

14 October 2011

The Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
corporations.joint@aph.gov.au

Dear Sir/Madam

NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT (ENHANCEMENTS) BILL 2011

I am writing this letter to you to express my deep concern regarding the draft Bill that the Government proposes to introduce with respect to short term small amount loans.

This business commenced operation on the Gold Coast in 2006 to provide short-term finance ranging from \$500 to \$3,000 with loan terms of six months to two years. The business has steadily grown from two employees to fourteen employees all based on the Gold Coast servicing approximately 3,500 active clients. In the six years that this business has been operating, we have established a client base that is appreciative of our products and service.

I personally have been involved in this industry for over 10 years and during this period have seen many changes by many governments regarding regulation of this industry. I have supported all measures to bring proper regulation and accountability to this industry. I embraced wholeheartedly the most recent changes regarding licencing of businesses, responsible lending practices and internal policy implementation to ensure best practice with respect to dealings with consumers. These new measures were embraced at significant cost to the business as continuing training has to be provided to staff, a compliance officer has been employed to oversee ASIC requirements and attend to internal audit to monitor compliance with responsible lending rules.

During my time in the industry, there have also been numerous research studies undertaken regarding the imposition of interest rate caps. The most recent study undertaken by the Queensland University of Technology "Phase Two of the National Credit Reforms Examining the Regulation of Payday Lenders" in March 2011 clearly concludes that

".. the effect of an all inclusive cap is likely to have the effect of prohibiting payday lending as being unprofitable.

Further, the research study goes on to say:

"..Given that the mainstream lending market does not provide credit for small loans repayable over a short period, the cap would be likely to have the effect of excluding some low-income consumers from the market or leading others to take out larger loans than they need.

We believe that the draft Bill if passed will result in the above research study conclusions becoming a reality.

We have read the draft Bill and believe that the Government's intention is to close the industry down altogether or that Treasury has not properly assessed the impact of this draft Bill on this industry with a view to having a viable and compliant industry. In particular I would like to comment on specific areas of the draft Bill as follows:

Interest rate caps

The draft Bill seeks to limit the amount charged on small-amount short-term contracts to 10% establishment fee plus 2% monthly fee. In addition loans greater than \$2,000 will be subject to a 48% all inclusive interest rate cap. We believe the definition of small-amount short-term contract should be changed to less than \$500 and less than six months so as to discourage higher value loans being issued in instances where they would clearly be inappropriate.

If the Government seeks to protect the poor and vulnerable it should do so by looking at income levels or some type of income protection measurement which we refer to below for further discussion.

Secondly' we have prepared our own budgets to assess the effect of this draft Bill on the business. Our conclusion is that these proposed rules may only allow us to recover our costs at best. This outcome is not sustainable and my only course of action will be to get out of the industry altogether. I am at a loss to understand how the proposed model outlined in the draft Bill is a viable business model. Treasury has not provided any financial modelling to support their proposed model. How can any business meet its responsible lending and other ASIC requirements under this proposed model? We believe an appropriate model to be based on a 48%pa interest rate plus a market driven establishment fee, as this level of fees allows us to meet all our legal requirements including responsible lending practices, pay our expenses and return a reasonable profit to shareholders.

Prohibition of more than one contract/refinancing

The draft Bill also contains provisions relating to prohibition of providing short-term small-amount loans where the lender is “aware” that the consumer has another small amount credit contract in place. This also presents another problem with respect to implementation. How far are we to take this notion of being “aware”? Is the current practice of making sufficient enquires and verification enough, or will there be another yardstick introduced to measure this by? This aspect of the draft Bill is difficult to implement in practice.

The prohibition on refinancing (i.e., paying out an existing loan with the proceeds of a new loan) and increasing credit limits will disadvantage consumers greatly as it will eliminate the flexibility they currently have in borrowing funds to meet unforeseen circumstances as and when they need it. We believe this will lead to consumers borrowing the maximum amount they possibly can as they will have no possibility of obtaining additional funds until their current loan is paid out. It will also lead to consumers concealing the fact that they may have other loans in existence when applying for a loan.

This piece of draft legislation implies that by eliminating the rights of consumers to apply for more than one loan, refinance an existing loan or increase their credit limit as and when they require it, will avoid them falling into a debt trap. The only way consumers will not fall into a debt trap is if they disclose all existing loans to potential lenders at the time of their application. We would never give a loan to a consumer if we were aware that they were falling into a debt trap as we would be the only loser. Introducing a piece of legislation that is difficult for the lender to comply with will result in failure for all concerned.

Cap on default fees

The draft Bill addresses the issue and quantum of default fee charges. We agree that a limit should be placed on the total amount that can be charged for default fees. Our own policy is to cease charging a default fee after three consecutive defaults. However, the draft Bill suggests that an upper limit be imposed of twice the amount of credit obtained. We welcome this approach as we believe it will protect consumers against spiralling debt.

Protection of poor and vulnerable consumers

I understand and agree that the main focus of this draft Bill is to protect the poor and vulnerable. Our business has addressed this issue by identifying these people based on their gross income level. Our current policy is that we do not lend to any consumer with a gross weekly income of less than \$400. There has been much talk recently that our industry should refer these clients to the various NILS and LILS programs available. We do not have a problem in doing this for all the applications that we reject. In any given month we reject an average of 2,000 applications. We understand that NILS/ LILS and other charities may be able to assist these consumers on low incomes. As we are not a charity (with all the attendant benefits of being a charity i.e., tax free status) we cannot operate on the same level playing field as charities.

If this draft Bill is passed by government it will result in the following for this business:

1. Cease short-term lending to consumers as it will be unprofitable. The big banks have not been able to make a profit in this segment under current laws and we will not be able to make a profit either under the draft Bill rules
2. Retrench fourteen staff on the Gold Coast with immediate payout of leave entitlements. This is a region which suffers high unemployment already and staff may not readily find other work in this economic climate.
3. Additional cost will be incurred as the business will need to outsource debt collection on the existing loan book. Alternatively, I would need to consider selling the loan book at a significant loss.
4. Close two office locations whilst continuing to incur lease obligations for at least another eighteen months.
5. Dispose of all office equipment, computers and software at significant loss.

I can only hope that you will reconsider this draft Bill with a view to making it workable for the industry and the consumers.

Yours faithfully

Wade Doblo - Director