A satisfactory resolution might be achieved in the following manner:

- By adopting the ACT median house price as the maximum value for eligibility, to be reviewed 6 monthly to ensure ongoing relevance;
- Not applying a maximum loan value, or current balance, instead opting for a maximum loan to value ratio of 90 per cent; and
- Adopting the current ACT Concessional Stamp Duty gross household income upper threshold (as varied from time to time).⁴⁸

c) The reasons for seeking assistance:

In NSW, Victoria and Queensland, the main reason noted for seeking assistance in material describing the schemes is a change in circumstances leading to financial difficulty that will place an applicant at risk of losing their home. That appears a most appropriate rationale.

In contrast, the West Australian requirement that the loan be at immediate risk of termination appears unnecessarily restrictive. For example, while there may be some applications for relief made after foreclosure proceedings have commenced, there will as a result be significant enforcement expenses added to the balance outstanding on the loan. It would be an unfortunate outcome if a mortgage relief scheme, directly or by implication, discouraged the making of applications for mortgage relief until the relationship with the home loan provider had already substantially broken down.

d) Meeting the documentary requirements for lodging applications:

Each of the schemes currently in operation is supported by a detailed and documented application process. Applicants must respond to and complete each one of the requirements or risk their application not being processed. There is also a requirement for information to be sourced from the provider of the home loan the subject of the application.

The existence of a formal application process and documentary requirements that must be met is uncontroversial and should be a key feature in an ACT Scheme. Precisely what the requirements might be to ensure an effective application process is dealt with under the next heading.

⁴⁸ The current gross household income eligibility threshold for accessing the ACT Concessional Duty scheme is \$120,000 (with a sliding scale based on the number of dependent children).

Recommendation:

- 6. In setting the key eligibility criteria for the scheme, the following principles will support integrity without unnecessarily limiting access:**
- a) the home loan must relate to the applicant's residence and the applicant should not own other property;**
 - b) any financial and income caps should be aimed at facilitating access where it might genuinely be useful;**
 - c) the central reason for seeking assistance should be financial distress threatening continuing home ownership; and**
 - d) there should be a formal, written application process.**

Application process

Each of the schemes currently in operation in Australia has a detailed, written application process, requiring appropriate supporting documentation. Recommendation 6 (d) suggests that any ACT scheme should also adopt a formal application process.

The application process has two key elements:

- information provided by the applicant(s) confirming personal details and outlining financial circumstances; and
- material required from the credit provider.

Information to be provided by the applicant(s):

The applicants are the primary borrowers who have a responsibility for paying the home loan. This definition does not extend to guarantors. Similar to other current schemes, the applicants should be required to provide key information, such as:

- their full name, address, contact details and details of dependents;
- details of the home loan and the property secured by the loan;
- employment details;
- income and Expenditure information;
- assets and liabilities;
- an explanation of their circumstances and the reasons why relief is being sought (with supporting information such as doctors' certificates, redundancy notice etc, as appropriate);
- details of the relief being sought;
- reasons why approval would be of assistance; and
- a signed authority, facilitating the checking and sharing of information to process the application.

As noted earlier, the Rates Deferral (Hardship) Application currently used by the ACT Revenue Office contains a useful template for the financial information that might be required of applicants. Sufficient clarity and detail in the application form will support the efficient and consistent processing of applications. Similarly, applicants should be clearly informed prior to lodgment that failure to provide all of the material requested will mean that an application is not processed.

It is highly likely that applicants would benefit from external assistance in the preparation of their applications. The most likely sources of such assistance would be:

- financial counsellors (and Care Inc's data referred to earlier in this paper suggests borrowers experiencing problems with home loan payments are already seeking assistance of this type in increasing numbers);
- accountants; or
- financial planners (these latter groups being particularly useful for the self employed or small business people).

Application material could contain referral suggestions and relevant contact details for organisations that might provide assistance in preparing applications. If referral information is provided, it would be important to make clear that some professional services will incur a fee. It may however be useful for the ACT Government to discuss its plans for developing a scheme with representatives of the local accounting and financial planning industries, to see whether assistance might be provided to applicants pro-bono, or at a reduced rate.

Community based financial counselling services are free of charge. Some, like Care Inc, do however apply eligibility criteria for clients seeking access to face-to-face services, including limitations on income and assets.⁴⁹ It may be useful to discuss variations or exemptions to normal financial counselling client eligibility criteria to allow assistance to be provided to all bona-fide applicants for mortgage relief. There would likely be resource implications for financial counselling agencies in assisting mortgage relief applicants, but with the estimated number of applications low and additional resourcing already contemplated, this is unlikely to be insurmountable or expensive. It may also be very useful to discuss the scheme with local financial counsellors.⁵⁰

Finally, it may be useful for service providers like financial counsellors, accountants and financial planners to be able to certify that they have seen original material referred to in application forms.⁵¹ That may cut down the amount of supporting material required to accompany applications, or where external checking is required by the processing agency. It would not however be

⁴⁹ Care Inc receives funding from a variety of government programs and, in the ACT, from the Department of Disability, Housing and Community Services and the Department of Justice and Community Safety. Contracts for service provision include reference to eligibility criteria.

⁵⁰ There is an informal, unincorporated Financial Counsellors' Network in the ACT, which involves all of the agencies providing financial counselling – Care Inc, Lifeline and the Salvation Army MoneyCare program.

⁵¹ This material might include original account statements, pay-slips, tax returns and benefit statements.

appropriate for these service providers to be asked to certify the accuracy or completeness of the material provided. That is ultimately a responsibility of the applicants themselves and there would no doubt be a requirement in the application form for applicants to certify the accuracy of the information provided, to the best of their knowledge.

Material required from the credit provider:

Each of the other schemes currently in operation requires the borrower to seek and include information from the credit provider with the application. The information includes details about the home loan, including the balance, any arrears, the current status of collection/enforcement action, how payments are made and so on. There is also normally a request for the credit provider to certify that efforts have been made and exhausted to find a solution to the borrowers' problems, as well as an undertaking that provision of the relief sought will prevent any immediate threat to the applicant retaining possession of their home. It is vital that certification of this type is included in the application process for any ACT scheme however there are limitations on its effectiveness that will be discussed further in the responsibilities section on page 28.

Recommendations:

- 7. The application for mortgage relief should involve two parts:
 - a) detailed personal and financial information from all applicants; and
 - b) material from credit providers, including an acknowledgement that efforts have been made to consider and respond to the applicants' difficulty.**
- 8. The financial information sought in the Rates Deferral (Hardship) Application currently used by ACT Revenue should be considered as a template for the relevant section in any Mortgage Relief Scheme Application.**
- 9. Consideration should be given to discussing the development of the scheme with local financial counsellors, accountants and financial planners to see what assistance they might provide in preparing, filing and following-up applications.**

Nature and scale of relief

As noted earlier and detailed in the table comparing current schemes in Appendix 1, the most frequent method for delivering mortgage relief assistance is by way of an interest free loan. Because mortgage assistance is invariably paid directly to the credit provider for use against the interest bearing home loan however, the outcome redistributes rather than adds to debt commitments and the normally interest free nature of the assistance reduces the overall cost of carrying and repaying the principal home loan.

If some or all of the assistance available were to be provided by way of grant rather than a loan, the effects would undoubtedly be more profound for successful applicants and with a scheme of the size anticipated in the ACT, might even be cheaper to administer. There are many sound public policy reasons why a loan might be preferable to a grant, from significant issues of equity to avoiding unintended market distortions. In contrast however the sums committed to the continuing and recently increased grants to assist people in the first home buyer market are likely to be greater than the support required to keep the people at risk of losing their homes in those properties.

It may be useful if the jurisdictions providing mortgage relief assistance asked the Commonwealth to investigate the potential for ongoing market distortions to be created by the first home buyer grants. The current approach does not on its face appear to be targeted at tackling the structural causes of an unaffordable housing market. If the grants contribute to price increases, or prevent prices decreasing, there may be links between the market impacts of those grants and first home buyers taking on loans that later prove unsustainable. There is very little information currently available to explore these issues further and detailed research and analysis may assist in that process.

There are other ways that the mortgage relief assistance provided might be extended further than the initial advance, including:

- discounts for repayments in full within specified time frames (for example a percentage reduction in the total required if repaid within three years); and
- not pursuing shortfalls in the event that a property is sold and there is insufficient equity to repay both the outstanding home loan and mortgage assistance.

In relation to the second of the potential additional benefits suggested, pursuing shortfall debts might not only cost more than what can be recovered but press scheme user/debtors into considering options like bankruptcy and increasing the spread of costs in the community.

Assuming that the preferred option is repayment of the assistance, an interest free loan is administratively simple and does not compound the applicant's financial difficulties. Charging interest produces a credit relationship and would likely trigger significant additional regulatory and compliance obligations.⁵²

⁵² The definition of 'credit' in the Uniform Consumer Credit Code 1996 includes at section 6(1)(c) (where):
...a charge is or may be made for providing the credit.

The additional question of how to record and/or secure the obligation to repay the assistance provided is one of scale. In Victoria and Queensland, the States' interest is secured by way of a registered mortgage. In NSW the interest is noted by way of a caveat against the title of the borrower's property. A mortgage is significantly more expensive to prepare, settle and register and requires the formal consent of the home lender before it can proceed. The costs involved are added to the repayable assistance and therefore have the potential to erode the benefit of the relief. Registration of a mortgage may also impact upon the borrower's capacity to discuss and negotiate a refinance of the home loan.

In all of the circumstances lodgment of a caveat appears a more effective, appropriate and cost efficient solution.

The remaining issue is the quantum of the assistance available. In ACT Labor's pre-election commitment to establish a mortgage relief scheme, the sum adopted as a cap for the interest free loan assistance was \$10,000.⁵³ As noted in the comparison table a \$10,000 limit would mean that the assistance available in the ACT was the lowest of any scheme in operation in Australia. That outcome of itself is not important. What is significant is whether the sum provides meaningful assistance to the borrower.

If the entire scope of the exercise is the prevention of an immediate threat that a house will be available to a creditor because of non-payment of home loan obligations, \$10,000 may be useful in many situations. There is a wide variety of potential permutations, dependent on the size of the home loan and the applicable fees, terms and conditions, but as a general indication, \$10,000 could cover up to three months of payments on loans with balances less than approximately \$350,000.⁵⁴ For a facility of that size that is three months in arrears however, \$10,000 may not be sufficient to return the loan to order, especially if formal enforcement action through the ACT Supreme Court has already commenced. Additional fees, charges, penalties and enforcement costs in instances of serious and ongoing default are substantial and can exhibit considerable variation.⁵⁵

There is no perfect way of setting a useful cap for repayment of arrears. As noted, \$10,000 will certainly be of benefit in many situations. If official interest rate reductions continue and continue to be passed on by home lenders, \$10,000 will become even more significant as a lump sum contribution. It would however be very useful to consider an additional capped amount that might supplement on-going payments for a period of time. An additional capped sum of \$5,000 (producing an overall potential advance of \$15,000) would bring an ACT Scheme into line with the total assistance available under the current Victorian scheme. It would add

⁵³ Australian Labor Party ACT Branch, *\$10,000 interest-free loans for Canberrans at risk of losing their homes*, *ibid*.

⁵⁴ For example, using the Commonwealth Bank on-line home loan calculator, a \$350,000, 25 year home loan at the standard variable rate of 8.32 per cent, produces a monthly repayment requirement of \$2,776 (current at 6 November 2008). There are both cheaper and more expensive rates available. This example was chosen as a useful indicator.

⁵⁵ An example of the variation in legal costs claimed in foreclosure matters commenced in the ACT Supreme Court is contained in the CLC and Centre for Commercial Law report, *They still want to take our house*, *ibid* page 18.

significantly to the potential to provide immediate assistance and help borrowers to return to full payments over a longer period of time.⁵⁶

Recommendations:

10. The assistance should be provided by way of repayable, non-interest bearing loans, however consideration might be given to extending the benefit of that assistance, for example:

- a. by providing discounts for repayments in full within specified time frames; and
- b. not pursuing shortfalls in the event that a property is sold and there is insufficient equity to repay both the outstanding home loan and mortgage assistance.

11. The assistance available should have two possible elements:

- a. a capped lump sum to be used toward home loan arrears, fees and charges; and
- b. ongoing supplementary payments for up to 6 months to assist borrowers to regain control of their financial situation;

With \$10,000 and \$5,000 recommended as appropriate caps respectively for the two elements, adding to a total of \$15,000 as the maximum relief available.

12. The lodgment of a Caveat on the title of a recipient's home is a sufficient and cost effective way of securing the repayment of the assistance.

13. The ACT might consider asking the Commonwealth to investigate the potential for ongoing market distortions to be created by the first home buyer grants.

Responsibilities (borrowers and credit providers)

Borrowers:

The responsibilities of applicant/borrowers are primarily related to communication and a number have already been noted, at least for the stage before assistance has been approved and advanced. Providing information required in the application process honestly and in full are the key themes.

⁵⁶ Using again the CBA online example of a \$350,000 loan with a 10 year term referred to in footnote 38, \$5000 of additional assistance over a period of 6 months would reduce monthly payments by \$833 – or from \$640 per week to \$448 per week.

Once assistance has been approved the focus would naturally swing to communicating the normal information a borrower would be expected to pass on to a credit provider with an interest in their property. Any and all significant changes in circumstances, especially those which would impact the borrowers' capacity to keep up with their obligations on the home loan should be communicated to the scheme managers.

Failure to meet these communication responsibilities might result in assistance not being provided, or recalled.

Credit Providers:

Credit providers play a key part in the application process in schemes operating in other jurisdictions. Recommendation 7 suggests a similar approach be adopted in the ACT.

Consumer advocates and financial counsellors report a variety of difficulties in their dealings with home loan credit providers on behalf of borrowers experiencing payment difficulties.⁵⁷ These problems appear to be most prevalent in communications with non-traditional, non-'bank' home loan providers, or more accurately described as the non Authorised Deposit Taking (non-ADI) lenders.

If credit providers do not provide the information requested in the course of preparing a mortgage relief application, at all or in a timely manner, or perhaps more importantly do not attempt to understand or assist a consumer experiencing financial difficulty to overcome that situation, a mortgage relief scheme cannot force the issue. It is not in any sense a regulatory facility. There may however be opportunities for the administrator of the scheme to pass on useful market intelligence about the scheme's operation to the relevant regulator, where appropriate. For example, where a specific credit provider features frequently in applications to a small scheme such as that envisaged in the ACT, it may raise questions about the lending standards adopted and/or the manner in which that provider deals with consumers reporting hardship.⁵⁸

The CLC and CCL research into foreclosure activity through the ACT Supreme Court also showed that some credit providers are far more likely to commence enforcement action seeking possession of property than others, disproportionate to their relative market share.⁵⁹ A mortgage relief scheme may see evidence of this practice in its application base that might again warrant the passing of information to the relevant regulator for further investigation, assuming an appropriate and effective referral mechanism can be devised.

This issue is explored further in section 5, under the heading:

Regulatory challenges and imminent change.

⁵⁷ These issues were raised in the CLC and CCL publication, *They still want to take our house*, ibid and confirmed in communications with Care Inc, CCLC NSW and Legal Aid Queensland in the course of preparing this paper.

⁵⁸ There are a variety of processes by which credit providers might respond to reports of borrower hardship, from the formality of the variation process under sections 66-68 of the Uniform Consumer Credit Code, to a variety of promises in enforceable industry Codes of Practice, such as the Code of Banking Practice and the Mortgage Finance Association of Australia Code of Conduct.

⁵⁹ CLC and CCL, *They still want to take our house*, ibid, page 12.

Relationship with scheme users:

When a mortgage relief advance is approved, the scheme should ideally encourage successful applicants to return their finances to a sustainable footing. That is not to suggest that the scheme bears any responsibility for ensuring that outcomes beyond the provision of the relief are successful, but designing appropriate follow-up actions and facilitating useful referrals can ensure the benefits of the assistance provided are maximized.

- Repayment arrangements

Assuming a no-interest loan as the assistance most likely to be provided, the mortgage relief advance must be repaid. Ensuring the terms of repayment are realistic is important. So too is expressing the applicant's obligations clearly from the outset. Payment expectations should be included in key information provided to all potential applicants, before an application is lodged.

There are certain 'trigger' events that, if and whenever they might occur following an advance being made, would require the immediate repayment of the advance in full. Sale of the home, refinance and any settlement involving the property are formally recognised by several of the current schemes as events requiring immediate repayment.

To allow borrowers who are attempting to return their home loan to a sustainable footing an opportunity to do so without additional pressure, there should be no requirement to commence payments on a mortgage relief advance for the first 6 months after the advance is provided. Where there are ongoing supplementary payments for an agreed period, the 6 months should not commence until the last of the supplementary payments has been made.

The maximum suggested term for repayment is 10 years from the **last** date assistance is provided. Once 6 months from the date of assistance has elapsed, borrowers might be contacted and a rate of payment set to repay the advance within a 10 year term. Additional payments should be accepted at any time.

- Ongoing support for scheme users

Although it has been recommended that the main reason for seeking assistance be confirmed as a change of circumstances causing financial difficulty, the seeds of problems that result in a threat to a home loan can often take many years to accumulate. For example, households can take on debt levels that appear sustainable based on income levels at the time of borrowing, only to find that events like illness or unemployment undermine the capacity to keep pace with commitments. Home loans are usually long-term contractual obligations, with standard time frames spanning 25 to 30 years. It is unsurprising that the fortunes of a household may change a number of times over such a long period.

It would be unrealistic to expect that all applicants to a mortgage relief scheme will see all of their problems resolved by the approval and extension of assistance. Similarly not all applications will be successful.

The suggestions made in the application discussion on pages 23-25, regarding appropriate referral and potential for ongoing assistance from other service providers, particularly financial counsellors, apply equally here. The availability of relief through the scheme will not of itself assist struggling home loan borrowers to transition to safer, more affordable levels of debt. Providing useful referral to other support options may however increase the potential for outcomes of that type.

- **Implications on default**

Again assuming the relief is provided by way of a no-interest loan, repayment is still required. A consequence of non-payment is that collection activity will follow and the ultimate option available for enforcing the debt is the sale of the home. All of this should be made clear to applicants from the outset, however:

- regard should be had to the particular vulnerability of the people making application for relief;
- the scheme managers should provide borrowers in default with referral options, like financial counselling services, prior to escalating collection action; and
- any threat to enforce against a borrower's home should be seen as a last resort.

Regard might also be given to Recommendation 10(b), namely that shortfall debts remaining after the sale of property, be waived. Similarly and where appropriate, further assistance should be considered, including payment deferrals and ultimately formal waiver under the *Financial Management Act 1996* (ACT).

Recommendations:

14. Mortgage relief should be repaid within 10 years of the date of the last assistance provided but payments should not be required within the first 6 months of that period.

15. The consequences of non-payment should be made clear to all applicants however sale of a borrower's home to satisfy the debt should be a position of last resort.

5. Additional external factors:

There are a number of external factors which could impact upon the effective operation of a mortgage relief scheme. It is beyond the scope of this project to explore those factors in any detail however several examples follow.

- **Volatility in financial services markets and the economy more broadly:**

The volatility of current economic conditions makes it very difficult to predict what will occur and how ordinary consumers will be affected. The signs are wildly variable, from the good news that recent and significant cuts in official interest rates represent,⁶⁰ to the potential that a broader economic slowdown will produce an increase in unemployment with consequential additions to the number of people experiencing financial difficulty.

In relation to the recommendations made in this paper, at a time when financial conditions are changing, there is benefit in having more options available to respond to individual situations of hardship. Similarly, if in the course of delivering the scheme it becomes clear that more or different assistance might be of benefit, ACT Government will be better informed having introduced a facility such as that represented by a mortgage relief scheme.

- **The limitations in tackling personal debt and financial stability issues in a piecemeal fashion:**

A mortgage relief scheme focuses on one particular financial service with which a borrower might be experiencing difficulty. Not addressing problems with a home loan might mean that borrowers and their families face the loss of their accommodation. It is understandable that providing options to address those problems commands a position of priority.

It is unlikely however that a home loan problem will be the only financial challenge a household considering application to a mortgage relief scheme will be confronting. There may be a variety of other credit products that are in or in danger of falling into arrears. Similarly, other basic household commitments, like payments for utilities, telecommunications and so on, may be behind, threatening continued access to services.

Providing mortgage relief can be a useful intervention to deal with a specific immediate crisis. Tackling the underlying causes of that crisis and a return to longer term financial stability often requires a different type of engagement. Recommendation 9 makes suggestions regarding referral to other providers of ongoing support and assistance, particularly financial counsellors. Beyond the scope of this paper is any consideration of the broader reasons why Australian consumers took on so much debt and whether and how such a situation should be addressed and prevented from recurring.

⁶⁰ The RBA cut official interest rates by 0.25 per cent in September 2008, 1 per cent in October 2008 and a further 0.75 per cent in November 2008, after a sustained period of rate increases, dating back to May 2002 (www.rba.gov.au).

- **Regulatory challenges and imminent change:**

The *Uniform Consumer Credit Code* (the UCCC) is the main legislative instrument for regulating credit provision in Australia. Enacted in the Queensland Parliament in 1995, the Code was subsequently adopted⁶¹ in each of the other jurisdictions and commenced in November 1996. A Uniformity Agreement has ensured that the template legislation has delivered substantially the same consumer credit laws throughout Australia since the UCCC's commencement. A Committee comprised of officials from each of the jurisdictions has monitored the UCCC's operations and overseen any necessary reform processes.⁶²

There has been a growing recognition that the current legislative and regulatory scheme for consumer credit is not as efficient as it might be. In particular, the current framework for managing the UCCC has struggled to keep pace with emerging problems in the credit market.

In October, the Commonwealth announced its intention to assume responsibility for the regulation of consumer credit, with the agreement of the states and territories.⁶³ The agreement will take some time to process however it represents the most significant change in credit regulation since the commencement of the UCCC. Of significance to the ACT, the Australian Securities and Investments Commission will assume primary responsibility for the regulatory oversight of consumer credit provision in the Territory, a role that has previously been undertaken by the Office of Fair Trading, within the Office of Regulatory Services.

As discussed earlier in this paper, it is likely that in the course of delivering a mortgage relief scheme, the managers of that scheme will come into contact with information regarding the effective operation of the mortgage market and more specifically any problems, dysfunction or unfairness within that market. It would be very useful to explore appropriate ways for that information to be passed on to the relevant regulators, through a specific Memorandum of Understanding, under current Territory/Commonwealth relationships, or Minister to Minister exchange.

Recommendation:

- 16. The managers of the scheme should explore appropriate ways to establish links with relevant regulators to pass on information regarding potential problems in the ACT home mortgage market that may become evident in delivering the scheme.**

⁶¹ The UCCC was adopted identically in each of the States and Territories, save for West Australia, where substantially similar legislation was enacted.

⁶² The Uniform Consumer Credit Code Management Committee (UCCCMC).

⁶³ The Prime Minister, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, *New Measures for Australian Financial Services*, Joint Media Release, Perth, 3 October 2008.

Appendix 1:

Terms of Reference:

The Centre for Commercial Law will advise ACT Government on establishing a mortgage relief scheme, providing short term assistance to people experiencing problems with repayments on home loans. In providing advice, the Centre for Commercial Law will have specific regard to:

a) Analysis of demand:

- Overview of mortgage stress in the ACT
- Likely level of usage

b) Design of scheme:

- Eligibility
- Application process
- Nature and scale of relief
- Responsibilities of credit providers

c) Relationship with scheme users:

- Repayment arrangements
- Ongoing support for scheme users
- Implications on default

Appendix 2

Comparison Table

Jurisdiction	Administered by	Type of Relief	Amount available	Key eligibility criteria	Repayment arrangements
New South Wales	Housing NSW	Interest free loan	To a total of \$20,000 (anticipates both lump sum and ongoing payments, but to a maximum of 1 year's assistance)	<p>Balance of loan less than \$350,000 and value of house less than \$500,000.</p> <p>Must be principal residence.</p> <p>Gross household income less than \$90,000.</p> <p>Repayments must exceed 36% of gross income and payments made must exceed 27% of gross income.</p> <p>Serious financial difficulties, causing unavoidable change in circumstances.</p> <p>Written application form, including information and certification from lender.</p>	<p>Not specific.</p> <p>Normally approached to commence repayments 6 months after assistance provided.</p> <p>Caveat lodged to secure interest.</p>
Victoria	Housing and Community Building, Department of Human Services	Interest free loan	<p>To a maximum total of \$15,000 (with a maximum component toward arrears of \$7000)</p> <p>Initial assistance within a 12 month period, with potential to extend for further 12 months.</p>	<p>Original loan must not have exceeded \$337,500 and money borrowed must have been spent on purchase or construction.</p> <p>Total of housing loan and assistance advance must not exceed 95% of property valuation.</p> <p>Loan not a vendor's term contract or provided by private individual.</p> <p>Must be principal residence.</p> <p>Loan repayments must exceed 27% of gross income.</p> <p>Difficulties caused by unavoidable change in circumstances.</p> <p>Must have capacity to recommence loan repayments once assistance ceases.</p> <p>NOT available is house on the market or subject to a property settlement agreement.</p> <p>Written application form, including information and certification from lender.</p>	<p>When assistance ceases expected to start making full loan payments and to commence repayment of the assistance.</p> <p>Repayments can be lump sum, or monthly instalments.</p> <p>No maximum term specified, although sale or refinance triggers requirement to repay in full.</p> <p>Interest secured by mortgage in favour of Director of Housing.</p>

Queensland	Department of Housing	Interest free loan	<p>To a maximum of \$12,000.</p> <p>Paid directly to home lender, to clear arrears and to subsidise repayments for a period of up to 6 months.</p>	<p>The value of the home must be less than \$450,000.</p> <p>There must be sufficient equity in the home to secure the assistance provided.</p> <p>Must be principle residence and cannot own additional property.</p> <p>Must be in financial difficulty, in danger of losing home and the change in circumstances must have caused the level of payments required to exceed 30% of gross household income.</p> <p>Must have taken all reasonable steps to meet liabilities and have been making loan repayments more than 30% of gross household income.</p> <p>Written application form, including information and certification from lender.</p>	<p>Will be contacted 12 months after the loan is provided to arrange for monthly payments to commence.</p> <p>Maximum term is 10 years.</p> <p>Repayment in full is required on sale of home or refinance or renegotiation of loan.</p> <p>Interest secured by registered mortgage to Department of Housing.</p>
Western Australia	Keystart Housing Scheme Trust	<p>Opportunity to refinance home loan with Keystart.</p> <p>Period of up to 2 years reduced payments and discount on standard rate</p>	<p>The Keystart maximum total loan value (at October 2008) is \$475,000.</p>	<p>Value of home must be less than \$500,000, must have at least 20% equity and maximum income must be less than \$170,000 (at October 2008).</p> <p>Must be principle residence and cannot own additional property.</p> <p>Must have experienced an unavoidable change in circumstances and be facing immediate loan termination.</p> <p>Must have had 6 months consistent employment prior to change of circumstances, have had a previous satisfactory credit history a show evidence of a job search and training plan (in the event of unemployment).</p> <p>Cannot have a loan managed or financed through a State Government program.</p>	<p>Reduced payment arrangement for up to 2 years, at 'interest only' and based on 25% of gross income.</p> <p>In unable to support a standard Keystart loan at the end of 2 years, Keystart will seek possession of the home for sale to discharge all of obligations.</p>

Appendix 3

Consultation list

ACT Revenue

ACT Supreme Court Registry

ACT Treasury

Care Inc Financial Counselling Service

(Carmel Franklin, Director; Liisa Wallace, Client Service Team Coordinator)

Consumer Credit Legal Centre (NSW)

(Katerine Lane, Principal Solicitor)

Craig Dadds

(Interested finance industry participant)

HomeStart Finance (South Australia)

Housing NSW

Housing Queensland

Housing Victoria

Keystart Housing Scheme Trust (WA)

Legal Aid Queensland

(Loretta Kreet, Solcitor, Civil Law program)

Reserve Bank of Australia

(Information Department)