



Attention: Manager
Consumer Credit Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: enhancementsregulations@treasury.gov.au

29 August 2012

Dear Sir/Madam

Re: Submission on the draft National Consumer Credit Protection Amendment Regulations Issues for small amount credit contracts ("SACCs")

We write to you in response to the release of the draft National Consumer Credit Protection Amendment Regulations ("Regulations"). The provisions proposed under the Regulations impose, amongst other things, a requirement for certain disclosures to be made on credit licensee websites for SACCs ("Website Disclosure"), and a prohibition on third party fees from being passed on to the consumer ("Ban on Third Party Fees"). We wish to make submissions in respect to these as follows.

Submission Synopsis

As you are aware, Cash Doctors has been an active stakeholder in the consultation process for the Consumer Credit Legislation Amendment (Enhancements) Bill 2012 ("Legislation") and you will therefore be familiar with how Cash Doctors are differentiated in the marketplace. We will briefly summarise these differences again.

Our customer base:

- are fully PAYG employed with average NET annual income of \$40,000 (44% of clients earn between NET \$35,000-\$50,000 and 18% between NET \$50,000-\$75,000); and
- 60% have a perfect credit history and all have a desire to engage with a short-term credit solution rather than the longer term commitment required by more traditional solutions.

Cash Doctors offer:

- advances of between \$100 to \$600 for a maximum period of 45 days to financially literate customers with no roll-overs permitted;



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- 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;
- a purely online product, in line with the preferences of this customer base.

We understand and support steps to protect the vulnerable; this is not our customer base however. These regulations need to strike a balance between protecting those vulnerable consumers while also accommodating the significant changes brought about by technology and the growing number of financially literate Australians who conduct their financial lives online.

The Legislation already imposes restrictions on how a business can operate where its product is a SACC. These include a prohibition on loans for 15 days or less, a requirement to obtain and consider the customer's bank statements for the last 90 days, a rebuttable presumption of unsuitability where the customer is in default under another SACC or where the customer has had 2 or more SACCs in the last 90 days, and a cap on the overall costs that can be charged under a SACC. We accept these were implemented by the Government for the protection of the "vulnerable" class of consumer, and notwithstanding that they are not required for our customer base, we are currently working through the changes and amending our product for July 2013 readiness. We have now been given draft regulations which, although expected, will have an impact on our customers and business. We wish to provide Treasury with some insight into the impact they will have on our business, and suggest ways to overcome, or at least mitigate their affect so financially literate consumers can continue to use the product to suit their needs.

Our key submissions are:

- 1. the Website Disclosures are intended to protect the "vulnerable" and should only apply to the class of consumers set out in regulation 28S (holders of Pensioner Cards). In the alternative, we suggest a different disclosure be sent to non-holders of Pensioner Cards which is more tailored to their needs.**
- 2. The Ban on Third Party Fees excludes the ability to recover from the consumer reasonable and genuine out-of-pocket expenses paid to third parties such as the cost of a credit check and identity verification check paid to a credit reporting agency, direct debit fees paid to a direct debit service provider, and card fees paid to a card issuer, all of which may be related to the provision of a credit product. These costs should be recoverable and exempted from the costs cap.**

Website Disclosures

The draft Regulations provide:

"28XXB Small amount credit contracts—requirements for warning on licensee's website



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For paragraphs ... 133CB (1) (b) of the Act, the requirements for a licensee's website are as follows:

- (a) a hyperlink in the form of a boxed icon containing the words 'Warning about Borrowing' must appear and be reasonably visible on any webpage where a significant proportion of the information on the page is about small amount credit contracts;
- (b) the hyperlink must open a warning;
- (c) the warning must:
 - (i) be as set out in Schedule 8; and
 - (ii) use the typeface known as Arial; and
 - (iii) unless otherwise illustrated in Schedule 8, be in typeface that is:
 - (A) 10 points in size; and
 - (B) in normal weighted regular font; and
 - (iv) include the words 'WARNING – Do you really need a loan today?':
 - (A) at the start of the warning; and
 - (B) in bolded font; and
 - (v) include the words 'This statement is an Australian Government requirement under the National Consumer Credit Protection Act 2009':
 - (A) at the end of the warning; and
 - (B) in typeface that is 8 points in size;
- (d) an identical warning must immediately appear when a person clicks on an access point or link that takes the person directly to an application form to apply for a small amount credit contract;
- (e) an application form for a small amount credit contract must not be able to be accessed until the identical warning is closed.

The form of the warning is set out in Schedule 8:

"Schedule 8 - Warning about small amount credit contracts—websites

"WARNING* - Do you really need a loan today?"

Short-term loans are expensive and may not solve your money problems.

Check your options before you borrow:

- *Call the free National Financial Helpline: 1800 007 007*





- *Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan*
- *If you are on government benefits, ask if you can receive an advance from Centrelink: Phone: 13 17 94*

MoneySmart shows you how short-term loans work and suggests other options that may help you.

** This statement is an Australian Government requirement under the National Consumer Credit Protection Act 2009."*

Treasury has said (in the paper "Treasury Commentary and Questions Draft Regulations" released 9 August 2012):

"The first warning must be in the form of an icon displaying the words 'Warning About Borrowing' and must be visible on pages of the website referring predominantly to small amount credit contracts (this recognises that some small amount lenders also operate in different business areas)" (the "Hyperlink"),

and that:

"the second warning would appear whenever a consumer clicks on the relevant link which would take them directly to an application form, and must be physically closed before they can access the application form" (the "Warning").

Treasury has asked for feedback on the location and content of the Warning. We make the following observations:

Frequency -

Regulation 28XXB provides that the Hyperlink "must appear and be reasonably visible on any webpage where a significant proportion of the information on the page is about small amount credit contracts". As stated above, Treasury has said that "*this recognises that some small amount lenders also operate in different business areas*". As our only product will be a SACC, the Hyperlink containing the words "Warning About Borrowing" will need to appear on nearly every page. The Cash Doctors website already provides extensive information and advice to consumers (including an established link to the MoneySmart site – see <http://www.cashdoctors.com.au/articles/free-financial-advice>). In its current form, this would require duplication across up to 400 webpages.

Location –





Treasury has said that the Warning “*would appear whenever a consumer clicks on the relevant link which would take them directly to an application form, and must be physically closed before they can access the application form*”. This suggests that a “pop-up box” containing the text of the Warning would have to appear after a customer clicks on an “Apply Now” button, which must be closed before the application form is accessed. In the online world, a pop-up is considered “Spam”, and is typically closed by the user immediately without reading it, in order to quickly access the page they require. Pop-up texts are also often related to Spyware style messages and will create further negative experiences for the user as well as concern that their computer is compromised. Consequently, we do not believe that the message will be read and therefore will not have the desired effect that the Government is intending here.

Typeface and font –

The regulations also prescribe that the text be in 10 point size – a measure clearly aimed at the traditional, paper-based environment. This is irrelevant to the end user who will view the Warning differently depending on the technology device used, for example, anything from a large computer screen, down to an Ipad or mobile phone device. Also consider the customer’s own viewing settings on the device (which could be large or small), and the fact that all text can be increased or decreased at any point using the “magnifier” icon. As the text size is always variable, we believe that prescribing font size is unnecessary and cannot achieve the “static” font size that is intended by Treasury.

Content –

The “Warning” connotes something “negative” about using the site, when we are striving hard to maintain a positive customer experience and help people with a product that is quite different from what other providers offer. It will be hard to reconcile the two unless the wording is changed.

The content of the Warning has a “hardship” focus. The Government has made a general assumption that all users of SACCs already:

- have “money problems” (second sentence),
- need financial help (reference to “National Financial Helpline” in first dot point)
- are behind in their essential services bills (second dot point)
- are on government benefits (third dot point).

This is not the case.

Further there is a suggestion that short term loans are “expensive”. This is a very subjective term. What is this being measured against? If it is other SACCs, there is now an even playing field where the costs are fixed under a rate cap. Is the intention that they are expensive compared with other





credit products? Our customers tell us that in fact it is credit cards that are “expensive”, because credit is too easily accessible, creating the ability to easily fall into a downward debt spiral. This term should be removed as it cannot be substantiated.

Further there is a suggestion that all consumers of SACCs are eligible for hardship relief with essential service providers, and eligible for the “other options” available on the Moneysmart website (and we assume this to mean the NILS and LILS programs). This is not always the case with consumers of SACCs who may have higher incomes putting them over the threshold for eligibility – as is the case with the Cash Doctors’ customer-base.

Cash Doctors therefore submits that it is potentially misleading to presume that every person that visits websites of credit providers offering SACC’s, and in particular the Cash Doctors website, firstly, “need” the assistance that the Warning suggests, secondly, are “eligible” for such assistance, and thirdly, that the alternative options are “cheaper” than the product on offer in that particular website. It would be dangerous to apply such blanket presumptions to all recipients of SACC’s, and also to all the credit providers of SACCs - the financial situation of each website visitor will be different, and the costs of each credit provider will be different (so far as is possible under the rate cap). Credit providers are now prohibited from making representations assuming suitability without having first undertaken an assessment (section 128(aa)). This approach however involves the Government assuming *unsuitability* without having first undertaken an assessment - this is completely at odds with the approach adopted in the Legislation.

Prescribed Website Disclosure has the potential to confuse and mislead the customer about options available and particularly about the Cash Doctors product. Accordingly, Cash Doctors does not support a requirement to include this particular information as it is currently proposed in the Regulations.

Finally, we note the MoneySmart website currently does not have information on “how short-term loans work” and does not suggest “other options” that may help a consumer, despite the fact that the Warning states that this is the case. This makes it difficult to make a submission on disclosure when we do not know the text that the consumer is meant to be seeing by clicking through the links. On this point, we would like to highlight that the suggestion that the customer needs to go to the MoneySmart website for more information on “how short term loans work” is problematic. It negatively connotes that the credit provider’s website that they are currently on cannot be trusted, and that only the Government can reveal the “truths” about these loans. In effect, this undermines the credibility of the credit provider’s product and site. Further, how can the Government be sure that they have correctly represented “how short term loans work”? Surely, there will be differing products in the market?

Accordingly, our submissions (in order of priority) are:



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1. That the Website Disclosure is not forced upon credit providers who do not lend to centrelink recipients. We suggest this is done by the following amendment:

“New 28XXBA Small amount credit contracts – exemption for requirements for warning on licensee’s website

Regulation 28XXB does not apply when the licensee’s application criteria for a small amount credit contract excludes the class of consumers set out in regulation 28S(2).

2. That the Hyperlink only appear on the application page, and instead of reading “Warning About Borrowing”, it reads “An important message from the Australian Government”. The prescribed Warning would read, with no prescribed font or size requirements for online applications:

“This statement is an Australian Government requirement under the National Consumer Credit Protection Act 2009.

Is a short term loan adequate to address your needs?

If you have an unexpected bill or expense, a short-term loan may be adequate for your needs, but there may be other short-term solutions also available to you. MoneySmart shows you how short-term loans generally work and suggests other options* that may help you.

**subject to certain eligibility criteria.”*

We suggest the Website Disclosure has the ability to be given in the same manner and timing as the credit provider’s credit guide. It should also have the ability to be given in combination with the other disclosure documents (refer to the enabling provision in regulation 28L(9)). Therefore, we consider the best location for the link is after the customer has completed an application form but before the customer clicks on an “accept” button, so that the customer has the opportunity to see the information before the contract is accepted.

3. That it is made clear that the following provisions apply to the Warning:

208(1) of the Code: “If a form is prescribed or approved by or for the purpose of this Code, strict compliance with the form is not necessary and substantial compliance is sufficient.”

Regulation 6(5): “A document that is required to comply with a form need not contain any matter that is not relevant to the credit contract, mortgage, guarantee or consumer lease concerned. The consequential renumbering of items is permissible.”

It would appear that these provisions would permit the licensee to delete the line “If you are





on Government Benefits...” if, as indeed is the case for Cash Doctors, this would not be relevant to the credit contract. It would be helpful if these provisions are cross-referenced in a Note to 28XXB as follows:

“Note: Section 208(1) of the Code and Regulation 6(5) apply to the requirements set out in this regulation.”

Ban on Third Party Fees

Regulation 79AB states:

“Credit provider or prescribed person must not require or accept payment of fee or charge in relation to small amount credit contract etc

For subsection 31B (1) of the Code, a person who has been introduced to a debtor by a credit provider to provide a service in relation to a small amount credit contract is a prescribed person (whether or not the person is associated with the credit provider).

Note Section 31B of the Code applies to a credit provider or a person prescribed by the regulations.”

Treasury has asked *“Are there any situations where third party fees should be allowed?”*.

We submit that the following third party fees should be allowed:

- The cost of a credit check and identity verification check paid to a credit reporting agency. Performing a credit check, not only is a suggested requirement under responsible lending laws, but it also helps credit providers to understand the consumer’s behavior, capacity to repay and whether they are already bankrupt or in financial difficulty. Participation in credit checking will be imperative when comprehensive credit reporting is introduced. Similarly, identity verification checks are a requirement under Anti-Money Laundering legislation, and the use of a third party provider such as a credit reporting agency assists with the compliance of this obligation.
- Direct debit fees paid to a direct debit service provider. Using a direct debit as a form of repayment enables the customer to avoid manual and time intensive repayment methods and thus increases their chances of successful repayment and finalising the repayment of any loan.
- Card fees paid to a card issuer. Customers use prepaid or debit cards for purposes other than short term loans and are independently charged by the issuer of the card. These fees include card issuance, card replacement, and ATM withdrawal/EFTPOS usage fees. These card-related fees are not connected with the loan per se, rather they act only to provide a payment method or a provider of other utility for the client.





All of these fees are reasonable and genuine out of pocket expenses paid to third parties that may be related to the provision of a credit product. Credit providers are already disadvantaged by the restrictive rate cap and restrictive business practices placed on SACCs - to not exempt these costs from the cap places credit providers of SACCs at a further disadvantage because they will be forced to absorb such costs rather than being able to legitimately pass such costs on to the consumer.

In Closing

Cash Doctors customers already have the protection they need to make an informed decision about the loan product they want:

- they are subjected to a rigorous and responsible assessment of their financial capacity to repay a loan; and
- they receive an advance that is an appropriate amount with an appropriate repayment schedule for their individual financial situation and purpose.

Website Disclosure serves no purpose for our permanently employed customer-base. We have submitted in the first instance that the requirement to give the Website Disclosure does not apply when the customers involved are not Centrelink recipients. In the alternative, we have provided a more tailored website disclosure for our customer base. Finally, we seek that the Website Disclosure provision is made clear that the Warning can be amended if the wording is not relevant to the credit provider.

In relation to third party fees, we have submitted that the cost of a credit check and identity verification check paid to a credit reporting agency, direct debit fees paid to a direct debit service provider, and card fees paid to a card issuer, as directly incurred expenses, should be exempted from the cap on costs in order to lessen, albeit by a small margin, the financial restrictions currently imposed by the "20+4" costs cap.

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

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Yours sincerely



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