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SUBMISSION TO THE SENATE ECONOMICS LEGISLATION COMMITTEE

NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT BILL No. 2

October 2011

BACKGROUND

With 82 branches across the country, Cash Store Australia is one of the largest providers of short-term loan services in Australia.

The Company is publicly traded on the TSX Venture. It is 18 per cent owned by Cash Store Financial (TSX:CSF) (NYSE: CSFS), which operates Canada's largest retail network of payday advance outlets. Cash Store Financial has 574 branches across Canada and 13 branches in the United Kingdom. Cash Store Financial and Cash Store Australia share the same principal shareholders.

Cash Store Australia has a Code of Business Conduct and Ethics that all employees must sign and abide to as a condition of employment.

Cash Store has been a leading advocate of improved consumer protection rules.

We have lobbied actively for rules that go further than the existing responsible lending provisions.

We are one of the few companies that voluntarily stopped rollover loans in order to protect our customers from debt spirals.

SUMMARY

As a major participant in the Australian short-term loans industry, The Cash Store is disappointed at the contents of the Bill now being reviewed by the Committee, and this submission details the reason why.

Equally, we believe that the legislation can be amended in a way that meets the objectives stated by the Federal Government – namely, to strengthen consumer protection – while ensuring the commercial viability of the industry.

Therefore, this submission includes a number of constructive proposals that if accepted by the Government, will strengthen the *National Consumer Credit Protection Amendment Bill No 2*. These proposals are outlined at the end of the paper.

This submission also highlights what we believe are serious short-falls in the public policy development process, about which all Parliamentarians should be concerned.

OUR POSITION

Over the past few months, The Cash Store has been one of a number of companies and industry representative bodies engaged in discussions and negotiations with the Federal Government and with Treasury officials with the aim of introducing national legislation that fairly regulates the short-term loans industry.

Throughout this process, our aims have been clear: a national legislative framework that provides additional protection to consumers while ensuring a viable short-term loan industry based on sensible commercial considerations.

Along with other industry providers, we put to the Government a range of proposals designed to meet those aims, but it seems that most of these have been ignored or dismissed by the Assistant Treasurer, Hon Bill Shorten, MP.

At no stage during our ongoing discussions did the Government indicate that it was considering a cap of anywhere near 10 per cent for short-term loans.

This simply will not work.

The Minister is fully aware of the damage that this cap will inflict on industry.

He has ignored thoughtful public policy development in favour of “sweat box” tactics designed to force last minute concessions from an industry that is suddenly fighting for its life.

It is well known to stakeholders on all sides of the debate that this proposal was developed last minute, despite recommendations to the contrary by Treasury officials. This is substantiated by the Regulatory Assessment Statement supporting this legislation.

We encourage all Committee members to read this statement before coming to any conclusion about this debate.

It is the opinion of The Cash Store that a priority objective of any government is to encourage business investment. Despite any legitimate social policy concerns that may arise in relation to a particular business, when a government indicates its intention to regulate an industry it must do so in an environment of certainty. In the case of this matter, regulatory certainty has been flagrantly abdicated.

This sets a dangerous precedent for the regulation of any business by this Government. All Parliamentarians should be concerned. They should reflect carefully on the merits of passing the short-term credit provisions of this Bill.

In the opinion of The Cash Store, Parliamentary Committees have a duty to reflect not only on the substance and policy objectives of legislation that is put before them.

They must also ensure that due process and fairness have been integral to the development of that legislation. We believe this has not occurred in this case.

The facts are clear.

The Government directed Treasury officials to conduct stakeholder consultations. This was done over a period of at least two years.

At no point did these same officials – based on substantive stakeholder input – suggest that a 10 per cent cap was reasonable. It would seem to us that the cap was established by the Minister and his advisors, disregarding the negative impact of such a decision on legitimate, ethical, industry participants.

We believe that in framing the legislation, the Minister has failed to take into account the costs associated with the provision of short-term credit to Australian consumers, a group of consumers that is routinely and deliberately ignored by most major financial institutions.

In setting its proposed cap on fees and interest charges, the Government has ignored the fact that such caps are unworkable and unprofitable for legitimate operators such as The Cash Store.

In fact, the proposed cap rate, which would involve an upfront establishment fee of no more than \$10 for every \$100 advanced and a maximum monthly interest rate of two per cent on the loan, is well below the cost of The Cash Store providing a loan.

The proposed cap is below costs for all companies involved in the industry.

Our modelling in our formal submissions to Treasury showed that fees need to be at least \$30 for each loan to allow for a commercially viable business.

The Minister refuses to accept these facts.

This is unrealistic and uncommercial.

Given the lack of transparency and the apparent rush by the Minister to introduce legislation without proper debate, we would submit that the sections devoted to short term loans be carved out of the Bill, or, that they be addressed through regulation at a later stage.

More time is needed to get this right.

This would allow for further discussion with the Government aimed at finding common ground on legislation that strengthens protection for consumers, as well as providing a sound commercial environment for short-term loan providers to operate in.

At a minimum, we would ask that the Committee recommend changes to ensure the viability of legitimate business operators such as The Cash Store.

We would ask the Committee to also consider the following:

- Multiple industry operators told the Government that a cap of \$30 - \$40 was needed to keep the industry viable. The proposal of an upfront establishment fee of \$10 and a monthly maximum interest rate of 2 per cent will not work.
- Minister Shorten has said that the Government should fund small-sum loans for those who need them but does not have a program in place to help people now. The Minister has recommended a review to determine suitable alternatives. Where will the estimated \$800 million in current annualised lending come from if not from the existing providers?

AMENDMENTS TO THE BILL

The Cash Store urges the Committee to consider a number of important changes to the Bill, as follows:

Recommendation 1: An independent tribunal to set market-based caps

The Cash Store envisions a pricing tribunal that will ensure transparency on the rate cap regime. This could be achieved through a general regulation – making power. This regulation could allow for the establishment of the panel and its terms of reference.

These general regulations could be added to the Bill without hampering its progress, with details to be established after Royal Assent.

Such an independent tribunal - made up of economic experts with an appropriate background in consumer lending and market competition - would be able to oversee the pricing activities of the industry and make recommendations to the Minister.

The tribunal would have a clear mandate to set a price cap that excludes those that charge egregious rates outside the normal competitive price band but high enough to accommodate providers who charge normal market rates. The tribunal would be directed to set a cap that is sufficient to foster, not stifle, competition.

We propose that rate setting be deferred to such a tribunal, which also could provide a formal method of appeal for all parties, including consumer groups, should there be a disagreement with the tribunal's findings.

The key responsibilities for the tribunal would include:

- fixing the maximum cost of credit, or establishing a rate, formula or tariff for determining the maximum cost of credit, that may be charged, required or accepted in respect of a micro loan;
- fixing the maximum amount, or establishing a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of the extension or renewal of a micro loan or in respect of a replacement loan; and
- fixing the maximum amount, or establishing a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of a default by the borrower under a micro loan.

Recommendation 2: Changing the definition of short-term credit

The current definition of two years / \$2,000 does not reflect the current market. Therefore, we recommend that short-term credit rules apply to loans of \$1,500 for 62 days or less.

Recommendation 3: Removal of prohibitions on lending to persons with outstanding loans to other short-term credit providers

This recommendation is impractical to implement and will further add costs for lenders. In a restrictive rate regime, providers must be permitted to keep costs low.

THE NEED FOR A VIABLE INDUSTRY – AND STRONG CONSUMER PROTECTION

We agree that the industry can do more in the area of responsible lending and ensure in the process that there is greater protection for consumers from those credit providers that adopt unscrupulous and exploitive lending practices. This is particularly important for those consumers regarded as the most vulnerable, including those on social security payments.

But we do not believe that these consumers should be “carved out” of the system.

We believe that it is just and reasonable for all members of the community to have access to some form of credit in a free market, and the best protections for any class of borrower are more rigorous and robust responsible lending practices, as well as the monitoring of behaviour.

However, it is unreasonable to expect that we would provide heavily discounted or free loans which would impact on our ability to remain a viable business.

As the legislation stands, we believe the Government would be denying credit to a very large proportion of Australians because the modelling behind the rate cap regime is flawed and unrealistic.

Based on the cost of credit, we believe that a cap of between \$30 and \$40 for each \$100 loan is needed to ensure that we can continue to operate a viable business in Australia. The supporting data is outlined in an independent costing audit conducted by Ernst and Young accountants that we submitted to Treasury.

CONCLUSION

As one of the largest and best-known businesses in the short-term loans industry, The Cash Store believes that the Bill before the Parliament is flawed and will result in less competition with the almost certain demise of most, if not all, legitimate and responsible operators.

This will leave many consumers worse off, with less rather than greater protection, and fewer options for short-term credit.

The Bill has failed to take into account the cost of providing credit for companies such as The Cash Store, with the proposed cap being well below the cost of credit making it unviable for companies to remain in the industry.

We ask the Committee to take our submission into account as it reviews the legislation, and that amendments be recommended to ensure that consumers are properly protected while ensuring a viable and well-regulated industry.