DollarsDirect

Memorandum

To: Department of the Senate
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ATTN: Submission - NCCP Amendment (Enhancements) Bills 2011

From: Daniel Shteyn,
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16 - 18 Grosvenor Street
Sydney, NSW 2000

Date: October 21, 2011

Re: DollarsDirect's Comments to the Consumer Credit and Corporations Legislation Amendment Enhancement Bill 2011

Dear Sir or Madam:

Below please find DollarsDirect's comments to the Consumer Credit and Corporations Legislation Amendment Enhancement Bill 2011 ("the Bill") introduced by the Hon. Bill Shorten MP on Thursday August 25, 2011. We are the leading online broker for short-term loans in the Australian market, and are owned by Enova Financial, 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

INTRODUCTORY STATEMENT

The primary goal of any short-term small amount credit legislation should be to protect Australian consumers within a framework that permits the lending industry to remain viable. With an eye towards creating such a framework, this memorandum sets forth the provisions of the Bill we consider problematic, the reasons such provisions are problematic, and our recommendations on how to tailor the Bill to achieve a framework that would protect consumers and permit the lending industry to survive. As discussed in more detail below, a workable solution must:

1) for non-desperately vulnerable persons, cap rates at $30 per $100 lent;

2) for desperately vulnerable persons, cap rates at $10 per $100, with a 2% monthly fee;

3) institute a 200% total cost of credit cap for all short-term small amount credit loans; and

4) permit consumers to take control of their finances within the framework of responsible lending requirements.

We have also included in the submission our draft amendments to the Bill, which incorporate the recommendations we detail below.

After reviewing the Bill, DollarsDirect and many other stakeholders prepared lengthy and well-reasoned responses for submission to the Joint Committee on Corporations and Financial Services. However, last Friday October 14, 2011, a mere two hours before the closing of submissions, Treasury issued a further discussion paper with the intention of amending the tabled bill ***while in Parliament***.

This tactic, which could be viewed by some as lacking in transparency, sound policymaking and democratic process, left DollarsDirect and other stakeholders no time to substantively respond to the amendment. Moreover, the amendments introduced late last Friday are unclear in many respects. For example, in some cases, defined terms are worded in an overly broad manner. The amendments could also cause unintended consequences, which could harm consumers and business in Australia. The Treasury even admitted that one of the provisions (Section 32A) was not included in the Bill when it was introduced into the House of Representatives because "further consultation was desirable to consider whether the prohibition introduced practical difficulties…." If further consultation was desirable, jamming in the amendments at the last second without providing a meaningful opportunity for review, analysis and comment is a recipe for poor lawmaking. Therefore, it is impossible for DollarsDirect, or any other stakeholder, to substantively comment on the recent amendments to the Bill.

To ensure fairness and the use of best legislative practices, the lawmaking process, as it relates to the Bill, should be immediately placed on hold. At that time, a clean and complete draft of the Bill, which incorporates the amendments introduced on October 14, 2011, should be circulated for proper review and comment. Only then can DollarsDirect, and other stakeholders, provide substantive comments on the Bill.

OUTLINE

The following table provides an outline for DollarsDirect's comments, issues, and recommendations to the specific provisions of the proposed short-term small amount credit legislation introduced by the Hon. Bill Shorten MP on August 25, 2011. A more detailed analysis of DollarsDirect's recommendations follows the outline.

SECTION	ISSUE	RECOMMENDATION
§ 31A: Restrictions on Fees and Charges for Small Amount Credit Contracts	Interest rate caps are detrimental to consumers because they would deprive consumers of access to legitimate and responsible credit options. The proposed rate caps are financially prohibitive to responsible, licensed lenders, as the rate caps would force such lenders out of the Australian market. Illegitimate and illegal lenders would fill the vacuum, creating an unregulated system. Such consequences would be devastating to Australian consumers because they would lose a legitimate and responsible source for their short-term small amount credit needs and be forced to deal with unlicensed and illegal lenders.	The proposed interest rate cap model of a 10% establishment fee + a 2% monthly fee is conceivable only for desperately vulnerable people ("D&V"). D&V should be defined as Centrelink recipients with a monthly income of $500 or less. Employed customers should not be classified as D&V. For all other people that are not classified as D&V, the proposed rate cap should be increased from 10% to $30 per $100 lent. Thirty percent is the lowest number for which DollarsDirect would be able to continue business in Australia.
§ 39A: Limit on the Application of Amount of Credit Provided Under a Small Amount Credit Contract	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 refinance his or her loan contract a limited number of times using the services of a legitimate and responsible lender. Additionally, such a ban harms consumers because consumers lose financial flexibility and control over their financial affairs.	**Any short-term small amount credit legislation should include 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 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.
§ 39B: Limit on Amount that May be Recovered if there is Default Under a Small Amount Credit	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.	As explained above, any legislation should include a 200% total cost of credit cap applicable to ***all*** loans.

SECTION	ISSUE	RECOMMENDATION
Contract		
§ 124A	Section 124A is discriminatory to online lenders/ brokers as storefront lenders are exempted from providing a short high-impact statement to consumers. 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).	The obligation on licensees that have a website to provide a short high-impact statement to consumers should be removed. However, online lenders should be required to provide a financial information section.
§§ 124B, 124C, 133CB, 133CC	Sections 124B, 124C, 133CB, and 133CC 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. Banning refinances harms the consumer because it is fundamentally in the consumer's best interest to retain the ability to refinance with cheaper credit. Additionally, a ban on refinances is onerous and burdensome without comprehensive credit reporting. 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. 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.e.*, whether the consumer is hiding another loan with a different lender.	Refinancing a short-term credit with another credit should be permitted so long the new amount is not incompatible with responsible lending. Rather than simply ban refinances, lenders and brokers should be obliged to consider the existence of such loans in the context of meeting their responsible lending requirements. As explained above, any legislation should include a 200% total cost of credit cap applicable to ***all*** loans. Such a cap makes a ban on refinances redundant and unnecessary because the consumer could never be charged more than 200% the cost of the original loan. The "recklessness" provisions should be dropped.

SECTION	ISSUE	RECOMMENDATION
§ 72(1): Changes on the Grounds of Hardship and Unjust Transactions	The proposed trigger for the obligations of the credit provider in subsection 72(1) is the debtor "notifying the credit provider of the debtor's inability to meet the obligations." This is too imprecise. 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 hardship. Once that happens, there is nothing the credit provider can do to protect itself from illegitimate hardship claims.	The "trigger" for the obligations of the credit provider should be that the debtor: i. notifies the credit provider of their inability to meet their obligations under a credit contract (possibly for a reasonable cause); AND ii. asks the credit provider for assistance relating to their obligations under the contract. Additionally, the legislation should provide for a hardship procedure, which includes the following: 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. 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. 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. 4. The credit provider has 30 days from the date of receiving the consumer's documentation of hardship to make a hardship determination.
§ 72(3): Changes on the Grounds of Hardship and Unjust Transactions	Under the current provisions, a credit provider is required to respond to a trigger within 21 days. This time period is too short to allow the credit provider to	The credit provider should be given 21 days ***from the date the credit provider has enough information to make a decision*** to inform the borrower whether it agrees to change the

SECTION	ISSUE	RECOMMENDATION
	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.	contract.

DETAILED ANALYSIS

1. Interest Rate Caps (§ **31A**)

   a. ***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. The proposed interest rate cap model of a 10% establishment fee + a 2% monthly fee is conceivable only for desperately vulnerable people (D&V). D&V should be defined as Centrelink recipients with an income of $500 or less. Employed customers should not be classified as D&V.

      2. A 10% establishment fee with monthly fees that can be a maximum of 2% 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 each. It has recently been advised by Veda that the cost for a credit report will increase to a maximum of something in the order of $14 each.

         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 $2 MORE than it would recover for a $100 one-month loan pursuant to the proposed amendments.

3. Thus, the proposed rate caps are 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.

4. **If interest rates were capped at a 10% establishment fee + a 2% monthly fee, DollarsDirect would be unequivocally 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.

5. 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.

6. 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.

7. 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.

8. 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 Will NOT Be Able to Operate Under the Proposed Rate Caps.***

1. Payday lenders cannot operate profitably with a 10% rate cap. 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. ***Solution: Increase the Proposed Rate Cap from 10% to $30 per $100 lent for everyone but D&V.***

1. The Regulation Impact Statement suggests an interest rate cap of $30 per $100. We agree with this recommendation. Rates should be capped at $30 per $100 for all non-desperately vulnerable people ("D&V"). D&V should be eligible for the 10%+2% model.

2. D&V should be defined as Centrelink recipients with an income of less than $500 per month. Those who are employed should not be classified as D&V.

3. A rate cap of $30 per $100 lent 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.

4. The government should also consider setting the establishment fee at a higher rate than $30 per $100 and bringing it down gradually. This would permit the small amount credit industry to adjust to the new legislation.

5. Finally, lenders should be allowed to levy the monthly charge before the first month passes.

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, in a situation 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 are in need of a small value loans due to the some *unforeseen circumstances that are beyond their control.* Sometimes several weeks are sufficient for the consumers, but sometimes consumers 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 ultimate goal is to protect (not punish) consumers experiencing unforeseen financial needs and to prevent the circle of debt while providing access to credit offered responsibly, then the solution is to limit the total cost of credit, not eliminate rollovers.

3. Cap on Default Fees (**§ 39B**)

i. According to our internal data, short term low value loans (payday loans) account for a miniscule portion of a typical bankrupt customer's total debt load and monthly cost of debt service. Short term low value loans account 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.

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

i. We understand that section 124A 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 be not be implemented.

5. Ban on Refinances (**§§124B, 124C, 133CA, 133CB, and 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 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 incompatible with responsible lending from a consolidated perspective.

ii. Banning Refinances is Onerous and Burdensome without 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 Put Credit Providers in an Impossible Situation.

1. 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

2. 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.

3. The "recklessness" provisions would cause DollarsDirect to exit the Australian market.

iv. ***Transition Measure Required***

1. At the very least, a transition measure must be put in place to stay the coming into effect of this provision until such time as comprehensive credit reporting is introduced and the amount of data in credit reports is increased.

6. 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 "notifying the credit provider 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 of their inability to meet their obligations under a credit contract (possibly for a reasonable cause); and

2. asks the credit provider for assistance or information in respect of their options in relation to their 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.

7. Hardship: Obligations Following Trigger for Obligations of Credit Provider (**§72(3)**)

    i. Under the current provisions, a credit provider is required to respond to a trigger within 21 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 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.

8. 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.

9. 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.

10. 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.

I greatly appreciate your thorough consideration of the points made in our submission and I look forward to working with the Committee 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
DollarsDirect, an Enova Financial company