

Additional Comments by Coalition Members and Senators

1.1 Coalition Members and Senators make the following additional comments concerning the Committee's inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011.

1.2 The Committee received evidence from one lender, Money3, that the industry provides cash advances of \$800 million a year to 500,000 customers.¹

1.3 This suggests the industry is meeting a substantial consumer need for short term, small amount (STSA) loans. Consideration of any regulatory restrictions must take account of the consumer detriment from reducing the availability of a product for which there is a proven demand.

1.4 Minister Shorten's media release, announcing the measures in the Bill, says they are intended to 'protect...vulnerable consumers.'² In other words, this Bill is based on the assumption that all STSA loans are inherently harmful and all who take them out are inherently vulnerable. We do not think this is correct.

1.5 Some witnesses argued that, in effect, any consumer who takes out a STSA loan is doing so because they are desperate. A good example is the view put by Ms Catriona Lowe of the Consumer Action Law Centre:

Ms Lowe: It is not about a person making a judgement; it is about a person having a need to make a series of payments and it is about whether there are safe options available for that person to satisfy their need to make those payments. We do not consider that people need expensive credit; what they need is an adequate income to be able to afford the cost of living. Paying expensive credit when you do not have enough income is simply not a proposition that is going to help consumers. It is not about their judgement; it is about the objective outcome.

Mr FLETCHER: You do not ever see a circumstance in which consumers ought to be permitted to make that judgement?

Ms Lowe: No. That is not, with respect, what we are saying. What we are saying is that the product is harmful in the sorts of circumstances which are typical for the user of the product. Where a product is harmful, there are countless examples of where we as a society make a judgement that, if we are making that product available, we will regulate the basis on which it is available because of its potential for harm. We would say that this is such a product.³

1 Money3, *Submission 7*, p 2.

2 Bill Shorten, Media Release, 25/8/11, 'Reforms to Payday Lending'

3 *Committee Hansard*, 24 October 2011, pp 38-39

1.6 Coalition Members acknowledge the important and difficult work done by consumer legal services and financial counsellors. But we respectfully disagree with the view that STSA loans are so inherently dangerous that their provision (to any consumer of any kind) should be tightly restricted.

1.7 This is a policy area which raises difficult issues. Clearly there are people who are incapable of making sensible financial decisions – be that due to addiction, substance abuse, limited decision-making capacity or other factors.

1.8 But the Committee heard persuasive evidence that, rather than STSA loans being used only by those who are vulnerable and desperate, many STSA loans are provided to people in employment who have made a rational decision that the product meets their needs better than other alternatives. The Committee heard that a number of providers specifically require customers to be employed or have a rule that they do not lend to those whose only income is government benefits. These include Money Plus, Money Centre, Dollars Direct, Cash Doctors and First Stop Money.⁴

1.9 Providers which do lend to welfare recipients, such as Cash Converters, gave evidence about their responsible lending practices in doing so.

Mr Day: No, that is not the case. We at Cash Converters indicated that over 40 per cent of our customers are on welfare payments. We have a responsible lending structure in place that will lend a new customer a maximum of 10 per cent of net income and, out of that, we have a 97 per cent repayment rate. It does not necessarily happen at the end of the month. Some 30 per cent of them take longer, but there are no punitive penalties or additional costs involved in that.⁵

1.10 This evidence is not consistent with an assumption that STSA lending inherently and necessarily involves vulnerable and disadvantaged customers being forced to agree to terms which make it impossible for them to repay the loans.

1.11 The evidence highlighted several serious concerns about the approach taken in this Bill – leading us to conclude that it is a hastily-cobbled together attempt to grab a headline, rather than any meaningful attempt to come to terms with the policy issues raised by STSA loans. We set out our concerns below.

1.12 The legislation in its present form would in our view be likely to seriously damage the STSA market. The Committee received evidence from a range of lenders that the proposed caps on fees and charges for STSA loans will make their business model unsustainable.

1.13 The government has adopted the simplistic 48 per cent cap first passed into law by the hopelessly incompetent NSW Labor government in its dying days –

4 Committee Report, paragraphs 5.72-5.76.

5 Ian Day, Cash Converters International, *Committee Hansard*, 24 October 2011, p. 58.

without bothering to consult with industry at all. This is explained in the submission by the Australian Bankers' Association:

The proposed model for calculation of the "cost rate" is based on a model legislated under the Credit (Commonwealth Powers) Act 2010 (NSW) upon which there was no prior consultation with the credit industry. Subsequent representations to the New South Wales government were to no avail.⁶

1.14 Simple mathematics means that any short term loan (for a few days or even a month) is likely to breach a cap calculated on an annualised basis. (On a loan of \$100 for two weeks, any fee greater than \$1.85 produces an annualised interest rate of more than 48 per cent.) Coalition Members do not agree that short term loans are inherently problematic, and we believe that a formula which automatically deems short term loans to be unacceptable is inherently flawed.

1.15 The Bill would impose this flawed 48 per cent cap for all loans other than 'small amount credit contracts'. There would be a separate cap mechanism (of an upfront fee of 10 per cent of the principal amount, and a monthly fee of 2 per cent) for 'small amount credit contracts' (defined as being for less than two years and for less than \$2,000). Coalition Members highlight the comment in the Committee Report that the Treasury evidence on this point did not give details of any economic modelling underpinning the '10/2' approach.⁷ We would add that there is no evidence of this having been calculated so as to ensure a viable business model for STSA lenders.

1.16 The government seems to have given little thought as to what will replace the provision of STSA loans by private sector providers. Minister Shorten's media release identified some alternatives – but there is no persuasive evidence of these being available in sufficient volume.

1.17 The restrictions in the Bill specifically carve out Authorised Deposit-taking Institutions (such as banks and credit unions.) We cannot understand why. Competitive neutrality ought to be a core public policy principle. If you are going to intervene heavily in marketplace activity, you ought to take care to do so in a way which is neutral as between market participants. The government has failed to do this.

1.18 This Bill follows closely on the recent introduction of the responsible lending framework. STSA lenders argued that they are already prevented by this framework from making STSA loans to customers who will be incapable of repaying them. A similar argument was made by Fair Finance Australia:

Our experience would indicate that any loan made for the purpose of payment of daily consumption or bills cannot by definition fit within the responsible lending framework. This is because it is usually the case that

6 Australian Bankers' Association, *Submission* 43, p 16

7 Committee Report para 5.180

individuals do not have enough income to survive day to day and are clearly in poverty.⁸

1.19 If this is so, why are the measures in this Bill required? If the evil at which they are directed is lending to disadvantaged and vulnerable consumers who cannot repay their loans, is that evil not now addressed by the responsible lending requirements? No satisfactory answer was presented to this question in evidence before the inquiry.

1.20 The measures in the Bill involve highly detailed and prescriptive interventions in the business practices of STSA lenders. They include restrictions on multiple concurrent contracts and on increasing credit to a borrower when an existing loan matures. We believe these measures are undesirable in principle and unworkable in practice.

1.21 We question why government should be setting a cap on the prices that STSA lenders – or any other kind of lender – may charge. We support full disclosure of what is charged, and a requirement to calculate and disclose to the customer an annual rate calculated using a standardised methodology. But we are sceptical of the wisdom of outlawing prices above a certain level.

1.22 At the very minimum, before we could support the imposition of such a law, we would need to be satisfied that the caps had been carefully developed based on a study of the business models of industry participants and their costs. We recommend that the Productivity Commission or a similar agency be tasked to carry out this study and recommend pricing which would permit STSA lenders to achieve a reasonable return on capital.

1.23 We note the evidence provided to the Inquiry from a Treasury official that the government's objective is to maintain a viable STSA industry:

Ms Vroombout: What I said in my earlier comments was that the government's objective with reforms and with the caps as outlined in the bill was to balance the social costs and improve the outcomes for vulnerable consumers while maintaining a viable industry. So that was the objective.

Mr GRIFFIN: You are confident it will maintain a viable industry. That is what I am trying to get to. Okay, that is what you are saying.

Ms Vroombout: I am saying that was the government's objective in setting that cap.⁹

1.24 If the government is serious about this objective, it must adopt the more rigorous approach we have suggested.

8 Fair Finance Australia, *Submission51*, p 1.

9 *Committee Hansard*, 24 October 2011, p. 77.

Senator Sue Boyce

Senator Mathias Cormann

Paul Fletcher MP

Hon Tony Smith MP

