

# Memorandum

To: The General Manager  
Retail Investor Division  
The Treasury  
Langston Crescent  
PARKES ACT 2600  
Email: [consumercredit@treasury.gov.au](mailto:consumercredit@treasury.gov.au)  
ATTN: Submission - NCCP Amendment (Enhancements) Bills 2011

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Date: May 7, 2012

**Re: DollarsDirect's Comments to Draft Legislation to Amend the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011**

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Dear Sir or Madam:

Below please find DollarsDirect's comments to the most recent version of the draft legislation to amend the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, which the Minister for Financial Services and Superannuation released for public consultation on April 24, 2012. DollarsDirect is the leading online broker for short-term loans in the Australian market, and is owned by Enova International, Inc., part of the Cash America group of companies (NYSE: CSH). If you have any questions or comments, or seek any clarification regarding our submission, please do not hesitate to contact me by email at [DShteyn@nova.com](mailto:DShteyn@nova.com).

## INTRODUCTORY COMMENT

After nearly eight months, and review by the Parliamentary Joint Committee on Corporations and the Financial Services and the Senate Economics Legislation Committee, practically the only change to the draft legislation to amend the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 is to increase the proposed interest rate caps from a 10% establishment fee + 2% monthly fee to a 20% establishment fee + 4% monthly fee. The increase in rate caps is a step in the right direction, but without significant changes to the other key provisions, we cannot support the draft legislation in its current form. Once the new legislation takes effect, it should explicitly provide payday lending and short-term credit lenders a transition period of at least 12-18 months to ensure that business models are adjusted for the new regime. Thus, assuming the new regulatory regime takes effect on or before July 1, 2012, the consumer credit industry should have until *at least* July 1, 2013 to fully comply with any new regulatory regime.

## OUTLINE

The following table provides an outline for DollarsDirect's comments, issues, and recommendations to the specific provisions of the draft legislation to amend the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, which the Minister for Financial Services and Superannuation released for public consultation on April 24, 2012. A more detailed analysis of DollarsDirect's recommendations follows the outline.

<u>SECTION</u>	<u>ISSUE</u>	<u>RECOMMENDATION</u>
<b>§ 31A: Restrictions on Fees and Charges for Small Amount Credit Contracts</b>	<p>Interest rate caps are detrimental to consumers because they deprive consumers of access to legitimate and responsible credit options. The proposed rate caps are financially prohibitive to responsible, licensed lenders because they would force such lenders out of the Australian market. Illegitimate and illegal lenders would fill the vacuum, creating an unregulated system. This would be devastating to Australian consumers who would lose a legitimate and responsible source for short-term small amount credit needs and be forced to deal with unlicensed, illegal lenders.</p> <p>Moreover, Section 31A(1)(a) adds a separate prohibition: "no establishment fee can exceed the credit provider's reasonable costs of determining the application for credit and the initial administrative costs of providing the credit under the contract."</p>	<p>The proposed establishment fee should be increased from 20% to 25%, while maintaining the 4% monthly fee. The establishment fee should not be explicitly linked to reasonable cost recovery, as the reasonableness of costs would be too difficult to define, problematic to audit and would vary too widely among various lenders and/or brokers.</p>

<u>SECTION</u>	<u>ISSUE</u>	<u>RECOMMENDATION</u>
<p><b>§ 39A: Limit on the Application of Amount of Credit Provided Under a Small Amount Credit Contract</b></p>	<p>Section 39A constitutes an effective ban on rollovers. A ban on rollovers does not address the root problem – debt spirals. Consumers should have the ability, in cases of need, to extend their loan contracts a limited number of times using the services of a legitimate, responsible lender. Additionally, such a ban harms consumers because they lose flexibility and control over their financial affairs.</p>	<p><b>Any short-term small amount credit legislation should include a 200% total cost of credit cap</b>, which would be applicable to <i>all</i> loans, not just default fees, as proposed in § 39B. A 200% total cost of credit cap is the most effective means to prevent debt spirals, while also maintaining a responsible lending regime that is easily regulated by the government. A 200% total cost of credit cap makes a ban on rollovers unnecessary. Such a cap would make irrelevant whether a consumer never rolls over a loan, rolls over once, or rolls over ten times, he will never be liable for more than 200% the total cost of credit.</p> <p>However, if a hard cap on the number of extensions is deemed necessary, we would support a presumption of unsuitability for all extensions if a given loan is extended more than four (4) times.</p>
<p><b>§ 39B: Limit on Amount Recoverable if Default Under a Small Amount Credit Contract</b></p>	<p>Section 39B constitutes an effective cap on default fees. A cap on default fees is unnecessary if the Government implements a 200% total cost of credit cap.</p>	<p>As explained above, any legislation should include a 200% total cost of credit cap applicable to <i>all</i> loans.</p> <p>In addition, we would support a hard limit on default fees at \$30, which we believe is adequate for cost recovery for short-term lenders.</p>
<p><b>§ 124A: Website Disclosures</b></p>	<p>In conjunction with the Regulations, Section 124A is discriminatory to online lenders/ brokers as storefront lenders are exempted from providing a short high-impact statement to consumers.</p> <p>Consumers are more likely to appreciate and comprehend short, concise, and clear disclosures, which provide them with all necessary information about the credit product. Consumers are less likely to comprehend multiple (and sometimes repetitive) notices.</p>	<p>Storefronts and online lenders should be held to the same standards of disclosure. If the disclosure requirement will only apply to online lenders or only apply to storefronts, it should be removed altogether.</p> <p>If a disclosure requirement is implemented, it should serve to assist the consumer to understand the product and costs and should be clear, concise and understandable.</p> <p>Currently, Australian customers receive a multitude of documents (e.g., broker</p>

SECTION	ISSUE	RECOMMENDATION
		<p>statement, lender statement, credit guide, contract) and are required to provide several signatures. To make any disclosures meaningful to the consumer, all of the other pre-contractual guides and statements should be hyper-linked and sent by email.</p> <p>The disclosure statement should be clear and limited to one page and should provide the key pieces of information: the lender name, the lender’s license number, establishment fee, monthly fee, and an example of the cost of repayment for a sample transaction.</p>
<p><b>§§ 124B, 133CB, 133CC: Prohibition on Providing Credit When Applicant is a Debtor under a Separate Credit Contract</b></p>	<p>Sections 124B and 133CB effectively ban refinances and implement a “recklessness” standard on credit providers to determine whether a consumer is a debtor under another small amount credit contract.</p> <p>Banning refinances harms the consumer because it is fundamentally in the consumer’s best interest to retain the ability to refinance with cheaper credit.</p> <p>Additionally, a ban on refinances is onerous and burdensome without comprehensive credit reporting.</p> <p>The “reckless” provisions in the proposed bill put credit providers in an impossible situation because the definition of “recklessness” would be up to a judge based on the facts of the case, rather than clearly-specified criteria.</p> <p>Credit providers cannot operate in an environment where they are subject to criminal liability for something they have no means of knowing with any certainty, <i>i.e.</i>, whether the consumer is hiding</p>	<p>Refinancing short-term credit with another credit should be permitted so long as the new amount is not incompatible with responsible lending.</p> <p>Rather than simply ban refinances, lenders and brokers should be obliged to consider the existence of such loans, if disclosed, in the context of meeting their responsible lending requirements.</p> <p>The “recklessness” provisions should be dropped because they are practically impossible. Additionally, we cannot accept any provision prohibiting refinances “unless it is in the consumer’s best interests” because it would require lenders to compare loan contracts, which presents several issues, including:</p> <ul style="list-style-type: none"> <li>• It forces the customer to provide his other loan contracts, which is a burden on the consumer;</li> <li>• It is impossible to quantify costs where the products are different and/or the</li> </ul>

<u>SECTION</u>	<u>ISSUE</u>	<u>RECOMMENDATION</u>
	another loan with a different lender.	<p>loan terms vary; and</p> <ul style="list-style-type: none"> <li>• There is no way to measure non-quantifiable factors, such as the quality of customer service.</li> </ul> <p>Moreover, the “recklessness” provision is anti-competitive, bad for the consumer and contrary to the spirit of competition present in every other industry. It would serve to stifle competition between lenders. Lenders would be unable to compete on price and Australian consumers would be held captive to lenders with the greatest market share.</p> <p>Section 133BC applies the same “reckless” language to brokers and should be removed for the reasons listed above.</p>
<b>§§ 124C, 133CD: Prohibition Against Suggesting or Assisting with Credit Limit Increases</b>	A prohibition on suggesting or assisting with credit limit increases is unnecessary. There should be no ban on increasing credit limits in situations where the lender has complied with its Responsible Lending Obligations and determined that the increased credit limit is suitable to the consumer’s needs.	The prohibition against credit limit increases is unnecessary and should be removed.
<b>§ 72(1): Changes on the Grounds of Hardship and Unjust Transactions</b>	<p>The proposed trigger for the obligations of the credit provider in subsection 72(1) is the debtor “give the credit provider notice (a hardship notice), orally or in writing, of the debtor’s inability to meet the obligations.” This is too imprecise.</p> <p>Moreover, simply allowing a consumer to cancel a small amount credit contract on the basis of “hardship” is likely to lead to significant fraud on credit providers. Rather than provide fake names and account numbers, a fraud-feasor need only apply for and take out a loan, and later call the credit provider and claim</p>	<p>The “trigger” for the obligations of the credit provider should be that the debtor:</p> <ol style="list-style-type: none"> <li>i. notifies the credit provider in writing of their inability to meet their obligations under a credit contract (possibly for a reasonable cause); AND</li> <li>ii. asks the credit provider for assistance relating to their obligations under the contract.</li> </ol> <p>Additionally, the legislation should provide for a hardship procedure, which includes the</p>

<u>SECTION</u>	<u>ISSUE</u>	<u>RECOMMENDATION</u>
	hardship. Once that happens, there is nothing the credit provider can do to protect itself from illegitimate hardship claims.	<p>following:</p> <ol style="list-style-type: none"> <li>1. When a consumer claims hardship, their account is placed on a collections hold and the credit provider may not enforce the original credit contract.</li> <li>2. Following the consumer's hardship claim, the credit provider has 14 days to request documentation from the consumer supporting his or her hardship claim.</li> <li>3. The consumer has 30 days from the date he or she receives the credit provider's request for documentation to provide documentation of hardship to the credit provider.</li> <li>4. The credit provider has 30 days from the date of receiving the consumer's documentation of hardship to make a hardship determination.</li> </ol>
<b>§ 72(5): Changes on the Grounds of Hardship and Unjust Transactions</b>	Under the current provisions, a credit provider is required to respond to a trigger within 21 or 28 days. This time period is too short to allow the credit provider to properly assess the debtor's financial position and leaves the credit provider with no choice but to refuse to make any changes to the contract.	The credit provider should be given at least 21 days <i>from the date the credit provider has enough information to make a decision</i> to inform the borrower whether it agrees to change the contract.
<b>Transition</b>	Any legislation altering the current regulatory scheme for payday lending and short-term credit must provide lenders a transition period of at least 12-18 months to ensure that business models are adjusted for the new regime.	Assuming the new regulatory regime takes effect on or before July 1, 2012, the consumer credit industry should have until at least July 1, 2013 to fully comply with the new regime.

## DETAILED ANALYSIS

### 1. Interest Rate Caps (§ 31A)

#### i. *The Proposed Caps on Establishment Fees are Detrimental to Consumers and the Australian Public and would result in depriving consumers access to legitimate and responsible credit options and encourage illegal lending activities.*

1. A 20% establishment fee with monthly fees that can be a maximum of 4% of the adjusted credit amount is entirely unrealistic and demonstrates a complete misunderstanding of the way small loan businesses operate.
  - a. For example, the Regulatory Guides issued by ASIC (in particular RG 209) indicate that it is expected that a credit report will be obtained each time an assessment is made on a borrower. The credit reports are generally obtained from credit reporting agencies such as Veda Advantage.
  - b. The reports are obtained by a credit provider prior to agreeing to enter into a credit contract with a consumer. The credit report is therefore obtained before there is a contract in place between the credit provider and the consumer. The credit report is therefore obtained in the name of and at the cost of the credit provider.
  - c. Whilst the cost of obtaining the credit report varies from credit provider to credit provider, the cost of the report is generally between \$6 and \$12. Veda has recently advised that the cost for a credit report will increase to a maximum of approximately \$14.
  - d. Because of the operation of the proposed section 39A, it is not possible for the credit provider to recover the cost of the credit report (or for that matter any other outlay) from the consumer. Therefore, to comply with RG 209, even if the credit provider does nothing externally apart from obtain a credit report (and RG 209 requires various other applications, enquiries and assessments to take place), the credit provider will incur a fee of possibly up to \$14, or only \$10 less than it would recover for a \$100 one-month loan pursuant to the proposed amendments.
2. Thus, the proposed cap on establishment fees is not a viable option for small amount credit lenders in Australia. Such legislation is, in effect, a ban on the short-term small-volume credit industry because it is significantly below any conceivable break-even point for lenders and/or brokers.

3. **If interest rates were capped at a 20% establishment fee + 4% monthly fee, DollarsDirect could be forced to exit the Australian market.** As one of the leaders in the short-term small amount credit industry in Australia, DollarsDirect's exit would directly harm Australian consumers by removing one of their primary sources for short-term credit.
4. If these rate caps are passed, other **legitimate lenders will exit the Australian market. Illegal lenders and loan sharks will flood the market**, creating a prospering black market for small amount loans. This is what other jurisdictions experienced upon introducing the unrealistic rate caps that pushed away all legitimate players. **This would eliminate a supply of credit from responsible lenders, but would NOT eliminate demand.** Thus, consumers would face the dire choice of being cut off from access to credit or dealing with criminals, who will not provide the substantial consumer protections extended by responsible lenders.
5. A widespread market exit would cause licensed lenders to shut down, cut staff, and stop paying taxes, which would result in the loss of substantial tax revenue and eliminate thousands of small-business jobs.
6. Banks have shown no willingness to fill the small amount credit void that would be left. Short-term lenders provide benefits to consumers that banks do not and cannot, such as accessibility, convenience, and speed of access. Thus, short-term small amount credit will not be available to any borrowers, including those who might have been able to afford the loan.
7. Various reports and submissions indicate that a huge number of Australians use small amount lenders because they are unable to access alternative forms of credit. For a more detailed analysis of these statistics, *see* THE REGULATION OF SHORT TERM, SMALL AMOUNT FINANCE, REGULATION IMPACT STATEMENT: June 2011, at p. 16 (hereinafter, the "Regulation Impact Statement").

ii. ***Legitimate Compliant Lenders and Finance Brokers May Not Be Able to Operate Under the Proposed Rate Caps.***

1. Payday lenders cannot operate profitably with a 20% cap on establishment fees. The Regulation Impact Statement notes that the cap can be set too low, and therefore risks putting out of business large parts of the market (as has been argued in relation to the current cap in New South Wales of 48%) (Regulation Impact Statement, p. 49).

2. High charges associated with payday loans are justified by the particular problems faced by this industry, such as: higher risks associated with lending to borrowers with low income or impaired credit ratings; and high administrative overheads needed to provide short-term low value loans.
3. The low value of the loan means that administration costs are higher per loan for short-term credit than they are for larger, long-term loans.
4. Accordingly, such a measure would not result in cheaper loans. Instead, it would result in NO loans at all from licensed lenders/brokers.

iii. ***The establishment fee should not be explicitly linked to reasonable cost recovery.***

1. The reasonableness of costs would be too hard to define, problematic to audit and would vary too widely among various lenders and/or brokers.
2. The legislation should simply cap establishment fees at 25% and monthly fees at 4%, with no linkage to reasonable cost recovery.

iv. ***Solution: Increase the Proposed Establishment Fee Cap from 20% to 25%.***

1. Establishment fees should be capped at 25%.
2. A rate cap of 25% would permit the short-term small amount consumer credit industry to survive. This benefits all parties: it maintains jobs, permits consumers access to small amount short-term credit, and provides a regulatory scheme that the government can monitor.
3. The government should also consider setting the establishment fee at a higher rate than 25% initially and bringing it down gradually. This would permit the small amount credit industry to adjust to the new legislation.
4. Lenders should be allowed to levy the monthly charge on the first day of the contract and this should be explicitly stated in any legislation.
5. Finally, any reference to reasonable cost recovery should be removed for a simpler, clearer 25+4 model.

2. Limit on the Application of Amount of Credit Provided Under a Small Amount Credit Contract (§ 39A)

- i. ***Legislation that prohibits consumers under a small amount credit contract from applying credit to pay a credit provider or other person prescribed by the regulations is Complicated and Unnecessary to Prevent Consumer Debt Spirals.***

1. Prohibiting consumers from applying funds from a small amount credit contract towards another credit contract constitutes an effective ban on rollovers because, with a rollover, proceeds from a new loan are applied toward the original loan.
2. Instead of putting in place yet another regulation as to what a lender should (or should not) do, it would be simpler to attack the root cause of the problem, which is how to prevent debt spirals. Such a mechanism already exists in the bill in case of default, where the total cost of credit should not exceed the amount of the principal advanced.
3. The best way to deal with debt spirals is to extend that total cost of credit cap to all loans, not simply those which are in default. This way, all fees and charges associated with the loan would not exceed a certain cap (we propose 200% total cost of credit cap). The number of rollovers, or what the lender does with the proceeds with the loan, would lose significance because there would be an overall cap.

ii. ***Proposal: 200% Total Cost of Credit Cap***

1. As mentioned above, we strongly support a 200% total cost of credit cap, which would be applicable to *all* loans, not just default fees, as proposed in § 39B. A 200% total cost of credit cap is the most effective mechanism to prevent debt spirals, while also maintaining a responsible lending regime that is easily regulated by the government.

iii. ***Section 39A is Unnecessary if a 200% total cost of credit cap is implemented.***

1. A prohibition against credit providers under small amount contracts (or any person prescribed by the regulations) receiving any part of the amount of the credit provided under the contract is unnecessary if a 200% total cost of credit cap is imposed on all credit agreements.
2. Section 39A effectively imposes a ban on rollovers. However, a ban on rollovers is redundant and not needed in light of a 200% total cost of credit cap. In other words, it does not matter whether a consumer never rolls over a loan, rolls over once, or rolls over ten times; he will never be liable for more than 200% the total cost of credit.
3. For example, where a lender charges \$25 per \$100 lent, the loan could be rolled over 3 times prior to bumping up against the limit (one fee for the original base loan, and three fees for the rollovers). Any rollovers beyond this amount would need to be free, and no default fee could be imposed.

iv. *A ban on rollovers punishes consumers who are having unforeseen financial needs.*

1. Short-term loans are a viable credit alternative for consumers who need a small value loans due to *unforeseen circumstances that are beyond their control*. Sometimes several weeks are sufficient for the consumers, but sometimes they may need extra time to repay their loans.
2. Prohibiting rollovers by means of using the services of responsible finance brokers or lenders would yet again push consumers to the illegal operators. An effective ban on rollovers **will cause consumers to lose significant financial flexibility and control over their financial affairs**, when it may be in their interests to control such affairs.
3. We must offer consumers viable choices, not punish them. If the goal is to protect consumers experiencing unforeseen financial difficulty and prevent the cycle of debt while providing access to credit offered responsibly, then the solution is to limit the total cost of credit, not eliminate rollovers.

v. *If necessary, presume unsuitability after the fourth extension.*

1. If a hard cap on the number of extensions is deemed necessary, the new legislation should provide for a presumption of unsuitability for all extensions if a given loan is extended more than four (4) times.

3. Cap on Default Fees (§ 39B)

- i. According to our internal data, short term low value loans (payday loans) account for an exceedingly small portion of a typical bankrupt customer's total debt load and monthly cost of debt service. In our sample, short term low value loans accounted for only 2.8% of a customer's total cost of debt, as opposed to home loans (73.2%), auto loans (8.8%), and credit cards (15.2%). Accordingly, there should be a 200% total cost of credit cap, which is applicable to all loans.
- ii. In addition, we would support a hard limit on default fees at \$30, which we believe is adequate for cost recovery for short-term lenders.

4. Short high-impact statements (§ 124A)

- i. We understand that section 124A and the accompanying regulations will be used to require online lenders to provide short high-impact statements on their websites, to comply with the regulations. Such a requirement to provide short high-impact statements does not exist for storefront lenders, and is thus highly discriminatory against licensees that conduct their business online. Unless this is designed to skew the

playing field against ecommerce in the Australian market, this requirement should not be implemented as proposed.

- ii. Storefronts and online lenders should be held to the same standards of disclosure, in our view. In both instances, the goal is to provide consumers with an understandable and meaningful explanation of the product and its costs. In light of that goal, it does not make sense to differentiate between online lenders and storefronts. If the disclosure requirement will only apply to online lenders or only apply to storefronts, it should be removed altogether.
  - iii. If a disclosure requirement is implemented, it should serve to assist the consumer to understand the product and costs. Accordingly, it should be clear, concise and understandable.
  - iv. Currently, Australian customers receive a multitude of documents (e.g., broker statement, lender statement, credit guide, and contract) and are required to sign in several places. There are literally pages and pages of legalese that likely mean nothing to the customer. To make any disclosures meaningful to the consumer, all of the other pre-contractual guides and statements should be hyper-linked from the one page disclosure requirement and sent by email, accessible by the customer if he/she so wishes. Otherwise, the disclosures will be lost amidst the pages of legal wording and paperwork, which are currently required to be presented prior to the contract.
  - v. The disclosure statement should be clear and limited to one page and should provide: the lender name, license number, establishment fee, monthly fee, and an example of the cost of repayment for a sample transaction of \$100.
5. Ban on Providing Credit When Applicant is a Debtor under a Separate Credit Contract (§§124B, 133CB, 133CC)

i. *Banning Refinances Harms the Consumer.*

1. The proposed prohibition on refinances defies logic because **it is fundamentally in the consumer's best interest to retain the ability to refinance, especially with cheaper credit.** If a consumer is prohibited from refinancing with cheaper debt, the consumer is the big loser.
2. Thus, the ban should not apply in situations where the loan is refinanced at a cheaper or equivalent rate. Further, refinancing a short-term credit with another credit at a higher price should also be acceptable, so long as the incremental amount of the new loan would not be incompatible with responsible lending from a consolidated perspective.

3. Section 133BC applies the same “reckless” language to brokers and should be removed for the same reasons listed above.
- ii. ***Banning Refinances is Onerous and Burdensome Absent Comprehensive Credit Reporting.***
    1. These sections impose a ban on refinancing, which would be impossibly onerous to comply with in the absence of comprehensive credit reporting. Instead, lenders and brokers should be obliged to consider the existence of such loans in the context of meeting their responsible lending requirements, to the best of their ability and knowledge.
    2. Moreover, the bill should state that checking a customer’s credit report would satisfy the obligation of verifying whether other credit is outstanding.
    3. Finally, a ban would be superfluous in situations where responsible lending applies.
  - iii. ***The “Reckless” Provisions are Practically Impossible.***
    1. The “recklessness” provisions should be dropped because they are practically impossible.
    2. In addition, we cannot accept any provision which prohibits refinances, even if the prohibition contained an exemption such as “the refinance is in the consumer’s best interests”. In order to avail themselves of such an exemption, lenders and brokers would need to compare loan contracts, which raises many issues, including:
      - a. It forces the customer to provide the other loan contracts, which is a burden on the consumer and could be construed to be an undue invasion of the consumer’s privacy;
      - b. It is impossible to quantify costs where the products are different and/or the loan terms vary; and
      - c. There is no way to measure non-quantifiable factors, such as the quality of customer service.
  - iv. ***The “recklessness” provision is anti-competitive, bad for the consumer and contrary to the spirit of competition in every other industry.***

1. This provision would stifle competition between lenders, which is inherently detrimental to consumers who will not be able to choose a lender based on the most favorable and convenient rates and terms.
  2. Lenders will be unable to compete on price and Australian consumers will be held captive to lenders with the greatest market share.
- i. ***The “Reckless” Provisions Put Credit Providers in an Impossible Situation and Must be Removed.***
3. A breach of the “reckless” provisions would be easy, as the definition of “recklessness” would be up to a judge based on the facts of the case, rather than clearly-specified criteria.
  4. The “recklessness” provisions should be dropped, as DollarsDirect would not be willing to accept potential criminal liability for something that is impossible to carry out in practice.
  5. The “recklessness” provisions would cause DollarsDirect to exit the Australian market.
6. **Ban on Increasing Credit Limits (§§ 124C, 133CD)**
- i. A prohibition on suggesting or assisting with credit limit increases is not necessary and should be removed.
  - ii. There should be no issue with increasing credit limits in situations where the lender has complied with its Responsible Lending Obligations and determined that the increased credit limit is not unsuitable to the consumer’s needs.
7. **Hardship: Triggers for Obligations of Credit Provider (§ 72(1))**
- i. The current trigger for the obligations of the credit provider in subsection 72(1) is the debtor “give the credit provider notice (a hardship notice), orally or in writing, of the debtor’s inability to meet the obligations.”
  - ii. The current trigger is too imprecise. The debtor should have to make an application or a formal request in order for the credit provider’s obligations to be triggered.
  - iii. We support legislation whereby the “trigger” for the obligations of the credit provider is that the debtor:
    1. notifies the credit provider in writing of his or her inability to meet the obligations under a credit contract (possibly for a reasonable cause); and

2. asks the credit provider for assistance or information in respect of his or her options in relation to the obligations under the contract.
  - iv. Such legislation will more clearly trigger credit providers' obligations and leave less room for interpretation.
  - v. Moreover, simply allowing a consumer to cancel a small amount credit contract on the basis of "hardship" is likely to lead to significant fraud on credit providers.
  - vi. Rather than provide fake names and account numbers, a fraud-feasor need only apply for and take out a loan, and later call the credit provider and claim hardship. Once that happens, there is nothing the credit provider can do to protect itself from illegitimate hardship claims.
  - vii. Thus, the legislation should provide for a hardship procedure, which includes the following:
    1. When a consumer claims hardship, their account is placed on hold.
    2. The consumer has 30 days from the date the account is placed on hold to verify their hardship claim.
    3. If the hardship claim is verified, then the credit provider must grant a consumer's request to make a hardship determination.
8. Hardship: Obligations Following Trigger for Obligations of Credit Provider (§72(5))
- i. Under the current provisions, a credit provider is required to respond to a trigger within 21 or 28 days.
  - ii. This time period is too short to allow the credit provider to properly assess the debtor's financial position. Accordingly, often times the credit provider has no choice but to refuse to make any changes to the contract.
  - iii. We support legislation whereby the credit provider has **21 or 28 days from the date the credit provider has enough information to make a decision** to inform the borrower whether it agrees to change the contract.
  - iv. This benefits consumers and lenders. It provides lenders the opportunity to assess the debtor's financial position, thus providing consumers more opportunities to change their agreements in times of hardship.

9. Other Aspects to Proposed Legislation

- i. A limit on the application of amount of credit provided under a small amount credit contract is feasible so long as there is a limit on the number of repeats within a specified time frame.

10. Responsible Lending Requirements tailored for the short-term loans are a better way to protect consumers without depriving them access to credit

- i. Responsible and prudent policies and procedures present true tools for consumer protection. A reasonable and lenient hardship policy is the best guarantee that consumers experiencing financial difficulties shall have reasonable and feasible options and would not be caught in the circle of debt.
- ii. It is critical to understand that consumers approach short-term lenders at the times when they require immediate credit. The lenders policies and procedures should be efficient enough to accommodate such circumstances.

11. Transition Period

- i. Any legislation altering the current regulatory scheme for payday lending and short-term credit must provide lenders a transition period of at least 12-18 months to ensure that business models are adjusted for the new regime.
- ii. Thus, assuming the new regulatory regime takes effect on or before July 1, 2012, the consumer credit industry should have until *at least* July 1, 2013 to fully comply with any new regulatory regime.

I greatly appreciate your thorough consideration of the points made in our submission and I look forward to collaborating on a solution that permits the short-term small amount credit industry to survive, while at the same time addressing the concerns of the Australian consumer.

Sincerely,

Daniel Shteyn  
Managing Director

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