

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

13 October 2011

By email: corporations.joint@aph.gov.au

Dear Committee Secretary

Re: ***Inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011***

We refer to your email sent to us on 28 September inviting us to make a submission on your inquiry into the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011* currently before Parliament. We are pleased to have the opportunity to provide the following submission.

Submission Synopsis

- Cash Doctors is the industry leader in online small-amount short-term lending, dedicated to offering an alternative, yet fully responsible credit product that meets the financial needs of its customers.
- Our customers are financially literate, in full-time employment, and are able to make fully informed decisions about their financial needs and commitments. We approve just 17% of our applications.
- Cash Doctors customers do not necessarily want to be tied into a long term financial product, or have a higher credit limit than needed, which are inflexible features of mainstream products, such as credit cards and personal loans.
- The approach and intent of the Bill to “protect the vulnerable” fails to acknowledge or accommodate this new demographic of financially literate, full-time employed borrowers.
- While, for the most part, the intent of these reforms is correctly aimed towards minimising unfair outcomes for “vulnerable” consumers they have the unintended consequence of excluding this emerging and growing demographic of financially literate and fully-employed consumer from the debate. The Government’s focus needs to shift solely to the correct target group - the “vulnerable” low-income consumer.
- The proposed restrictive rate cap will result in the exit of responsible, small-amount, short-term lenders such as ourselves from the sector, leaving our financially, full-time employed borrowers with few, if any, alternatives.
- Accordingly, it is our submission that:
 - **a new “income”type criterion is added to the definition of “small amount credit contract” to provide that the debtor must be a permanent employee and not a consumer whose primary source of income is Centrelink**

- **payments, which will allow a continued freedom of choice for those that we consider are not “vulnerable” and needing of protection; and the maximum amount of permitted establishment fee is increased from 10% to 27.5%, allowing businesses to continue to responsibly provide the service to consumers, albeit with very small margins.**

We are different

Cash Doctors is a growing national brand in Australia and is the industry leader in responsible online small-amount short-term lending. In 2005, the founders, Greg Ellis and Sean Teahan, identified a need in the small-amount short-term lending sector and saw an opportunity to provide a responsible, transparent service to the Australian working community that was neither available in the mainstream credit market nor the incumbent fringe/short-term lending and pawn broking market.

To date, Cash Doctors has provided more than 155,000 cash advances under its continuing credit facility to some 23,000 customers. We offer advances of between \$100 to \$600 for a maximum period of 45 days with **no roll-overs** permitted. Repayments are typically over 1-3 pay cycles. The average advance is \$421 over a period of 21 days. We only offer loans to **fully PAYG employed** customers, and as such, only 17% of total applications are approved.

The low approval rate is the result of an extremely rigorous selection and approval process, which includes prudent credit checks and other responsible lending checks, accompanied by technically sophisticated data-driven underwriting measures to carefully assess capacity to repay and maximise the chance of customer repayment and satisfaction.

In response to the demands of this new financially-aware, computer-literate demographic, application is made purely online at any time of the day. If accepted, funds are deposited into the customer's account within an hour during business hours (with existing members paid within seconds of a request 24 hours a day, 7 days a week). In particular, our customers value the ability to apply conveniently at any time and obtain a quick cash injection, with the specifics of the transaction very clearly communicated upfront. They can access then finalise a simple solution then move on with their lives without committing to lengthy repayment schedules and the temptation of more credit than they need. Cash Doctors also offers financial tips and online budgeting tools to promote good financial health, and ultimately to help our customers avoid deeper financial issues in the first instance.

Cash Doctors is, and has always been a responsible lender. Profiting from late fees is inconsistent with our company mission and values and the fact we apply a loss making fee structure to those few accounts that fall overdue is designed to strongly incentivise our organization to continually make correct initial lending decisions. That's in our interests and those of our customers.

Our customers are different

The Assistant Treasurer, and Minister for Financial Services and Superannuation, the Hon. Bill Shorten, notes in his Second Reading Speech on the Bill¹ that:

“The vast majority of these [“payday”] loans are sought by low-paid workers or people on Centrelink benefits. It is estimated that nearly half of payday borrowers have incomes of less than \$24,000 a year, and up to two-thirds earn less than \$36,000”.

Cash Doctors customers differ **greatly** from mainstream “vulnerable” users of “payday loans”. Cash Doctors customers are fully PAYG employed with average net annual income of \$40,000 (44% of clients earn between \$35,000-\$50,000 and 18% between \$50,000-\$75,000). Notably these figures are **net of tax**, so the salary levels of our customers are, in fact, a lot higher.

Further, almost 65% of our customers have clear credit records. This illustrates that this customer demographic have mainstream financial options available to them, yet a small-amount short-term cash advance, such as the Cash Doctors product, is freely chosen over all of the traditional lending options. The Cash Doctors client base is thus entirely outside the Assistant Treasurer’s rationale for these changes on the basis that:

“Australians who use payday loans are usually unable to access other cheaper forms of credit.”²

Clearly, our client base is very different. As such, **the recipients of Cash Doctors cash advances are not a vulnerable or desperate demographic, and can and should be distinguished from the recipients of the “payday” loans presented by the Government.**

Our customers should not be disadvantaged by being included in the same group that the Government is, rightly, seeking to protect.

“Risks” facing consumers – “Excessively high costs”

The Assistant Treasurer in the Second Reading Speech highlights the following two “risks” facing consumers in using “payday” loans. We will address these in turn.

“The first is the risk of excessively high costs, as consumers who cannot shop around can end up paying whatever the lender decides to charge...”

Misapplication of APR

There is an association in the marketplace that short term credit providers charge “excessively high costs” on small amount short term loans. This is perpetuated by the presentation of an “annualised percentage rate” often used by consumer action groups to highlight “excessive”

¹ Bill Shorten, Second Reading Speech, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, 21 September 2011.

² Bill Shorten, Second Reading Speech, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, 21 September 2011.

costs. This misrepresents the true cost of a short-term loan. Critics often quote the APR of short-term loans as being in excess of 400%. When compared with the APR charged by mainstream credit providers (7-20%), it would be easy to conclude that the fees of short-term credit providers are “excessive” and therefore resulting in abnormal profits.

However, the reality is that because mainstream credit providers lend large amounts of credit over long periods of time, they are able to apply a much smaller APR while still generating adequate revenue to drive a viable service. This is in stark contrast to short term credit providers such as ourselves who lend just a few hundred dollars for a few days or weeks.

In the Cash Doctors case, the average loan is \$420 over an average of just 21 days. The costs of administering the loan of such small amounts of credit over such short deadlines are significantly higher, even with our very restrictive lending practices – in order to cover the costs of administering the loan, a larger APR is required to be applied.

All finance providers, regardless of whether they adopt mainstream or short term models incur the same operating costs, competing in the same markets for labour, rental, capital and other inputs. It is thus evident that comparing the costs of short term lenders, lending a few hundred dollars for a few days or weeks with costs of the mainstream providers lending thousands of dollars for years, via an APR is not a legitimate “like with like” comparison – the operating models are simply too different. This costs reality must be acknowledged in the debate.

What really matters is “How, and for how long?” these charges apply....

The main contributing factor to the “excessively high costs” perception is really **how and for how long** these charges are applied rather than the price point or APR itself. Unfortunately there are players in the market that stretch the financial commitment of customers beyond an initial short term purpose for which the service was sought by permitting the customer to continually roll-over the loan, or extend the due date for payment, whilst charging fees for the roll-over/extension. These lenders blur the lines between business models. Over time, the fees that are paid on these extended/rolled-over loans can greatly outrun the initial very small principal initially borrowed, thereby creating, albeit unfairly, “excessively high costs”. These outcomes are analogous with catching a taxi from Brisbane to Sydney. **We contend that the Government should rightly introduce a control mechanism such as a prohibition on roll-overs, and place a reasonable cap on costs, and that this will have the effect of lowering the perception of “excessive” costs charged by the short-term loan industry. The Cash Doctors position on “roll-overs” and on “caps on costs” are dealt with in further detail below.**

“Risks” facing consumers – “roll-overs”

“The second risk that consumers face is the risk of a debt spiral, where an existing loan is extended or rolled over into a new loan. The consumer is then faced with using even more of their scarce income to meet repayments, reducing their ability to meet other expenses from their own income... A significant number of borrowers take out multiple loans and there is evidence that some lenders’ existing business models actually rely on

this occurring. They need people to keep coming back again and again, borrowing more and more, and paying larger and larger fees.”³

As discussed above, we agree that there are players in the market whose business models rely heavily on income derived from the customer “rolling-over” an existing loan leading to outcomes where a debt of a few hundred dollars can become thousands. Again, this has contributed largely to the unfavourable reputation of short-term lenders.

Our model DOES NOT embrace roll-overs

The Cash Doctors model does not permit loans to be rolled-over, as we understand how rolling-over loans can easily contribute to a compounding “debt spiral” and believe the product should be confined to its short term purpose. Further, Cash Doctors freeze any charges on overdue advances once 45 days after the original due date has elapsed. Unlike other finance providers, Cash Doctors even applies a different, loss making fee structure to accounts that fall overdue to strongly incentivise our organization to make correct initial lending decisions. Profiting from late fees is inconsistent with our company mission and values. We believe that it is unfair to continually apply overdue fees indefinitely if the customer is clearly unable to make repayment.

Our lending model is to only offer customers an amount of credit that they can comfortably afford to repay within a short term horizon. By adhering to this strict responsible lending criteria in the customer’s initial assessment of credit, the need to roll-over or extend the loan should be negated. For us, making the correct assessment at the outset is key to forming a healthy credit relationship with the customer (i.e. no need for them to roll-over, late fees are capped after 45 days), and thus default rate is kept at a minimum.

The “alternatives” to “payday” loans

We also note the policy intent of the Bill is to “educate” customers about short-term loans by requiring credit providers to disclose to customers the availability of other alternatives in the marketplace, such as advances on Centrelink payments, no or low interest loans run by not for profit organisations, or seeking hardship relief with a utility provider. These suggestions are clearly aimed at those low/no income consumers who have been wrongly subjected to the predatory behaviour of traditional players in the sector. We acknowledge there is a need to protect this vulnerable class of consumer, and no doubt the reforms will greatly improve their access to such services.

However, given the employment status of Cash Doctors’ customers, most, if not all of the no and low interest loan scheme alternatives suggested have restrictive qualifying criteria thereby rendering many individuals, and certainly our customers, **ineligible**.

³ Bill Shorten, Second Reading Speech, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, 21 September 2011.

Additionally, customers with higher incomes are unlikely to satisfy the hardship criteria of utility providers as there is an assumption that higher paid individuals should be able to repay without qualification.

The Government clearly has not considered the emerging financially literate, employed demographic in this particular proposal. **We contend that the Government is focusing on the “payday” industry as the target of the reforms, which has the unintended consequence of excluding this emerging and growing demographic of financially literate and fully employed consumer from the debate. The Government’s focus, rather, needs to shift to the intended group - the “vulnerable” low-income consumer.**

Issues with a National Rate Cap

As discussed above, our submission welcomes a national cap on costs, and concurs with the Government that rate caps do have the intended effect of controlling excessive fees charged to consumers. However, any national rate cap should be carefully considered and represent a fair and balanced cap on costs, having regard to the true costs of short-term loans, such as those outlined above. In this respect, we would ask that the Government revisit the capping options set out in the Government’s Discussion Paper released on 9 June 2011, which present a more balanced view than the restrictive cap placed on “small amount credit contracts” currently proposed under the Bill.

Issues with the “Small Amount Credit Contract” Cap

We have expressed our disappointment with the Government’s failure to provide a viable and balanced rate cap above, and we request in the first instance that the Government revisit its proposed capping models for both “small amount credit contracts” and for all other “credit contracts”. However, if the Government does not wish to revisit both capping models, we, in the alternative, request that the Government make certain changes to the “small amount credit contract” capping model as follows.

“Establishment fee”

Section 31A provides an exhaustive list of the costs that can be charged for “small amount credit contracts”. It specifies that, a “permitted establishment fee” can be charged if it:

“reflects the credit provider’s reasonable costs of determining the application for credit and the initial administrative costs of providing the credit under the contract.”

The permitted establishment fee is set out in 31A(2) as a fee not exceeding 10% of the adjusted credit amount. We submit that a fee of 10% is not reflective of “the *reasonable costs of determining the application for credit and the initial administrative costs of providing the credit under the contract*”. We submit that the Government has not considered the true costs of determining an application for credit, and associated administrative costs. In the interests of creating a balanced and viable outcome we welcome the opportunity to assist this process.

For example, Cash Doctors incurs a range of costs for each loan including the cost of a credit report, labour costs in carrying out responsible lending assessments, office costs including rent,

interest on borrowed funds, telephone and internet, marketing and the cost of complying with Government requirements imposed by ASIC, the ATO, AUSTRAC and statutory EDR's, including licensing fees, taxes, professional indemnity insurance premiums, and the indirect costs of compliance of IT software development for product compliance, and staff compliance training.

For Cash Doctors the current average cost for processing each loan is \$116. The below scenario shows our ability to cover our costs if we charge as per the rates currently being proposed:

Amount Borrowed	\$420
Loan Period	21 days
Establishment Fee	\$42 (10%)
Monthly Fee (1 month)	\$5 (1.29% which is 2% pro-rate for 21 days)
Gross Revenue	\$47
Cost of Loan	\$116
Loss per Loan	\$69

It is clear that applying the 10%+2% rate cap on the average cash advance of \$420 would result in a loss of \$69 per advance. Thus the costs Cash Doctors incur in processing an advance far exceed this 10%+2% margin. We contend that the proposed cap on costs for these short term credit contracts have not had due consideration of the true costs of a loan for short-term lenders. The Government appears to have ignored its own findings set out in the Regulatory Impact Statement which states that:

“approximately \$20 to \$30 per \$100 is required to generate a reasonable return on providing loans up to a certain limit (under \$300)”; and “the shorter the loan term the higher the repayments will need to be to generate a return”⁴. **We therefore submit that the Government change the maximum amount of permitted establishment fee in proposed section 31A(2) of the Code from 10% to 27.5%, allowing businesses to continue to operate, albeit with very small margins. The result would be as follows:**

Amount Borrowed	\$420
Loan Period	21 days
Establishment Fee	\$115.50 (27.5%)
Monthly Fee (1 month)	\$5 (1.29% which is 2% pro-rate for 21 days)
Gross Revenue	\$120.50
Cost of Loan	\$116

⁴ Regulatory Impact Statement, *The Regulation of Short Term, Small Amount Finance*, June 2011, at page 42.

Profit per Loan \$4.50

New permanent employee exemption

The Explanatory Memorandum on the Bill says that the intention of the small amount credit contract amendments is to “*address specific risks of financial detriment or harm to consumers, through the use of relatively high-cost credit*”⁵ and comments that

“The risk to a consumer of this financial detriment increases according to ...the borrower’s income — the lower the income the greater the reduction in income that will result from having to meet repayments under a credit contract...”⁶

It is clear that the small amount credit contract cap has been introduced to address the financial detriment suffered by this low income group however “income” has not been introduced as a relevant criterion to whether the small amount credit contract provisions should apply. This should be key.

Accordingly, we submit that a new criterion be added to the definition of “small amount credit contract” in subsection 5(1) of the Act to provide that the debtor must be a permanent employee and not deriving their primary income from Centrelink payments, to allow freedom of choice for those that we consider are not “vulnerable” and needing of protection. This essentially shifts the focus of the reforms away from all recipients of “payday” loans, to a more targeted “vulnerable” low-income group as intended, and who are correctly deserving of the protections proposed in the Bill.

In Closing

We understand the role of Government is, as stated by Mr. Shorten:

*“on the one hand, to facilitate a competitive market for microloans but, on the other hand, to intervene when the market fails”,*⁷

and we understand that the market has failed to an extent by some unscrupulous players in the short term lending industry charging exorbitant fees for inappropriately long periods to consumers, and allowing loans to continually roll-over, but eliminating the entire small-amount short-term industry by such restrictive reforms is not the solution. If the Bill is passed in its present form, a whole demographic of financially literate customers who have the maturity to make informed decisions, are being denied a voice in the debate, and a choice of product. The Government cannot ignore this growing class of Australians and their needs must be heard.

We ask the Government to deliver on its commitment that:

⁵ Explanatory Memorandum, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, at paragraph 5.6.

⁶ Explanatory Memorandum, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, at paragraph 5.7

⁷ Bill Shorten, Second Reading Speech, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, 21 September 2011.

“short term loans do have a role in the Australian economy and should be part of everyday life,”⁸

Cash Doctors can and should be clearly differentiated from other industry participants who are, rightly, the target of the Government’s reforms. We are proud of the business model we have developed which both provides a service demanded by our customers, while including industry-leading safeguards to ensure responsible lending practices. These include:

- we only lend to fully PAYG employed customers with average net annual income of \$40,000 (44% of clients earn between \$35,000-\$50,000 and 18% between \$50,000-\$75,000);
- we offer advances of between \$100 to \$600 for a period of 45 days with no roll-overs permitted;
- overdue fees, which are applied at loss making rates are frozen after 45 days of an amount outstanding; and
- we approve just 17% of total applications.

Our customer testimonials support this position and we invite Government to read our latest customer feedback attached in the Annexure to this letter to gain our customers’ view on the Cash Doctors cash advance.

Cash Doctors cash advances are a legitimate alternative for a growing demographic of credit averse, financially literate individuals – we look forward to your support in continuing to serve the needs of this growing consumer group. We would welcome the opportunity to expand our case in more detail in the Committee’s hearing on the Inquiry.

Should you need to contact us, please do so on the following details:

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Yours sincerely

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⁸ Bill Shorten, Second Reading Speech, *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*, 21 September 2011.

Annexure – A Sample of our Customer Testimonials

"Man I love this system . It's the best system ever . Obviously you guys have to make money, but no way are you guys being unfair . I'm so glad im a Cash Doctors customer. You made my day." S.A, NSW, 03 Aug 2011

" My last direct debit for cash doctors came out today - I'm kinda sad (but glad at the same time) as this will be my last cash advance for a very long time because my life is finally back to normal (yay!) I'd like to take this opportunity to express my appreciation towards Cash Doctors as you guys helped me through the hardest 10 months of my life financially. If I hadn't of discovered Cash Doctors I would have been a very stressed, starved and worried person. Thank you Cash Doctors! Your future is a shining beacon.", B.S, VIC, 22 Jul 2011

"You really do provide a great service! It is fair to say that I was more than a bit sceptical about getting a payday loan. I did a lot of research before deciding that this type of loan was the right option for me, and was pleasantly surprised by your service... Thanks again for helping me out when I needed it most!", A.E, QLD, 08 Jul 2011

" My personal finances have improved so much that I have no longer need to use your service. But thank you, I am more than grateful for your help. Without it I can honestly say I would not be sitting in my home typing this letter on my laptop, and my car still in the carport. I wish you all the very best which I believe is echoed by the Cash Doctors community." R.S, WA, 24 Jun 2011

"Thanks for your patience while I was having financial difficulties. Glad to say I'm back on track now, in part because of your company's flexibility and understanding. Send my compliments to you and your team on how you guys handle and run your business. Kind Regards." M.K, QLD 18 Nov 2010

"Cash Doctors, you are the best! Sometimes I've needed money to pay my rent or an outstanding electric bill... but pay day has been weeks away... you saved me the embarrassment of asking my boss for an advance, and relieved me of the stress of pending bills! Works great every time! I ADORE you guys and your awesome business model! Keep up the BRILLIANT work!!!" A.K, QLD 22 Oct 2010

"Even though I can't get a loan at this time, I've heard some very positive feedback from people around and still think you guys are doing the best to help people. I really do look forward to using your services some time in future. Thanks! Have a nice day Cash Doctors!" YK, NSW 14 Sep 2010

" Just wanted to let you know that i did read it and thank you for helping me out i was just the type of loan i needed, not tied down to debt and being able to pay it pack over two weeks with a clean slate. Thanks again for a smooth easy transaction and no doubt i will call on you again sometime in the future! =)" SA, SA 23 Apr 2010

"Dear Team at Cash Doctors, Great story.....I have been accepted into medicine and Cash Doctors will be vital in my days as a Doctor in Training. I am absolutely thrilled with the support Cash Doctors have been so far. Your continued support will be a real boost. Many thanks as usual." P.D, NSW 08 Sep 2009

"I have found your services to be excellent. Even when something went wrong for me and my pay was not in my account when it should have been over Christmas, you were fantastic and worked out how it could be fixed and it was. Your staff are extremely helpful and pleasant." GW QLD 26 Jun 2009

"Just a quick note to say thank you so much for being there to help us out in financial difficulty. Our daughter has been on a lung transplant list for 12 months due to one lung only working and our son has grandmal seizures frequently due to his epilepsy so Cash Doctors has been a god send as we have used this facility every time we go to Sydney for treatment. If we did not have access to something like this then there would be a lot of times that we would not be able to go due to no money as we all know how quickly savings runs out. So a HUGE THANKYOU to all at Cash Doctors for helping us have the money in a flash to enable our children to get the help they need. We borrow frequently and will continue to do so as everyone is so friendly and helpful" CA, NSW 01 May 2009

"Thank you for understanding and arranging a payment plan suitable to us at this time. For all its worth, Cash Doctors helped us out with a loan when we really needed it, so thank you!" M.I, VIC 08 Apr 2009

"Cash Doctors offers an excellent service that is of particular benefit to someone like me that wishes to avoid signing up for credit cards. Many thanks to all of the Cash Doctors team for your excellent customer service." R.C, NSW 20 Jan 2009

"I was originally quite skeptical about using your services. I have heard some horror stories of other cash providers ripping off their customers. However, after using the service for myself I now know Cash Doctors is a trustworthy cash provider." D.H, NT 15 Dec 2008

"I just wanted to say thank you for the offering of this service. I have already used your new service which helped to pay some unexpected bills that all hit at once. It is hard to organise financial matters when you are at work all day, so having the 24/7 option is great for all those working families. Sometimes quiet time is late at night or on the weekend so it's a great pressure release to know there is this service out there. Thanks again for you support." CW, QLD 17 Jul 2008

"Having moved away from our family, life can sometimes be difficult without any close family support, especially where money is involved. Cash Doctors loans can come in really handy if we have a sick family member or need extra cash quickly to be able to go home. I know where to turn to when I need the cash. Keep up the great work." CS, NSW 23 Jun 2008